



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 31 May 2013

No. 5208

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 130

2013

PROMULGATION OF ACT
OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 6 of 2013: Transfer Duty Amendment Act, 2013.

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Transfer Duty Act, 1993, so as to change the rates at which transfer duty is levied; and to provide for incidental matters.

(Signed by the President on 16 May 2013)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

Amendment of section 2 of Act No. 14 of 1993, as amended by section 1 of Act No. 20 of 2003 and section 1 of Act No. 3 of 2010

1. Section 2 of the Transfer Duty Act, 1993 (Act No. 14 of 1993) is amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of section 9, there shall be levied for the benefit of the State Revenue Fund a transfer duty on the value of any property acquired by any person on or after the date of commencement of the Transfer Duty Amendment Act, [2010] 2013, by way of a transaction or in any other manner, or on the amount by which the value of any property is enhanced by renunciation, on or after the said date, of an interest in or a restriction upon the use or disposal of that property, at the rate of -

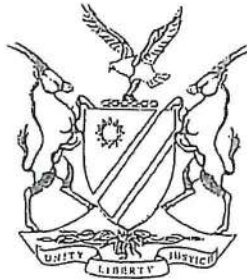
- (a) where the said value or the said amount, as the case may be -
- (i) does not exceed [N\$400 000] N\$600 000, nil per cent;
 - (ii) exceeds [N\$400 000] N\$600 000 but does not exceed [N\$800 000] N\$1 000 000, one per cent of such amount of the said value or the said amount, as the case may be, as exceeds [N\$400 000] N\$ 600 000;
 - (iii) exceeds [N\$800 000] N\$1 000 000 but does not exceed [N\$1 500 000] N\$2 000 000, N\$ 4000 plus five per cent of so much of the said value or the said amount, as the case may be, as exceeds [N\$800 000] N\$1 000 000;
 - (iv) exceeds [N\$1 500 000] N\$2 000 000, [N\$39 000] N\$ 54 000 plus eight per cent of so much of the said value or the said amount, as the case may be, as exceeds [N\$1 500 000] N\$ 2 000 000;

if the property is not agricultural land as contemplated in paragraph (b) and the person by whom the property is acquired or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person; [or]

- (b) where the value of the agricultural land acquired by a natural person to whom an advance, for the purposes of such acquisition, is made by the Agribank in accordance with the provisions of section 5 [(a) or] (c) of the Agricultural Bank Act, 2003 (Act No. 5 of 2003) –
- (i) does not exceed [N\$500 000] N\$1 500 000, nil per cent;
 - (ii) exceeds [N\$500 000] N\$1 500 000 but does not exceed [N\$1 000 000] N\$2 500 000, one per cent of so much of the value of the agricultural land as exceeds [N\$500 000] N\$1 500 000; and
 - (iii) exceeds [N\$1 000 000] N\$2 500 000, [N\$5 000] N\$ 10 000 plus three per cent of so much of the value of the agricultural land as exceeds [N\$1 000 000] N\$ 2 500 000]; or
- (c) 12 per cent of the said value or the said amount, as the case may be, if the person by whom the property is acquired or in whose favour or for whose benefit the said interest or restriction is renounced is a person other than a natural person."

Short title and commencement

2. This Act is called the Transfer Duty Amendment Act, 2013, and comes into operation on the first day of the month following the month in which this Act is published in the *Gazette*.



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OF THE
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GOVERNMENT NOTICE

No. 131 Promulgation of Stamp Duties Amendment Act, 2013 (Act No. 7 of 2013), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 131

20 13

PROMULGATION OF ACT
OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 7 of 2013: Stamp Duties Amendment Act, 2013.

EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing provisions.
- [] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Stamp Duties Act, 1993, so as to exempt natural persons from the payment of stamp duty on transfer deeds in respect of the acquisition of immovable property with a value or consideration not exceeding N\$600 000; and to provide for incidental matters.

(Signed by the President on 16 May 2013)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

Substitution of Item 16 of Schedule I to Act No. 15 of 1993 as amended by section 1 of Act No. 12 of 2011

1. Schedule 1 to the Stamp Duties Act, 1993 (Act No. 15 of 1993), is amended by the substitution for item 16 of the following item:

16	<p><i>Transfer Deed</i>, relating to immovable property purchased by:</p> <p><i>Natural persons</i> -</p> <p>(1) where the value or consideration does not exceed [N\$400 000] <u>N\$600 000</u>.</p> <p>(2) where the value or consideration exceeds [N\$400 000] <u>N\$600 000</u> for every N\$1 000 or part thereof of the value or consideration that exceeds [N\$400 000] <u>N\$600 000</u>.</p> <p><i>A person (including a trust) other than a natural person</i> -</p> <p>On the value or consideration for every N\$1 000 or part thereof:</p> <p>Where the amount of such value differs from the amount of such consideration, the duty under this item is payable on the higher amount.</p> <p>Where, in terms of the Sectional Titles Act, 1971 (Act 66 of 1971), the ownership or any share of or interest in the ownership in any unit or land held under sectional title deed is transferred or any alienation of any such unit or land or any share of or interest therein is registered by means of an endorsement made by the registrar of deeds on such sectional title deed or by means of the issue by such registrar of a certificate of registered sectional title, such endorsement or certificate is for the purposes of this item deemed to be a transfer deed relating to immovable property.</p>	<p>Exempt</p> <p>N\$ 10</p> <p>N\$12</p>
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Act No. 7, 2013

STAMP DUTIES AMENDMENT ACT, 2013

	<p><i>Exemptions:</i></p> <p>(a) Partition Transfers, except in respect of consideration paid by one of the parties thereto to another such party.</p> <p>(b) Transfers which bring about no alteration in the legal rights in the property transferred.</p>	
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Short title and commencement

2. This Act is called the Stamp Duties Amendment Act, 2013 and comes into operation on the first day of the month following the month of its publication in the *Gazette*.



