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PROCLAMATION NOTICES • PROKLAMASIE KENNISGEWINGS

PROCLAMATION 47 OF 2022

BY THE

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

COMMENCEMENT OF THE PROPERTY PRACTITIONERS ACT, 2019

In terms of section 77 of the Property Practitioners Act, 2019 (Act No. 22 of 2019), I hereby determine the 01 February 2022 as the date on which the said Act shall come into operation.

Given under my Hand and the Seal of the Republic of South Africa at JOHANNESBURG this 16TH day of DECEMBER Two Thousand and Twenty One.

PRESIDENT

MINISTER OF THE CABINET

81/172488(Z 19E)

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MULEVHO

Nga

Phresidennde wa Riphabuliki ya Afrika Tshipembe

Nomboro ya 2019

U THOMA U SHUMISWA HA MULAYO WA VHASHUMI VHA ZWA NDAKA WA, 2019

U ya nga khethekanyo ya 77 ya Mulayo wa Vhashumi vha zwa Ndaka wa, 2019 (Mulayo wa Nomboro ya. 22 wa 2019), Nne ndi khou ta dzi 01 Luhuhi 2022 sa yone datumu ine ngayo Mulayo wo bulwaho u tea u thoma u shuma.

Nga tsaino yanga na Sili ya Riphabuliki ya Afrika Tshipembe vhuponi ha JOHANNESBURG. nga duvha la dzi ...16.....dza nwedzi wa NYENDAVHUSIKU .....nwaha wa gidimbili fumbilithihi.

PHRESIDENNDE

MINISITA WA KHABINETE

81/172488(Z 19E)

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DEPARTMENT OF HUMAN SETTLEMENTS

PROPERTY PRACTITIONERS REGULATIONS, 2022

I, Mmamoloko Tryphosa Kubayi, Minister for Human Settlements, hereby in terms of section 70 of the Property Practitioners Act,2019 (Act No 22 of 2019), and after consultation with the Board of the Authority publishes the Property Practitioners Regulations.

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CHAPTER 1: DEFINITIONS, APPLICATION AND EXEMPTIONS

1 DEFINITIONS

1.1 Unless the context indicates otherwise, words that are defined in the Act shall be ascribed their meaning, and –

1.2 "Act" means the Property Practitioners Act, No 22 of 2019;

1.3 “appellant” means the person referred to in section 31 (1) of the Act;

1.4 "Authority" means the Property Practitioners Regulatory Authority established under section 5 of the Act;

1.5 "body corporate" bears the meaning assigned to in the Sectional Titles Schemes Management Act, 8 of 2011;

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1.6 "business property practitioner" means a partnership, company, trust, close corporation or similar organisational entity that carries on the activities of a property practitioner;

1.7 "candidate estate agent" means a candidate property practitioner in the estate agency industry;

1.8 “case presenter” means the person appointed or designated in terms of regulation 13.13;

1.9 “charge” means a charge of sanctionable conduct which shall be brought against any property practitioner;

1.10 "client" means a person who has given a property practitioner a mandate, provided that should a property practitioner have conflicting mandates in respect of a particular immovable property, the person whose mandate has been accepted first in time by the property practitioner, is regarded as the client;

1.11 “code of conduct” means the code of conduct referred to in section 61 (1) of the Act;

1.12 “compensatory award” means the compensation referred to in section 30 (7) (b)) of the Act;

1.13 “complainant” means any person who lodged a complaint against a property practitioner in terms of section 28 (1) of the Act;

1.14 “complaint” means a complaint concerning the conduct deserving of sanction against any property practitioner acting in his or her capacity as such;

1.15 "effective date" means the date upon which these regulations come into operation;

1.16 "estate agent" means –

1.16.1 any person who performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking or the management of any property;

1.16.2 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, performed any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking;

1.16.3 for the purposes of sections 34, 46, 48, 59, 60, 61 and 65 –

1.16.3.1 any director of a company or a member of a close corporation that performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking;

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1.16.3.2 any person who is employed by any person who performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking;

1.16.3.3 any trustee of a trust referred to in sub- regulation 1.16.2;

1.16.3.4 any person who is employed by any person who performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act other than insofar as it relates to any business undertaking, to manage, supervise or control the day-to-day operations of the business of that property practitioner;

1.16.4 any person who is employed by or renders services to an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979, other than an attorney or candidate Attorney, and his duties consist wholly or primarily of the performance of any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act other than insofar as it relates to any business undertaking, on behalf of such attorney or professional company whose actions will be specifically covered by the Legal Practitioners' Fidelity Fund and not the Property Practitioners Fidelity Fund;

1.16.5 includes any person who carries on any activity referred to in sub-regulation 39.1.1; and

1.16.6 includes any person who fell within the ambit of any of subregulations 1.16.1 to 1.16.5 foregoing at the time when he or she was guilty of any act or omission which constitutes sanctionable conduct;

1.17 "Fidelity Fund" means the Property Practitioners Fidelity Fund contemplated in section 34 of the Act;

1.18 "franchise" means an agreement, arrangement or understanding between a franchisor and a franchisee property practitioner in terms of which the latter is entitled or required to operate under a trade name which is owned by, or which is associated with the business of, the franchisor or any other person;

1.19 "immovable property" means property as defined in section 1 of the Act;

1.20 "industry" means an industry sector or sub-sector, the property practitioners within which are regulated by the Authority, which includes but is not limited to the estate agency industry and the property broking industry;

1.21 "industry representative body" or any similar term means, in relation to any industry, a body that represents all or the greater part of the natural and juristic persons active within such industry;

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1.22 "managing agent" means –

1.22.1 any person who manages property as referred to in subparagraph (a) (i) of the definition of "property practitioner" in the Act;

1.22.2 any person who carries out any activity referred to in subparagraph (c) of the definition of "property practitioner" in the Act; and

1.22.3 includes -

1.22.3.1 a managing agent in terms of rule 28 of Annexure 1 of Sectional Titles Schemes Management Regulations published under GNR.1231 of 7 October 2016 or any amendment thereto; and

1.22.3.2 a scheme executive under the Regulations on Community Schemes Ombud Service published under GNR.1233 of 7 October 2016 or any amendment thereto;

1.23 "mandate" means an instruction or an authority given to, and accepted by, a property practitioner to render a service;

1.24 “mediator” means a mediator appointed in terms of section 29 (2) of the Act;

1.25 "Minister" means the Minister of Human Settlements and includes his or her successor in title;

1.26 “non-principal property practitioner” means any person referred to in paragraph (e) (ii) of the definition of ‘property practitioner’ in section 1 of the Act;

1.27 “notice of appeal” means the notice referred to in section 31 (1) of the Act;

1.28 "previous Act" means the Estate Agency Affairs Act, 1976 together with the regulations published thereunder;

1.29 “principal property practitioner” means any person referred to in paragraph (a) or paragraph (e) (i) of the definition of ‘property practitioner’ in section 1 of the Act;

1.30 “Professional Designation Examination” means an integrated test of knowledge for property practitioners contemplated in regulation 33.2;

1.31 "property practitioner" means a person defined in section 1 of the Act, including a candidate property practitioner;

1.32 “property practitioner charged” means the property practitioner as defined in the Property Practitioners Act.

1.33 "Property Sector Charter Code" means the transformation charter which establishes a framework and the principles in terms of which broad-based black economic empowerment

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will be implemented in the property sector pursuant to the provisions of the Broad-Based Black Economic Empowerment Act 53 of 2003, as such transformation charter may be amended from time to time;

1.34 “respondent” means a property practitioner against whom a complaint or a charge has been laid;

1.35 “record” means the record of the proceedings before the adjudication appeal committee;

1.36 "regulations" means these regulations, and "regulation" means a provision of these regulations;

1.37 "sanctionable conduct" means a sanctionable conduct as contemplated in the Act;

1.38 "service" means any service referred to in subparagraphs (i)-(vi) of paragraph (a) of the definition of "property practitioner" in section 1 of the Act; and

1.39 "sole mandate" means a mandate incorporating an undertaking on the part of the person giving the mandate, not to confer a similar mandate on another property practitioner before the expiry of a determined or determinable period.

2 **EXEMPTION FROM TRUST ACCOUNTS**

2.1 Pursuant to the provisions of section 23 (1) of the Act, the following is prescribed –

2.1.1 A property practitioner is exempted from keeping a trust account if –

2.1.1.1 that property practitioner has never received any trust monies, other than as permitted in regulation 2.4; or

2.1.1.2 no longer receives any trust monies, other than as permitted in regulation 2.4; and

2.1.1.3 that property practitioner submits to the Authority an affidavit in the form set out below in terms of which affidavit the property practitioner asserts that –

2.1.1.3.1 they are compliant with the provisions of either subregulation 2.1.1.1 or subregulation 2.1.1.2;

2.1.1.3.2 they undertake that they will not receive any trust funds after the date of such affidavit other than as permitted in terms of regulation 2.4, without having first opened a trust account and having provided the Authority at least 60 days in advance of receiving any funds in trust, with full details of such trust account, including the financial institution with which such trust account is held and the trust account number; and

2.1.1.3.3 the property practitioner provides evidence to the Authority that any previously existing trust account (including any savings or interest-bearing account referred

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to in section 54 (2) operated by that property practitioner (other than as permitted in terms of regulation 2.4 has been finally closed and all funds held in that trust account have been disbursed in accordance with the requirements of law, provided that for this purpose any independent review or audit report which is compliant with regulation 2.2 below, if provided to the Authority will be sufficient evidence of compliance with the foregoing.

2.2 Where a property practitioner is exempted in terms of subregulation 2.1.1, provided that such property practitioner has had any previously existing trust account reviewed in terms of section 23 (1) or audited in terms of section 54 (1) to (7) up to the date on which such trust account was closed, such property practitioner will not be required to again have such account reviewed or audited.

2.3 Where a property practitioner is exempt in terms of subregulation 2.1.1 and has complied with regulation 2.2 foregoing, such property practitioner will be exempted from having to have its annual financial statements and other accounts audited and will only be required to have such accounts records independently reviewed by a registered accountant.

2.4 A property practitioner will further be exempt from operating a trust account if such property practitioner is otherwise compliant with the provisions of subregulation 2.1.1 and if –

2.4.1 such property practitioner has mandated one or more other property practitioners that specialise in collecting and distributing trust payments ("the payment processing agents") to process such trust payments on its behalf, in respect of all trust funds received by that property practitioner;

2.4.2 each payment processing agent mandated by that property practitioner operates a trust environment that complies with the Act and associated regulations;

2.4.3 each payment processing agent mandated by that property practitioner operates a trust environment that complies with the Act and associated regulations; and

2.4.4 the trust environment and each of the client accounts operated by the payment processing agents are audited annually in compliance with the Act and regulations, and the audit reports in respect thereof are submitted to the Authority in compliance with the Act and the regulations; and

2.4.5 the property practitioner concerned holds no trust monies whatever outside of the manner provided for in subregulations 2.4.1 to 2.4.4 foregoing.

2.5 All property practitioners, other than a property practitioner registered as a business property practitioner with the Authority, are exempt from operating trust accounts.

2.6 A managing agent shall not be required to operate a trust account in respect of a body corporate where the funds of that body corporate are held in a bank account opened in the

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name of the body corporate concerned in terms of section 21 (4) (a) of the Sectional Title's Schemes Management Act, 8 of 2011.

FORM OF AFFIDAVIT BY BUSINESS PROPERTY PRACTITIONER IN RESPECT OF TRUST MONIES

1 I, [insert name] (identity number [insert identity number]), in my capacity as [insert capacity] of [insert the name of the business property practitioner concerned] (registration number [insert registration number]) (the "business property practitioner") solemnly affirm that –

1.1 I am duly authorised to make this affidavit on behalf of the business property practitioner;

1.2 the business property practitioner has never received any trust monies / no longer receives any trust monies (delete whichever is not applicable);

1.3 should these circumstances change, we undertake not to receive any trust monies after the date hereof without first –

1.3.1 opening a trust account;

1.3.2 giving the Authority no less than 60 days' notice prior to such receipt of any trust monies; and

1.3.3 furnishing all details pertaining to the trust account to the Authority, which details must comprise at least the name of the financial institution at which the trust account is held, and the trust account number.

_____ Signature

_____ Full name of signatory

_____ Identity or registration number of signatory

_____ Date of signature

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CHAPTER 2: TRANSFORMATION AND REGULARISATION

3 TRANSFORMATION AND REGULARISATION

3.1 The Authority shall appoint any suitably qualified independent person, persons or entity, subject to the approval of the Minister, to manage the Property Sector Transformation Fund as contemplated in section 21 of the Act.

3.2 The Property Sector Transformation Fund must allocate and make available no more than 75% of the grants received by the Property Sector Transformation Fund during each year for the following purposes -

3.2.1 enterprise development and support programmes as defined by the Property Sector Charter Code that focus on capacitation and enterprise support for historically disadvantaged property practitioners;

3.2.2 support of existing SMME's owned by historically disadvantaged property practitioners operating within the property sector, inclusive of support to purchase part or all of the interests in existing business property practitioners;

3.2.3 promotion of the standard of training and development of historically disadvantaged property practitioners aligned with the skills development objectives as defined by the Property Sector Charter Code;

3.2.4 regularisation of the affairs of historically disadvantaged property practitioners to promote compliance with the Act;

3.2.5 supporting existing historically disadvantaged property practitioners to become principal property practitioners and owners of business property practitioners;

3.2.6 facilitation of ownership of and participation in property investment enterprises by historically disadvantaged individuals; and

3.2.7 enabling the transformation of property ownership in South Africa by providing grant support to historically disadvantaged property practitioners who are in the business of developing residential properties in the affordable and secondary housing markets.

3.3 The Authority must-

3.3.1 develop guidelines including assessment criteria to qualify for the grants stipulated in regulation 3.2;

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3.3.2 develop guidelines for the regularisation of the affairs of historically disadvantaged property practitioners as contemplated in subregulation 3.2.4;

3.3.3 develop guidelines for the support of historically disadvantaged property practitioners in becoming principal property practitioners and owners of business property practitioners as contemplated in subregulation 3.2.5;

3.3.4 as part of the foregoing guidelines develop a means test to be applied in support of historically disadvantaged property practitioners under the provisions of regulation 3.2; and

3.3.5 monitor and publish an annual report on the outcomes and beneficiaries of the Property Sector Transformation Fund.

3.4 For the purposes of regularisation –

3.4.1 an applicant shall not be precluded from registering as a property practitioner or obtaining a Fidelity Fund certificate under the Act in consequence of such person having been in any way non-compliant with any of the provisions of the previous Act unless -

3.4.1.1 the Authority is able to show that such applicant is on the effective date subject to criminal prosecution or disciplinary proceedings which has or have commenced in respect of a failure on the part of such applicant to comply with any provisions of the previous Act or its regulations; or

3.4.1.2 the Authority is able to show that such applicant had a Fidelity Fund certificate issued under the previous Act withdrawn as a result of a failure on the part of such applicant to comply with any of the provisions of the previous Act or its regulations; and

3.4.2 an property practitioner who failed to register as an "estate agent" under the previous Act or failed to obtain a Fidelity Fund certificate under the previous Act when they were required to do so, shall not be subject to prosecution or any disciplinary action in respect of such failure by the Authority provided that such person registers with the Authority within a period of no more than six months of the effective date and subsequently obtains a Fidelity Fund certificate in accordance with the provisions of the Act and these regulations within a period of no more than 12 months following the date upon which such person registers with the Authority.

