

BILL

To provide for the establishment of the Authority for Property Practitioners; to provide for its powers and function; to provide for the registration and regulation of property practitioners; to provide for the continuation of the Estate Agents Fidelity Fund as the Property Practitioners Fidelity Fund; to provide for consumer protection to provide for the repeal of the Estate Agents Act 112 of 1976; and to provide for incidental matters.

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PART 1
PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates-

“Anti-corruption Act” means the Anti-Corruption Act, 2003 (Act No. 8 of 2003);

“Auditor” means a person registered under the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951);

“Association” means a voluntary association of property practitioners established for purposes of promoting interests of members, and recognised by Government;

“Banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“Authority” means the Authority for Property Practitioners established in terms of section 6 of the Act;

“Close Corporation” means a close corporation as defined in section 1 of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“Company” means a company as defined in section 1 of the Companies Act, 2004 (Act No. 28 of 2004);

“Chairperson” means the chairperson of the Authority;

“Code of Conduct” means the code of conduct made under section 56;

Chief Executive Officer means the Accounting Officer of the Authority

“Employee” means an employee as defined in the Labour Act 11 of 2007, and includes an independent contractor;

“Chief Executive Officer” means the Chief Executive Officer of the Authority contemplated in section 18 and any person acting as the Executive Director

“Fidelity Fund” means the Property Practitioners Fidelity Fund as contemplated in section 33.

“Fidelity Fund certificate” means a Fidelity Fund certificate contemplated in section 41(1);

“Fidelity Insurance” means insurance to cover a principal estate agent against liability he/she may incur as a result of fraud or dishonesty of his/her own staff.

“Financial Intelligence Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“Government Gazette” means the official journal of the Government of the Republic of Namibia that contains agency rules, proposed rules and public notices.

Independent Contractor - means a self-employed individual who works for or renders services to a user enterprise or customer as part of that individual's business, undertaking or professional practice; and that the referencing throughout be changed to accommodate the changes

"inspector" means a person appointed in terms of section 22(1);

“Intern property practitioner” means a person who has not yet met all the qualifications or experience required as prescribed, to practise as a property practitioner and who is undergoing training under the supervision of a property practitioner, or a program created by the Authority;

“Legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“Mandatory disclosure form” means the form referred to in section 62;

“Member” means a person who has met all the qualifications as prescribed to practice as a property practitioner but does not practice as a property practitioner, he/she only renews their membership annually by paying the prescribed fees.

"Minister" means Minister responsible for Trade & Industrialization & SME Development.

“Ministry” means the Ministry responsible for Industrialisation and Trade

“Namibia Estate Agents Board” means the Namibia Estate Agents Board established in terms of section 2 of the Estate Agents Act 112 of 1976 (Act No. 112 of 1976);

“Non-Principle Property Practitioner” means a property practitioner who is not a director of a company, member of a close corporation, trustee of a trust, partner of a partnership or owner of sole proprietorship that operates as a property practitioner;

“NQF” means the National Qualifications Framework. The NQF consists of 10 levels, each defined by a set of level descriptors. The National Qualifications Framework further consists of unit standards duly recognised by the National Qualifications Authority (NQA) as being of registration quality. The NQF consists of qualifications duly recognized by the NQA as being of registration quality and that meet the criteria.

“Principal Property Practitioner” means a property practitioner who is a director of a company, member of a close corporation, trustee of a trust, partner of a partnership or owner of sole proprietorship that operates as a property practitioner;

"Property Practitioner" means

- (a) any person who has undergone the prescribed examination and training who either alone or as member of a partnership, exercises or carries on or advertises or notifies or states that he or she exercises or carries on or is willing to exercise or carry on or in any way holds himself, herself out to the public as ready to undertake, on the instructions of or on behalf of any other person; including any company or close corporation which, for gain on own account, –
- (b) means any person who has undergone the prescribed examination and training who, either alone or as member of a partnership, or any company or close corporation, whether or not he or she or it carries on any other business, who or which for gain on own account, in any manner exercises or carries on or advertises or notifies or states that he or she or it exercises or carries on or is willing to exercise or carry on or in any way holds himself, herself or itself out to the public as ready to undertake, on the instructions of or on behalf of any other person, the business of –
 - (i) by auction, in sale of execution or otherwise sells, purchases, manages or publicly exhibits for sale property or negotiates in connection therewith or canvasses or undertakes or offers to canvass a seller or purchaser in respect thereof;
 - (ii) lets or hires or publicly exhibits for hire property or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor in respect thereof;
 - (iii) collects or receives any monies payable on account of a lease of a property;
 - (iv) provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or

- lease of a property;
- (v) in any other way acts or provides services as intermediary or facilitator with the primary purpose to, or to attempt to do so, effect the conclusion of an agreement to sell and purchase, or hire or let, as the case may be a property but does not include—
 - (aa) a person who does not do so in the ordinary course of business;
 - (bb) where the person is a natural person and that person in the ordinary course of business offers a property for sale which belongs to him or her in his or her personal capacity; or
 - (cc) a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995); or
- (vi) renders any other service specified by the Minister on the recommendation of the Authority from time to time by notice in the Gazette;
- (c) includes any person who has undergone the prescribed examination and training who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development;
- (d) includes any person who has undergone the prescribed examination and training who for remuneration manages a property on behalf of another.
- (e) includes a trust in respect of which the trustee, for the acquisition of gain on the account of the trust, directly or indirectly in any manner holds out that it is a business which, on the instruction of or on behalf of any other person, performs any act referred to in paragraph (a);
- (f) for the purposes of sections 36, 48, 51, 52, 63, 64, 65 and , includes—
 - (i) any director of a company or a member of a close corporation which is a property practitioner as defined in paragraph (a);
 - (ii) any person who is employed by a property practitioner as

defined in paragraph (b) and performs on his or her behalf any act referred to in subparagraph (i), (ii), (ii), (iv), (v) or (vi) of that paragraph;

- (iii) any trustee of a trust which is a property practitioner as defined in paragraph (b);
- (iv) any person who is employed by a property practitioner as defined in paragraph (b) and performs on its behalf any act referred to in subparagraph (i), (ii), (ii), (iv), (v) or (vi) of paragraph (a); and
- (v) any person who is employed by a property practitioner contemplated in paragraph (a) or (b) to manage, supervise or control the day-to-day operations of the business of that property practitioner;
- (g) includes any person who is employed by or renders services to a legal practitioner or a professional company as defined in section 1 of the Legal Practitioners Act, 1995, otherwise than as an legal practitioner, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i), (ii), (iii) (iv), (v) or (vi) of paragraph (a), on behalf of such legal practitioner or professional company whose actions will be specifically covered by the Legal Practitioners' Fidelity Fund and not the Property Practitioners Fidelity Fund;
- (h) for the purposes of section 63 and any regulation made under section 64, includes any person who was a property practitioner at the time when he or she was guilty of any act or omission which allegedly constitutes sanctionable conduct referred to in section 63,
- (i) in partnership with any person other than a partner in the practice of that legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995;
- (ii) through the medium of or as a director of a company other than such professional company, and "advertise" for the purposes of this

definition does not include advertising in compliance with the provisions of any other law;

"**prescribe**" means prescribe by regulation;

"**property**" means immovable property, and any interest, right or duty associated with it as contemplated in section 3;

"**State Owned enterprise**" means a body declared under section 2(1) of the Public Enterprises Governance Act 1 of 2019 to be a public enterprise;

"**record**" means any recorded information regardless of form or medium;

"**Registration certificate**" means a registration certificate as contemplated in section 45(2);

"**Rent Control**"

"**This Act**" includes any regulation made under this Act;

Application of Act

2. Subject to any other law to the contrary, this Act applies to the marketing, promotion, managing, sale, letting, purchase of immovable property, and to any rights, obligations, interests, duties or powers associated with or relevant to such property.

Objects of Act

3. The objects of the Act are to provide for—
 - (a) the regulation of property practitioners;
 - (b) the establishment, powers, functions and governance of the Authority;
 - (c) the protection and promotion of the interests of consumers;
 - (d) a dispute resolution mechanism in the property market;
 - (e) the education, training and development of property practitioners;
 - (f) a framework for the licensing of property practitioners;
 - (g) a just and equitable legal framework for the financing, marketing, managing, letting, hiring, sale and purchase of property;
 - (h) the promotion of meaningful participation of historically disadvantaged

individuals and small and medium enterprises in the property market;
and

Exemption from license or registration requirements for legal practitioners

4. (1) A legal practitioner who, on his or her own account or as partner in a firm of legal practitioners or as member of a professional company, as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), or any other legal practitioner in the employment of such legal practitioner, partnership or professional company, or a candidate legal practitioner, as defined in that section attached to such legal practitioner for practical training, may not perform any of the functions of a property practitioner without being the holder of a license or a certificate of registration in terms of this Act, if such act is performed by the person while acting within the scope and under the name and from the premises of such legal practitioner or professional company.
- (2) A legal practitioner or candidate legal practitioner referred to in subsection (1) is not entitled, in respect of the sale, exchange or other disposal of any land or business in accordance with that subsection, to be remunerated for that work by commission in addition to, or instead of, any professional fees chargeable by that legal practitioner or candidate legal practitioner.
- (3) Subsection (1) does not exempt any person employed or engaged as independent contractor as a salesperson by a legal practitioner's or professional company's practice from the requirement of holding a certificate of registration to perform any function of a property practitioner for or on behalf of such practice. The above excludes those in the employ of the Legal Practitioner

Exemption from license or registration requirements for certain other persons

5. A person is not required to hold a license or a certificate of registration under this Act if that person performs any function of a property practitioner in his or her

capacity as -

- (1) an officer or employee of the State, State Owned Enterprise, a local authority as defined in the Local Authorities Act, 1992 (Act No. 22 of 1992) or a regional Authority as defined in the Regional Authorities Act, 1992 (Act No. 23 of 1992) in the performance of his or her functions as such officer or employee in terms of any law;
- (2) an executor or trustee of a deceased or insolvent estate or a liquidator or judicial manager of a company or close corporation close corporation or a curator/tutor appointed by the Master or a Trustee of a registered trust executing the management and administration of the trust assets in the performance of their functions as such; or
- (3) a person who falls within a class of persons excluded by the regulations from the requirement to be the holder of a license or a registration certificate to perform any of the functions of a property practitioner.