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 1 October 2015

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Government Notices

MINISTRY OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT

No. 220 2015

**AMENDMENT OF REGULATIONS RELATING TO STANDARD OF TRAINING
OF ESTATE AGENTS: ESTATE AGENTS ACT NO. 112 OF 1976**

Under section 33 of the Estate Agents Act, 1976 (Act No. 112 of 1976), after consultation with the Namibia Estate Agents Board, I have made the regulations set out in the Schedule.

**I. NGATJIZEKO
MINISTER OF INDUSTRIALIZATION, TRADE
AND SME DEVELOPMENT**

Windhoek, 15 September 2015

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the Regulations Relating to the Standard of Training of Estate Agents published under Government Notice R1409 of 1 July 1983 as amended by Government Notice No. 221 of 2 September 1996.

Amendment of regulation 4 of Regulations

2. Regulation 4 of the Regulations is amended by the substitution in paragraph (b) for the amount "N\$250" of the amount "N\$1000".

 MINISTRY OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT

No. 221

2015

 AMENDMENT OF REGULATIONS RELATING TO AUDITORS'S
 REPORT FORMAT: ESTATE AGENTS ACT, 1976

Under section 32 of the Estate Agents Act, 1976 (Act No. 112 of 1976), after consultation with the Namibia Estate Agents Board, I have amended the regulations as set out in the Schedule.

I. NGATJIZEKO
 MINISTER OF INDUSTRIALIZATION, TRADE
 AND SME DEVELOPMENT

Windhoek, 15 September 2015

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the Regulations Relating to the Auditor's Report Format published under Government Notice R604 of 23 March 1979 as amended by Government Notice R2499 of 13 November 1981.

Amendment of Annexure to Regulations

2. The Annexure to the Regulations is amended by inserting the letter "C" after the word "Annexure".

Amendment of Regulations

3. The Regulations are amended by inserting after Annexure B of the following Annexure:

Annexure "C"

"AUDITOR'S REPORT IN TERMS OF SECTION 32(4) OF THE
 ESTATE AGENTS ACT, 1976 (ACT 112 OF 1976)
 (Regulation 2)

 20

(Insert Name of the Estate Agency Entity)

P O Box _____
 Windhoek
 Namibia

Report of the independent auditor _____ *(Insert Name of the Estate Agency Entity)* ("the estate agent") in respect of the Estate Agent's Trust Account(s) to the Director(s)/Member(s)/Practitioner(s) _____ *(Insert Name of the Estate Agency Entity)*, and The Namibia Estate Agents Board.

We have completed our engagement to determine whether the estate agent's trust accounts of _____ (*Insert Name of the Estate Agency Entity*) were maintained in terms of Sections 29, 32(1)(2)(a)(b)(c) and (3)(a)(b) of the Estate Agents Act, No. 112 of 1976 (the "Act"), for the period from _____ 20____ to _____ 20____ or year ended _____ and report our conclusion thereon, together with any instances of non-compliance that came to our attention (Section A). We are also required to report on certain additional matters of compliance with other Acts (Section B) and report on certain information extracted from the accounting records (Section C).

Our engagement arises from our appointment as auditor of _____ (*Insert Name of the Estate Agency Entity*)

Director(s)/Member(s)/Practitioner(s) responsibility for Trust Accounts

The Director(s)/Member(s)/Practitioner(s) of _____ (*Insert Name of the Estate Agency Entity*) are responsible for ensuring that the estate agent's trust accounts are maintained in compliance with the provisions of the Act and the regulations of the Estate Agent Board of Namibia. The Director(s)/Member(s)/Practitioner(s) is/are also responsible for the implementation of accounting and internal control systems to ensure that the trust account(s) and extracts therefrom included in this report are free of material misstatement whether due to fraud or error.

Auditor's responsibility

Our responsibility is to report our conclusions and findings regarding the _____ (*Insert Name of the Estate Agency Entity*) maintenance of its trust account(s) in compliance with the Act, and extraction of certain information from the accounting records, based on our work performed.

We conducted our assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000, Assurance Engagements Other than Audits or Reviews of Historical Financial Information. That standard requires that we comply with ethical requirements and plan and perform the engagement to obtain reasonable assurance about the compliance of the estate agent trust account(s), in all material respects, with the Act and the regulations.

The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and the regulations, whether due to fraud and error.

In making those risk assessments the auditor considers internal control relevant to the circumstances of the engagement.

We have relied on evidence obtained in the course of our audit of the annual financial statements for the year ended _____ 20____, and exercised our judgement regarding matters coming to our attention in the course of our audit, together with evidence obtained from such additional procedures as we considered necessary in the circumstances.