3.5 The Authority shall be entitled to from time to time in good faith consultation with the representative bodies of the industry or industries concerned, take steps in respect of and arrange for the regularisation of the affairs of, the property practitioners in such industry or industries in order to enable the property practitioners concerned to bring themselves into compliance with the provisions of the Act and the regulations.

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3.6 The Property Sector Transformation Fund must allocate and make available no more than 5% of the grants received by the Property Sector Transformation Fund during each year for the purposes of consumer education and in which regard the Authority must take steps to educate consumers about their rights under the Act and the regulations. For such purpose the Authority must develop consumer education programs, host interactive roadshows and conduct seminars and physical roadshows annually. At least one of the foregoing events must be held once per annum in each provincial capital and each regional primary business hub, with subsequent events during such year in the province concerned being held in other places so as to maximise consumer education across the province. The Authority must monitor the progress of consumer education and publish an annual report on such progress and details of its activities under this regulation 3.4.

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CHAPTER 3: COMPLIANCE, ENFORCEMENT AND DISPUTE RESOLUTION

4 **FORMAT OF COMPLIANCE NOTICE**

4.1 The compliance notice contemplated in section 26 (4) of the Act shall be in the following fomat –

[*Insert Authority's letterhead*]
[*Insert date*]

[Insert addressee's relevant particulars]
BY HAND
BY EMAIL: *[insert email address]*

Dear *[Sirs / Sir / Madam]*

RE: COMPLIANCE NOTICE FOR MINOR CONTRAVENTIONS ISSUED BY THE PROPERTY PRACTITIONERS REGULATORY AUTHORITY (THE "AUTHORITY) IN TERMS OF SECTION 26 (4) OF THE PROPERTY PRACTITIONERS ACT, NO *[INSERT NUMBER]* OF 2019 (THE "ACT")

1 On *[insert date(s)]*, your premises from which you conduct the business of a property practitioner (as contemplated in section 1 of the Act) were visited by our *[insert name of inspector]*, who is duly appointed as an inspector in accordance with section 24 (a).

2 The inspection revealed that in contravention of [insert section number], you [insert particulars of contravention].

3 [*Alternatively to the foregoing] We have become aware that [insert details of the contravention*].

4 In light of this contravention, the Authority hereby issues this compliance notice directing you to *[describe remedial action(s) to be taken]* by no later than *[insert reasonable deadline]*. Should you fail to comply with this directive, in respect of either the remedial action or deadline herein indicated, such failure may, *inter alia*, constitute a breach of the code of conduct applicable to property practitioners, which failure in turn shall constitute sanctionable conduct as contemplated under section 62 (1) (e).

5 If you admit that you have failed to adhere to the Act in the manner aforesaid, you are further directed, in terms of section 26 (5) to (6) –

5.1 to pay a fine in the sum of *[insert sum]* to the Authority; and

5.2 to sign the attached acknowledgement, delivering the original signed acknowledgement together with a copy of this compliance notice (which you must initial) to the Authority,

by no later than *[insert deadline]*.

6 We further draw to your attention that if you do not admit that you have failed to adhere to the Act in the manner aforesaid, that you may make representations to the Authority as to why you dispute that you have failed to adhere to the Act in the manner aforesaid.

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Further, in the event that you do admit that you have failed to adhere to the Act in the manner aforesaid, you may also make representations to the Authority as to the extent of the fine imposed and to draw to the attention of the Authority any reasons as to why that fine should stand to be reduced.

7 In the event of your admitting that you failed to adhere to the Act in the manner aforesaid and not making representations as to the extent of the fine imposed, the fine must be paid into the following bank account using the following reference:

[*insert unique reference number of the Authority*]

[*insert banking details of the Authority*]

8 All communications in relation to this compliance must be either uploaded through the Authority's web portal or otherwise must be sent by the applicant to the Authority's email address at *[insert email address]* or otherwise sent by post or delivered by hand to the following address of the Authority –

Property Practitioners Regulatory Authority
63 Wierda Road East (Cnr Johan)
Wierda Valley
Sandton
Johannesburg
2196

Yours faithfully

_____
[INSERT NAME OF SIGNATORY]
Chief Executive Officer
Property Practitioners Regulatory Authority

ACKNOWLEDGEMENT BY PROPERTY PRACTITIONER IN TERMS OF SECTION 26 (5) OF THE PROPERTY PRACTITIONERS ACT, NO *[INSERT NUMBER]* OF 2019 (THE "ACT")

1 I, *[insert name]* (*[insert identity or registration number]*), admit to having contravened the Act in the manner set out in paragraph 2 of the compliance notice to which this acknowledgement is attached.

2 I further confirm my awareness of the fact that -

2.1 I may not be prosecuted in relation to the compliance notice; and

2.2 the contravention referred to in the compliance notice may not be considered in any other proceedings against me.

_____Signature of property practitioner

_____Name of property practitioner

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CONTINUES ON PAGE 130 OF BOOK 2

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_____Identity / registration number of property practitioner

_____Date of signature

5 **FORM FOR LODGING COMPLAINT**

5.1 A complaint contemplated in section 28 (1) of the Act must be lodged on the following form –

SECTION A: COMPLAINANT (MARK "N / A) IF NOT APPLICABLE)		
1	Full name	
2	Legal form (eg. natural person, partnership, trust, close corporation, company, voluntary association etc)	
3	Identity, passport or registration number	
4	Residential address	
5	Business address	
6	Full names of directors, members, trustees or similar persons exercising management control over Complainant	
7	Full names of shareholders or similar persons owning proprietary interests in Complainant	
SECTION B: PROPERTY PRACTITIONER (MARK "N / A" IF NOT APPLICABLE)		
1	Full name	
2	Legal form (eg. sole proprietorship, partnership, trust, close corporation or company)	

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3	Identity, passport or registration number	
4	Fidelity Fund certificate number (if known)	
5	Residential address	
6	Business address	
7	Full names of directors, members, trustees or similar persons exercising management control over Property Practitioner	
8	Full names of shareholders or similar persons owning proprietary interests in Property Practitioner	
SECTION C: DETAILS OF COMPLAINT		
1	Basis of complaint against respondent (ie financing, marketing, management, letting, hiring, sale or purchase)	
2	Brief description of incident(s) giving rise to complaint	
3	List of supporting documents, if any (must be attached hereto)	

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Signed by Complainant at _____ on _____

Signature of Complainant_____

6 **REFERRAL OF COMPLAINT TO MEDIATION**

Lodging of complaints

6.1 Any person who feels aggrieved by any act or omission of a property practitioner may lodge a complaint with the Authority.

6.2 A complaint must be addressed to the Authority and shall-

6.2.1 be in writing;

6.2.2 contain the name and address of the complainant and of the respondent (to the extent that the same are known to the complainant);

6.2.3 contain details of the conduct complained of; and

6.2.4 be signed by or on behalf of the complainant.

6.3 The Authority may of its own accord formulate a complaint in the manner prescribed by regulation 6.2 if on good cause it has reason to believe that the conduct of a property practitioner may constitute conduct deserving of sanction.

Consideration of complaint and investigation thereof

6.4 The Authority may-

6.4.1 on receipt of a complaint referred to in regulation 6.1 request the complainant to furnish it with such further information, in the form of an affidavit or otherwise, as it deems necessary;

6.4.2 carry out, or cause to be carried out, any investigation in respect of a complaint as it deems necessary or appropriate; and

6.4.3 notify the respondent in writing of a complaint and shall simultaneously with such notification –

6.4.3.1 furnish the respondent with a copy of the complaint in question;

6.4.3.2 request the respondent in writing to furnish the Authority with his or her comments on the complaint, if any, within the period referred to in regulation 6.5; and

6.4.3.3 advise the respondent of the provisions of regulation 6.6.

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6.5 The respondent shall furnish the Authority with his or her comments, if any, within 21 days after the date of the Authority's request, or within such extended period as the Authority may allow.

6.6 Comments furnished to the Authority by the respondent in terms of paragraph (a) shall not be used against him or her in any legal proceedings relating to the complaint.

6.7 If the Authority is of the opinion that there is insufficient evidence to substantiate a complaint, the Authority shall in writing notify-

6.7.1 the complainant; and

6.7.2 the respondent (if he or she has already been notified by the Authority of the complaint),

that the matter will not be proceeded with by the Authority.

6.8 The Authority may at any time and on good cause withdraw a complaint formulated by it in terms of regulation 6.3 and shall forthwith thereafter notify the respondent of such decision in writing, if he or she has already received notification of the complaint in terms of subregulation 6.4.3.

6.9 Notwithstanding the provisions of regulations 6.7 and 6.8, the Authority may at any time after having taken any step referred to in those regulations and after notification to the complainant and the respondent (if he or she has already received a notification), re-open the matter or revoke the withdrawal of the complaint, as the case may be, if new evidence has become available which, in the opinion of the Authority, justifies such reopening or revocation.

Mediation

6.10 The Authority may at any time attempt to resolve any dispute between the complainant and the respondent based on the complaint, by inviting the complainant and the respondent to participate in mediation proceedings.

6.11 When inviting the parties in terms of regulation 6.10, the Authority-

6.11.1 shall notify both parties of the provisions of regulation 6.15; and

6.11.2 where mediation proceedings involve an inter-property practitioners dispute –

6.11.2.1 the Authority will determine mediation costs payable by the parties;

6.11.2.2 the mediation costs shall be borne by the disputing parties on an equal basis;

6.11.2.3 The mediation proceedings shall not commence until the mediation costs have been paid up by the parties or parties may conclude an agreement regarding the payment

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of the Authority's costs in respect of the mediation proceedings and the appointment of a mediator.

6.12 If the complainant and the respondent are willing to participate in mediation proceedings, the Authority (or its nominee) shall act as mediator in the matter.

6.13 The mediator shall determine the procedure to be followed in the mediation.

6.14 If through mediation the dispute between the complainant and the respondent is settled –

6.14.1 such settlement shall be recorded by the mediator in writing and shall be signed by both the complainant and the respondent as soon as is practicable; and

6.14.2 the complainant in question, and the charge (if any) against the respondent shall be deemed to be withdrawn, unless the respondent fails to implement any obligation imposed upon him or her in terms of the settlement as recorded and signed in terms of subregulation 6.14.1.

6.15 Neither the complainant nor the respondent shall be obliged to participate in mediation proceedings and nothing said or done by either party in an attempt to settle the dispute through mediation shall be used in evidence in any legal proceedings relating to the complaint.

6.16 A person who has been appointed as mediator in terms of this regulation, may not in any manner be involved in any subsequent proceedings relating to the dispute.

6.17 Except where the parties are involved in inter-property practitioners' dispute, the mediation proceedings shall be free of charge.

6.18 Any costs incurred by the Authority in respect of the mediation proceedings and the appointment of a mediator shall be borne by the Authority, subject to the provisions of an agreement (if any) as referred to in subregulation 6.11.2.

6.19 The Authority may, if it has formulated a complaint as contemplated in regulation 6.3 at any time attempt to settle the complaint through mediation, in which event regulations 6.13 and 6.18 shall apply *mutatis mutandis*.

Certificate of outcome

6.20 Upon the completion of the mediation proceedings, the mediator must within seven working days issue a certificate of outcome to the complainant, respondent and the Authority.

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SCHEDULE 2: CERTIFICATE OF OUTCOME

I, *[insert name]*, certify that the dispute between

[insert name of complainant] (the "Complainant")

and

[insert name of respondent] (the "Respondent"),

which I mediated on *[insert date(s)]*

Failed, as the parties could not come to an agreement in respect of the complainant's complaint	
Was resolved by means of a settlement agreement between the parties (attached hereto)	
Tick whichever is applicable	

Full name of mediator _____

Signature of mediator _____

Place of signature _____

Date of signature _____

7 **NOTICE OF MEDIATION**

7.1 A notice of mediation contemplated in section 26 (4) of the Act must be in the following format -

[Insert Authority's letterhead]
[Insert date]

To: *[Insert name of complainant]* (the "**Complainant**")
[Insert address of complainant]

And

To: *[Insert name of respondent]* (the "**Respondent**")
[Insert address of respondent]

(the "**Parties**")

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BY HAND

BY POST: *[insert business or residential address]*

Dear *[Sirs / Sir / Madam]*

RE: NOTICE OF MEDIATION IN TERMS OF SECTION 26 (4) OF THE PROPERTY PRACTITIONERS ACT, NO 22 OF 2019 (THE "ACT")

1 The Parties are hereby called upon to appear at *[insert location]* on *[insert date]*, at *[insert time]* before the undersigned mediator (the "**Mediator**") of the Property Practitioners Regulatory Authority (the "**Authority**"), for the purposes of mediating a complaint *[lodged by the Complainant]* / *[formulated by the Authority]* (delete whichever is inapplicable) of *[insert short description of nature of claim]* against the Respondent, in respect of which complaint the Parties have already been informed in writing delivered to them either personally, or by prepaid registered mail to their business or residential address as per the Authority's records.

2 The mediation will be conducted in accordance with the procedure determined by the Mediator and attached hereto.

3 The Parties are further notified that –

3.1 neither of them is obliged to attend the mediation; and

3.2 nothing said by the Parties during the mediation may be used against the Respondent in any other legal proceedings relating to the subject matter of the complaint against him / her / it.

Yours faithfully

_____
[INSERT NAME OF SIGNATORY]
Mediator
Property Practitioners Regulatory Authority

8 **NOTICE OF ADJUDICATION**

8.1 A notice of adjudication contemplated in section 30 (1) of the Act must be in the following format –

[Insert Authority's letterhead]

[Insert date]

To: *[Insert name of complainant]* (the "**Complainant**")
[Insert address of complainant]

And

To: *[Insert name of respondent]* (the "**Respondent**")
[Insert address of respondent]

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(the "**Parties**")

BY HAND

BY POST: *[insert business or residential address]*

Dear Sirs

RE: NOTICE OF ADJUDICATION IN TERMS OF SECTION 30 (1) OF THE PROPERTY PRACTITIONERS ACT, NO 22 OF 2019 (THE "ACT")

1 The Parties are hereby called upon to appear at *[insert location]* on *[insert date]*, at *[insert time]* before an adjudicator of the Property Practitioners Regulatory Authority (the "**Authority**"), for the purposes of adjudicating a complaint *[lodged by the Complainant]* / *[formulated by the Authority]* (delete whichever is inapplicable) of *[insert short description of nature of claim]* against the Respondent, in respect of which complaint the Parties have already been informed in writing delivered to them either personally, or by email or by prepaid registered mail to their business or residential address as per the Authority's records.

2 The adjudication will be conducted in accordance with the procedure prescribed in terms of section 30 (5) of the Act and attached hereto.

Yours faithfully

_____

[*INSERT NAME OF SIGNATORY*]

[*Insert designation*]

Property Practitioners Regulatory Authority

9 **PROCEDURE FOR ADJUDICATION**

Charge

9.1 The Authority may only bring a charge to be heard by an adjudicator if –

9.1.1 it is of the reasonable opinion that there is sufficient evidence to substantiate a complaint and there is a reasonable likelihood that an adjudicator will find that the complaint, if proved, constitutes sanctionable conduct; or

9.1.2 the respondent to the complaint has failed to observe the terms of a compliance notice issued in terms of section 26 (4).