PART 2

AUTHORITY FOR PROPERTY PRACTITIONERS

Establishment of the Authority for Property Practitioners

6. (1) There is established a juristic person to be known as the Authority for Property Practitioners which is capable, in its own name, of suing and of being sued and, subject to the provisions of this Act, of performing all such acts as a juristic person may perform lawfully.
- (2) The Authority –
 - (a) continues to be a juristic person;
 - (b) may acquire, hold and dispose of immovable and movable property; and
 - (c) may institute and defend legal proceedings in its corporate name.

- (3) The change of name does not affect a right or obligation of the Authority or anyone else.

Succession from former Board to Authority

7. (1) The Authority is for all purposes the successor to the former Namibia Estate Agents Board established by section 2 of the Estate Agents Act 112 of 1976.
- (2) All assets, rights, obligations and liabilities which immediately before the commencement date vested in, or had been incurred by, any of the former Board referred to in subsection (1), pass to the Authority on that date.

Functions and duties of Authority

8. (1) Subject to the provisions of this Act, the functions and duties of the Authority shall be —
 - (a) to administer the licensing and registration regimes under this Act;
 - (b) to exercise control over and manage the Fidelity Fund;
 - (c) to regulate and control the practice of property practitioners and salespersons;
 - (d) to promote integrity and competence amongst property practitioners and salespersons and to maintain or enhance their status;
 - (e) to administer examinations and a professional development framework for the purposes of licensing and registration under this Act;
 - (f) to develop codes of practice, ethics and conduct for property practitioners and salespersons;
 - (g) to conduct investigations and disciplinary proceedings in relation to offences and unsatisfactory conduct or misconduct in relation property practitioner work;
 - (h) to develop measures to equip consumers with the necessary

knowledge to conduct their property transactions with prudence and diligence; and

- (i) to perform such other functions and discharge such other duties as may be conferred on the Authority by any written law.
- (2) In addition to the functions and duties imposed under subsection (1), the Authority may undertake such other functions and duties (not incompatible with those specified in that subsection) as the Minister may, by order published in the Gazette, assign to the Authority and in so doing —
 - (a) the Authority shall be deemed to be fulfilling the purposes of this Act; and
 - (b) the provisions of this Act shall apply to the Authority in respect of such functions and duties.
- (3) Nothing in this section shall be construed as imposing on the Authority, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Powers of Authority

- 9. (1) Subject to the provisions of this Act, the Authority shall have the power to do what is necessary in terms of the laws applicable in the Republic of Namibia for the purpose of performing its functions and discharging its duties under this Act or any other written law, or which is incidental or conducive to the performance and discharge of those functions and duties.
- (2) Without affecting the generality of subsection (1), the Authority may —
 - (a) enter into such contracts as may be necessary or expedient for the purpose of discharging the functions and duties of the Authority;
 - (b) acquire or dispose of, in accordance with the provisions of this Act, any property, whether movable or immovable, which the Authority thinks necessary or expedient for the purpose of carrying out its functions or duties;
 - (c) charge fees for licensing and registration and for any services

- rendered by the Authority or for the use of any facilities of the Authority;
- (d) receive grants or contributions from any source, or raise funds by all lawful means and apply such funds for any of the functions and duties of the Authority;
 - (e) provide recreational facilities and promote recreational activities for, and activities conducive to, the welfare of officers and employees of the Authority and members of their families;
 - (f) lease, let or otherwise utilize any property, movable or immovable, vested in or acquired by the Authority on such terms and conditions as the Authority thinks fit; and
 - (g) do anything incidental to any of its functions, duties or powers.
- (4) The Authority shall provide mechanisms to settle disputes in respect of the, marketing, managing, letting, hiring, sale and purchase of property, and may do all that is necessary or expedient to achieve the objects of the Act.
- (5) This section shall not be construed as limiting any power of the Authority conferred by or under any other written law.
- (6) The Authority shall furnish the Minister with information with respect to and concerning its assets and activities in such manner and at such times as the Minister may require.

Directions by Minister

10. (1) The Minister may give to the Authority such directives, not inconsistent with the provisions of this Act, as to the performance of its functions, the discharge of its duties and the exercise of its powers under this Act or any other written law as the Minister may consider necessary, and the Authority shall give effect to all such directions.
- (2) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to any particular application or other matter with which the Authority or a committee is concerned.

Composition and appointment of Authority

11. (1) Unless a different number is determined by the Public Enterprise Governance Act, the Authority consists of seven members appointed by the Minister of whom -
 - (a) three persons are selected by the Minister;
 - (b) four persons are from the persons who apply for appointment as members or are nominated in the manner contemplated in subsection 2 who have appropriate and relevant expertise and experience in one or more of the following fields, namely, finance; law; consumer protection; development, management; financing of property and property practitioner.
- (2) For the purposes of making an application or being nominated for appointment in terms of subsection (1)(b)-
 - (a) the Minister must in at least two newspapers circulated widely through Namibia invite for applications or nominations to be submitted to the Minister in writing within the period specified in the invitation; and
 - (b) if no nomination is submitted as contemplated in paragraph (a) within the period specified in the invitation referred to in that paragraph, the Minister, subject to this section, may appoint a suitable person (s) as member (s) of the Authority.
- (3) A person appointed as a member of the Authority under paragraph (b) of subsection 2 is regarded as having been properly nominated for appointment as a member of the Authority under paragraph (b) of subsection 1.
- (4) The Minister must appoint a chairperson and a deputy chairperson and a deputy chairperson of the Authority from among the members of the Authority.
- (5) The Chief Executive Officer is an ex officio member with no voting right.
- (6) The Minister must, as soon as possible after appointing the members of the Authority in terms of subsection (1), make known in the Gazette-

- (a) the name of every person appointed as a member of the Authority;
 - (b) the period for which the appointment is made; and
 - (c) the date from which the appointment takes effect.
- (7) A member holds office for a term of three years and is eligible for reappointment at the expiration of that term, provided no member may serve for more than two consecutive terms.
- (8) (1) A member vacates office, if he or she
- (a) becomes subject to any of the disqualifications referred to in section 12
 - (b) resigns from his or her office, after giving the Minister 30 days written notice of his or her intention to resign;

Disqualification from membership

12. A candidate will be disqualified if he/she:
- (1) is not a Namibian citizen or permanent resident in Namibia;
 - (2) is an unrehabilitated insolvent;
 - (3) during a period of 10 years preceding the date of the proposed appointment as a member, has been convicted of any offence and sentenced to a period of imprisonment without the option of a fine;
 - (4) has been removed from an office of trust as a result of improper conduct during the period of ten years before date of appointment;
 - (5) has been declared mentally ill by a competent court under any law; or
 - (6) is a member of Parliament, local Authority, or regional Authority.

Good governance and ethics

13. (1) The Authority must—
- (a) Approve codes of ethics applicable to all members of the Authority and employees of the Authority, respectively; and
 - (b) from time to time review those codes to ensure compliance with all current law, principles of good governance and ethical behaviour.

- (2) Nothing in this section prevents the Authority from voluntarily adopting any code, protocol or charter not in conflict with any policy, code, protocol, guideline or similar document contemplated in subsection (1) and applicable to its members.

Committees of Authority

14. (1) The Authority may establish any committee -
 - (a) to advise the Authority on any matter in relation to the Authority's functions; and
 - (b) to perform, subject to the directions of the Authority, any function of the Authority which the Board may delegate to the committee in writing.
- (2) A committee established under subsection (1) may consist of two or more members and not more than two other persons not being members, whom the Authority considers suitable to appoint.
- (3) The Authority may at any time dissolve or reconstitute a committee.
- (4) The Authority is not divested or relieved from a power or duty delegated or assigned to a committee.
- (5) If, in the event of a committee consisting of two members, the members are not able to reach consensus on any matter, the matter is to be determined by the Authority.
- (6) A decision of a committee in the exercise of a power delegated or a duty assigned to it is subject to approval by the Authority, and the Authority may at any time vary or set aside the decision.

Meetings and procedures of the Authority

15. (1) The first meeting of the Authority is to be held at a place and time determined by the Minister and thereafter the Authority must meet at the places and times determined by the Authority.

- (2) The chairperson must convene the next meeting if a meeting determined by the Authority cannot take place.
- (3) The Authority must meet at least four times in every year.
- (4) The chairperson of the Authority may at any time, and must at the written request of the Minister or at least four members, convene a special meeting of the Authority, to be held at the time and place determined by the chairperson.
- (5) A notice whereby a special meeting of the Authority is convened must specify the purpose of that meeting.
- (6) The chairperson or, in the absence of the chairperson, the vice-chairperson, must preside at a meeting of the Authority and, if neither of them are present, the members present must elect a member to preside at that meeting.
- (7) At a meeting of the Authority –
 - (a) a majority of the members for the time being in office constitute a quorum;
 - (b) all questions are decided by a majority of the votes of the members present and voting; and
 - (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.
- (8) If there is a quorum at a meeting of the Authority, a decision taken by the Authority is valid despite -
 - (a) a vacancy in the membership of the Authority at the time the decision was taken; or
 - (b) the presence at the meeting when the decision was taken of a person who was not entitled to sit as a member, if a majority of the members present and entitled to sit, voted in favour of the decision.
- (9) The Authority may make rules for the conduct of meetings of the Authority or a committee.
- (10) The Authority must cause accurate minutes of its proceedings to be kept.

Conflict of interest

16. (1) A member of the Authority or a committee who has a direct or indirect financial or personal interest in a matter being, or proposed to be, considered by the Authority or the committee must disclose the nature of that interest to the Authority or the committee, as the case may be, as soon as is practicable after the relevant facts have come to the member's knowledge.
- (2) For the purposes of subsection (1) "direct or indirect financial or personal interest" –
- (a) includes a personal, professional, commercial or other relationship with another person who has an interest in a matter referred to in that subsection, which relationship is of a nature that is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member of independent judgment in performing his or her duties as member;
 - (b) does not include an interest –
 - (i) held as a member of a public company common with other members of that company;
 - (ii) in a matter that applies or will apply to property practitioner or property developers generally.
- (3) A person who has made a disclosure in respect of a matter may not –
- (a) be present during any deliberation of the matter by the Authority or committee; or
 - (b) take part in any decision of the Authority or committee with respect to the matter.
- (4) The disclosure of an interest must be recorded in the minutes of the meeting of the Authority or committee.
- (5) A person who knowingly fails to comply with subsection (1) or (3) commits an offence and, on conviction, is liable to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment.