A. Compliance with the Act

Summary of work performed

Additional procedures included:

1. Inquiries of the Director(s)/Member(s)/Practitioner(s) responsible for financial matters and compliance with the Act and the inspection of supporting documents to determine whether for the period reported on:

- the estate agent opened and kept a separate, properly designated, trust account during the entire period as required by Section 32(1) of the Act;
 - the estate agent had invested moneys deposited in a trust account in accordance with the requirements of section 32(2) of the Act and that any interest earned and kept in a separate interest bearing account was managed appropriately in terms of Section 32 (2) (a);
 - the estate agent had kept separate accounting records, as required by Section 32(3)(a) of the Act, and balanced the accounting records relating to any trust account at intervals of not more than one month, as required by Section 32(3)(b) of the Act;
 - the circumstances under which negotiable instruments deposited into the estate agent's trust accounts at each month-end and not subsequently honoured, were satisfactory;
 - the system employed when transferring amounts (including interest earned) from the estate agent's trust banking account to the estate agent's business account appears to ensure that on each occasion any such transfer is made, the balance remaining to the credit of such trust banking amount or other interest-bearing account referred to in Section 32(2)(c) of the Act, together with any trust moneys held in cash on hand, amounts to not less than the trust balances.
2. Inspection of the estate agent's accounting records to determine whether:
- The estate agent has kept such accounting records in terms of section 29 of the Act and that the business accounts were audited in terms of section 29(b) of the Act.

Conclusion on compliance with the Act

3. Based on our work performed, we found that the estate agent's trust account(s) were maintained in compliance with Sections 29, 32(1), (2) and (3) of the Act during the period from _____ 20__ to _____ 20__ OR year ended _____ except for the contraventions as set out below:

	Section of the Act	Details of Contravention/s of the Estate Agency Affairs Act in respect of Trust Accounts ¹

B. Additional compliance

1. Estate Agents' Act, No. 112 of 1976

We have inspected that a valid fidelity fund certificate in the name of _____ (Insert Name of the Estate Agency Entity) and for each Director(s)/Member(s)/Practitioner(s) was obtained, as required by Section 26(b) of the Act. The fidelity fund policy number is _____ (insert policy number) and _____ (insert number) individuals practicing as estate agents have been insured for a period of _____ (insert number of months) months ending on the _____ (insert date).

¹ Any contravention of the items detailed in the bullet points above are regarded as material and should be reported. Specify sections of the Act and Rules contravened and provide details of contravention(s).

2. **Financial Intelligence Act, No. 3 of 2012 (FIA)**

The Estate Agent has provided evidence that the Director(s)/Member(s)/Practitioner(s) of _____ (Insert Name of Estate Agency Entity) are aware of the relevant provisions of the FIA and its complementing regulations. The evidence obtained includes but is not limited to:

	Yes	No
• That the estate agent or agency has a written policy and procedure document in place which addresses certain key provisions of the FIA. The policy and procedures are approved by the Director(s)/Member(s)/Practitioner(s) and further require each employee of all departments to be aware of the requirements of the Financial Intelligence Act, especially the identification of clients, reporting of suspicious transactions, reporting of transactions in excess of the determined cash thresholds and the retention of documentation for transactions for at least 5 (five) years;		
• That the estate agent has been registered with the Financial Intelligence Centre; and		
• That the estate agent has appointed/designated an Anti-Money Laundering Compliance Officer.		

C. **Information extracted from the accounting records**

Monies deposited in a trust banking account in compliance with Sections 32(1) and 32(2)(a) of the Act:

	NS
1. Total interest received	
2. Less: Paid out in terms of express written mandates (Section 32(2)(c) of the Act	
3. Balance	
4. Less: Amounts paid to the Fidelity Fund of the Board – 50% of above balance	
5. Amount retained by estate agent	

D. **Procedures performed**

1. We agreed the total interest received to supporting bank statements to determine that the total interest received has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
2. We agreed the total amount paid out in terms of express written mandates to the balance(s) reflected in the underlying trust accounting records to determine that the total amount paid out has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
3. We agreed the amounts paid out to the Fidelity Fund of the Board to the balance(s) reflected in the underlying trust accounting records to determine that the total amount paid out has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
4. We agreed the amount retained by the estate agent to the balance recorded in the general ledger.

The above information has been extracted from the underlying trust accounting records which were subject to our audit of the financial statements as a whole. With the exception of those procedures performed, as described above, the underlying information is unaudited and does not form part of our conclusion regarding compliance with Sections 32(1), (2) and (3) of the Act as set out in Section A, and accordingly, we express no conclusion thereon.

Additionally we were informed by the Director(s)/Member(s)/Practitioner(s) that the sellers of the properties deposit their funds into the attorneys trust accounts and not into the trust account(s) of _____ (*Insert Name of the Estate Agency Entity*).

OR

We inspected the bank statements of the _____ bank account and identified that _____ (*Insert Name of the Estate Agency Entity*) does not earn any interest as the account is not interest-bearing.

Additionally we were informed by the Director(s)/Member(s)/Practitioner(s) that the sellers of the properties deposit their funds into the attorneys trust accounts and not into the trust account(s) of _____ (*Insert Name of the Estate Agency Entity*).

E Restriction on use and distribution of the report

The layout and wording of our report is in compliance with the requirements of the Estate Agents Board and may not be suitable for any other purpose, consequently, it is intended solely for the use of Director(s)/Member(s)/Practitioner(s) of the estate agent and the Estate Agents' Board and should not be distributed to any other parties without our prior written consent.