9.2 A charge shall be in writing, be dated and shall-

9.2.1 contain the name and address of both the complainant and the respondent;

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9.2.2 contain an exposition of the sanctionable conduct with which the respondent is charged;

9.2.3 be accompanied by –

9.2.3.1 a summary of the procedure applicable to the adjudication; and

9.2.3.2 a copy of the complaint on which the charge is based, if such copy has not already been furnished to the respondent;

9.2.3.3 copies of all documents which are at that point in the possession of the Authority and which the Authority intends to submit in evidence at the adjudication; and

9.2.3.4 any other documents or information in the possession or under the control of the Authority which tend to prove or disprove the charges against the respondent;

9.2.4 invite the respondent to furnish the Authority with an affidavit setting out his or her comments on the charge, if any, within 30 days;

9.2.5 notify the respondent that he or she is under no obligation to respond or to make any comments, and that any such comments may and shall be used as evidence against him or her at an adjudication; and

9.2.6 notify the respondent that should he or she admit the charge within the period stated in subregulation 9.2.4, he or she –

9.2.6.1 will not be required to appear at an adjudication; and

9.2.6.2 in the case of admitting the charge, may within the period mentioned in subregulation 9.2.4 furnish the Authority with a written statement setting forth any mitigating circumstances.

9.3 The Authority may at any time and on good cause withdraw a charge and. shall forthwith thereafter in writing notify the complainant and the respondent of its decision and the reason therefor.

9.4 A charge contemplated in regulation 9.1 and any notification referred to in regulation 9.3 shall be delivered to the respondent personally or be sent to him or her by prepaid registered post at his or her business or residential address on record at the Authority.

Acknowledgement of Guilt

9.5 If a respondent admits the charge as contemplated in subregulation 9.2.6, the Authority shall deliver to an adjudicator a copy of the charge and the statements, if any, referred to in subregulation 9.2.4.

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9.6 The adjudicator shall consider the charge and the respondent's statements, if any, and if it is satisfied that the conduct complained of constitutes sanctionable conduct and that the respondent is found guilty of such conduct, it shall-

9.6.1 find the respondent guilty on such charge; and

9.6.2 make an appropriate order, having due regard to the respondent's statement referred to in subregulation 9.2.6.2, if any.

9.7 The Authority shall in writing notify the complainant and the respondent of the adjudicator's decision referred to in regulation 9.6.

Authority's powers and duties in respect of adjudication

9.8 The Authority -

9.8.1 may appoint any appropriately qualified person, or designate any appropriately qualified staff member of the Authority, to perform the specific functions entrusted to a prosecutor in terms of the adjudication proceedings;

9.8.2 shall cause such adjudication proceedings to be recorded.

Summoning of respondent and witness

9.9 The Authority -

9.10 shall, if the respondent does not admit the charge as contemplated in subregulation 9.2.6, summon the respondent to appear before an adjudicator at a time and place specified in a notice of adjudication; and

9.11 may summon any witness of its own accord, or at the instance of the adjudicator or the respondent, to be present at the adjudication in order to give evidence.

9.12 A summons referred to in regulation 9.10 shall be in the form specified in Annexure A, and a summons referred to in regulation 9.11 shall be in the form specified in Annexure B.

9.13 A summons referred to in regulation 9.9 shall be served on the respondent or a witness, as the case may be, by-

9.13.1 delivering it to him or her personally; or

9.13.2 sending it to him or her by prepaid registered post at his or her business or residential address last known to the Authority; or

9.13.3 delivering it at his or her place of employment, business or residential address to any person over the age of 16 years that resides or is employed at such address.

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9.14 The Authority shall reimburse a witness who is present at an adjudication at the instance of the Authority or an adjudicator the expenses as the Authority may from time to time determine generally, or in any particular case.

9.15 The Authority may require the respondent to first deposit a reasonable sum of money sufficient to cover the costs of preparing and service of the summons for any witness who is summoned by the Authority at the instance of the respondent and any surplus amount shall be repaid without interest to the respondent.

Plea of guilty before adjudication is held

9.16 The respondent may, before commencement of an adjudication, notify the adjudicator in writing that he or she pleads guilty to the charge as set out in the summons referred to in regulation 9.10, and may with such notification submit to the adjudicator a written statement setting forth any mitigating circumstances.

9.17 If, after having received a notification in terms of regulation 9.16, the adjudicator is satisfied that the charge against the respondent can be disposed of without the holding of an adjudication -

9.17.1 the Authority shall in writing notify the respondent and the complainant and any person on whom a summons has been served in terms of regulation 9.11) that the adjudication in question will no longer be held; and

9.17.2 the adjudicator shall, *mutatis mutandis* apply regulation 9.6, having due regard to the respondent's statement in mitigation (if any) referred to in subregulation 9.2.6.2.

9.18 The Authority shall in writing notify the complainant and the respondent of the adjudicator's decision referred to in regulation 9.6.

Proceedings at adjudication

9.19 At the commencement of an adjudication the adjudicator shall ask the respondent to plead guilty or not guilty to the charge as set out in the summons, and the plea shall be recorded.

9.20 If the respondent refuses or fails to plead to the charge, a plea of not guilty shall be recorded.

9.21 A respondent is entitled to be assisted at an adjudication by a legal representative.

9.22 Evidence at an adjudication shall be given orally or be tendered by way of affidavits, provided that no affidavit shall be admitted in evidence if the adjudicator acting reasonably is satisfied that there are sufficient grounds why it should not be admitted.

9.23 The adjudicator shall administer an oath to or accept an affirmation from any person called to give evidence.

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9.24 If the respondent has pleaded guilty to the charge and the adjudicator is satisfied that-

9.24.1 the charge can be disposed of without hearing evidence;

9.24.2 the act or omission with which the respondent is charged constitutes sanctionable conduct; and

9.24.3 the respondent is guilty as charged,

it shall find the respondent guilty and such finding shall either be made known at the adjudication or be communicated in writing to the Authority by the adjudicator within 14 days of the date of the respondent's plea, whereafter the Authority shall in writing notify both the respondent and the complainant of the finding.

9.25 If the respondent has pleaded not guilty to the charge, or if the adjudicator decides to hear evidence on the charge notwithstanding a plea of guilty, the procedure to be followed in respect of the adjudication shall be determined by the adjudicator, having due regard to the requirements and principles of natural justice.

9.26 The adjudicator must-

9.26.1 allow the prosecutor (if appointed) to present evidence in support of the charge and to cross-examine the respondent and any witness called by the respondent; and

9.26.2 allow the respondent or, if applicable, the respondent's legal representative, to present evidence rebutting the charge and to cross-examine any witness called by the prosecutor of the adjudicator.

9.27 In respect of each charge the adjudicator shall find the respondent either guilty or not guilty.

9.28 The adjudicator may find the respondent not guilty even if he or she has pleaded guilty.

9.29 If the adjudicator finds the respondent not guilty it shall determine whether or not to make an order as referred to in section 30 (7) of the Act.

9.30 The adjudicator's decision referred to in regulations 9.27 and 9.29 shall either be made known at the adjudication or be conveyed in writing to the Authority by the adjudicator within 60 days after all evidence in respect of the charge has been heard.

9.31 The Authority shall forthwith after obtaining the adjudicator's decision in writing notify the complainant and the respondent-

9.31.1 of the decision referred to in regulation 9.27; and

9.31.2 of the adjudicator's order referred to in regulation 9.29, if such order has been made.

9.32 If the adjudicator has found the respondent guilty of sanctionable conduct, it shall-

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9.32.1 determine whether the respondent has previously been convicted of a charge deserving of sanction;

9.32.2 give the respondent the opportunity of adducing evidence in mitigation; and

9.32.3 give the respondent and the prosecutor (if appointed) the opportunity of addressing the adjudicator in connection with the appropriate penalty to be imposed.

9.33 A computer-generated extract from the records of the Authority stating the particulars of any prior charge brought against the respondent, the conviction of the respondent and the penalty imposed by the Authority or an adjudicator, shall be *prima facie* proof that the respondent has previously been convicted of sanctionable conduct.

9.34 After the requirements of regulation 9.32 have been complied with, the adjudicator shall deliberate *in camera* to determine the appropriate penalty to be imposed on the respondent.

9.35 The Authority shall in writing notify the complainant and the respondent of the penalty imposed on the respondent by the adjudicator.

9.36 An adjudicator may for the proper performance of its functions in terms of these regulations obtain such legal or other advice and consult such person or persons as it may deem necessary or appropriate.

9.37 Subject always to these regulations, the adjudicator may give directions to expedite the adjudication or settle any dispute between the complainant and the respondent relating to the subject-matter of the charge against the respondent.

Compensatory award

9.38 In order to exercise the discretion conferred upon it in terms of section 30 (7) (b) of the Act, and to determine the amount referred to in that section and to whom such amount is to be paid, the adjudicator-

9.38.1 shall have due regard to the evidence adduced during the adjudication;

9.38.2 may call any person as a witness or re-call any witness who has testified at the adjudication, and inquisitorially examine him or her on issues relevant to such determination;

9.38.3 may allow the prosecutor (if appointed) and the respondent to lead evidence in respect of any matter pertaining to the determination of a compensatory award by the adjudicator, and to address the adjudicator on the desirability of such award, the amount to be awarded and to whom it should be awarded, if at all;

9.38.4 may inquisitorially examine any witness called by the prosecutor or the respondent; and

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9.38.5 may generally make such enquiries and accept such proof as it considers necessary or appropriate in order to determine the issues to be adjudicated upon.

9.39 If the adjudicator has determined that a compensatory award is to made, the Authority shall in writing notify the complainant and the respondent of -

9.39.1 the amount of the Award; and

9.39.2 the person to whom the award will be paid by the Authority in terms of section 30 (7) (b).

General

9.40 The Authority may publish a notice in the Government Gazette or any other publication, or release to the news media in a notice, announcing the conviction of the respondent of sanctionable conduct, together with details of the charge and the penalty imposed, provided that if the respondent has filed an appeal or commenced review proceedings against such conviction in terms of section 31 (1), such notice may be published only if the appeal or review proceedings have been dismissed or have not been proceeded with.

9.41 The complainant and the respondent may request the Authority in writing to furnish him or her with reasons for a decision of the adjudicator, provided such request-

9.41.1 shall be made to the Authority within 30 days after he or she has been informed, in writing by the Authority of the adjudicator's decision; and

9.41.2 is accompanied by an amount determined by the Authority from time to time.

9.42 If the Authority has received a request in terms of regulation 9.41, the reason in question shall be furnished in writing to the party making the request within 60 days thereafter.

9.43 The Authority shall be entitled to make such reasonable charge for the furnishing of a copy of the record of the proceedings at any adjudication or a transcription thereof, as the Authority may determine from time to time, provided always that the aggregate cost of providing such copy of the record shall never exceed R 300.

9.44 No person who has been-

9.44.1 duly summoned to be present at any adjudication, shall without lawful excuse fail to-

9.44.1.1 appear at an adjudication; or

9.44.1.2 remain present at an adjudication until he or she has been discharged by the adjudicator; or

9.44.2 called as a witness at an adjudication, shall without lawful excuse refuse to be sworn or to make an affirmation of to produce any book or other document or to answer any question which he may lawfully be required to answer.

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9.45 No person shall disrupt the proceedings at an adjudication, or directly or indirectly threaten or insult any person involved in the adjudication in the performance of his or her function or duties as such, or act in a manner which, if the adjudication proceedings were to take place in a court of law, would constitute contempt of that court.

9.46 The proceedings at any adjudication shall be open to the public, except in so far as these regulations provide otherwise.

9.47 The adjudicator may on good cause-

9.47.1 direct any evidence adduced or to be adduced during an adjudication be heard *in camera*; and

9.47.2 order that no person may at any time in any way publish any information which may reveal the identity of any particular person or party to the proceedings.

9.48 The Authority shall record in its records full details of any decision, recommendation, order or determination made by an adjudicator pursuant to these regulations or the Act.

ANNEXURE A

PROPERTY PRACTITIONERS ACT, NO 22 OF 2019

Form of summons referred to be issued to a respondent

To: ……..

You are hereby summoned to appear on.....

at…….or so soon thereafter as the matter may be heard on that date,

at

.....
.

before adjudicator of the Authority for the purposes of an adjudication into sanctionable conduct by you and to produce the following books and documents at the said time and place:

……

The adjudication will be in respect of the charge which has already been delivered to you.

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Should you fail without just cause, to comply with this summons or to remain present at the adjudication until lawfully discharged therefrom -

1 You will be guilty of an offence in terms of section 71 of the Property Practitioners Act, No 22 of 2019, and liable on conviction to a fine or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment; and

2. The Authority may, in terms of section 51 (1) (a) withdraw the fidelity fund certificate issued to you.

Signed at……. on this…… day of ....., ...

…….

Chief Executive Officer

Property Practitioners Regulatory Authority

ANNEXURE B

PROPERTY PRACTITIONERS ACT, NO 22 OF 2019

Form of summons to be issued to a witness

To: .....

You are hereby summoned to appear on.....

at……. or so soon thereafter as the matter may be heard on that date,

at .....

before an adjudicator of the Property Practitioners Regulatory Authority in order to give evidence at an adjudication in respect of

sanctionable conduct involving..... and to produce the following books and documents at the said time and place:

……

Should you fail, without lawful excuse, to be present at the time and place stated above you will be guilty of an offence in terms of section 71 and liable on conviction to a fine or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment.

Signed at……. on this…… day of ....., ...

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……

Chief Executive Officer

Property Practitioners Regulatory Authority

10 **RECORD OF ADJUDICATION PROCEEDINGS**

The record of proceedings referred to in section 30 (9) of the Act must comprise –

10.1.1 the form setting out the complainant's grievance against the respondent, contemplated in section 28 (1);

10.1.2 the notice of mediation contemplated in section 29 (3) (a);

10.1.3 the certificate contemplated in section 29 (4) (b) (i);

10.1.4 any compliance notices issued to the respondent in terms of section 26;

10.1.5 the notice of adjudication contemplated in section 30 (1);

10.1.6 a transcript of the adjudication;

10.1.7 the adjudicator's written reasons for either upholding or dismissing the complaint, and written order; and

10.1.8 the notice of appeal referred to in section 31 (1).

11 **LODGING AN APPEAL RE: OUTCOME OF ADJUDICATION**

11.1 An appeal contemplated in section 31 (1) of the Act must be lodged on the following form –

APPEAL AGAINST OUTCOME OF ADJUDICATION PROCEEDINGS		
SECTION A: DETAILS OF APPELLANT		
1	Full name	
2	Postal address	
3	Telephone number	
4	Residential address	

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5	Business address		
6	Place and date(s) of adjudication		
7	Adjudication case reference		
8	Name of adjudicator		
SECTION B: DETAILS OF APPEAL			
1	Reason for appeal (tick appropriate box)	Finding that the property practitioner was guilty	
		Finding that the property practitioner was not guilty	
		Fine imposed by adjudicator	
		Order made against property practitioner	
		Decision not to make an order against the property practitioner	
		Other	
2	Decision sought from Adjudication Appeal Committee		
3	Copy of adjudication record requested?		