Dissolution of Authority

17. (1) The Minister may, subject to subsection (2) and Article 18 of the Namibian Constitution, dissolve the Authority—
- (a) if the Authority collectively disregards or contravenes any document contemplated in section 8 or any applicable law; or
 - (b) if the Auditor-General has for two successive years qualified his or her audit report or noted matters of emphasis or has declined to express an opinion on the accounts, financial statements and financial management of the Authority.
- (2) If the Minister dissolves the Authority as contemplated in subsection (1), he or she must—
- (a) inform Cabinet of the dissolution of the Authority and state the reasons for that decision; and
 - (b) provide all members of the dissolved Authority with written reasons for the dissolution.
- (3) Upon dissolution of the Authority, the Minister may-
- (a) appoint the Chief Executive Officer as the accounting authority; or
 - (b) appoint a suitably qualified person as an administrator;
- (4) An appointment contemplated in subsection (3), may not exceed a period of six months.

PART 3

CHIEF EXECUTIVE OFFICER CHIEF EXECUTIVE OFFICER AND STAFF OF AUTHORITY

Appointment of Chief Executive Officer

18. (1) The Authority must, with the approval of the Minister, appoint a qualified and experienced person as Chief Executive Officer Chief Executive Officer for a period not exceeding five years.

- (2) The Chief Executive Officer Chief Executive Officer is accountable to the Authority and is responsible and accountable for the day-to-day management and operations of the Authority.
- (3) The Authority must, prior to the appointment of the Chief Executive Officer, satisfy itself that the person whom it intends to appoint has a suitable combination of qualifications, skills and experience to lead and manage the Authority.
- (4) The appointment of the Chief Executive OfficerChief Executive Officer is subject to the conclusion of a written performance contract entered into between him or her and the Authority within three months of the appointment.
- 5) An Chief Executive OfficerChief Executive Officer may be re-appointed after the expiration of every period of appointment.
- (6) The Chief Executive Officer Chief Executive Officer may resign by giving three months' notice in writing to the Authority, unless the parties agree on a shorter period.
- (7) Upon resignation or removal of the Chief Executive Officer Chief Executive Officer , the Authority must as soon as possible appoint an Chief Executive Officer Chief Executive Officer or an acting Chief Executive OfficerChief Executive Officer on the terms and conditions it determine.
- (9) If the Authority has not appointed a permanent Chief Executive Officer Chief Executive Officer within six months after the previous Chief Executive Officer Chief Executive Officer has vacated his or her office, it must within 14 days after the expiry of the period of six months report to the Minister the reasons why it has not done so.

Staff of Authority

19. (1) The Chief Executive Officer Chief Executive Officer must employ suitably qualified persons on the instruction of the Authority and in terms of the Public Enterprises Governance Act 1 of 2019 to efficiently and effectively perform the powers and duties of the Authority in accordance

- with an employment policy approved by the Authority.
- (2) The Chief Executive Officer Chief Executive Officer must ensure that all employees of the Authority are adequately qualified and trained for their respective positions.
 - (3) The Code of Ethics for employees of the Authority contemplated in section 9(1) applies to all employees of the Authority to the extent indicated in the Code.

Conflict of interest of employees

20. (1) An employee of the Authority must, on appointment, submit to the Authority a statement in writing in which that person declares whether, or not he or she has any direct or indirect interest, financially or otherwise, which—
 - (a) may constitute a conflict of interest in respect of his or her functions and duties as a member of staff of the Authority; or
 - (b) could reasonably be expected to compromise the Authority in the performance of its functions.
- (2) If an employee of the Authority acquires an interest contemplated in subsection (1), he or she must immediately in writing declare that fact to the Authority.
- (3) An employee of the Authority may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Authority in which that member has an interest contemplated in subsection (1).
- (4) An employee of the Authority may not use his or her position, or privileges, or confidential information obtained as a member of staff of the Authority, for personal gain or to improperly benefit another person.
- (5) The Authority must institute disciplinary proceedings against any employee of the Authority who fails or refuses to comply with or contravenes a provision of subsections (1), (2), (3) or (4) in accordance with applicable employment and labour law.

- (6) The Authority must keep a register of the interests of members of staff disclosed in terms of subsections (1) and (2) and must update that register every year.

Delegation by the Chief Executive Officer

21. (1) The Chief Executive Officer Chief Executive Officer may in writing, delegate any of his or her functions or
powers to any of the staff members of the Authority subject to any qualifications he or she may determine.
- (2) The delegation of any function or power under subsection (1), does not preclude the Chief Executive Officer Chief Executive Officer from exercising such function or power.
- (3) The Chief Executive Officer Chief Executive Officer remains responsible and accountable for all acts and/or omissions in terms of or under such a delegation.
- (4) The Chief Executive Officer Chief Executive Officer may in writing revoke any delegation under subsection (1).
- (5) The Chief Executive Officer must maintain a register of all delegations under subsection (1).

Delegation of powers by Minister

34. (1) The Minister may, subject to subsections (2) and (3), delegate any power or duty assigned to him or her in terms of this Act, excluding the power to make regulations contemplated in section 63 to-
 - (a) the Chief Executive Officer or to any other official in the Department;
 - (b) the Authority; or
 - (c) the Chief Executive Officer of the Authority.
- (2) A delegation in terms of subsection (1)-
 - (a) is subject to any limitations, conditions and directions the Minister may impose;
 - (b) must be in writing;

- (d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of a provision of this Act or the Estate Agents Act 112 of 1976.

PART 4 COMPLIANCE AND ENFORCEMENT

Appointment of inspectors

22. (1) The Authority —
- (a) may appoint any suitably qualified person as an inspector; and
 - (b) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act and with an inspector's identification card.
- (2) When an inspector performs his or her functions in terms of this section, he or she—
- (a) must be in possession of a certificate of appointment or an inspector's identification card issued to that inspector in terms of subsection (1)(b);
 - (b) must immediately show that certificate or inspector's identification card to any person who—
 - (i) is affected by the inspector's actions in terms of this Act; or
 - (ii) requests to see the certificate or inspector's identification card;
 - (c) Must have the powers of a peace officer and may exercise the powers conferred on a peace officer by law.

Powers of inspectors to enter, inspect, search and seize

23. (1) (a) For purposes of conducting an investigation an inspector may at all times, with prior notice, enter any place other than a private residence, if it is reasonably suspected that—
- (i) a person in that place is performing an act as a property practitioner;
 - (ii) that place is reasonably connected with an act performed by a property practitioner; or
 - (iii) there are books, records or documents to which the provisions of the Act apply are kept at or in that place;
- (b) After having identified himself or herself as an inspector acting in terms of or under the Act to the person who seems to be in control of such place, the inspector may-
- (i) instruct any property practitioner, manager, employee or an agent of the property practitioner in or at that place to —
 - (aa) produce to him or her the fidelity fund certificate of that property practitioner;
 - (bb) produce to him or her any book, record, or other document relevant to the inspection in the possession of or under the control of that property practitioner, manager, employee or agent;
 - (cc) furnish him or her at such place and in such manner as he or she may reasonably specify with such information in respect of that fidelity fund certificate, book, record or other document as he or she may direct;
 - (ii) prohibit the removal or destruction of any digital data, book, record, or other document relevant to the inspection in the possession of or under the control of that property practitioner, manager, employee or agent;

- (iii) examine or make extracts from or copies of any such fidelity fund certificate, book, record or other document which may be in or at that place;
 - (iv) seize and retain any such fidelity fund certificate, book, record or other document in or at that place to which any charge of improper or sanctionable conduct under this Act may relate, but the person from whose possession any fidelity fund certificate, book, record or other document was taken, must at his or her request forthwith be allowed to make, at his or her expense and under the supervision of the inspector concerned, copies thereof or extracts therefrom at the place where the relevant object is being removed from.
- (2)
 - (a) Where a routine compliance inspection is to be conducted at a private residence or a place of business where the property practitioner performs his or her business, an inspector with an Inspection Authority must at all reasonable times notify the property practitioner in a prescribed manner about the inspection.
 - (b) The provisions of subsection (1) apply with the necessary required changes.
- (3)
 - (a) If the inspector suspects that a criminal offence has been or is being committed in terms of or under the Act, an inspector may conduct the search, on behalf of the Authority according to a warrant issued by a magistrate or a judge.
 - (b) A magistrate or a judge may issue a warrant only on written application by an inspector, setting out under oath or affirmation the grounds why it is necessary for an inspector to gain access to the relevant premises or to conduct the search in question.
 - (c) The magistrate or judge may issue the warrant if it appears that from the information on oath or affirmation that-

- (i) there are reasonable grounds for suspecting that a contravention of the Act has occurred or is occurring;
 - (ii) a search of the premises is likely to yield information pertaining to the contravention; and
 - (iii) the search is reasonably necessary for the purposes of the Act.
- (4) An inspector, otherwise required to obtain a warrant under subsection (3), may enter and search any place without a warrant, if the inspector on reasonable grounds believes that—
 - (a) a warrant would be issued in terms of subsection (3) if the inspector applied for it; and
 - (b) the delay in obtaining the warrant is likely to defeat the object of the search.
- (5) A warrant contemplated in subsection (3) may be issued at any time and must-
 - (a) identify the premises that may be entered and searched; and
 - (b) specify the parameters within which the inspector may perform an entry, search or seizure.
- (6) An inspector may, on the Authority of a warrant--
 - (a) enter and search any premises where he or she has reason to believe that any provision of this Act has been or is being contravened;
 - (b) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of a book, document or record that has a bearing on the inspection;
 - (c) examine any book, document or record that is on or in those premises that has a bearing on the inspection.
 - (d) request any person to unlock or otherwise provide unhindered access to any safe, storage, facility or other receptacle, or to point out any other person on the premises who can do so;
 - (e) request information about any book, document or record;

- (f) take extracts from, or making copies of, any book, document or record that is on or in the premises and that has a bearing on the inspection.
 - (g) use any computer system on the premises that has a bearing on the inspection, or require assistance from any person on the premises to use that computer system, to—
 - (i) search any data contained in that system; or
 - (ii) reproduce any record from that data;
 - (h) seize any output from that computer for examination and copying; and
 - (i) attaching and if necessary removing from the premises for examination and safe-keeping anything that has a bearing on the inspection, but the person from whose possession any book, record or other document was taken, must at his or her request forthwith be allowed to make at his or her expense under the supervision of an inspector concerned copies thereof or extracts therefrom at the place where the relevant object is being removed from.
- (7) A warrant to enter and search may be executed only during the hours of 08h00 and 17h00 of a day other than a Saturday, Sunday or public holiday, unless the judge or the magistrate who issued it authorises that it may be executed at any other time that is reasonable in the circumstances.
- (8) Immediately before commencing with the execution of a warrant, the inspector executing that warrant must either-
- (a) if the owner, or person in control, of the premises to be searched is present-
 - (i) provide identification to that person and explain to that person the Authority by which the warrant is being executed; and
 - (ii) hand exact copies of the warrant and of this section to that person or to the person named in it; or
 - (b) if no personas present, affix an exact copy of the warrant at the entrance to the premises in a prominent and visible place.