 "Firm Name"
 PAAB registration number
 Registered Accountants and Auditors
 Chartered Accountants (Namibia)

Per: A Accountant
 Partner

Place: Date:

MINISTRY OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT

No. 222

2015

**AMENDMENT OF REGULATIONS RELATING TO ISSUE OF FIDELITY FUND AND
 REGISTRATION CERTIFICATES: ESTATE AGENT ACT, 1976**

Under section 33 of the Estate Agent Act, 1976 (Act. No. 112 of 1976), after the consultation with the Namibia Estate Agents Board, I have amended the regulations set out in the Schedule.

**I. NGATJIZEKO
 MINISTER OF INDUSTRIALIZATION, TRADE
 AND SME DEVELOPMENT**

Windhoek, 15 September 2015

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the Regulations Relating to the Issue of Fidelity Fund and Registration Certificates published under Government Notice No. R2106 of 3 October 1986 as amended by Government Notice Nos. AG 97 of 1 November 1989 and 222 of 2 September 1996.

Substitution of regulation 2 of Regulations

2. The regulations are amended by the substitution for regulation 2 of the following regulation:

- "2. (1) Any estate agent -
- (a) shall for the calendar year 2015 and annually thereafter pay to the board a levy of N\$1200; and
- (b) excluding the estate agent referred to in paragraph (d) of the definition of 'estate agent' in section 1 of the Act, shall for the calendar year 2015 and annually thereafter pay to the fund a contribution of N\$300;
- (2) Any person who applies to the board for the issue of a fidelity fund certificate or registration certificate shall pay to the board a levy of N\$300 in addition to the levy referred to in subregulation (1)(a); and
- (3) Any estate agent to whom a fidelity fund certificate or a registration certificate has already been issued for a particular year, but failed to -
- (a) apply before the date referred to in regulation 4(1) to the Board for the issue to him or her of such certificate in respect of the succeeding or any later calendar year; and
- (b) make such application after that date shall pay to the board a levy of N\$1 000 in addition to the levy referred to in subregulation (1)(a).
- (4) Any person who has passed the Board's examination becomes an estate agent in terms of the Act as long as that person remains registered and pays membership fees to the NEAB.
- (5) Any estate agency and every estate agent shall pay an additional membership fee of N\$500 to the Board on or before 1 October every year.
- (6) Any estate agent who has not paid his or her annual membership fees before 1 November each year shall automatically cease to be an estate agent and an estate agency which fails to pay its annual membership fees by 1 November each year shall not be issued with a fidelity fund certificate for the ensuing year.
- (7) Any person who has ceased to be an estate agent in terms of subregulation (5) may be required to re-write and pass the applicable examinations before he or she can be registered again."

Amendment of regulation 4 of Regulations

3. Regulation 4 of the regulations is amended by the substitution for subregulation (3) of the following subregulation:

“(3) Any estate agent who carries on a business otherwise than as an employee in more than one branch or outlet, shall -

- (a) apply for a separate fidelity fund certificate in respect of each branch or outlet, irrespective of the trading name or style under which business is carried on in each such branch or outlet; and
 - (b) display each fidelity certificate to the satisfaction of the Board in a prominent place in each branch or outlet.
- (4) Each fidelity fund certificate shall be issued to the estate agent only if each business, branch or outlet has paid the levies referred to in regulation 2(1)(a) and (b).”
-

PART VIII
PARTICIPATION QUOTAS AND DEVELOPERS

Participation quotas

34. (1) Subject to section 51, the participation quota of a section is a percentage expressed to four decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the section by the floor area, correct to the nearest square metre, of all the sections in the building or buildings comprised in the scheme.

(2) In all cases where a developer alienates a unit in a scheme before the sectional title register is opened, the total of the participation quotas allocated to the respective sections and the participation quota of that unit must be disclosed in the deed of alienation.

(3) A deed of alienation in which a disclosure contemplated in subsection (2) has not been made as required by that subsection, is voidable at the option of the purchaser, and thereupon section 26(23), (24), (25), and (26) applies with the necessary changes in respect of such an alienation.

(4) Subject to subsection (5), the participation quota of a section determines -

(a) the value of the vote of the owner of the section, in the case where the vote is to be reckoned in value;

(b) the undivided share in the common property of the owner of the section; and

(c) subject to section 39(1)(b), the proportion in which the owner of the section -

(i) must make contributions for the purposes of section 39(1)(a); or

(ii) may in terms of section 49(1) be held liable for the payment of a judgment debt of the body corporate of which that owner is a member.

(5) Subject to section 39(1)(b) -

(a) the developer, when submitting an application for the opening of a sectional title register; or

(b) the members of the body corporate, by special resolution,

may make rules under section 37 by which a different value is attached to the vote of the owner of a section, or the liability of the owner of a section to make contributions for the purposes of section 39(1)(a) or 49(1) is adjusted, but -

(i) where the owner of a section is adversely affected by a such a decision of the body corporate that owner's written consent must be obtained;

- (b) confer on the owners of sections the right, to be exercised by the body corporate, to have access to each section and the exclusive use areas from time to time during reasonable hours to the extent necessary to maintain, repair or renew a part of the building or any pipes, wires, cables or ducts therein, or to make emergency repairs therein necessary to prevent damage to the common property or to any other section or sections.