Signed by Appellant at _____ on _____

Signature of Appellant_____

12 **NOTICE OF APPEAL**

12.1 The notice of appeal contemplated in section 31 (3) (a) must be in the following format -

[Insert Authority's letterhead]

[Insert date]

To: *[Insert name]* (the "**Appellant**")
[Insert address]

And

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To: *[Insert name]* (the "**Respondent**")
[Insert address]

(the "**Parties**")

BY HAND / BY REGISTERED POST

Dear *Sirs*

RE: NOTICE OF APPEAL IN TERMS OF SECTION 31 (3) (a) OF THE PROPERTY PRACTITIONERS ACT, NO 22 OF 2019 (THE "ACT")
CASE NO *[INSERT NUMBER]*

1 The Parties are hereby called upon to appear at *[insert location]* on *[insert date]*, at *[insert time]* before the Appeal Adjudication Committee of the Property Practitioners Regulatory Authority (the "**Authority**"), for the purposes of hearing an appeal lodged by the Appellant against the adjudicator's decision in respect of the above case number (the "**Appeal**"), which decision was communicated to the Parties in writing either personally, or by prepaid registered mail to their business or residential address as per the Authority's records.

2 The Appeal will be conducted in accordance with the procedure prescribed under section 31 (4) and regulation 15 of the procedure for appeal, and attached hereto.

Yours faithfully

_____
[INSERT NAME OF SIGNATORY]
Appeal Adjudication Committee
Property Practitioners Regulatory Authority

13 **PROCEDURE FOR APPEAL**

Notice of appeal

13.1 An appeal may be lodged by the Authority, the property practitioner concerned or the complainant and the appellant must deliver to the Authority a notice, dated and signed by the appellant, containing the following particulars -

13.1.1 the name, email address, mobile telephone number and residential address of the appellant;

13.1.2 the place where and the date(s) when the appellant appeared before the adjudication appeal committee and, if known, the case reference number;

13.1.3 whether the appeal is lodged in respect of-

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13.1.3.1 the decision finding the property practitioner charged not guilty of conduct deserving of sanction;

13.1.3.2 the decision finding the property practitioner guilty of conduct deserving of sanction;

13.1.3.3 the penalty imposed by the adjudicator;

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

13.1.3.5 the decision not to make an order contemplated in section 30 (6) (b) of the Act;

13.1.3.6 any other aspect of the adjudication appeal committee's decision or the proceedings in connection therewith, not mentioned above;

13.1.4 the decision sought from the Authority; and

13.1.5 whether or not the appellant requires a copy of the record of proceedings.

13.2 If applicable, the notice of appeal must be accompanied the amount determined by the Authority from time to time as a charge for the furnishing of a copy of the record or a transcription thereof, which may not exceed R 300.

13.3 The notice of appeal must be delivered to the Authority not later than 30 days after the adjudication appeal committee has furnished the appellant with the reasons for its decision.

13.4 The Authority must after receipt of the notice of appeal deliver a copy thereof to-

13.4.1 the property practitioner charged, where such property practitioner is not the appellant; and

13.4.2 the complainant, where the complainant is not the appellant.

13.5 The appeal is deemed to be lodged on the date that the Authority receives the notice of appeal.

13.6 A notice not containing the particulars referred to in regulation 13.1 or, if applicable, not accompanied by the amount or deposit referred to in regulation 13.2, is not a valid notice of appeal and delivery thereof to the Authority has no effect.

Determination of date of the appeal hearing and invitation to attend

13.7 The Authority must-

13.7.1 after receipt of the notice of appeal, determine the date on which the appeal will be heard, such date to be not later than 60 days after the appeal has been lodged;

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13.7.2 in writing notify the parties of the date of the appeal hearing and invite them to be present at the hearing to submit oral or written arguments to the Authority should they wish to do so;

13.7.3 invite the complainant to attend the appeal hearing, where the complainant is not the appellant.

Summary of arguments

13.8 The appellant must not later than 30 days after the date of the notice of appeal or, if applicable, the date on which the appellant has been furnished with a copy of the record or a transcription thereof (whichever is the latest), deliver to the Authority a summary in which the appellant explains the reasons for the appeal.

13.9 The summary referred to in regulation 13.8 must, where applicable-

13.9.1 refer to the relevant page number of the record and the document containing the adjudication appeal committee's reasons for its decision;

13.9.2 clearly state whether, in the appellant's opinion, the adjudication appeal committee-

13.9.2.1 wrongly applied the law;

13.9.2.2 erred in how it interpreted the facts;

13.9.2.3 wrongly applied the code of conduct.

13.10 Where the appellant is not the property practitioner charged, the Authority must-

13.10.1 upon receipt of the summary referred to in regulation 13.8 deliver a copy thereof to such property practitioner;

13.10.2 invite such property practitioner to furnish the Authority with a reply within 21 days after delivery of the copy of the summary, should the property practitioner wish to do so; and

13.10.3 furnish the appellant with a copy of the reply.

13.11 If the appellant fails to deliver to the Authority the summary contemplated in regulation 13.8, the notice of appeal referred to in regulation 13.1 lapses.

Authority's powers and duties in respect of appeal

13.12 The Authority-

13.12.1 may appoint any appropriately qualified person, or designate any appropriately qualified staff member of the Authority, to appear at the hearing of the appeal to counter the appellant's case or to perform such other function as the Authority may direct;

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13.12.2 must make a copy of the record or a transcription thereof available to any person, provided such person has requested a copy in writing and paid to the Authority the amount referred to in regulation 13.2; and

13.12.3 may, for the proper performance of its functions in terms of these regulations, obtain such legal or other advice as it may deem necessary or expedient.

Duties of the case presenter

13.13 The case presenter, if appointed, must not less than 21 days before the date of the appeal hearing deliver to the appellant and, in cases where they are not the appellant, the property practitioner charged and the complainant, a memorandum containing-

13.13.1 a reply to the appellant's summary referred to in subregulation 13.10.2;

13.13.2 a response to the reply (if any) furnished by the property practitioner; and

13.13.3 what order, in the case presenter's view, the Authority should make in the circumstances.

Hearing of appeal

13.14 The appeal takes the form of a reconsideration of the merits of the charge faced by the property practitioner before the adjudication appeal committee, but subject to regulation 13.15, is confined to the record.

13.15 Neither the appellant nor the property practitioner charged (where such property practitioner is not the appellant) may introduce new facts or legal arguments not raised before the adjudicator, unless the appeal committee permits such in exceptional circumstances upon just because being shown.

13.16 The appellant, the property practitioner charged and the complainant may attend the hearing of the appeal, with or without a legal representative, or be represented by a legal representative.

13.17 At the hearing the Authority must give the appellant the first opportunity to present arguments in support of the appeal, if the appellant is present or represented, whereafter the Authority must allow -

13.17.1 the property practitioner charged the opportunity to reply (where such property practitioner is not the appellant), if such property practitioner is present at the hearing or represented; and

13.17.2 the case presenter (if appointed) to make submissions to the Authority.

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13.18 The Authority may put questions to the appellant, the complainant and the property practitioner charged (if they are present at the hearing or represented) on any matter relevant to the appeal.

13.19 The chairperson at the appeal hearing may give directions in respect of the procedure to be followed at the hearing of the appeal, with due regard to the requirements of justice.

13.20 No member of the Authority who was involved in the adjudication may participate in any manner in the appeal hearing or be present thereat.

13.21 The Authority may proceed with the hearing in the absence of the appellant, the property practitioner agent charged and the complainant if any of them without just cause fails to attend the appeal hearing after having been lawfully invited by the Authority to do so.

Decision of the adjudication appeal committee

13.22 The appeal adjudication committee must arrive at a decision referred to in section 31 (5) (a) of the Act, having regard to all relevant considerations including-

13.22.1 the arguments and submissions presented to it at the hearing, if any;

13.22.2 the record;

13.22.3 the papers referred to in regulations 13.1, 13.8, 13.10.2 and 13.13;

13.22.4 the reasons given by the adjudicator for its decision;

13.22.5 the replies given to the questions (if any) put by the adjudication appeal committee to the appellant, the property practitioner charged and the complainant (as the case may be); and

13.22.6 legal or other advice obtained in terms of subregulation 13.12.3.

13.23 The adjudication appeal committee's decision shall be conveyed in writing to the appellant, the property practitioner charged and the complainant (as the case may be).

Service and delivery of notices

All documents and notices to be delivered or sent by the Authority in terms of these regulations shall be effectively served if delivered personally or sent -

13.23.1 in the case of the appellant, to the appellant’s email address stated in the notice of appeal;

13.23.2 in the case of the property practitioner charged (if such property practitioner is not the appellant), to the property practitioner’s address on record with the Authority;

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13.23.3 in the case of the complainant (if the complainant is not the appellant), to the address last known to the Authority, unless such party has in writing furnished the Authority with another address to be used for such purpose, in which case all documents and notices shall be effectively served if sent by post to such address.

14 **RECORD OF APPEAL**

14.1 The record of appeal referred to in section 31 (7) of the Act must comprise –

14.1.1 the form setting out the complainant's grievance against the respondent, contemplated in section 28 (1);

14.1.2 the notice of mediation contemplated in section 29 (3) (a);

14.1.3 the certificate of outcome contemplated in section 29 (4) (b) (i);

14.1.4 any compliance notices issued to the respondent in terms of section 26;

14.1.5 the notice of adjudication contemplated in section 30 (1);

14.1.6 a transcript of the adjudication proceedings;

14.1.7 the adjudicator's written reasons for either upholding or dismissing the complaint in terms of section 30 (8) and, if the complaint was upheld, the written order in terms of section 30 (7);

14.1.8 the form applicable to lodging an appeal referred to in section 31 (1);

14.1.9 the notice of appeal in terms of section 31 (3) (a);

14.1.10 a transcript of the appeal proceedings; and

14.1.11 the appeal committee's written reasons for either upholding or dismissing the complaint in terms of section 31 (6) and, if the complaint was upheld, the order given in terms of section 31 (5) (b).

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CHAPTER 4: FEES AND THE FIDELITY FUND

15 FEES PAYABLE UNDER THE ACT

15.1 Every property practitioner who is a natural person shall –

15.1.1 as of the calendar year 2020, pay to the Authority a levy of R 2 340 set for the period of 3 years; or

15.1.2 in the alternative, if so permitted by the Authority, pay R780 per annum.

15.2 A candidate property practitioner as defined in the Act shall

15.2.1 pay R380 in each year of his/her candidacy period; and

15.2.2 where the candidacy period has exceeded two years, the candidate property practitioner shall pay the same levy applicable to every property practitioner mentioned in 15.1.1 or 15.1.2.

15.3 Every property practitioner who is a natural person shall, upon first becoming registered as a property practitioner pay to the Property Practitioners Fidelity Fund ("the Fidelity Fund") a contribution of R 400.

15.4 Every property practitioner to whom a fidelity fund certificate or registration certificate, as the case may be, has already been issued in respect of a specific calendar year, shall, unless he/she has ceased or will cease before the end of that year to operate as a property practitioner and has advised the Authority of such fact in writing, by not later than 31 October of that year, apply to the Authority for the issue to him/her of a fidelity fund certificate.

15.5 Any person who intends to commence operating as a property practitioner during the course of any calendar year shall apply to the Authority for the issue to him/her of a fidelity fund certificate or registration certificate, as the case may be, in respect of the remainder of that year.

15.6 The applications referred to in regulation 15.5 shall be accompanied by the levies referred to in regulation 15.3 and by the contribution referred to in regulation 15.4, if the contribution is applicable.

15.7 If the Authority is satisfied that the applicant concerned is not disqualified in terms of section 50 of the Act and that the requirements of regulations 15.5 and 15.6 have been complied with, the Authority shall issue to the applicant a fidelity fund certificate or a registration certificate, as the case may be, which certificate shall be expressed to be valid until 31 December of the last year to which the application relates.

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15.8 The holder of a fidelity fund certificate or a registration certificate, as the case may be, shall inform the Authority within fourteen (14) days of any change in the information supplied to the Authority at the time of applying for the issue to him/her of such certificate.

16 **METHOD OF AUTOMATICALLY ESCALATING FEES ANNUALLY**

All amounts determined under section 41 (1) of the Property Practitioners Act 22 of 2019 will be increased annually on 01 April of each year by a percentage equal to the percentage change in the Consumer Price Index "All items (CPI Headline)" from January of the preceding year to January of the current year as published by Statistics South Africa under Statistical Release P0141 or any other statistical release substituted by Statistics South Africa for Statistical Release P0141 from time to time.

17 **CLAIMS FROM FIDELITY FUND**

17.1 A claim from the Fidelity Fund contemplated in section 37 of the Act must be lodged on the following form –

SECTION A: CLAIMANT (MARK "N / A) IF NOT APPLICABLE)		
1.	Full name	
2.	Legal form (eg. natural person, partnership, trust, close corporation, company, voluntary association etc)	
3.	Identity, passport or registration number	
4.	Residential address	
5.	Business address	
6.	Email address	
7.	Mobile number	
8.	Work number	
SECTION B: RESPONDENT (MARK "N / A" IF NOT APPLICABLE)		
1.	Full name	

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2.	Legal form (eg. sole proprietorship, partnership, trust, close corporation or company)		
3.	Identity, passport or registration number		
4.	Fidelity Fund certificate number (if known)		
5.	Residential address		
6.	Business address		
7.	Full names of directors, members, trustees or similar persons exercising management control over Respondent		
8.	Full names of shareholders or similar persons owning proprietary interests in Respondent		
SECTION C: CLAIM			
1.	Basis of claim against respondent (tick appropriate box)	Theft of trust money in terms of section 35 (a) of the Act	
		Failure in relation to the opening of a trust account in terms of section 54 (1) of the Act	
		Failure to retain money in trust account until lawfully entitled to it or instructed to pay it to someone else in terms of section 54 (3)	
2.	Description of incident giving rise to claim (please provide in sufficient detail to allow the respondent to answer to the claim – attach additional pages if necessary)		

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3.	List of supporting documents, if any (must be attached hereto)	Sale agreement / offer to purchase	
		Mandate	
		Lease agreement	
		Proof of monies paid	
		Other	
4.	Have you reported the incident to the South African Police Service? Please note: you may not claim from the Fidelity Fund without having first reported the matter to the police.		
5.	Case number		
6.	Investigating officer assigned to case		
7.	Have you taken any other action against the respondent?		

Signed by Claimant at _____ on _____

Signature of Claimant_____

18 **INQUIRIES RE: CLAIMS FROM FIDELITY FUND**

Claims that may be entertained

18.1 The Authority must only consider a claim against the Fidelity Fund if –

18.1.1 the claim is lodged within 3 years of the incident giving rise thereto;

18.1.2 the claim relates to pecuniary loss arising from the theft of trust monies, the failure to open a trust account or the failure to retain money in a trust account until lawfully entitled to it or instructed to pay such money to a third party;

18.1.3 the theft or failures contemplated in subregulation 18.1.2 were committed by a property practitioner;

18.1.4 recommendation for the rejection or approval of the claim to the board of the Authority;

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18.1.5 the Authority furnishes reasons for the rejection or approval of the claim.

Responsibility for handling claim

18.2 The Authority must hold an inquiry to determine –

18.2.1 whether the claim as lodged complies with all legal requirements for the lodging of claims; and

18.2.2 whether a valid claim was established against the Fund.