- (9) An inspector authorised to conduct an entry and search in terms of a warrant issued in terms of subsection (3) may be accompanied and assisted by one or more police officers.
- (10) An inspector and any police officer accompanying him or her must when entering and searching any premises in terms of a warrant issued in terms of subsection (3) conduct that entry and search with strict regard to decency and every person's right to dignity, freedom, security and privacy.
- (11) During any search, only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.
- (12) An inspector who removes anything from premises being searched must-
 - (a) issue a written receipt for it to the owner of or person in control of the premises in sufficient detail to identify each specific thing so removed; and
 - (b) return it as soon as practicable after achieving the purpose for which it was removed to the person from whose control it was taken, unless it is to be used as evidence in any subsequent proceedings, in which case the inspector must forthwith in writing inform the person from whose control it was taken of that fact.
- (13) During a search conducted under a warrant issued in terms of subsection (3), a person may refuse to permit the removal of an article, document or record on the grounds that it contains privileged or protected information, but that person may not cause such article, document or record to be amended, altered or destroyed until the inspector has been afforded a reasonable time to act under subsection (14), but any person who does so, is guilty of an offence.
- (14) If the owner or person in control of an article or document refuses in terms of subsection (12) to give an article, document or record to the inspector conducting the search, that inspector may in writing request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article,

document or record for safe custody until a court determines whether or not the information is privileged or protected.

- (15) A police officer who is assisting an inspector who is authorised to enter and search premises in terms of a warrant issued in terms of subsection (3) may use as much force as is necessary, including breaking a door or window of the premises, or the breaking of any lock or other barrier which prevents the search of any safe, storage facility or other receptacle on the premises, to overcome resistance by any person to the entry, search or seizure.
- (16) Before using force in terms of subsection (15), a police officer must audibly demand admission or access and must announce the purpose of entry, unless it is reasonable to believe that doing so may induce someone to destroy, dispose of or conceal an article, document or record that forms part of the search or is otherwise relevant to the search.
- (17) A person who submits any information to an inspector or makes any statement to him or her, may indicate to the inspector that he or she claims confidentiality in respect of any information or statement so provided, and the inspector must deal with such information as such.
- (18) Any person—
 - (a) who obstructs, hinders or prevents an inspector from carry-out his or her duties commits an offence; or
 - (b) who removes or destroys any digital data, book, record or other document in respect of which an inspector has issued a prohibition is guilty of an offence;

Lodging of complaints

- 24. (1) Any person may lodge a complaint in respect of any matter which may be adjudicated in terms of or under this Act, in the prescribed form with the Authority, and the Authority must in writing acknowledge receipt thereof and inform the complainant of the case number assigned to the complaint.
- (2) An inspector—

- (a) must investigate a complaint submitted by any person against any property practitioner or person who appears to be carrying on the business of a property practitioner, whether registered in terms of this Act or not; and
 - (b) may on his or her own initiative and on reasonable grounds investigate any alleged contravention of or non-compliance with the provisions of this Act, and he or she must refer the matter to the office of the Prosecutor General where the evidence indicates a prima facie case of a criminal contravention of this Act or any other law.
- (3) The inspector may—
- (a) issue a compliance notice contemplated in section 25.
 - (b) refer the matter for mediation as contemplated in section 27; or
 - (c) refer the matter for adjudication as contemplated in section 28.

Compliance notices

25. (1) The Authority may, where an inspection or investigation indicates a contravention of the Act, issue a compliance notice in the prescribed format to the person so allegedly contravening this Act, calling on him or her to comply with this Act within a period specified in the compliance notice, which period must be reasonable in the circumstances.
- (2) The Authority may in the compliance notice determine a fine to be paid by the person concerned if he or she in writing on the compliance notice acknowledges his or her failure to comply with this Act as stated in the compliance notice.
- (3) The fine contemplated in subsection (2) must be paid to the Authority within a period specified in the compliance notice.
- (4) Any person named in that notice may not be prosecuted for having committed such contravention.

Determination of fines

26. The Minister may from time to time by notice in the Gazette prescribe the maximum fines in respect of each type of contravention which the Authority may impose.

Mediation

27. (1) An inspector may where he or she believes that a matter may be resolved through mediation, or on application by the person concerned, refer a matter for mediation, as prescribed.
- (2) Within 14 days of referral to mediation, the mediator must set the matter down for mediation within 30 days and give notice of the mediation as prescribed to all parties concerned.
- (3) The mediator assists the parties to resolve the dispute, and if the parties come to an agreement which resolves the matter complained of, the mediator must record that agreement in writing and conclude the proceedings.
- (4) The Authority must keep the records of all mediation proceedings, including the agreements where applicable, as prescribed.
- (5) If a matter is not resolved as contemplated in this section, the matter must be adjudicated in accordance with section 28.

Adjudication

28. (1) If —
- (a) a person on whom a compliance notice has been served in accordance with section 25 —
- (i) fails to comply with this Act as demanded in the compliance notice;
- (ii) fails to timeously comply with the compliance notice;
- (iii) fails to timeously pay the fine determined by the Authority; or
- (b) mediation has been attempted in accordance with section 27 but has failed;

- (c) the serious nature of the complaint and the contravention in question warrants, an inspector must cause a notice of adjudication to be served on the person concerned as prescribed.
- (2) The Authority must appoint an independent legal practitioner as an adjudicator to conduct an adjudication of a complaint in terms of this section, who for purposes of this section is referred to as the "adjudicator".
- (3) The Authority may upon application from the adjudicator on good grounds appoint independent assessors to assist him or her.
- (4) Within 14 days of the appointment of the adjudicator, he or she must set the matter down for hearing within 60 days and must give notice as prescribed of the adjudication to all parties concerned.
- (5) The adjudication must be held informally and expeditiously, subject to upholding the rules of natural justice and in accordance with prescribed provisions.
- (6) The adjudicator must upon conclusion of the adjudication make a determination as to whether the complaint is upheld or not.
- (7) If the complaint is upheld, the adjudicator must make an order which in the circumstances is appropriate, and such an order has the status of a judgment in a magistrate's court and must be executed accordingly.
- (8) The order contemplated in subsection (7) may include—
 - (a) a fine which may not exceed the amount determined by the Minister
 - (b) if appropriate in the circumstances, an order that the Authority pays not more than 80 percent of the fine as a compensation award to the complainant contemplated in section 24(1); or
 - (c) any appropriate order under the circumstances.
- (9) The adjudicator must upon finalisation of the adjudication process provide written reasons for any of his or her determinations or orders.
- (10) The Authority must keep the records of all hearings, including the order made and written reasons provided by the adjudicator, as prescribed.

Fine as compensation

29. (1) The Authority may whenever a fine has been imposed on a property practitioner under this Act, in its discretion order that any portion of the fine be applied towards the payment of compensation to any person who suffered a pecuniary loss as a result of the conduct of that property practitioner.
- (2) The Authority may on receipt of a fine imposed on a property practitioner make the payment contemplated in subsection (1), but no such payment may be made until all appeals in respect of the imposition of the fine have lapsed or have been finalised or abandoned.
- (3) This subsection does not preclude any person from pursuing any civil remedy against a property practitioner contemplated in subsection (1) or other person, but if an award is made by a court in favour of a person who has received payment from the Authority as contemplated in subsection (2), the court must take that payment into account.

PART 5

Finances

Funds of Authority

30. (1) The funds of the Authority consist of –
- (a) money received by the Authority in respect of fees, referred to in section 9(2)(c) and other money received by the Authority in terms of this Act, not being money received for the benefit of the Fidelity Fund;
 - (b) money earned on investments of money of the Authority;
 - (c) money received by the Authority in respect of fines and costs in terms of any order made under section 28(8)(a);
 - (d) expenses recovered by the Authority in connection with an audit in terms of section 53(4)(c); and
 - (e) other money lawfully received by the Authority from any other source.
- (2) The funds of the Authority must be applied only to defray the costs, expenses and other obligations incurred by the Authority in the performance of its

functions, but money or other property donated or bequeathed to the Authority must be used only in accordance with the conditions of the donation or bequest.

- (3) The Authority must open such bank accounts with a banking institution as the Authority considers necessary, and into which all money received by the Authority must be deposited.
- (4) The Authority may invest money of the Authority that is not required for immediate use in the manner the Authority, with the concurrence of the Minister, may determine.

Financial year, accounts and audit

31. (1) The financial year of the Authority ends on 31 March of each year.
- (2) The Authority must ensure that -
 - (a) proper accounts and records of the transactions and affairs of the Authority are kept in accordance with generally accepted accounting principles to represent fairly the state of affairs of the Authority;
 - (b) adequate control is maintained over the incurring of liabilities by the Authority;
 - (c) all payments out of the money of or held by the Authority are correctly made and properly authorised; and
 - (d) adequate control is maintained over the assets of, or in the custody, control and management of the Authority.
- (3) Within three months after the end of each financial year, the Authority must prepare annual financial statements showing, with appropriate particulars –
 - (a) the money received, and expenditure incurred by the Board during the financial year; and
 - (b) the assets, liabilities and financial position of the Board as at the end of the financial year.
- (4) An auditor appointed by the Authority must audit the accounts, records and annual financial statements of the Authority.