Creation of servitudes

31. (1) The owners of sections may by special resolution direct the body corporate -

- (a) to execute on their behalf a servitude or restrictive agreement burdening the land shown on the relevant sectional plan;
- (b) to accept on their behalf a servitude or restrictive agreement benefiting the land shown on the relevant sectional plan.

(2) Every servitude or agreement referred to in subsection (1) must -

- (a) be embodied in a notarial deed; and
- (b) be registered by the registrar by noting the notarial deed referred to in paragraph (a) -
 - (i) on the schedule of servitudes and conditions referred to in section 11(3)(b); and
 - (ii) on the title deeds of every party to such servitude or restrictive agreement whose title deeds are registered in the land register.

(3) If the land to be burdened by a servitude or restrictive agreement referred to in subsection (1)(a) is hypothecated, the written consent of every mortgagee to the registration of that servitude or restrictive agreement must be lodged with the registrar.

Ancillary servitudal rights

32. All ancillary rights and obligations reasonably necessary to make servitudes effective apply in respect of servitudes implied or created under this Act.

Deeds Registries Act and implied servitudes

33. (1) The Deeds Registries Act does not apply in respect of servitudes or restrictions as to user implied under this Act.

(2) The servitudes and restrictions referred to in subsection (1) take effect and are enforceable immediately on the establishment of the body corporate.

- (ii) no such change may be made by a special resolution of the body corporate until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme;
 - (iii) in the case where the developer alienates a unit before submitting an application for the opening of the sectional title register, no exercise of power to make a change conferred on the developer by this subsection is valid unless the intended change is disclosed in the relevant deed of alienation.
- (6) The specification on or in the schedule to a sectional plan of -
- (a) the participation quota of each section; and
 - (b) the total of the participation quotas of all the sections,

in the building or buildings comprised in a scheme is for all purposes deemed to be correct in the absence of proof to the contrary.

Sale or letting of sections

35. Nothing in this Act or any other law contained is to be construed as preventing a developer from selling certain sections in a building and letting other sections therein or from letting all sections therein.

Shares of developers in buildings and land

36. (1) The developer is the owner of a section in respect of which the ownership is not held by any other person, and the participation quota of such section or, if there is more than one such section, the total of the participation quotas of such sections determines the share of the developer in the common property.

(2) When the ownership in every section is held by any person or persons other than the developer, the developer ceases, subject to section 26(1), to have a share or interest in the common property.

(3) When a developer has in one transaction alienated the whole of his or her interest in the land and the building or buildings comprised in a scheme, or a share in the whole of such interest, to any other person, the registrar must register the transaction by means of -

- (a) in the case of units, a deed of transfer; and
 - (b) in the case of rights reserved under sections 26 and 28, a bilateral notarial deed of cession.
- (4) The registrar may not register the transfer of a transaction referred to in subsection (3) unless there is produced to the registrar -
- (a) a certificate by a conveyancer confirming that, if a body corporate is deemed to have been established in terms of section 38(1), the body corporate has certified that all moneys due to the body corporate by the transferor in respect of the units in question have been paid or provision

for the payment thereof has been made to the satisfaction of the body corporate;

- (b) a conveyancer's certificate or other document, whichever may be applicable, prescribed by section 78 of the Local Authorities Act, 1992 (Act No. 23 of 1992); and
- (c) such other documents and particulars as may be prescribed by or under this Act or any other law.

PART IX
RULES AND BODIES CORPORATE

Rules

37. (1) A scheme is, as from the date of the establishment in terms of section 38(1) of the body corporate, controlled and managed, subject to this Act, by means of rules.

- (2) The Minister -
 - (a) may make rules, on the recommendation of the sectional titles Regulation Board and subject to subsection (3); and
 - (b) must publish the rules made in terms of paragraph (a) by notice in the *Gazette*.
- (3) The rules made in terms of subsection (2) must provide for the control, management, administration, use and enjoyment of the sections and the common property, and must comprise -
 - (a) management rules; and
 - (b) conduct rules.
- (4) The rules referred to in subsection (3) may be substituted, added to, amended or repealed in respect of a particular scheme -
 - (a) in the case of management rules -
 - (i) by the developer, when applying to the registrar for the opening of a sectional title register, to the extent prescribed;
 - (ii) by the body corporate, from time to time by unanimous resolution of that body corporate as prescribed;
 - (b) in the case of conduct rules -
 - (i) by the developer, when applying to the registrar for the opening of a sectional title register;
 - (ii) by the body corporate, from time to time by special resolution of the body corporate,

but a conduct rule substituted, added to or amended by the developer under subparagraph (i), or any substitution, addition to or amendment of the conduct rules by the body corporate under subparagraph (ii), may not be in conflict with any management rule made in terms of subsection (2).

(5) A management rule or conduct rule made by a developer or a body corporate under subsection (4) must -

- (a) be reasonable; and
- (b) apply equally to all owners of units used for substantially the same purpose.

(6) Subject to subsection (9), the rules made in terms of this section apply, as from the date of the establishment in terms of section 38(1) of the body corporate, in respect of the building or buildings and land in question and binds -

- (a) the body corporate;
- (b) the owners of the sections; and
- (c) any person occupying, or finding himself or herself in or on, a section for any purpose.

(7) If the rules are substituted, added to, amended or repealed by a body corporate under subsection (4), the body corporate must furnish the registrar, in the prescribed form and manner, with particulars of that substitution, addition, amendment or repeal.