Consideration of merits and outcome of claim

18.3 Before considering the merits of the claim, the claims department must ensure that –

18.3.1 the claim complies with regulation 18.1 and has been lodged in the manner required under regulation 17; and

18.3.2 the claimant has substantiated their claim with proof, which may comprise –

18.3.2.1 receipts;

18.3.2.2 bank statements;

18.3.2.3 correspondence between the claimant and the property practitioner in which reference is made to the subject matter of the claim;

18.3.2.4 proof of any civil or criminal action taken against the property practitioner; and

18.3.2.5 any other item of evidence that will assist the claims department in its consideration of the claim.

18.4 Within 90 days of lodgement of the claim, the claims department must consider the merits of the claim, notifying the claimant in writing as to whether their claim has been upheld or declined, and as to the reasons for declining it if it was declined.

18.5 At any point before the 90 days have elapsed, the claims department may request the claimant to furnish it with further particulars or clarifications in respect of the claim to which request the claimant must respond within 14 days.

18.6 Should the claims department uphold the claim, it must pay the claimant within 30 days' receipt of the claimant's proof of banking details.

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19 **CLAIMS OF TRUST MONIES BY PREVIOUSLY UNIDENTIFIED BENEFICIARIES**

FORM FOR UNCLAIMED TRUST MONIES

SECTION A: CLAIMANT (MARK "N / A) IF NOT APPLICABLE)		
1	Full name	
2	Legal form (eg. natural person, partnership, trust, close corporation, company, voluntary association etc)	
3	Identity, passport or registration number	
4	Residential address	
5	Business address	
6	Email address	
7	Mobile number	
8	Work number	
SECTION B: PROPERTY PRACTITIONER (MARK "N / A" IF NOT APPLICABLE)		
1	Full name	
2	Legal form (eg. sole proprietorship, partnership, trust, close corporation or company)	
3	Identity, passport or registration number	
4	Fidelity Fund certificate number (if known)	
5	Residential address	
6	Business address	

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SECTION C: CLAIM			
1	Amount claimed		
2	Name of bank at which trust account was held		
3	Name of account		
4	Account number		
5	Branch at which account is held		
6	Branch code		
7	Reason for delay in lodging claim		
8	List of supporting documents, if any (must be attached hereto)	Sale agreement / offer to purchase	
		Mandate	
		Lease agreement	
		Proof of monies paid	
		Other	

Signed by Claimant at _____ on _____

Signature of Claimant_____

20 **MAXIMUM PAY-OUTS FROM FIDELITY FUND**

The maximum amount that the Fidelity Fund may pay a claimant in respect of each cause of action isR2 000 000.00

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CHAPTER 5: FIDELITY FUND CERTIFICATES

21 FORM AND DEADLINE FOR APPLYING FOR FIDELITY FUND CERTIFICATES

21.1 A property practitioner must lodge an application for the renewal of his, her or its Fidelity Fund certificate before 31 October of the calendar year in which the current certificate will expire.

21.2 All applications in respect of Fidelity Fund or registration certificates must be made by submitting to the Authority the following prescribed form -

APPLICATION FOR THE ISSUE OF A FIDELITY FUND CERTIFICATE OR REGISTRATION CERTIFICATE TO A PROPERTY PRACTITIONER

This application form must be completed and submitted to the Authority by –

- Property practitioners and persons employed by attorneys
- All directors of a company, members of a close corporation, partners of a partnership, and trustees of a trust and sole proprietors conducting the business of a property practitioner
- Under cover of a letter by his / her principal confirming his / her employment as indicated herein

Please note: the prescribed fee must accompany this application

Title				
Full name				
Date of birth				
Identity number				
Citizenship				
Residential address				
Postal address				
Telephone number				
What are you applying for (tick appropriate box)	Fidelity Fund certificate		Registration certificate	
State the capacity in which you are applying (tick appropriate box)	Director	Partner	Employee of an attorney	Member
	Sole proprietor	Non-principal	Trustee	Candidate

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State the full name, trading name, registration number and business address of the company, close corporation, partnership, sole proprietorship or trust with which you are associated or employed as a property practitioner		
Date from which you intend to act as a property practitioner		
Have you ever been issued with a Fidelity Fund or registration certificate before?	Yes	No
If yes, state the type of certificate, date of issue, certificate number, and name under which certificate was issued		
State the industry in respect of which a Fidelity Fund certificate is being applied for	*[insert e.g. "estate agency industry", "business broking industry", "bond broking industry" or similar]*	

DECLARATION BY APPLICANT		
I am a South African citizen and I lawfully reside in the Republic of South Africa	Yes	No
I have not in the preceding 5 years been found guilty of contravening either the Estate Agency Affairs Act, No 112 of 1976 or the Property Practitioners Act, No 22 of 2019	Yes	No
I have not been found in any civil or criminal proceedings by a court of law in any country to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which I was sentenced to imprisonment without the option of a fine	Yes	No
I am not of unsound mind	Yes	No
I have not within the preceding 5 years been dismissed from a position of trust by reason of improper conduct	Yes	No
I am not an unrehabilitated insolvent	Yes	No
I am in possession of a valid tax clearance certificate	Yes	No

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I am not prohibited by any legislation from being a property practitioner or from occupying a position of trust	Yes	No
I have never been found guilty by any court of unfair discrimination	Yes	No
I am in possession of a valid BEE certificate	Yes	No
I have not, nor has any director or manager of my company, any member of my close corporation, or any trustee of my trust (as the case may be) – • Failed to be in compliance with the prescribed standard of training (this does not apply to candidate property practitioners) • Failed to have the practical experience determined by the Authority • Been found guilty of any act or omission in respect of which the Fidelity Fund had to compensate any person • Been prohibited from operating a trust account	Yes	No
I do not trade under a name that is confusingly similar to that of another property practitioner whose Fidelity Fund certificate has been withdrawn or lapsed, or who has already been issued with a Fidelity Fund certificate	Yes	No

Date	
Signature of applicant	
Place of signature	

22 **FORMAT OF FIDELITY FUND CERTIFICATE**

22.1 Pursuant to section 47 (3) of the Act, it is prescribed that the form of a Fidelity Fund certificate will be as follows -

FIDELITY FUND CERTIFICATE
issued under the provisions of the Property Practitioners Act 22 of 2019

[Insert logo of the authority]
Property Practitioners Regulatory Authority

Holder:
[Insert the full name of the holder of the fidelity fund certificate]
[Insert the geographical address of the holder of the fidelity fund certificate]

Valid from date of issue to 31 December of the undermentioned year
[insert the year at the end of which the fidelity fund certificate will expire]

Date of issue:
[insert the date of issue]

Certificate number:

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[insert the number of the certificate]	_____
Industry: *[insert e.g. "estate agency industry", "business broking industry", "bond broking industry" or similar]*	**The Property Practitioners Regulatory Authority**

23 **PENALTY FOR LATE FFC APPLICATIONS**

23.1 A property practitioner that fails to apply for a fidelity fund certificate when such person is obliged to do so under the provisions of the Property Practitioners Act 22 of 2019 shall pay a penalty in addition to the amount prescribed under section 32 (3) of R 125.00 in respect of each month or part of a month which has expired as between the date upon which such person was obliged to apply for a fidelity fund certificate and the date upon which they applied for a fidelity fund certificate, provided always that the aggregate amount of such penalty shall never exceed an amount equal to the amount prescribed under section 32 (3) as adjusted under the provisions of any regulations promulgated under the provisions of section 41 (2) from time to time.

24 **DEADLINE FOR RESPONDING TO NOTICE OF AMENDMENT OF FFC**

24.1 A property practitioner who receives a notice from the Authority in terms of section 51 (2) (a) to (b) of the Act of the Authority's intention to amend the property practitioner's Fidelity Fund certificate must, within a period of 30 days following receipt of such notice, respond in writing thereto.

25 **OBLIGATION TO HOLD A FIDELITY FUND CERTIFICATE**

25.1 Every business operation carrying on the activities of a property practitioner, including every business property practitioner and every sole proprietorship, shall hold a separate Fidelity Fund certificate from that of any natural person who is concerned with the management operations of such business property practitioner or sole proprietorship or who is employed by such business property practitioner or sole proprietorship.

25.2 Subject to any express provision to the contrary in the Act or these regulations, no person who does not directly carry out to any material degree any activity or function of a "property practitioner" as defined in section 1 of the Act is required to register with the Authority or hold a Fidelity Fund certificate, regardless of the fact that such person may be employed by or in any way be engaged with any property practitioner.

26 **FIDELITY FUND CERTIFICATES TO BE INDUSTRY SPECIFIC**

26.1 The Authority shall, in good faith consultation with industry representative bodies, define the various industries in which different categories of property practitioners operate (including for the purposes of regulation 33).

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26.2 A property practitioner shall hold a separate Fidelity Fund certificate in respect of each different industry in which such property practitioner operates and a separate application shall be lodged by such property practitioner with the Authority in respect of each such required Fidelity Fund certificate.

26.3 A Fidelity Fund certificate issued to a property practitioner shall reflect the industry in respect of which that Fidelity Fund certificate is issued.

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CHAPTER 6: TRUST ACCOUNTS AND DETAILS OF AUDITOR

27 INFORMATION ABOUT TRUST ACCOUNT

27.1 Immediately after opening a trust account contemplated in section 54 (1) (a) of the Act, a property practitioner must in writing provide the Authority with the following information in connection with such trust account –

27.1.1 name of financial institution at which account is held;

27.1.2 branch at which account is held and branch code;

27.1.3 name of accountholder;

27.1.4 account number; and

27.1.5 type of account.

27.2 Immediately after appointing an auditor in terms of section 54 (1) (b) of the Act, a property practitioner must in writing provide the Authority with the following information relating to such auditor -

27.2.1 full name;

27.2.2 Independent Regulatory Board of Auditors certificate number;

27.2.3 business address;

27.2.4 postal address;

27.2.5 email address;

27.2.6 mobile telephone number; and

27.2.7 office telephone number.

28 INFORMATION RE: SEPARATE SAVINGS ACCOUNT

28.1 Should a property practitioner open a separate savings account in respect of trust monies that have no immediate purpose as permitted under section 54 (2) (b) of the Act, the property practitioner must immediately after opening such account notify the Authority of –

28.1.1 name of financial institution at which the account is held;

28.1.2 branch at which the account is held and branch code;

28.1.3 name of accountholder;

28.1.4 account number; and

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28.1.5 type of account.

29 **BANK'S DECLARATION OF INTEREST**

29.1 A declaration from a bank contemplated in section 54 (2) (b) must be made in the following format -

[Insert bank's letterhead]

[Insert date]

Property Practitioners Regulatory Authority
63 Wierda Road East (Corner of Johan Avenue)
Sandton 2196

BY POST

Dear Sir / Madam

RE: DECLARATION OF INTEREST EARNED BETWEEN *[INSERT RANGE OF DATES]* IN TRUST ACCOUNT(S) OF *[INSERT NAME]* (THE "ACCOUNTHOLDER") IN TERMS OF SECTION 54 (2) (b) OF THE PROPERTY PRACTITIONERS ACT, NO 22 OF 2019

1 We certify the following regarding the Accountholder's trust account(s) held with us -

DESCRIPTION OF ACCOUNT	ACCOUNT NUMBER	INTEREST EARNED	CREDIT BALANCE

2 Please contact us should you have any queries in the above regard.

Yours faithfully

_____
[NAME OF SIGNATORY]
[Designation]
[Name of bank]

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30 **TRUST ACCOUNT ADMINISTRATION**

30.1 A property practitioner must administer his, her or its trust accounts using a digital or manual bookkeeping system.

30.2 Such bookkeeping system must –

30.2.1 at a minimum, enable the property practitioner to record all pertinent information regarding trust accounts and the movements of all trust monies, and must include general and subsidiary ledgers, cash books, and all other documents and books of entry necessary for the proper maintenance of trust accounts;

30.2.2 include safeguards to protect the records thereon against unauthorised access, alteration, destruction or manipulation.

30.2.3 be kept in a format that will render it readily retrievable should the Authority, an auditor or any other person entitled to the records on the bookkeeping system require to access them or make extracts or copies thereof.

31 **WINDING UP TRUST ACCOUNTS**

31.1 After (i) the occurrence of an event contemplated in section 54 (9) (a) to (d) of the Act or (ii) a property practitioner who operates a trust account becomes exempted from the requirement to do so in accordance with the Act -

31.1.1 no monies shall be withdrawn from or paid out of the trust account or savings or other interest-bearing account in question without the Authority's written consent;

31.1.2 the property practitioner concerned shall –

31.1.2.1 if it is an event contemplated in section 54 (9) (c) of the Act, forthwith notify the Authority in writing thereof;

31.1.2.2 as soon as may be practicable in writing notify the bank referred to in section 54 (1) (a) with which he keeps the trust account or savings or other interest-bearing account in question of the occurrence of any such event and also that in future no monies may be withdrawn from or paid out of any such account without the consent in writing of the Authority, provided that the Authority itself may at any time so notify such bank;

31.1.2.3 as soon as may be practicable in writing furnish the Authority with the names of the persons entitled to any monies in any such account, the amount to which any such person is entitled and the reasons therefor;

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31.1.2.4 having complied with the requirements of subregulations 31.1.2.1, 31.1.2.2 and 31.1.2.3 and with the consent in writing of the Authority, pay to the persons referred to in subregulation 31.1.2.3 and to such other persons who in the opinion of the Authority are entitled to any monies in such accounts, the monies to which they are entitled.

31.2 If no person has proved any claim in terms of subregulation 31.1.2.3 to the balance in question or any part thereof, the property practitioner concerned shall be entitled to such balance or after payment of any part of such balance to any person who has proved that he is entitled thereto, the property practitioner concerned shall be entitled to the remainder.

31.3 After all the monies in the accounts in question have been paid in terms of this regulation to the persons entitled thereto, the property practitioner concerned shall wind up such accounts and in writing notify the Authority thereof.

32 **UPDATE OF AUDITOR'S DETAILS**

32.1 A property practitioner must annually, before the end of his, her or its financial year –

32.1.1 confirm his, her or its auditor's details; or

32.1.2 update such details if they have changed,

on the Property Practitioners Regulatory Authority's online portal.

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CHAPTER 7: TRAINING, CONDUCT AND CONSUMER PROTECTION MEASURES

33 STANDARD OF TRAINING

33.1 Application

33.1.1 This regulation 33 is only of application to property practitioners who are natural persons.

33.1.2 The Authority may upon application and good cause shown exempt any person or class of persons from any of the requirements of this regulation 33, whether in whole or in part, by virtue of any existing qualification of such person or class of persons.

33.1.3 The Authority may upon application made by any industry representative body other than in respect of estate agents, and on good cause shown, and in good faith consultation with the representative bodies of the relevant industries concerned, vary the provisions of this regulation 33 to accommodate the specific requirements of any particular industry within which a particular category or categories of property practitioners operate.

33.2 Establishment of Professional Designation Examination

33.2.1 The Authority must consult in good faith with the representative bodies in the various industries in which property practitioners operate, and establish in accordance with the principles set out further in this regulation 33.2 -

33.2.1.1 qualification standards for property practitioners;

33.2.1.2 course materials that will enable persons who wish to qualify as property practitioners to be properly equipped as such and to qualify as property practitioners in accordance with the standards established by the Authority;

33.2.1.3 professional designation examinations to be written by persons who wish to qualify as a property practitioners; and

33.2.1.4 standards for the practical training of non-principal property practitioners as referred to in subregulation 33.2.3,

provided always that such standards, course materials, professional designation examinations and standards for the practical training of non-principal property practitioners may vary according to the industry in which such property practitioner operates.