Reports and financial statements of Authority

32. (1) The Authority must -
- (a) furnish to the Minister such information as the Minister may from time to time in writing require in connection with the activities and financial statements position of the Authority; and
 - (b) each year, within six months after the end of its financial year, submit to the Minister –
 - (i) copies of the Authority's audited financial statements and the auditor's report for that financial year;
 - (ii) a report on the Authority's activities in respect of that financial year;
 - (iii) detailed list of names and numbers of registered Property Practitioner's, the Authority entered in the register during the financial year;
 - (iv) a statement specifying the number and nature of complaints the Authority received in respect of property practitioner, property developer's agent's representatives or salespersons during the financial year;
 - (v) a statement specifying the manner in which the Authority handled complaints during the financial year, setting out the number it dismissed, the number it dealt with in misconduct inquiries and the number outstanding at the end of the financial year; and
 - (vi) a statement giving details of any disciplinary action the Authority took against property practitioner, property developers, agent's representatives or salespersons during the financial year.

- (2) The Minister must cause copies of the Authority's report and financial statements received in terms of subsection 32(1)(b) to be laid before the National Assembly -
 - (a) if the National Assembly is in session, within 30 days of having received it from the Authority; or
 - (b) if the National Assembly is not then in session, within 30 days after commencement of the National Assembly's next session.
- (3) The Authority must utilise its funds to defray the expenses incurred by it in the performance of its functions and the exercise of its powers, but —
 - (a) any monies or other property donated or bequeathed to the Authority must be utilised in accordance with the conditions of such donation or bequest; and
 - (b) if the Authority—
 - (i) after an inspection or investigation, has found that a property practitioner failed to comply with any duty imposed upon him or her in terms of this Act;
 - (ii) has incurred any liability to pay costs in respect of any proceedings instituted by it in terms of this Act for the recovery from a property practitioner of any amount which is payable by him, her or it to the Authority or the Fund, or
 - (iii) has incurred any liability to pay audit fees in respect of an audit done on the instructions of the Authority in a case where an audit contemplated in section 53(4)(b) has not been done, the Authority may recover the costs of such inspection or investigation in so far as it relates to such duty or the taxed amount of such costs on an attorney and client scale or the amount of such audit fees, as the case may be, from the property practitioner concerned.
- (4) The Minister must by notice in the Gazette, prior to the commencement of the

Act and thereafter annually prior to the beginning of a financial year of the Authority, after consultation with the Authority, determine the fees payable in terms of or under this Act.

- (5) The Authority may invest or deposit money of the Authority that is not immediately required for contingencies or to meet current expenditures on a call or short-term fixed deposit account with any registered bank within the Republic.
- (6) The Authority must open such banking accounts with a registered banking institution to which all monies received must be deposited.

PART 6

PROPERTY PRACTITIONERS FIDELITY FUND

Property Practitioners Fidelity Fund

33. (1) The fund established by section 12 of the Estate Agents Act 112 of 1976, known immediately before the commencement of this Act as the Estate Agents Fidelity Fund, continues to operate as if it were established in terms of this Act, under the name Property Practitioner's Fidelity Fund.
- (2) The following must be paid into the Fund:
- (a) All monies paid as fees in accordance with this Act to or on account of the Fund;
 - (b) income derived from the investment of monies in the Fund in terms of section 34(1);
 - (c) all monies recovered by or on behalf of the Fund in the exercise of any right of action conferred by this Act;
 - (d) all monies received on behalf of the Fund from any insurance company;
 - (e) interest derived from trust accounts paid to the Fund; and
 - (f) any other monies accruing to the Fund from any other source.

Control and management of the fund

35. (1) The Authority is responsible for the management and administration of the Fund.
- (2) Each member of the Authority owes a fiduciary duty and a duty of care and skill to the Fund.
- (3) The Authority must deposit money of the Fund into a banking account held by the Fund in a banking institution to be known as the Property Practitioners Fidelity Fund.

Primary purpose of the Fund

36. (1) Subject to the provisions of this Act, the Fund must be maintained and applied to reimburse persons who suffer pecuniary loss by reason of—
- (a) theft of trust money committed by a property practitioner who was in possession of a Fidelity Fund certificate at the time of the theft; or
- (b) the failure by a property practitioner to comply with subsection (1) or (4) of section 59.
- (2) No person has any claim against the Authority as contemplated in subsection (1) unless the claimant has—
- (a) within three years after the circumstances giving rise to a claim came into being, given notice to the Authority of such claim as contemplated in section 36; or
- (b) within the three years period contemplated in paragraph (a) after a written request was sent to him or her by the Authority, furnished to the Authority such proof as it may reasonably require.

Claims

37. (1) A claim for compensation from the Fund must be lodged with the Authority in the prescribed manner.

- (2) No person has a claim against the Authority in respect of a theft of trust money by a property practitioner unless such a person has before lodging a claim with the Authority laid a criminal charge against that property practitioner.
- (3) The Authority must hold an inquiry in the prescribed manner into any claim lodged with the Authority in respect of the Fund.

Co-operation by claimant

38. (1) A person who has lodged a claim contemplated in section 36 must upon request by the Authority participate, co-operate and assist the Authority in respect of any matter concerning the claim.
- (2) The Authority may withhold payment from the Fund of any amount payable to a person who fails or refuses to substantially comply with any reasonable request made in writing by—
- (a) the Namibian Police or other organ of state responsible for investigating or monitoring crime or criminal activity, to co-operate and assist in its investigation of any criminal charge laid against a property practitioner;
 - (b) the office of the Prosecutor General or any organ of state responsible for asset forfeiture investigations or proceedings, in respect of any investigation or proceedings in a court of law of which the relevant property practitioner is the subject or defendant, as the case may be; or
 - (c) the Authority to co-operate and assist in—
 - (i) the investigation of any complaint against the relevant property practitioner; or
 - (ii) the exercise of the Authority's rights and remedies against the relevant property practitioner pursuant to the provisions of this Act.

- (3) Neither the Fund nor the Authority is liable for payment of interest on any amount withheld as contemplated in subsection 2.

Actions against Authority in respect of Fund

1. No person shall commence action against the Authority for payment from the Fund without having first commenced action against the Fidelity Insurance of the Property Practitioner.
 2. Every Property Practitioner shall take out fidelity insurance in respect of each and every employee, irrespective of the nature of the employee's tasks and whether his/her appointment is permanent or temporary.
39. (1) No person may commence any action against the Authority for payment from the Fund after the expiry of three years from the date of a written notification by the Authority addressed to the claimant, or his or her legal representative, if any, informing the claimant that the Authority—
- (a) rejects the claim to which the action relates; or
 - (b) requires compliance with section 37.
- (2) No person may recover from the Authority any amount larger than the difference between the amount of the loss suffered by him or her and the amount or value of all monies or other benefits which he or she received or is entitled to receive out of any other source in respect of such loss.
- (3) No right of action lies against the Authority in respect of any loss suffered by—
- (a) the spouse, life partner, business partner or immediate family member of a property practitioner by reason of any negligent or intentional conduct including theft committed by such property practitioner; or
 - (b) any property practitioner by reason of any negligent or intentional conduct including theft committed—
 - (i) by his or her business partner;
 - (ii) if such property practitioner is a company, by any director of such company;

- (iii) if he or she is a director of a company, by any co-director in such company;
 - (iv) if such property practitioner is a close corporation, by any member of such corporation;
 - (v) if he or she is a partner in a partnership, by any other partner of such partnership; or
 - (vi) by any person employed by him or her as a property practitioner;
- (c) any person as a result of negligent or intentional conduct including theft, or as a result of any other act or omission in connection with trust monies held or received on account of any other person, by any person referred to in paragraph (d) of the definition of "property practitioner" in section 1.

Payments from Fund

40. Subject to the provisions of this Act, the following must, whenever required, be paid out of the Fund:
- (a) The amount of all claims, including costs, allowed or established against the Fund as provided for in this Act.
 - (b) in the discretion of the Authority, any contribution in respect of any expense incurred by any claimant in establishing a claim;
 - (c) all legal, accounting and other expenses incurred in investigating and defending claims made against the Fund or otherwise incurred in relation to the Fund;
 - (d) the expenses incurred in the management, control and administration of the Fund by the Authority, in accordance with terms and conditions approved by the Minister; and
 - (e) any other monies which may be paid out of the Fund in accordance with this Act.

Computation of future claims against the Fund

41. Only monies in the Fund are available for the satisfaction of any judgment obtained in relation to the Fund or for the payment of any claim allowed by the Authority, but if the amount in the Fund is at any time insufficient to settle all such judgments and claims, they must, to the extent they are not settled, be charged against future accumulations to the Fund.

Transfer of rights and remedies to Authority

42. If the Authority settles in full or in part any claim under this Act, all the rights and remedies of the claimant in respect of such claim against the property practitioner concerned or any other person or, in the case of the death, insolvency or other legal incapacity of that property practitioner or other person, against the estate of that property practitioner or other person pass to the Authority, without qualification or diminution, to the extent of such settlement.

Insurance contracts and application of insurance monies

43. (1) The Authority may enter into a contract with any registered insurer to ensure the Fund against claims.
- (2) A person having a claim against the Fund does not have—
- (a) any right of action against the insurer;
 - (b) any right or claim in respect of any money paid or payable to the Authority by such insurer in accordance with such contract, but such money must be paid into the Fund.

Fund is exempted from certain laws

44. (1) The revenue of the Fund is exempt from any law relating to the payment of income tax.
- (2) The provisions of any law relating to insurance.

Financial year of the Fund and reporting

45. (1) The financial year of the Fund ends on the 31 of March of each year.
- (2) Within three months after the end of financial year, the Authority must—
- (a) prepare financial statements in respect of the Fund;
 - (b) prepare a report in respect of the activities of the Fund; and
 - (c) submit to the Minister the Fund financial statements as audited and report on the activities of the Fund within six months after the financial year end.
- (3) The Minister must table the Fund financial statements and report on the activities of the Fund to the National Assembly within 30 days of having received it from the Authority.