(8) The registrar -

- (a) may not be involved in the enforcement or application of the rules made in terms of this section; and
- (b) is not required to examine or note or endorse any substitution, addition, amendment or repeal of the rules referred to in paragraph (a) against or on any certificate, deed or other document.

(9) A substitution, addition, amendment or repeal contemplated in subsection (7) comes into operation on the date on which the registrar is furnished in terms of that subsection with particulars thereof.

(10) The body corporate must, at the written request of -

- (a) an owner of a unit or any other person having a registered real right in or over a unit; or
- (b) any person authorised thereto in writing by the owner or other person referred to in paragraph (a),

make any rules then in force available for inspection to that owner, or other or authorised person.

Bodies corporate

38. (1) With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there is deemed to be established for that scheme a body corporate of which the developer and that person are members, and every person who thereafter becomes an owner of a unit in that scheme is, as from the date on which that person becomes such an owner, a member of that body corporate.
- (2) The developer ceases to be a member of the body corporate referred to in subsection (1) when the developer ceases to have a share in the common property in terms of section 36(2), and any other member of the body corporate ceases to be a member thereof when that member ceases to be the owner of a unit in the scheme in question.
- (3) A body corporate must be designated as "the Body Corporate of the (name) Development Scheme, No", such name and number to be inserted being the name and the distinctive number referred to in sections 7(3)(b) and 12(1)(a), respectively.
- (4) The registrar must issue a certificate of establishment, in the prescribed form, to a body corporate established in terms of subsection (1).
- (5) Subject to this Act, a body corporate is responsible for -
- (a) the enforcement of the rules referred to in section 37; and
 - (b) the control, administration and management of the common property for the benefit of all owners.
- (6) The Companies Act, 1973 (Act No. 61 of 1973), and the Close Corporations Act, 1988 (Act No. 26 of 1988), do not apply in relation to a body corporate.
- (7) A body corporate has perpetual succession and is capable of suing and of being sued in its corporate name in respect of -
- (a) any agreement entered into by it;
 - (b) any damage to the common property;
 - (c) any matter in connection with the land or building for which the body corporate is liable or for which the members of the body corporate are jointly liable;
 - (d) any matter arising out of the exercise or non-exercise of any of its powers or the performance or non-performance of any of its duties in terms of this Act or any rule; and
 - (e) any claim against the developer in respect of the scheme if so determined by special resolution.
- (8) When a body corporate is established in terms of subsection (1), the developer must inform the local authority concerned in writing -

- (a) of the corporate name and postal address of the body corporate, within 30 days after the establishment of the body corporate; and
- (b) of the full names, residential address and postal address of every person who purchases from the developer a unit in the scheme in question, within 30 days after the entering into of an agreement of sale.

(9) The developer must convene a meeting of the members of the body corporate to take place not later than 60 days after the establishment in terms of subsection (1) of that body corporate, at which meeting the developer must furnish those members with -

- (a) a copy of the registered sectional plan;
- (b) a clearance certificate issued by the local authority concerned to the effect that all rates and other payments due by the developer to that local authority in respect of the property in question, up to and including the date of the establishment of the body corporate, have been duly paid; and
- (c) proof, in writing, of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit in that scheme until the date of the establishment of the body corporate.

(10) The agenda of the meeting convened in terms of subsection (9) is as prescribed in the management rules.

(11) The developer must pay over to the body corporate, at the meeting convened in terms of subsection (9), any surplus funds as revealed by the proof of revenue and expenditure furnished in terms of paragraph (c) of that subsection.

(12) A developer who fails to comply with a provision of subsection (8) or (9) or (11) commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

(13) Despite anything to the contrary in this Act or any other law, a developer who fails to comply with a provision of subsection (8) is liable for the payment of the rates and taxes due to the local authority concerned in respect of the unit or units in question until such time as the developer complies with that subsection, irrespective of whether or not the developer is convicted of an offence under that subsection.

Functions of bodies corporate

39. (1) A body corporate referred to in section 38(1) must perform the functions entrusted to it by or under this Act or the rules, and those functions include -

- (a) to establish for administrative expenses a fund sufficient in the opinion of the body corporate for -
 - (i) the repair, upkeep, control, management and administration of the common property, including reasonable provision for future maintenance and repairs;

- (ii) subject to section 54, the payment of rates and taxes and other local authority charges in respect of the common property;
- (iii) the payment of local authority charges or other charges for -
 - (aa) necessary maintenance with regard to the supply of electricity, gas, water and fuel; and
 - (bb) the supply of sanitary and other services,
to the building or buildings and land;
- (iv) the payment of any premiums of insurance in respect of the scheme that may become due and payable; and
- (v) the discharge of any other duty or the fulfilment of any other obligation of the body corporate;
- (b) (i) to require the owners of sections, when necessary, to make contributions to the fund established in terms of paragraph (a) for the purposes of satisfying any claims against the body corporate;
- (ii) despite subparagraph (i), to require the owner or owners of a section or sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not that right is registered or conferred by rules made under the repealed Act, to make such additional contribution to the fund referred to in that subparagraph as is estimated necessary by the body corporate to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for the payment of those costs;
- (c) to determine from time to time the amounts to be raised for the purposes of paragraphs (a) and (b);
- (d) to raise the amounts determined in terms of paragraph (c) by levying contributions on the owners in proportion to the participation quotas of their respective sections;
- (e) to open and operate an account or accounts with a banking institution or a building society as may be prescribed;
- (f) to insure the building or buildings, and keep the building or buildings insured, to the replacement value thereof against fire and such other risks as may be prescribed;
- (g) to insure, in addition to the insurance contemplated in paragraph (f), against such other risks as the owners may determine by special resolution;