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33.2.2 The standards, course materials and professional designation examinations referred to above shall be different in respect of non-principal and principal property practitioners, provided that no person shall be entitled to sit the exam for or qualify as a principal property practitioner unless such person has first qualified as a non-principal property practitioner and completed the practical training referred to in the immediately following sub- regulation.

33.2.3 Subject only to an exception arising under subregulation 33.2.9 and to the provisions of subregulation 33.4.1, no person shall be entitled to practice as a property practitioner unless such person has first completed a practical training course in respect of non-principal property practitioners relevant to the industry in which such person has sat their professional designation examination as referred to above, which practical training course will constitute a minimum of six modules to be completed over a maximum period of six months. The purpose and object of such practical training will be to equip non-principal property practitioners with the necessary practical skills required in order to enable them to operate in an efficient and appropriate manner as property practitioners in the relevant industry; provided always that notwithstanding the provisions of subregulation 33.2.1, such practical training course shall be designed primarily by the leading industry bodies regulating those areas of industry to which the activities of the various categories of property practitioners relate; provided further that such practical training courses shall be subject to the overall oversight and approval of the Authority, and that such approval shall not be unreasonably withheld or delayed by the Authority.

33.2.4 The Authority shall make arrangements so that the professional designation examinations referred to in subregulation 33.2.1.3 will be capable of being written at least four times per annum at such intervals as are determined by the Authority, acting reasonably.

33.2.5 The Authority may, if it so deems fit and on good cause shown, permit a person or persons to (a) write the relevant professional designation examination in any official language other than English or (b) be examined orally in respect of the relevant professional designation examination.

33.2.6 It shall not be a prerequisite that a person be registered with the Authority as a candidate property practitioner prior to such person being entitled to study for, sit the exams for, and achieve the qualifications in respect of, the standards provided for in this subregulation 33.1.

33.2.7 Subject to section 4 of the Act, no person may be issued with a Fidelity Fund certificate by the Authority unless such person has complied with the qualification requirements of this regulation 33.1; provided always that such person shall only be entitled to practice as such in the industry to which the professional designation examination in question relates.

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33.2.8 Notwithstanding the foregoing, if any person ceases to practice as a property practitioner in the industry in relation to which he or she has qualified as either a non-principal property practitioner or a principal property practitioner (as may be applicable), for a period of in excess of five years calculated from the date upon which his or her professional designation examination as referred to in this regulation 33.1 was passed, such person shall not be entitled to practice as a property practitioner in the industry in question or to be registered as a property practitioner in the industry in question with the Authority (other than in accordance with subregulation 33.4.1) unless such person has again first achieved the qualification in question de novo under the provisions of this regulation 33.1; provided that the Authority may establish a less onerous standard for the purposes of such requalification than the standards and professional designation examinations otherwise contemplated under subregulation 33.2.1 in respect of persons who have not previously achieved the relevant qualifications.

33.2.9 Notwithstanding anything to the contrary contained in these regulations –

33.2.9.1 a property practitioner who, on the effective date, is already registered as either a non-principal or principal property practitioner, will be exempted from the requirements of the provisions of subregulation 33.2.1; and

33.2.9.2 the Authority may in good faith consultation with industry representative bodies, establish transitional provisions for the phasing in of some or all of the provisions of this regulation 33.

33.2.10 The Authority shall keep and maintain, for a period of 5 years, in electronic format, copies of all examination scripts written by persons in respect of the professional designation examinations and in respect of oral examinations, electronic recordings of such oral examinations.

33.3 **Further Restrictions**

33.3.1 For a period of six months following the date upon which a person first becomes qualified and registered as a non-principal property practitioner, such person shall not in their capacity as a property practitioner (a) enter into any mandate for the sale or purchase of any property or the letting or hiring of any property with any member of the public or (b) conclude or cause to be concluded any agreement for the sale or purchase of any property or the letting or hiring of any property, unless such mandate or agreement has first been reviewed and co-signed by another qualified property practitioner (other than a candidate property practitioner as contemplated in regulation 33.4) operating in the same industry registered with the Authority who holds a Fidelity Fund certificate issued by the Authority and who is not subject to the foregoing restriction referred to in this subregulation 33.3.1.

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33.3.2 A property practitioner who is not subject to the restriction referred to in subregulation 33.3.1 and who co-signs any mandate or agreement as referred to in subregulation 33.3.1 shall assume a duty of ensuring that such mandate or agreement, as the case may be, accords with industry norms and standards and is otherwise compliant with the duties and obligations imposed upon property practitioners in the industry concerned; provided always that such property practitioner who co-signs such mandate or agreement (a) shall be entitled to accept as prima facie correct all information reflected in such mandate or agreement and (b) shall not by virtue of such co-signature have any liability in relation to any matter other than the contents of the document in question.

33.4 **Candidate Estate Agents**

33.4.1 Any person who registers with the Authority as a property practitioner in the estate agency industry prior to becoming entitled to practice as a property practitioner as referred to in regulation 33.1 shall be a candidate estate agent.

33.4.2 A candidate estate agent may not perform any act as a property practitioner unless the candidate estate agent -

33.4.2.1 has duly disclosed as far as practically possible in relation to the candidate estate agent's activities as a property practitioner, excluding authorized advertisements in the press, that he or she is a candidate estate agent; and

33.4.2.2 *is acting under the active supervision and control of a:*

(i) property practitioner qualified in terms of regulation 33.1 and who is no longer subject to any restriction in terms of regulation 33.3;
or
(ii) a practising attorney, with at least 3 years' experience, in the case of a person as contemplated in Section1(f) of the Act;

which supervision and control may be exercised either in person or by means of any electronic medium or application allowing the property practitioner or practising attorney immediate contact with the candidate estate agent;

33.4.2.3 is acting under the active supervision and control of a property practitioner qualified in terms of regulation 33.1 and who is no longer subject to any restriction in terms of regulation 33.3, which supervision and control may be exercised either in person or by means of any electronic medium or application allowing the property practitioner immediate contact with the candidate estate agent.

33.4.3 A candidate estate agent may not -

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33.4.3.1 in any way, directly or indirectly, hold himself or herself out as someone who complies with or advertise that he or she has complied with, the educational requirements contemplated in these regulations;

33.4.3.2 in any manner act or hold himself or herself out as either a property practitioner qualified in terms of regulation 33.1 or as someone who is no longer subject to any restriction in terms of regulation 33.3; or

33.4.3.3 in his or her capacity as a candidate estate agent, complete or draft any documentation relating to any transaction negotiated by him or her in his or her capacity as a candidate estate agent, otherwise than under the supervision of a property practitioner qualified in terms of regulation 33.1 and who is no longer subject to any restriction in terms of regulation 33.3, and who certifies on the documentation in question that the said documentation has been completed under his or her supervision.

33.4.4 The property practitioner contemplated in subregulation 33.4.2.3 shall be responsible for all acts of a candidate estate agent done in his or her capacity as such, of which the principal property practitioner is aware.

33.4.5 No person may, without the consent of the Authority, act as a candidate estate agent for a period in excess of 180 days in aggregate. After the expiry of such 180-day period, the candidate estate agent shall be obliged to sit for his or her professional designation examination as a non-principal property practitioner, in accordance with the provisions of regulation 33.1; provided that if such person fails to pass the professional designation examination in accordance with the provisions of regulation 33.1, then on application to the Authority and on good cause shown, the Authority may permit such person to again register as a candidate estate agent for a further period of 180 days.

33.5 **Continuing Professional Development**

33.5.1 In addition to the educational qualifications referred in regulation 33.1, the Authority may, at any time, prescribe any reasonable continuing professional development requirements for property practitioners, having regard to the various industries within which such property practitioners operate; provided always that all continuing professional development modules will be developed at the instance of the leading representative bodies in such industries, who shall appoint persons having specialist knowledge within the relevant industries concerned to develop and compile such modules.

33.5.2 All property practitioners, are required to undergo continuing professional development as prescribed by the Authority in accordance with subregulation 33.5.1, other than candidate estate agents.

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33.5.3 All continuing professional development requirements prescribed by the Authority in terms of subregulation 33.5.1 must be completed over a rolling three-year cycle on the basis that during such rolling three-year cycle, every property practitioner must complete at least 12 modules of continuing professional development on the basis that a minimum of four modules must be completed during each year of such cycle and that no module may be duplicated during the course of such rolling three-year cycle.

33.5.4 Notwithstanding the foregoing, the Authority shall be entitled to approve any business property practitioner or independent training organisation providing continuing professional development and in which regard -

33.5.4.1 such business property practitioner or independent training organisation shall develop modules for the purposes of continuing professional development in compliance with both the rolling three-year cycle requirements of subregulation 33.5.3 and the requirement in subregulation 33.5.3 that there be 12 modules and that a minimum of four modules must be completed during each year of such cycle;

33.5.4.2 the module so prepared by the business property practitioner or independent training organisation shall be submitted to the Authority for review and approval; and

33.5.4.3 the Authority shall not unreasonably withhold or delay any such approval.

33.5.5 Continuing professional development will be charged for by the Authority at a rate of R 1500 per annum in respect of each property practitioner, other than in the circumstances contemplated in subregulation 33.5.4 which shall be charged for by the Authority at the rate of R 500 per annum, which amounts will in each instance be increased annually on 01 April of each year by a percentage equal to the percentage change in the Consumer Price Index "All items (CPI Headline)" from January of the preceding year to January of the current year as published by Statistics South Africa under Statistical Release P0141 or any other statistical release substituted by Statistics South Africa for Statistical Release P0141 from time to time.

34 CODE OF CONDUCT

34.1 Supplementation

This code of conduct may be supplemented by the Authority after the effective date so as to provide for the regulation of any industry not catered for in this code of conduct as at the effective date, provided always that the Authority shall consult in good faith with the industry representative bodies in the industry concerned as to the terms of such proposed code of conduct prior to any such supplementation.

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34.2 **Duties Applicable to All Property Practitioners**

34.2.1 In terms of a property practitioner's general duty to members of the public and other persons or bodies, a property practitioner -

34.2.1.1 shall not in or pursuant to the conduct of his business do or omit to do any act which is or may be contrary to the integrity of property practitioners in general;

34.2.1.2 shall protect the interests of his client at all times to the best of his ability, with due regard to the interests of all other parties concerned;

34.2.1.3 shall not accept a mandate if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence, or he has not completed the required qualifications, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client;

34.2.1.4 shall not in his capacity as a property practitioner willfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of a property practitioner;

34.2.1.5 shall comply with both the Act, these regulations and all applicable bylaws; and

34.2.1.6 shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party, or by using such company, close corporation or third party as a front or nominee do anything which would not be permissible for him to do if he were operating as a property practitioner.

34.2.1.7 A property practitioner -

34.2.1.8 shall not solicit or influence any person entitled to trust funds under his control to make over or pay to the property practitioner directly or indirectly any interest on moneys deposited or invested in terms of section 54 (1) or 54 (2) of the Act;

34.2.1.9 shall, before he receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that unless they agree in writing to whom interest earned on such money must be paid, the interest may accrue to the Property Practitioners Fidelity Fund; and

34.2.1.10 shall, if any money is invested by him pursuant to section 54 (2) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the property practitioner -

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34.2.1.10.1 invest such money at the best interest rate available in the circumstances at the bank or building society where he normally keeps his trust account or accounts; and

34.2.1.10.2 pay the full amount of the interest which accrued on the investment to the party entitled to such interest.

34.2.2 No property practitioner shall, without just cause, divulge to any third party any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he acted as a property practitioner.

34.3 **Duties Applicable to Estate Agents**

Mandates

34.3.1 No estate agent shall -

34.3.1.1 offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee therefor, unless he has been given a mandate to do so by the seller or lessor of the property, or his duly authorised agent;

34.3.1.2 on behalf of a prospective purchaser or lessee, offer, purport or attempt to offer to purchase or lease any immovable property or negotiate in connection therewith or canvass, or undertake or offer to canvass a seller or lessor therefor, unless he has been given a mandate to do so by such prospective purchaser or lessee, as the case may be, or his duly authorised agent;

34.3.1.3 accept a sole mandate or the extension of the period of an existing sole mandate, unless -

34.3.1.3.1 all the terms of such mandate (or extension, as the case may be), are in writing and signed by the client in a manner acceptable in law, including by way of an electronic signature as permitted under the Electronic Transactions and Communications Act, 2002; and

34.3.1.3.2 the expiry date of the mandate (or extension, as the case may be), which shall be expressed as a calendar date, is specifically recorded in the written sole mandate (or extension, as the case may be);

34.3.1.4 accept a sole mandate which contains a provision conferring upon him -

34.3.1.4.1 an option to extend the sole mandate for a certain period after expiry of the sole mandate; or

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34.3.1.4.2 a mandate to continue to render the same service referred to in the sole mandate, after expiry of the sole mandate;

34.3.1.5 accept a sole mandate which also confers upon him a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate;

34.3.1.6 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract;

34.3.1.7 accept any mandate or instructions for work in respect of immovable property if his interest therein would compete with his obligations towards an existing client in respect of the same immovable property without first disclosing such interest in writing to such client;

34.3.1.8 knowingly or negligently make a material misrepresentation concerning the likely market value or rental income of immovable property to a seller or lessor thereof, in order to obtain a mandate in respect of such property;

34.3.1.9 accept a mandate in respect of any immovable property if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client; or

34.3.1.10 accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client –

34.3.1.10.1 the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent; and

34.3.1.10.2 what specific obligations in respect of the marketing of the property will be assumed by the estate agent in his endeavour to perform the mandate,

provided that such explanations, if contained in a standard pre-printed or typed sole mandate document, shall be in lettering not smaller than that generally used in the remainder of the document.

Duty to disclose

34.3.2 An estate agent shall -

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34.3.2.1 convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge and which are or could be material to a prospective purchaser or lessee thereof;

34.3.2.2 if he conducts his business under a trade name or style other than his own name, clearly disclose his full name in all correspondence, circulars and other written documentation; and

34.3.2.3 not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate, which conflicts with the aforesaid mandate, has been accepted by him, unless he has disclosed to the person who has given the later mandate the existence of such prior mandate, and the fact that he will not be the estate agent's only client in respect of that property.

34.3.3 No estate agent shall purchase directly or indirectly for himself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of, or interest in, such immovable property.