PART 7

PROPERTY PRACTITIONERS

Application for Fidelity Fund certificate

46. (1) Every property practitioner or prospective property practitioner, excluding a property practitioner referred to in paragraph (g) of the definition of "property practitioner" in section 1, must, within the prescribed period and in the prescribed manner, annually apply to the Authority for a Fidelity Fund certificate, and such application must be accompanied by the fees contemplated in section 46
- (2) A property practitioner or prospective property practitioner referred to in paragraph (g) of the definition of "property practitioner" in section 1, must, within the prescribed period and in the prescribed manner, apply to the Authority for a registration certificate, and such application must be accompanied by the fees contemplated in section 46;

- (3) the Authority must, upon receipt of an application contemplated in subsection (1) or (2) and the relevant fees, if it is satisfied that the applicant concerned—
 - (a) meets or has met all requirements provided for in or under this Act; and
 - (b) is not disqualified in terms of section 48 from being issued with a Fidelity Fund certificate, in the prescribed form issue to the applicant concerned a Fidelity Fund certificate, which is valid until 31 December of the year to which such application relates.
- (4) A property practitioner who applies to the Authority for a Fidelity Fund certificate or a registration certificate, after the prescribed period referred to in subsection (1) or (2), or whose application is not accompanied by the fees referred to in section 46, must in addition to the applicable fee pay a prescribed penalty to the Authority and the Authority may not issue a Fidelity Fund certificate to the property practitioner concerned until a penalty has been paid.
- (5) A property practitioner may not use or display a lapsed Fidelity Fund certificate.
- (6) A property practitioner must upon request from anyone produce a Fidelity Fund certificate or certified copy thereof.
- (7) A property practitioner whose contact details change during the period of validity of his, her or its Fidelity Fund certificate, must within 14 days of such a change taking place in writing provide the Authority with his, her or its new contact details.

47. Admission of Property Practitioners

1. No person shall be admitted and authorised to practice as a Property Practitioner or be enrolled as such, except in accordance with the provisions of this Act.

Persons qualified to be admitted as Property Practitioners and application for admission.

1. Subject to the provisions of this Act, the Namibia Property Practitioners Authority (NPPA) shall authorise to practise as a Property Practitioners any person who upon application in the prescribed manner made by him or her, satisfies the NPPA that he or she
 - (a) Is not disqualified in terms of this Act;
 - (b) Is duly qualified in accordance with the provisions of this Act; and
 - (c) (i) Is a Namibian Citizen; or
 - (ii) has been lawfully admitted to Namibia for permanent residence therein and is ordinarily resident in Namibia; or
 - (iii) Is the holder of an employment permit issued in terms of section 27 of the Immigration and Control Act, 1993 (Act 7 of 1993).

48. Professional Qualifications

1. A person shall be duly qualified to practice as a Property Practitioner for the purposes of this Act if –
 - (a) He or she holds a Certificate issued by the Namibia Property Practitioners Authority stating that he or she –
 - (i) Has undergone pre-examination training offered by the Namibia Property Practitioners Authority;
 - (ii) Has passed the Property Practitioners Qualifying Examination;
 - (iii) Has undergone the Induction training by the Namibia Property Practitioners Authority.

Fees payable by property practitioners

49. (1) A property practitioner must annually pay—
 - (a) a prescribed application fee for a Fidelity Fund Certificate, in accordance with the provisions of section 45; and
 - (b) any amount that the Minister after consultation with the Authority may determine from time to time by notice in the Gazette.

- (2) The Minister must in exercising the powers conferred under subsection (1), specify a method or standard to determine the percentage by which the fees payable are automatically adjusted annually on 1 April of every subsequent year.

Prohibition on rendering services without Fidelity Fund certificate

50. (1) No person or entity may act as a property practitioner unless, in addition to any other requirements provided for in or under this Act—
 - (a) he or she is in possession of a Fidelity Fund certificate contemplated in section 45;
 - (b) if he or she employs any other person as a property practitioner, that person is also in possession of a Fidelity Fund certificate contemplated in section 45; and
 - (c) if an entity is—
 - (i) a company;
 - (ii) a close corporation;
 - (iii) a trust; or
 - (iv) a partnership,every director of such a company, every member of such a close corporation, every trustee of such a trust and every partner of such a partnership, as the case may be, is also in possession of a Fidelity Fund certificate contemplated in section 45.
- (2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence.
- (3) A person who contravenes or fails to comply with subsection (1) must immediately upon receipt of a request from any relevant party in writing repay any amount received in respect of or as a result of any property transaction during such contravention.
- (4) A person who fails to comply with a request contemplated in subsection (3) is guilty of an offence.

- (5) The provisions of this section apply irrespective of—
 - (a) what appellation a person or entity is described by; or
 - (b) whether he, she or it is registered, certified or appointed or acts in terms of or under or for purposes of any other Act.
- (6) A person may not receive any commission, remuneration or other benefit in connection with any action contemplated in the definition of “property practitioner” in section 1, unless he or she is in possession of a Fidelity Fund certificate or has been exempted or has been excluded from the definition of property practitioner, , and any agreement entered into by that person related to such action is unlawful and in terms of this section may be cancelled at any time by the other party, irrespective of whether he or she knew that that person was not in possession of a Fidelity Fund certificate,
- (7) Any monies paid to the person who is not in possession of the Fidelity Fund certificate contemplated in subsection (6) must upon cancellation by the other party be repaid in full to him or her, together with interest calculated from the date of the monies being paid in contravention of subsection (6) to the date of repayment to that other party, at the rate charged for current accounts by that other party’s bank on the date of repayment, and any banking or transfer costs directly related to the payment and repayment of that money.

Disqualification

- Tax Clearance Certificate- a Good Standing Certificate is issued by Inland Revenue Department to confirm that a taxpayer is compliant with the Namibian tax laws in terms of submission of tax returns and payment of taxes.
51. The Authority may not issue a Fidelity Fund certificate to—
- (a) any person who—
 - (i) is not a Namibian citizen or does not lawfully reside in the Republic;

- (ii) has at any time in the preceding five years been found guilty of contravening this Act, the Estate Agents Act 112 of 1976, or any similar legislation in any other jurisdiction;
 - (iii) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which such person has been sentenced to imprisonment without the option of a fine;
 - (iv) is of unsound mind;
 - (v) has at any time in the preceding five years by reason of improper conduct been dismissed from a position of trust;
 - (vi) is an unrehabilitated insolvent,
 - (vii) is not in possession of a tax clearance certificate; or
 - (viii) has been prohibited by any legislation, enacted in the Republic or elsewhere, from practicing as a property practitioner or from occupying a position of trust, including any juristic person to whom the disqualifications in subparagraphs (ii), (iii), (vi) and (vii) apply with the necessary changes;
- (b) any property practitioner who or, if such property practitioner is a company, any director or member of management of that company, or if such property practitioner is a close corporation, any member referred to in paragraph (a) of the definition of "property practitioner" in section 1, or if such property practitioner is a trust, any trustee, or if such property practitioner is a partnership, any partner, who—
- (i) in the preceding five years has been found guilty of contravention of this Act or the Estate Agents Act 112 of 1976;
 - (ii) does not comply with the prescribed standard of training;
 - (iii) does not have the practical experience determined by the Authority;
 - (iv) has failed in respect of his or her or its financial year which has expired before the date on which application for a Fidelity Fund

- certificate is made, to comply with any provision of section 52 unless the Authority has in the case of the duty to submit audit reports, contemplated in section 52, in its discretion allowed a property practitioner to make a late submission of that report; or
- (v) has at any time been guilty of any act or omission in respect of which any person had to be compensated pursuant to the provisions of section 36 from the Fund, unless the property practitioner has repaid the relevant amount in full to the Authority, or the Authority is of the opinion that satisfactory arrangements for the settlement of such amount have been made and has confirmed such arrangements; or
- (c) any property practitioner contemplated in paragraph (a) of the definition of "property practitioner" in section 1 if such property practitioner carries or intends to carry on business as a property practitioner under a trade name which is identical or confusingly similar to the trade name of another property practitioner—
- (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; or
- (d) any property practitioner who is a director of a company, or who is a member referred to in paragraph (b) of the definition of "property practitioner" in section 1, of a close corporation—
- (i) of which the Fidelity Fund certificate was withdrawn by the Authority in terms of section 50,51 or 57; or
 - (ii) which was prohibited in terms of section 52(7) from operating in any way on its trust, savings or other interest-bearing account referred to in section 52(8),
 - (iii) or any property practitioner who within a period of six months before or on the date on which such Fidelity Fund certificate was so withdrawn or such company or close corporation was so prohibited, was a director of such company or such a member of such

corporation, Provided that if the Authority is satisfied in respect of any person who is subject to any disqualification referred to in this section, with due regard to all the relevant considerations, that the issue of a Fidelity Fund certificate to that person is on good cause shown in the interests of consumers, the Authority may on application in writing by the a person issue, on the conditions that it may determine, a Fidelity Fund certificate to that person.

Mandatory time periods for issuing certificates

52. (1) The Authority must consider any application which fully meets the prescribed requirements and submitted to it in terms of or under this Act, within 30 working days, unless the Authority on good grounds in writing informs the applicant of the reasons why that period is to be extended, provided that such extension may not exceed 20 working days.
- (2) A period of 30 working days contemplated in subsection (1) commences afresh if the Authority requests the applicant to submit additional information or to correct his or her application.
- (3) If the Authority has failed to comply with subsection (1), the relevant application is deemed to have been approved and the Authority must upon written request by the applicant within ten working days issue the applicant with the relevant certificate.