- (h) subject to section 51 and to the rights of the holder of any sectional mortgage bond, to immediately apply any insurance money received by the body corporate in respect of damage to the building or buildings for the rebuilding and reinstatement of the building or buildings in so far as this may be effected;
 - (i) to pay the premiums on any policy of insurance effected by the body corporate in terms of paragraph (f) or (g);
 - (j) to comply with any notice or order by a competent authority requiring any repairs to, or work in respect of, the building or buildings or land in question;
 - (k) to comply with any reasonable request for the furnishing of the names and addresses of the persons who are the trustees of the body corporate in terms of the rules referred to in section 37, or who are members of the body corporate;
 - (l) to notify the registrar and the local authority concerned in writing of the *domicilium citandi et executandi* of the body corporate, being its address for service of any process;
 - (m) to ensure compliance with any law relating to the common property or to any improvement on the land comprised in the common property;
 - (n) to properly maintain the common property (including elevators) and to keep it in a good and serviceable state of repair;
 - (o) to keep in a good and serviceable state of repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the common property and sections;
 - (p) subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;
 - (q) at the written request of an owner or registered mortgagee of a section, to produce to that owner or mortgagee, or a person authorised thereto in writing by that owner or mortgagee, the policy or policies of insurance effected by the body corporate in terms of paragraph (f) or (g) and the receipt or receipts for, or other written proof of, the most recent payment of the premium or premiums in respect of the policy or policies; and
 - (r) in general, to control, manage and administer the common property for the benefit of all owners.
- (2) Any contributions levied in terms of subsection (1) -
- (a) are due and payable on the passing of a resolution to that effect by the trustees of the body corporate; and

- (b) may be recovered by the body corporate by action in any court (including a magistrate's court) of competent jurisdiction from the persons who were the owners of sections at the time when the contributions became due and payable.
- (3) Despite anything to the contrary in any other law, a magistrate's court has jurisdiction to hear any action instituted under subsection (2)(b) irrespective of the amount of the claim.
- (4) The body corporate must, on application by an owner or registered mortgagee of a section, or a person authorised thereto in writing by that owner or mortgagee, certify in writing -
- (a) the amount determined in terms of subsection (1) as the contribution payable by that owner;
 - (b) the manner in which, and the time at which, a contribution referred to in paragraph (a) is payable;
 - (c) particulars relating to the payments made by that owner in respect of the contribution referred to in paragraph (a), and the balance outstanding and payable; and
 - (d) particulars relating to, and the amount of, any rates and taxes paid by the body corporate to the local authority concerned in terms of section 54(4) and not recovered by the body corporate from the owners concerned.
- (5) The body corporate is, for the purposes of effecting any insurance in terms of paragraph (f) of subsection (1), deemed to have an insurable interest for the replacement value of the building or buildings and is, for the purposes of effecting any other insurance in terms of that subsection, deemed to have an insurable interest in the subject matter of that insurance.

Powers of bodies corporate

40. A body corporate referred to in section 38(1) may exercise the powers conferred on it by or under this Act or the rules, and those powers include the power -
- (a) to appoint, subject to the conditions determined by the body corporate, such agents and employees as the body corporate may consider appropriate;
 - (b) when essential for the proper discharge of the duties of the body corporate and the proper conduct of its affairs -
 - (i) to purchase or otherwise acquire, or take transfer of units in the scheme in question;
 - (ii) to mortgage, sell, or give transfer of units acquired under subparagraph (i); or
 - (iii) to hire units in the scheme or let units acquired under subparagraph (i);

- (c) to purchase, hire, lease or otherwise acquire movable property for the use of owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property;
- (d) to establish and maintain, where practicable and at its discretion, suitable lawns and gardens and recreation facilities on the common property;
- (e) to borrow money required by the body corporate in the performance of its functions or the exercise of its powers;
- (f) to secure the repayment of money borrowed by the body corporate, and the payment of interest thereon, by means of a negotiable instrument effected for that purpose or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any property vested in the body corporate;
- (g) to invest any money of the fund established in terms of section 39(1)(a);
- (h) to enter into an agreement with the local authority or any other person or body for procuring the supply to the building or buildings and land of electricity, gas, water, fuel, and sanitary and other services in so far as this may be necessary;
- (i) to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by the body corporate to the section or to the owner or occupier thereof, including the right to let a part of the common property to any such owner or occupier by means of a lease other than a lease contemplated in section 19(1); and
- (j) to do all such other things as are reasonably necessary for the enforcement of this Act and the rules, and for the control, management and administration of the common property.

Functions and powers of bodies corporate to be performed or exercised by trustees

41. (1) The functions and powers of a body corporate must, subject to this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules, subject thereto that -

- (a) the majority of trustees must be owners of sections;
- (b) a trustee or an alternate trustee is elected annually at the annual general meeting in terms of the rules, but is not required to be the owner of a section, or the nominee of an owner which is a juristic person;
- (c) owners of sections may be represented by their spouses on the body corporate; and
- (d) the management agent or any of his or her employees, or any employee of the body corporate does not qualify for appointment as trustee.