Duty not to make misrepresentations or false statements or to use harmful marketing techniques

34.3.4 No estate agent shall -

34.3.4.1 in his capacity as an estate agent publish or cause to be published any advertisement which could create the impression that it was published by the owner, seller or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;

34.3.4.2 willfully or negligently, in relation to his activities as an estate agent, prepare, make or assist any other person to prepare or make any false statement, whether orally or in writing, or sign any false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of account or other records;

34.3.4.3 claim to be an expert or to have specialised knowledge in respect of any service if, in fact, he is not such an expert or does not have such special knowledge;

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34.3.4.4 advertise or otherwise market immovable property in respect of which he has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;

34.3.4.5 without derogating from the generality of the aforegoing –

34.3.4.5.1 willfully or negligently mislead or misrepresent in regard to any matter pertaining to the immovable property in respect of which he has a mandate; or

34.3.4.5.2 use any harmful or misleading marketing technique or method or undesirable practice as declared in terms of section 63 of the Act to influence any person to confer upon him a mandate to render any service or to sell, purchase, let or hire immovable property, having regard to the general experience which such person has concerning property transactions and the circumstances surrounding the transaction or proposed transaction;

34.3.4.6 use any firm or trading name in respect of his business if such name may give rise to confusion on the part of the public in respect of the nature of the business carried on by him;

34.3.4.7 inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from a purchaser or seller (as the case may be), unless such offer –

34.3.4.7.1 is in writing;

34.3.4.7.2 has been signed by the offeror in manuscript, albeit that the offer was subsequently electronically transmitted to the estate agent; and

34.3.4.7.3 is, to the knowledge of the estate agent concerned, a bona fide offer; or

34.3.4.8 affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let, unless –

34.3.4.8.1 the seller or lessor (as the case may be) has given his consent to do so; and

34.3.4.8.2 the estate agent concerned in fact has a mandate to sell or let the property, or in fact has sold or let the property, as the case may be; or

34.3.4.9 affix or erect any advertising board or notice to solicit business -

34.3.4.9.1 on local authority property, without express written approval by the local authority; or

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34.3.4.9.2 which is in contravention of the regulations of the advertising by-laws of the applicable local authority.

Duties in respect of offers and contracts

34.4 No estate agent -

34.4.1 who has a mandate to sell or purchase immovable property shall willfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a legally valid contract of sale in respect of such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;

34.4.2 who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to unduly influence the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller;

34.4.3 shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.

34.5 An estate agent shall -

34.5.1 explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he is unable to do so, refer such party to a person who can do so;

34.5.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted forthwith notify the offeror of such fact; and

34.5.3 without undue delay furnish every contracting party with a copy of an agreement of sale, lease, option or mandate with which he is concerned as an estate agent, provided that the aforegoing shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.

Remuneration

34.6 No estate agent shall -

34.6.1 stipulate for, demand or receive directly or indirectly any remuneration, commission, benefit or gain arising from or connected with any completed, pending or proposed contract of sale or lease which is subject to -

34.6.1.1 a suspensive condition, until such time as that condition has been fulfilled; or

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34.6.1.2 a resolutive condition, during the time that the transaction may fall away as a result of the operation of the said resolutive condition;

34.6.2 convey to his client or any other party to a completed or proposed transaction in which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the Authority or any institute or association of estate agents or any other body;

34.6.3 introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that:

34.6.3.1 such person has already been introduced to such property or the seller or lessor thereof by another estate agent; and

34.6.3.2 that there is a likelihood that his client may have to pay commission to such other estate agent, or to more than one estate agent, should the sale or lease be concluded through his intervention;

34.6.4 include, or cause to be included, or accept the benefit of, any clause in a mandate or in a contract of sale or lease of immovable property, providing for payment to him by the seller or lessor of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of whether the purchaser or lessee is financially able to fulfill his obligations in terms of the said contract;

34.6.5 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, entitling him to deduct from any money entrusted to him in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract, provided that the aforegoing shall not be construed so as to prohibit an estate agent from making such deduction when such money is actually paid over by him to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain; or

34.6.6 include, or cause to be included, or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser; provided that the aforegoing shall not apply if -

34.6.6.1 good cause exists; and

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34.6.6.2 the purchaser has prior to his signature of the contract in question, consented in writing in a document executed independently of the said contract, to such payment; and

34.6.6.3 such document contains an explanation of the implications and financial risks of such payment for the purchaser; and

34.6.6.4 such document is signed by both the seller and the purchaser and the estate agent in question; and

34.6.7 shall not operate a trust account, other than in compliance with the Act and these regulations.

35 **UNDESIRABLE BUSINESS PRACTICES**

35.1 Pursuant to the provisions of section 63 (1) of the Act, the following business practices are prohibited –

35.1.1.1 any arrangement in terms of which any party or person that directly or indirectly controls or manages any franchised business, requires that any franchise operation or outlet of such franchised business may only be marketed, promoted or disposed of through the agency of the franchisor or a property practitioner designated by the franchisor or which imposes any form of penalty in respect of a failure to do so; and

35.1.1.2 any arrangement in terms of which any party or person that directly or indirectly controls or manages any residential property development, including any body corporate or homeowners' association (the "managing organisation") –

35.1.1.3 receives money or any other reward in exchange for a benefit, advantage or other form of preferential treatment in respect of the marketing of properties in such property development;

35.1.1.4 requires that any property in such property development may only be disposed of through the agency of the managing organisation or a property practitioner designated by the managing organisation or which imposes any form of penalty in respect of a failure to do so;

35.1.1.5 requires that any property in such property development may only be disposed of to the managing organisation or a person or entity designated by the managing organisation;

35.1.1.6 effectively provides an advantage to any one property practitioner or group of property practitioners over and above any other property practitioners, in providing services in relation to properties in such property development; or

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35.1.1.7 effectively excludes or disadvantages any property practitioner or group of property practitioners from being able to provide services in relation to properties in such property development.

36 **MANDATORY DISCLOSURE**

36.1 The mandatory disclosure referred to in section 67 of the Act shall be in the following format -

IMMOVABLE PROPERTY CONDITION REPORT IN RELATION TO THE SALE OF ANY IMMOVABLE PROPERTY

1 **Disclaimer**

This condition report concerns the immovable property situated at *[insert deeds office and physical description]* (the "Property"). This report does not constitute a guarantee or warranty of any kind by the owner of the Property or by the property practitioners representing that owner in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the Property.

2 **Definitions**

In this form -

2.1 "to be aware" means to have actual notice or knowledge of a certain fact or state of affairs; and

2.2 "defect" means any condition, whether latent or patent, that would or could have a significant deleterious or adverse impact on, or affect, the value of the property, that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired, removed or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the Property.

3 **Disclosure of information**

The owner of the Property discloses the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property. The owner hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement, and to disclose any information contained in this statement, to any person in connection with any actual or anticipated sale of the Property.

4 **Provision of additional information**

The owner represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable". Should the owner have responded to any of the statements with a "yes", the owner shall be obliged to provide, in the additional information area of this form, a full explanation as to the response to the statement concerned.

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5 **Statements in connection with Property**

	YES	NO	N / A
I am aware of the defects in the roof			
I am aware of the defects in the electrical systems			
I am aware of the defects in the plumbing system, including in the swimming pool (if any)			
I am aware of the defects in the heating and air conditioning systems, including the air filters and humidifiers			
I am aware of the defects in the septic or other sanitary disposal systems			
I am aware of any defects to the property and/or in the basement or foundations of the property, including cracks, seepage and bulges. Other such defects include, but are not limited to, flooding, dampness or wet walls and unsafe concentrations of mould or defects in drain tiling or sump pumps			
I am aware of structural defects in the Property			
I am aware of boundary line dispute, encroachments or encumbrances in connection with the Property			
I am aware that remodelling and refurbishment have affected the structure of the Property			
I am aware that any additions or improvements made to or any erections made on the property, have been done or were made, only after the required consents, permissions and permits to do so were properly obtained.			

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I am aware that a structure on the Property has been earmarked as a historic structure or heritage site			
ADDITIONAL INFORMATION			

6 **Owner's certification**

The owner hereby certifies that the information provided in this report is, to the best of the owner's knowledge and belief, true and correct as at the date when the owner signs this report.

7 **Certification by person supplying information**

If a person other than the owner of the property provides the required information that person must certify that he/she is duly authorised by the owner to supply the information and that he/she has supplied the correct information on which the owner relied for the purposes of this report and, in addition, that the information contained herein is, to the best of that person's knowledge and belief, true and correct as at the date on which that person signs this report.

8 **Notice regarding advice or inspections**

Both the owner as well as potential buyers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property. Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties pertaining to the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties.

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9 **Buyer's acknowledgement**

The prospective buyer acknowledges that he/she has been informed that professional expertise and/or technical skill and knowledge may be required to detect defects in, and non-compliant aspects concerning, the property.

The prospective buyer acknowledges receipt of a copy of this statement.

10 **Signatures**

Signed at _____ on _____

Signature of owner _____

Signature of purchaser _____

Signature of property practitioner_____

37 **WORDING ON LETTERHEADS AND IN AGREEMENTS**

37.1 The following wording must appear on all letterheads or marketing material pertaining to a property practitioner: *"Registered with the PPRA"* and where a candidate estate agent is making use of such letterheads or is referenced in such marketing material, the fact that such individual is a candidate estate agent must be clearly stated.

37.2 Any agreement in connection with a property transaction to which the property practitioner is a party must contain a clause in the following terms: *"[Insert name of property practitioner as defined in the agreement] hereby warrants the validity of his / her / its Fidelity Fund certificate as at the date of signature of this Agreement."*

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CHAPTER 8: ADMINISTRATIVE AND OTHER MATTERS

38 DISTINCTION BETWEEN MINOR AND MAJOR CONTRAVENTIONS

Contraventions of the Act are classified as minor or substantial, and attract the maximum fines as set out below –

NO	SECTION REFERENCE	CONTRAVENTION MINOR OR SUBSTANTIAL	MAXIMUM FINE
1.	23 (1)	Minor	R 5 000
2.	41 (1)	Minor	R 5 000
3.	47 (1)	Substantial	R 15 000
4.	47 (2)	Substantial	R 10 000
5.	47 (4)	Minor	R 450 per full month
6.	47 (5)	Minor	R 1 500
7.	47 (6)	Minor	R 500
8.	47 (7)	Minor	R 2 000
9.	48 (1)	Substantial	R 25 000
10.	48 (4)	Substantial	R 10 000, in respect of the failure to effect a repayment when requested to do so.
11.	51 (5)	Minor	R 1 500
12.	52 (2)	Substantial	R 1 500
13.	52 (6)	Substantial where withdrawn, minor where lapsed.	R 25 000 where withdrawn R 7 500 where lapsed.
14.	52 (7)	Substantial where withdrawn, minor where lapsed	R 25 000 where substantial R 7 500 where minor
15.	53 (1) (a) to (c)	Substantial	R 1 500

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NO	SECTION REFERENCE	CONTRAVENTION MINOR OR SUBSTANTIAL	MAXIMUM FINE
16.	54 (1) (a) to (c)	Minor	R 7 500
17.	54 (2) (a) to (b)	Minor	In respect of subparagraph (a) R 750 and in respect of subparagraph (b) R 1 500.
18.	54 (3) (a) to (b)	Substantial in respect of subparagraph (a) and minor in respect of subparagraph (b).	R 40 000 in respect of subparagraph (a) and R 7 500 respect of subparagraph (b).
19.	54 (5) (a) to (c)	Minor	R 25 000
20.	54 (6)	Minor	R 20 per day in respect of each day (but subject to a maximum of R 5 000).
21.	54 (7)	Minor	R 1 500
22.	54 (9) (a) to (d)	Minor	R 7 500
23.	54 (10)	Substantial	R 25 000
24.	54 (14)	Minor	R 1 000
25.	55 (1) (a) to (f)	Substantial (is stated in the Act as being an offence)	R 1 500 per annum
26.	55 (4) (a) to (b)	Minor	R 7 500
27.	56 (1)	Minor	R 7 500
28.	56 (2)	Minor	R 7 500
29.	56 (3)	Minor	R 7 500
30.	56 (5)	Minor	R 7 500
31.	57 (1)	Minor	R 2 500
32.	58 (1) (a) to (b)	Substantial in respect of (a) and minor in respect of (b).	R 25 000 in respect of (a) and R 2 500 in respect of (b).

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NO	SECTION REFERENCE	CONTRAVENTION MINOR OR SUBSTANTIAL	MAXIMUM FINE
33.	59 (1) (a) to (c)	Substantial	R 5 000
34.	61 (3)	Minor	R 750
35.	62 (1) (a) (k)	Substantial in respect of subparagraph (h). Minor in respect of all other subparagraphs.	R 25 000 in respect of subparagraph (h). R 5 000 in respect of subparagraphs (a), (f), (g) and (j). R 1 500 in respect of each other subparagraph, other than (k). In respect of (k), as may be provided for in the Act or otherwise under this regulation.
36.	64 (1) and (2)	Minor	R 1 500
37.	64 (4)	Minor	R 1 500
38.	65 (1)	Substantial	R 25 000
39.	65 (2)	Minor	R 1 500
40.	66 (1) (a) to (d)	Substantial (is stated in the Act as being an offence)	R 25 000
41.	67 (1)	Minor	R 15 000
42.	69 (2)	Minor	R 1 500

39 **SPECIFICATION OF OTHER SERVICES**

39.1 Pursuant to the provisions of subsection (a) (vi) of the definition of "property practitioner" in the Act, the following services are specified –

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39.1.1 the sale, by auction or otherwise, by any person as part of the activities of operating a property development business, of any property or any interest, right or title in or to a property or a property development, provided that the foregoing shall not apply in circumstances where such sale, auction or other activity is conducted solely through the auspices of a property practitioner falling within subsection (a) (i) of the definition of "property practitioner" who is the holder of a current fidelity fund certificate issued under the provisions of the Act; and

39.1.2 an activity falling within subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act insofar as it pertains to business undertakings shall include any activity that relates to small, micro and medium enterprises, franchised businesses or new start-up ventures or newly created franchise concepts, whether such enterprise is sold as a whole as a going concern or as part of a business or by means of transferring the beneficial ownership in such enterprise.

40 **DOCUMENT RETENTION**

40.1 In terms of section 55 (1) (f) of the Property Practitioners Act 22 of 2019, it is prescribed that the following documents must be retained in accordance with the provisions of section 55 –

40.1.1 copies of all electronic communications sent or received by the property practitioner to and from members of the public in the course of carrying out its activities as a property practitioner, other than in circumstances where a property practitioner is acting in the course and scope of his or her employment by a person or entity that is a registered property practitioner in terms of the Property Practitioners Act 22 of 2019; and

40.1.2 where a property practitioner employs any other property practitioner, copies of all electronic communications sent or received by such employee property practitioner to or from members of the public in the course and scope of carrying out his or her employment duties,

provided that such obligation shall not extend to electronic communications on social media which are generally accessible by members of the public.

41 **ADMINISTRATIVE MATTERS**

In terms of section 70 (1) (a) of the Act, incidental matters of a procedural or administrative nature are prescribed as set out in the schedules hereto.

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SCHEDULE 1

ADMINISTRATIVE MATTERS RELATING TO EXEMPTIONS

Manner and Form of Application

41.1 For the purposes of section 4 of the Property Practitioners Act, 22 of 2019 ("**Act**"), the following is prescribed –

41.1.1 An application for exemption under section 4 of the Act must be submitted in writing to the Authority either by email or by hand delivery to the offices of the Authority as set out further below.

41.1.2 The application for exemption must be made using form E1 below.

41.1.3 Any objection to an exemption must be made using form E2 below.

Process Pertaining to Exemptions

41.2 Where application has been made for exemption in respect of any matter contemplated in the Act, no action will be taken against the applicant in relation to non-compliance with the matter in relation to which exemption is sought, until such exemption application has been finalised in accordance with the process set out in this Schedule 1. If such any exemption application is refused, notice of such refusal together with the reasons therefor must be given to the applicant and the applicant must be given a reasonable period of time within which to bring about compliance with the matter which is the subject of such exemption application in which regard the Authority must, if it requires such compliance, issue a compliance notice as contemplated in section 26. The aforegoing shall only apply where the exemption application precedes the action taken. It shall in no way affect any action that had already been mounted or proceedings against the applicant that are already underway on the date on which the application was lodged.