Mandatory display of Fidelity Fund certificate and communication of certificate status

53. (1) Every holder of a Fidelity Fund certificate must—
- (a) prominently display his, her or its Fidelity Fund certificate in every place of business from where he, she or it conducts property transactions, to enable consumers to easily inspect it;
- (b) ensure that the prescribed sentence regarding holding a Fidelity Fund certificate is reproduced in legible lettering on any letter head or marketing material relating to that property practitioner;

- (c) in any agreement relating to property transactions entered into by him or her or by his or her company, close corporation, partnership, trust or other entity permitted to conduct the business of a property practitioner include the prescribed clause which ensures that he, she or it guarantees the validity of the certificate.
- (2) A person who contravenes subsection (1) is guilty of an offence, and liable on conviction to a fine not exceeding N\$ 10 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

Withdrawal or lapse of Fidelity Fund certificate

54. (1) The Authority may, whether on its own initiative or pursuant to an instruction issued by a court of law or an adjudicator contemplated in section 28, withdraw a Fidelity Fund certificate issued to—
- (a) any person, partnership or trust summoned in the prescribed manner to appear before the Authority if that person or trust 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 Authority, from so appearing;
 - (b) a company or close corporation, if—
 - (i) the Fidelity Fund certificate of any director of the company or of any member of the corporation has lapsed in terms of subsection (5); or
 - (ii) any director of such company, or any member, referred to in paragraph (a) of the definition of "property practitioner" in section 1, of such corporation, has lapsed in terms of subsection (5), or any trustee of a trust or the person responsible for the trust, becomes subject to any disqualification referred to in subparagraphs (ii), (iii) or (iv) of paragraph (b) or paragraph (c) of section 48; or

- (c) a person or trust becomes subject to any disqualification referred to in subparagraphs (ii), (iii) or (iv) of paragraph (b) or paragraph (c) of section 48.
- (2) A person who has in his or her possession or under his or her control any Fidelity Fund certificate withdrawn in terms of subsection (1) must refrain from using or displaying that Fidelity Fund certificate.
- (3) A court may, on good cause and upon application by the Authority or any other competent person, withdraw any Fidelity Fund certificate issued to any person, and thereupon order that the person contemplated in subsection (2) or any other person must immediately refrain from using and displaying that Fidelity Fund certificate.
- (4) A Fidelity Fund certificate lapses immediately and is of no force and effect if the person to whom it has been issued—
 - (a) in the case of a natural person, the person to whom it has been issued dies or becomes subject to any disqualification referred to in subparagraphs (ii) to (vi) of section 48(a);
 - (b) is a company or a close corporation, and the company or close corporation is being wound up, whether provisionally or otherwise, or is deregistered, as the case may be;
 - (c) is a partnership, and one of the partners is sequestered; or
 - (d) in the case of a trust with only one trustee, that trustee is sequestered.
- (5) Any person who is in possession or control of a Fidelity Fund certificate which has been withdrawn or has lapsed must immediately return that certificate to the Authority, or if that Fidelity Fund certificate cannot be returned, submit a declaration made under oath or affirmed as to the reasons and circumstances preventing the property practitioner from doing so.
- (6) No person whose Fidelity Fund certificate has been withdrawn in terms of subsection (1) or has lapsed in terms of subsection (4), may directly or indirectly participate in the management of any business carried on by a

property practitioner in his or her capacity as such, or participate in the carrying on of such business, or be employed, directly or indirectly, in any capacity in such business, except with the written consent of the Authority and subject to the conditions that the Authority may determine.

- (7) No property practitioner may directly or indirectly in any capacity whatsoever employ a person contemplated in subsection (6), 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 a property practitioner, except with the consent in writing of the Authority, and subject to the conditions that the Authority may impose.
- (8) The Authority has no liability whatsoever in respect of the withdrawal or lapse of a Fidelity Fund certificate.
- (9) A person, partnership or trust whose Fidelity Fund certificate has been withdrawn or lapsed in terms of this section may re-apply for a Fidelity Fund certificate when it, he or she again qualifies for such a certificate.
- (10) Any person who uses or displays a Fidelity Fund certificate contemplated in subsection (2), is guilty of an offence.

Trust account

55. (1) Every property practitioner—

- (a) must open and keep one or more separate trust accounts, which must contain a reference to this section, with a registered bank within Namibia;
- (b) must immediately after opening a trust account contemplated in paragraph (a) appoint an auditor as prescribed;
- (c) must immediately after opening a trust account as contemplated in paragraph (a) and appointing an auditor as contemplated in paragraph (b) provide the Authority as prescribed with all information in respect of such account or accounts and such auditor; and

- (d) or his or her responsible or designated employee, as the case may be, must immediately deposit all trust money held or received by or on behalf of that property practitioner in the relevant trust account.
- (2) Despite subsection (1), any property practitioner may invest in a separate savings or other interest-bearing account opened by him or her with any bank any monies deposited in his or her trust account which are not immediately required for any particular purpose, provided that—
 - (a) that savings or other interest-bearing account must contain a reference to this subsection; and
 - (b) that property practitioner must as prescribed provide the Authority with all information in respect of such account.
- (3) A property practitioner must retain all trust money in an account deposited in terms of subsection (1) or invested in terms of subsection (2), until he, she or it—
 - (a) is lawfully entitled to such money; or
 - (b) is lawfully instructed in writing to make payment therefrom to any person.
- (4) Any bank which manages trust accounts for purposes of this Act must from time to time as prescribed submit a certificate to the Authority declaring the interest in that account.
- (5) Every property practitioner must—
 - (a) keep separate accounting records of all monies deposited by him or her in his or her trust account and of all monies invested by him or her in any savings or other interest-bearing account contemplated in subsection (2);
 - (b) balance his or her books and records relating to any account contemplated in paragraph (a) at intervals of not more than one month, and cause them as well as all his or her business accounts or any other account into which moneys are deposited in connection with any property transaction to be audited by the same auditor

contemplated in subsection (1)(b), within six months after the final date of the financial year of the property practitioner concerned as contemplated in section 58;

- (c) administer the accounts referred to in subsections (1) and (2) in the prescribed manner.
- (6) A property practitioner must forthwith after receipt of an audit report contemplated in subsection (5)(b) submit that report to the Authority, but a property practitioner who submits that report later, may upon payment of a prescribed penalty make a late submission of that report.
- (7) Despite subsection (5), the Authority may on good cause at any time order a property practitioner by notice in writing to submit to the Authority within a period stated in such notice, but not less than 30 days, an audited statement prepared by an auditor fully setting out the state of affairs in respect of the matters referred to in subsection (5)(a).
- (8) A court may on good cause, upon application by the Authority or any other competent person, prohibit any property practitioner from operating in any way his or her trust, savings or other interest-bearing account contemplated in subsection (2) and may appoint a curator *bonis* to control and administer such trust, savings or other interest-bearing account, with the rights, duties and powers that the court deems fit.
- (9) If—
 - (a) the Authority refuses under the provisions of this Act to issue a Fidelity Fund certificate to any property practitioner who applied for a Fidelity Fund certificate;
 - (b) a Fidelity Fund certificate issued to any property practitioner has been withdrawn or lapsed without being renewed;
 - (c) any property practitioner ceases to act as such; or
 - (d) any property practitioner becomes subject to any disqualification contemplated in section 48, the property practitioner concerned must immediately wind up his or her trust account, savings account or

other interest-bearing account in the prescribed manner and pay out in the prescribed manner the amount standing to the credit of any such account to the persons entitled to it.

- (10) Any property practitioner who winds up an account as contemplated in subsection (9) which contains unclaimed or unidentifiable money, or who has held moneys in his, her or its trust account of which the owner or beneficiary could for longer than three years not be identified, must pay that money into the Fund to be held in trust, but the Fund must upon application in the prescribed manner by the owner or beneficiary of such money and with the provision of sufficient proof pay that money to that owner or beneficiary.
- (11) Any money paid into the Fund in accordance with subsection (10) which has remained unclaimed by the person entitled thereto for a period of thirty years as from the date upon which such person became entitled to claim that money, is forfeited to the Fund.
- (12) Despite any other law, the amount standing to the credit of the trust, savings or other interest-bearing account contemplated in subsections (1) and (2) of any property practitioner, does not under any circumstances form part of the assets of such property practitioner or, if he or she was a natural person and has died or has become insolvent, of his or her deceased or insolvent estate.
- (13) Despite any other law, no trust money which may have been paid into any account other than an account contemplated in subsections (1) or (2), whether erroneously or not, under any circumstances becomes part of any such account, and does not lose its nature or characteristics as a result of being paid into such other account.
- (14) A property practitioner must annually confirm or update the details of his or her auditor as prescribed.
- (15) Any property practitioner who contravenes the provisions of subsections 1, 2, 3, 4, 5 and 6 commits an offence.

Duty of property practitioner to keep accounting records and other documents

56. (1) Despite any other law, a property practitioner must for a period of five years in respect of—
- (a) all documents exchanged with the Authority;
 - (b) if applicable, correspondence with his or her employer or franchisor;
 - (c) any agreement incidental to his or her carrying on the business of a property practitioner;
 - (d) any agreement, mandate, mandatory disclosure form or other document relating to the financing, sale, purchase or lease of a property;
 - (e) any advertising or marketing material related to his or her carrying on the business of a property practitioner; and
 - (f) any other document prescribed by the Minister,
from the date of the document or the probable date of the document retain that document and must upon request forthwith provide the Authority with a legible certified copy of that document.
- (2) The documents contemplated in subsection (1) may be stored electronically.
- (3) A property practitioner who contravenes subsection (1) is guilty of an offence.
- (4) In addition to the duties contemplated in section 52, a property practitioner must in respect of his or her activities—
- (a) keep at an address in the Republic the accounting records that are necessary fairly to reflect and explain the state of affairs—
 - (i) of all monies received or expended by him or her, including monies deposited to a trust account referred to in section 52(1) or invested in a savings or other interest-bearing account referred to in section 52(2);
 - (ii) of all his or her assets and liabilities; and
 - (iii) of all his or her financial transactions and the financial position of his or her business; and

- (b) cause the accounting records contemplated in paragraph (a) to be audited by an auditor within six months after the final date of the financial year of the property practitioner, which final date may not be altered by him or her without the prior written approval of the Authority.

Property practitioner not entitled to remuneration in certain circumstances

57. (1) A property practitioner is under no circumstances 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 "property practitioner" in section 1, unless at the time of the performance of that act—
- (a) the property practitioner; and
 - (b) if the property practitioner is a company, every director of such company or, if such property practitioner is a close corporation, every member referred to in paragraph (b) of the definition of "property practitioner" in section 1, of that corporation, is in possession of a Fidelity Fund certificate.
- (2) No person referred to in paragraph (f) of the definition of "property practitioner" in section 1, and no property practitioner who employs such person, is entitled to any remuneration or other payment in respect of or arising from the performance by that person of any act referred to in that paragraph, unless at the time of the performance of the act that person is in possession of a Fidelity Fund certificate.
- (3) A property practitioner, or anyone who performs any functions or exercises any powers normally performed or exercised by a property practitioner, who has received any remuneration or other payment contemplated in subsections (1) and (2) must immediately pay that amount to the Fund, and any affected seller, purchaser, lessor or lessee may within three years of that

money having been paid to the Fund submit a written claim in respect thereof to the Fund, together with the necessary proof, and the Fund may pay that amount or a portion thereof to that applicant which it in its discretion may deem equitable in the circumstances.