(2) For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, the trustees of the body corporate are deemed to be the owner of the land in question.

Fiduciary position of trustees

42. (1) Each trustee of a body corporate stands in a fiduciary relationship to the body corporate.

(2) Without prejudice to the generality of the expression "fiduciary relationship", subsection (1) implies that a trustee -

(a) must in relation to the body corporate act honestly and in good faith, and in particular -

(i) must exercise such powers as he or she may have to manage or represent the body corporate in the interest and for the benefit of the body corporate and its members; and

(ii) may not -

(aa) act without having the powers; or

(bb) exceed the powers,

contemplated in subparagraph (i); and

(b) must avoid any material conflict between his or her own interests and the interests of the body corporate, and in particular -

(i) may not derive any personal economic benefit to which if he or she is not entitled by reason of his or her office as trustee of the body corporate, from the body corporate or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the body corporate; and

(ii) must notify in writing every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest that he or she may have in any agreement entered into by the body corporate.

(3) A trustee of a body corporate whose *mala fide* or negligent act or omission has breached any duty arising from his or her fiduciary relationship to the body corporate is liable to the body corporate for -

(a) any loss suffered as a result thereof by the body corporate; or

(b) any economic benefit derived by that trustee by reason thereof.

(4) Any loss or economic benefit referred to in paragraph (a) or (b), respectively, of subsection (3) may be recovered by the body corporate by action in any court (including a magistrate's court) of competent jurisdiction from the trustee who is liable to the body corporate in terms of that subsection.

(5) Despite anything to the contrary in any other law contained, a magistrate's court has jurisdiction to hear any action instituted under subsection (4) irrespective of the amount of the claim.

(6) Where a trustee fails to comply with subsection (2)(b)(ii) and it becomes known to the body corporate that the trustee has an interest referred to in that subsection in an agreement entered into by the body corporate, that agreement is, at the option of the body corporate but subject to subsections (7) and (8), voidable.

(7) The option contemplated in subsection (6) must, by written notice to that effect given to the other party or parties to the agreement, be exercised by the body corporate within 30 days after the body corporate became aware of the trustee's interest in the agreement in question.

(8) Where the body corporate under subsection (6) chooses not to be bound by the agreement in which a trustee has an interest, the Court may, on application by an interested person -

- (a) if the Court is of the opinion that in the circumstances it is fair to order that that agreement is nevertheless binding on the parties, make an order to that effect;
- (b) make any further order in respect of that agreement which the Court may consider appropriate, including an order as to costs.

(9) A particular conduct of a trustee, except a conduct with regard to his or her duty referred to in subsection (2)(a)(i), does not constitute a breach of a duty arising from his or her fiduciary relationship to the body corporate, if such conduct was preceded or followed by the written approval of all the members of the body corporate where all those members were or are aware of all the material facts relating to that conduct.

Proceedings on behalf of bodies corporate

43. (1) When an owner of a section is of the opinion that he or she and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of any matter mentioned in section 38(7) and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit, or where the body corporate does not take the necessary action against any such owner who does not comply with the rules, that owner may initiate proceedings on behalf of the body corporate in the manner prescribed in this section.

(2) An owner who under subsection (1) intends to initiate proceedings must serve a written notice on the body corporate -

- (a) calling on the body corporate to institute such proceedings within 30 days from the date of service of the notice; and
- (b) stating in the notice -
 - (i) full particulars of the proceedings to be instituted; and

- (ii) that if the body corporate fails to institute proceedings in compliance with paragraph (a), an application under subsection (3) will be made to the Court.

(3) If the body corporate fails to institute proceedings within the period of 30 days mentioned in subsection (2)(a), the owner referred to in that subsection may apply to the Court for an order appointing a *domicilium citandi et executandi* for the body corporate for the purposes of instituting and conducting proceedings on behalf of the body corporate.

(4) The Court may on an application under subsection (3), if the Court is satisfied -

- (a) that the body corporate has not instituted the proceedings to which the application relates;
- (b) that there are *prima facie* grounds for instituting the proceedings referred to in paragraph (a); and
- (c) that an investigation into the grounds referred to in paragraph (b) and into the desirability of the institution of the proceedings referred to in paragraph (a) is justified,

make a provisional order -

- (i) appointing a provisional *curator ad litem* for the body corporate; and
- (ii) directing the provisional *curator ad litem* appointed under paragraph (i) -
 - (aa) to conduct the investigation referred to in paragraph (c); and
 - (bb) to report to the Court on the return day of the provisional order on the investigation conducted in terms of subparagraph (aa).

(5) On the return day of the provisional order made under subsection (4), and after having considered the report of the provisional *curator ad litem* referred to in subsection (4)(ii)(bb), the Court may -

- (a) discharge that provisional order; or
- (b) confirm the appointment of the *curator ad litem* for the body corporate, and issue such directions as the Court may consider necessary as to the institution of proceedings in the name of the body corporate and the conduct of such proceedings on behalf of the body corporate by the *curator ad litem*.

Powers of *curatores ad litem*

44. (1) A provisional *curator ad litem* appointed by the Court under section 43(4) and a *curator ad litem* whose appointment is confirmed by the Court under section 43(5) have, in addition to the powers expressly granted by the Court in connection with the investigation, proceedings and enforcement of a judgment, such powers as may be prescribed.