- (4) Any amount paid to the Fund contemplated in subsection (3) which is not claimed within three years irrevocably becomes the property of the Fund.
- (5) A legal practitioner may not pay any remuneration or other moneys to a property practitioner unless that property practitioner has provided the legal practitioner with a certified copy of his, her or its Fidelity Fund certificate valid during the period or on the date of the transaction to which such payment relates, and on the date of such payment.
- (6) Nothing in this section prevents the institution from conducting and concluding of criminal or any other proceedings in respect of any act contemplated in this section or under the Act.

Insolvency or liquidation of property practitioner

58. (1) In addition to the provisions of section 52(9), a property practitioner who—
- (a) commits an act of insolvency;
 - (b) is insolvent; or
 - (c) is placed under liquidation, whether provisional or final,
is immediately disqualified to be a holder of a Fidelity Fund certificate and must within a period of 30 days—
 - (i) inform the Authority in writing of any matter contemplated in paragraphs (a), (b) or (c);
 - (ii) refrain from using and displaying that Fidelity Fund certificate;
 - (iii) inform his or her auditor and the bank holding his or her trust account in writing about the disqualification;
 - (iv) cease to perform the functions of a property practitioner;
 - (v) inform his or her clients, employees or employers or any other affected person in writing of that disqualification;

- (vi) hand over the administration of his or her trust account, together with all relevant information and records, to the Authority; and
 - (vii) cause any outstanding matters in consultation with any affected person to be taken over by another property practitioner.
- (2) Any person who fails to comply with subsection (1) commits an offence.
 - (3) The Authority must wind down the trust account of a property practitioner contemplated in subsection (1) and effect payment of any trust moneys in accordance with the rights of affected consumers and other persons.
 - (4) In the event of insolvency or liquidation of the property practitioner trust moneys in the trust account, those moneys do not form part of the insolvent estate.

PART 8

Conduct and behaviour of property practitioners

Property practitioners' Code of Conduct

- 59. (1) The Minister must, after consultation with the Authority, prescribe a Code of Conduct which every property practitioner must comply with.
- (2) The Authority must annually advise the Minister on the efficacy of the Code of Conduct current at the time.

Improper and sanctionable conduct

- 60. (1) A property practitioner is guilty of sanctionable conduct if he or she or it—
 - (a) in the same transaction acts as a property practitioner on behalf of two or more persons whose interests are not in all material respects identical in respect of that transaction, and receives remuneration

- from all parties concerned in respect of such transaction, unless all affected persons in writing agree thereto;
- (b) fails in respect of any act performed by him or her as a property practitioner to give a full and proper explanation in writing, within 30 days of being called upon in writing to do so, to any person having a material interest in the performance of such act;
 - (c) fails to pay any money due to the Authority or in respect of the Fund within one month after such monies become due;
 - (d) fails to furnish in writing within a period determined by the Authority any information that the Authority has requested in writing and reasonably requires in order to properly exercise its powers under this Act;
 - (e) fails to comply with or contravenes any provision of the Code of Conduct
 - (f) fails to comply with or contravenes any provision of section 45, 50, 52, 53, 54, 57, or 65;
 - (g) in his or her capacity as a director of a company, or member contemplated in paragraph (b) of the definition of "property practitioner" in section (1), of a close corporation, or trustee of a trust, which is a property practitioner and which failed to comply with section 52 or 53, did not take all reasonable steps to prevent such failure;
 - (h) carries on an prohibited practice prohibited under section 58;
 - (i) commits an offence involving an element of dishonesty;
 - (j) fails to inform the Authority within 14 days of a change in his, her or its contact details; or
 - (k) fails to comply with or contravenes any provision of this Act.
- (2) Subsequent ratification or correction of any conduct contemplated in subsection (1) does not constitute a defence.

- (3) If a property practitioner is found guilty of improper and sanctionable conduct, the Authority may after affording the property practitioner an opportunity to be heard—
 - (a) withdraw the Fidelity Fund certificate of that property practitioner, or
 - (b) impose on that property practitioner a fine as determined by the Minister; or
 - (c) reprimand such property practitioner and note his or her transgression on its website on Authority's database, provided that the Authority may suspend payment of a fine or any portion thereof or the withdrawal of any Fidelity Fund certificate for a period not exceeding three years and on the further conditions that the Authority may determine.
- (2) The acquittal or conviction of a property practitioner by any court of law upon any criminal charge is not a bar to proceedings against him or her under this Act on a charge of sanctionable conduct, despite the facts set forth in the charge of sanctionable conduct constituting, if proven, the offence set forth in the criminal charge on which he or she was so acquitted or convicted or any other offence on which he or she might have been convicted at his or her trial on that criminal charge.

Prohibited practices

61. (1) Subject to subsection (2), the Minister may after consultation with the Authority, by notice in the Gazette, declare a particular business practice in the property market to be prohibited
- (2) When deciding whether or not a declaration contemplated in subsection (1) should be made, the Minister and the Authority must consider—
 - (a) the right of every citizen to freely choose their trade, occupation or profession;
 - (b) that the practice concerned, directly or indirectly, has or is likely to have the effect of—

- (i) damaging the relations between property practitioners, or any specific property practitioner, on the one hand, and any specific consumer, category of consumers or the general public on the other hand;
 - (ii) unreasonably prejudicing any consumer or category of consumers;
 - (iii) deceiving any consumer or category of consumers; or
 - (iv) unfairly affecting any consumer or category of consumers; and
 - (c) that if the practice is allowed to continue, one or more of the objects of this Act as contemplated in section 2 will or is likely to be defeated.
- (3) The Authority may issue a compliance notice contemplated in section 25 directing a property practitioner who, on or after the date of the publication of a notice contemplated in subsection (1) carries on a business practice in contravention of that notice, to rectify to the satisfaction of the Authority anything which was caused by or arose out of the carrying on of the business practice concerned, or otherwise deal with the matter as authorised by this Act or any other law.

Control and supervision of certain property practitioners

62. (1) A Intern property practitioner may not as a property practitioner draft or complete any document or clause in a document—
- (a) conferring any mandate on any property practitioner to perform any act referred to in paragraph (a), (c) or (d) of the definition of "property practitioner" in section 1; or
 - (b) relating to the sale or lease of property.
- (2) A person who contravenes subsection (1) and a property practitioner who allows an act contemplated in subsection (1) is not entitled to any payment, remuneration, consideration 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.

- (3) In any proceedings in respect of sanctionable conduct, it is no defence that the principal property practitioner was not aware of the acts or omissions of the Non-property practitioner or the Intern property practitioner.
- (4) A principal property practitioner who conducts business from more than one business premises must supervise and control the property practitioner and Intern property practitioner in his or her employ, despite the fact that those property practitioners conduct their business in branch or other offices.

Franchising

63. (1) A franchisee property practitioner may not carry on business under the name of a franchise unless he, she or it personally is the holder of a Fidelity Fund certificate.
- (2) A franchisee property practitioner must disclose clearly and unambiguously in all his, her or its written communication, advertising and marketing materials that he, she or it operates in terms of a franchise agreement, as well as the name of the franchisor.
- (3) The Authority may withdraw the Fidelity Fund certificate of a franchisee property practitioner who carries on business in contravention of subsections (1) or (2).

64. Limitation on relationships with other property market service providers

- (1) A property practitioner may not—
- (a) practise in association with any person which or who is prohibited by any law, any professional code of conduct, any code of ethics or protocol, report or charter on corporate governance, from doing so; or
- (b) enter into any arrangement, formally or informally, whereby a consumer is obliged or encouraged to use a particular service provider including a legal practitioner to render any service or ancillary services in respect of any transaction of which that property practitioner was the effective cause.

65. Consumer education and information

1) The Board must from time to time conduct campaigns to educate and inform the general public of their rights in respect of property transactions and property practitioners of their functions, duties and obligations.

(2) A property practitioner owes a buyer and a seller a duty of care.

Advertising and marketing

66. (1) The Minister may, after consultation with the Authority, prescribe norms and standards in respect of advertising and marketing by property practitioners.

PART 9

General

Mandatory disclosure form

67. (1) A property practitioner—

(a) may not accept a mandate unless the seller or lessor of the property has provided him or her with a fully completed and signed mandatory disclosure in the prescribed form;

(b) must provide a copy of the completed mandatory disclosure form to a prospective purchaser or lessee who intends to make an offer for the purchase or lease of a property.

(2) The completed mandatory disclosure form signed by all relevant parties must be attached to any agreement for the sale or lease of a property, and forms an integral part of that agreement, but if such a disclosure form was not completed, signed or attached, the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchaser.\

(3) Record the commission payable to the Property Practitioner

(4) A property practitioner who fails to comply with subsection (1) may be held liable by an affected consumer.

- (5) Nothing in this section prevents the Authority from taking action against a property practitioner or imposing an appropriate sanction.

Regulations

68. (1) The Minister may, subject to subsections (2) and (3), make regulations regarding any matter that may or must be prescribed in terms of this Act or any incidental matter of a procedural or administrative nature that the Minister considers necessary to prescribe in order to achieve the objects of this Act.
- (2) Before making any regulation the Minister must—
- (a) consult the Authority; and
 - (b) publish the proposed regulations for public comment and allow at least 30 days for submission of such comment.

Penalties

69. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment not exceeding, in the case of—
- (a) any offence not specifically provided for in paragraph (b), one year; or to a fine not exceeding N\$ 20 000 , or to both such fine and such imprisonment.
 - (b) section 50(2), 23(13), 23(18), 47(4), 51(10), 55(2), five years, or to a fine not exceeding N\$ 50 000, or to both such fine and such imprisonment .

Chief Executive Officer

Transitional provisions

70. (1) The juristic person known as the Namibia Estate Agents Board, established by section 2 of the Estate Agents Act 112 of 1976, continues as if it were established by this Act, under the name Namibian Property Practitioners Authority.
- (2) Upon commencement of this Act, all funds of the Estate Agents Fidelity Fund are transferred to the Fund.

- (3) The Authority constituted in terms of the Estate Agents Act 112 of 1976, shall continue to operate until the appointment of the Authority
- (4) All Regulations made in terms of the Estate Agents Act 112 of 1976, remain in full force and effect as if they were made in terms of or under this Act.

Repeal of laws

71. The following laws are repealed
 - (a) Estate Agents Act 112 of 1976; and
 - (b) Estate Agents Amendment Act 28 of 1987.

Short title and commencement

72.
 - (1) This Act is called the Property Practitioners Act, 2016.
 - (2) This Act commences on a date determined by the Minister by notice in the Gazette.