41.3 An application for exemption must be either uploaded through the Authority's web portal or otherwise must be sent by the applicant to the Authority's email address at *[insert email address]* or otherwise sent by post or delivered by hand to the following address of the Authority -

Property Practitioners Regulatory Authority
63 Wierda Road East (Cnr Johan)
Wierda Valley
Sandton
Johannesburg
2196

41.4 The Authority must, within 60 working days, consider any application for exemption submitted to it which is compliant with the provisions of this regulation, unless the Authority,

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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.

41.5 The period of 60 working days referred to in regulation 41.4 foregoing commences afresh if the Authority requests the applicant to submit additional information or to correct said application.

41.6 If the Authority fails to comply with regulation 41.4 foregoing, the application is deemed to have been approved and the Authority may not take any action against the applicant in relation to non-compliance with the matter which has been the subject of such exemption application, for so long as the exemption remains of force and effect.

41.7 An application for exemption may be made by any person or organisation, whether such person or organisation is a property practitioner or not. Without limiting the foregoing, an application for exemption may be made by a representative organisation or association on behalf of its members or membership.

Administration of Exemption Applications

41.8 As a matter of practice, exemptions should be granted in circumstances where none of the considerations in section 4 (5) (a), (b), (c) or (e) arises and, having regard to any considerations as referred to in section 4 (5) (d), such exemption will not have a material adverse effect upon consumers' rights.

41.9 As a matter of practice, exemptions from the provisions of section 58 (1) (b) should be granted (a) in circumstances where it can be shown on a balance of probabilities that such will be to the benefit of consumers or members of the public or (b) otherwise in circumstances where good and sufficient cause exists for such exemption.

41.10 Where natural persons apply for exemption from either or both provisions of section 50 (a) (vii) and 50 (a) (x), such exemptions should ordinarily be granted. Applications for exemption from the provisions of 50 (a) (vii) and 50 (a) (x) may be submitted simultaneously with any application for registration as a property practitioner, for a fidelity fund certificate or for renewal of a fidelity fund certificate.

41.11 In considering whether an exemption should be granted, regard should be had to the administrative burden on the Authority of not granting such exemption.

41.12 In considering any exemption application, due regard should be had to the legitimate expectations of the applicant, regard being had to previous practice in regard to exemption applications of the kind in question.

41.13 An exemption application may be submitted simultaneously with an application for registration as a property practitioner or with an application for a fidelity fund certificate and, in such event, such application must be dealt with simultaneously if the granting of such

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registration or the issue of such fidelity fund certificate is or may reasonably be considered to be, contingent upon the exemption application being granted.

41.14 Any person who applies for registration or a fidelity fund certificate may be exempted from the obligation to pay any prescribed fees pertaining thereto or otherwise be permitted by the Authority to discharge such fees over such period of time as the Authority may consider reasonable in the circumstances if either (a) such applicant provides the Authority with reasonable proof of financial hardship or (b) the interests of justice so require.

41.15 Where a party that applies for exemption acts solely as a conduit or platform for the placing of advertisements by property practitioners, such exemption should in the absence of other considerations relating to protecting the interests of consumers, be granted.

41.16 Where it is alleged that a property practitioner that is a business property practitioner has a partner, director, trustee or member that does not hold a fidelity fund certificate as required in terms of section 48 (2), written confirmation from the auditors or attorneys of the business property practitioner concerned that such partner, director, trustee or member (the "**non-compliant executive member**") has subsequently been removed, has resigned or has withdrawn from such position will be proof of such fact, provided that it is accompanied by an affidavit by a partner, director trustee or member of the business property practitioner concerned as follows –

I, [insert name] with identity number [insert details] [alternatively, insert passport number and details of the issuing country], being a [insert capacity] of [insert the full name of the business property practitioner concerned] (with registration number [insert details]) [delete the reference to the registration number if the property practitioner in question does not have a registration number], do hereby state and make oath/affirm that [insert the full name of the non-compliant executive member] (with identity number [insert details]) [alternatively, insert passport number and details of the issuing country], has as of [insert date] ceased to act as a [insert the relevant capacity] of [insert the full name of the business property practitioner concerned] or to have any involvement with the management of or the direction of the affairs of [insert the full name of the business property practitioner concerned].

41.17 Where a property practitioner that is a business property practitioner has non-executive directors or has finance, marketing, information technology or human resource directors or any other director who is not directly concerned with the management and oversight of individual property practitioners, exemption should ordinarily be granted from the provisions of section 48 (1) (b) and 48 (2) in respect of such persons, upon application being made to the Authority.

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41.18 Where an exemption application has or is likely to have an effect on significant numbers of property practitioners, the Authority must consult with industry bodies representing property practitioners before considering and finalising such exemption application.

41.19 Other than for sole proprietors, all property practitioners who are natural persons will, upon making application for a Fidelity Fund certificate, be deemed by the fact of such application itself to have applied for exemption from the provisions section 50 (vii) of the Act and the Authority must by default grant such exemption.

41.20 All property practitioners who are natural persons will, upon making application for a Fidelity Fund certificate, be deemed by the fact of such application itself to have applied for exemption from the provisions of section 50 (x) of the Act and the Authority must by default grant such exemption.

41.21 For the purposes of sub regulations 41.19 and 41.20 foregoing and regardless of what is provided for elsewhere in these Regulations (including this Schedule 1), it shall not be necessary for any property practitioner who is deemed to have applied for exemption under the provisions of such sub- regulations, to make any formal application for such exemption, the fact of the application for a Fidelity Fund in and of itself being deemed to comprise such application for exemption.

FORM E1– APPLICATION FOR EXEMPTION FROM PROVISIONS OF THE PROPERTY PRACTITIONERS ACT, 2019

Full names of the applicant:

If the applicant is a natural person: South African identity number of the applicant: If no South African identity number is available, then: Passport number of the applicant: Country of issue of passport: State the place of residence of the applicant: State the principal place of business of the applicant, if applicable: State the name of the employer of the applicant, if applicable:

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If the applicant is not a natural person:
State the form of the applicant (e.g. company, close corporation, trust, association):
State the registration number of the applicant, if applicable:
State the place of registration of the applicant, if applicable:
State the principal place of business of the applicant, if applicable:
Provide full details of the directors, members, trustees or similar persons exercising control over the applicant (attached separately, if necessary):

Please also provide full details of shareholders, members, beneficiaries or other persons who have a direct financial interest in the applicant (attached separately, if necessary):

Briefly state the reason exemption is applied for (full reasons may be attached separately):

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If the applicant is or has at any time been the holder of a fidelity fund certificate issued by the Authority or its predecessor in title the Estate Agency Affairs Board, attach a copy of the most recent version of the fidelity fund certificate held by the applicant.

Please separately attach comprehensive reasons as to why exemption is being applied for and also provide all relevant supporting documentation.

State the specific sections and subsections of the Property Practitioners Act, 2019 from which exemption is sought:

If the applicant is not a natural person, also attach an authorising resolution by the board of

State the period for which exemption is sought:

directors, members or trustees or similar body exercising control of the applicant which authorises the signatory below to submit the exemption application on behalf of the applicant.

Signed at on this day of 20

at

_____

For and on behalf of the applicant

Full names:

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FORM E2 FORM E1– OBJECTION TO EXEMPTION GRANTED UNDER THE PROVISIONS OF THE PROPERTY PRACTITIONERS ACT, 2019

Full names of the objecting party:

If the objecting party is a natural person:
South African identity number of the objecting party:
If no South African identity number is available, then:
Passport number of the objecting party:
Country of issue of objecting party:
State the place of residence of the objecting party:
State the principal place of business of the objecting party, if applicable:
State the name of the employer of the objecting party, if applicable:

If the objecting party is not a natural person:
State the form of the objecting party (e.g. company, close corporation, trust, association):
State the registration number of the objecting party, if applicable:
State the place of registration of the objecting party, if applicable:
State the principal place of business of the objecting party, if applicable:
Provide full details of the directors, members, trustees or similar persons exercising control over the objecting party (attached separately, if necessary):

Please also provide full details of shareholders, members, beneficiaries or other persons who have a direct financial interest in the objecting party (attached separately, if necessary):

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Briefly state the basis of the objection (full reasons may be attached separately):

State the specific sections and subsections of the Property Practitioners Act, 2019 in respect of which exemption has been granted and to which objection is made:

If the objecting party is or has at any time been the holder of a fidelity fund certificate issued by the Authority or its predecessor in title the Estate Agency Affairs Board, attach a copy of the most recent version of the fidelity fund certificate held by the objecting party.

Please separately attach comprehensive reasons as to why exemption is objected to and also provide all relevant supporting documentation.

If the objecting party is not a natural person, also attach an authorising resolution by the board of directors, members or trustees or similar body exercising control of the applicant which authorises the signatory below to submit the objection on behalf of the objecting party.

Signed at on this day of 20

at

_____

For and on behalf of the objecting party

Full names:

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SCHEDULE 2

ADMINISTRATIVE MATTERS RELATING TO REGISTRATIONS AND FIDELITY FUND CERTIFICATES

41.22 Where a natural person acts as a property practitioner in different capacities within the same industry, a single fidelity fund certificate shall be issued to that natural person in respect of all capacities in which they act as a property practitioner within that industry.

41.23 A fidelity fund certificate will state the industry in respect of which such fidelity fund certificate applies but will not otherwise state the capacity in which the holder holds that fidelity fund certificate.

41.24 The Authority may not as a precondition to issuing a fidelity fund certificate require a property practitioner to bring into compliance any matter pertaining to any period preceding the date upon which a fidelity fund certificate was previously issued to the property practitioner concerned, unless either (a) that fidelity fund certificate was issued subject to the property practitioner bringing such specific matter into compliance or (b) a complaint has been lodged with the Authority in relation to any such non-compliance by the property practitioner concerned.

41.25 All fidelity fund certificates, and registration certificates will be issued by uploading the same to the Authority's web portal and making such accessible to the property practitioner concerned. A fidelity fund certificate or a registration certificate will be issued to and come into the possession of a property practitioner once such certificate is made available on the Authority's web portal, such that a copy of it is capable of being downloaded by the property practitioner concerned. Should the Authority not observe the time period contemplated in section 49 (1), then in accordance with section 49 (3), an application for a fidelity fund certificate is deemed to have been approved by the Authority which must, upon the applicant's written request, issue the fidelity fund certificate within 10 working days. Furthermore, the property practitioner will be deemed to be compliant with all provisions of the Act requiring possession of a fidelity fund certificate, and no action relating to non-possession of a fidelity fund certificate may be taken against such property practitioner.

41.26 For the purposes of section 56 (5) of the Act, a conveyancer must obtain a copy of both (a) the Fidelity Fund certificate of the business operation concerned issued pursuant to the provisions of regulation 26A and (b) the Fidelity Fund certificate of the natural person property practitioner or natural person property practitioners who were concerned with the transaction in question.

41.27 A fidelity fund certificate downloaded from the Authority's web portal will, if saved and retained in the original file format together with its original properties, constitute an original fidelity fund certificate for the purposes of the Act and will retain that character if sent unaltered as part of an electronic message as contemplated in the Electronic

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Communications and Transactions Act, 25 of 2002. A fidelity fund certificate may in accordance with the foregoing be provided electronically to a conveyancer for the purposes of compliance with section 56 (5).

41.28 Prior to withdrawing a fidelity fund certificate (whether in terms of section 52 (1) or otherwise) and without derogating from the requirements of administrative law, the Authority must –

41.28.1 give notice of its intention to withdraw such fidelity fund certificate; and

41.28.2 first grant the person in question an opportunity to make representations within a period of 30 days as to why such fidelity fund certificate should not be withdrawn; and

41.28.3 first grant the person in question an opportunity to apply within a period of 30 days for exemption, should they wish to do so.

SCHEDULE 3

GRANTS FROM THE FIDELITY FUND

41.29 For the purposes of section 39 (1) grants from the Fidelity Fund may not without ministerial consent cause the Fidelity Fund to be reduced to a sum of less than R 400,000,000 (four hundred million Rand), provided always that the aforesaid amount will be escalated annually on 01 January of each year by the increase in CPI over the preceding year, with the first such escalation occurring on 01 January 2021.

41.30 For the purposes of the foregoing "CPI" means the consumer price index, statistical release P0141 as published from time to time by Statistics South Africa from time to time provided that if, at any time, such index shall cease to be published then there will be used other official information or index as may published by Statistics South Africa from time to time in lieu of statistical release P0141.

41.31 All amounts not required for the purposes referred to in section 39 of the Property Practitioners Act shall be allocated to and paid over to the Transformation Fund for utilisation by the Transformation Fund in accordance with the provisions of the Act as read with these Regulations.

SCHEDULE 4

GENERAL ADMINISTRATIVE MATTERS

41.32 For the purposes of section 54 (14), the relevant confirmation or update must be uploaded to the Authority's web portal, provided always that a property practitioner may send such confirmation or update to the email address or deliver such confirmation update by post or

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by hand to the physical address provided for in regulation 41.3 of Schedule 1 (Administrative Matters Relating to Exemptions).

41.33 Where a property practitioner who is a natural person acts on behalf of any business property practitioner, that natural person property practitioner must reflect on all emails, letters, contracts, business cards, marketing materials and similar forms of communication the full name, email address and telephone number of the business property practitioner on behalf of whom that natural person property practitioner is acting.

41.34 All emails, letters, contracts, business cards, marketing materials and similar forms of communications must, in addition to the matters prescribed for in terms of section 53 (1) further reflect, in respect of each property practitioner –

41.34.1 that is a sole proprietorship or business property practitioner, that such holds a fidelity fund certificate in the capacity of a business property practitioner;

41.34.2 whether or not that business property practitioner operates a trust account;

41.34.3 in respect of each natural person that is associated with or operates under the auspices of that business property practitioner, the name of such natural person together with a statement that such natural person holds a fidelity fund certificate and the capacity in which such person acts as a property practitioner in relation to that business property practitioner, being either a principal, a full status property practitioner or an intern.

41.35 For the purposes of section 62 (2) (1) (d), the Authority must grant a property practitioner a period of at least 30 days to provide the relevant requested information, calculated from the date upon which that property practitioner first receives such request for information.

41.36 A person who wishes to claim for compensation from the Property Practitioners Fidelity Fund in respect of theft of trust money by a property practitioner shall not be required to take any steps against the property practitioner concerned, other than as provided for in section 37 (2) of the Act.

41.37 The financial statements of a property practitioner must either be prepared in accordance with a recognised financial reporting framework or a basis of accounting as determined by the property practitioner taking cognisance of other applicable laws and regulations which may prescribe the financial reporting framework to be applied in the preparation of the financial statements based on the type of business through which the property practitioner practices.

41.38 An audit report required under the provisions of the Act (as read together with these regulations) shall be in such form as is determined by the auditor carrying out said audit as being most appropriate in the circumstances, provided that if the South African Institute of Chartered Accountants (or its successor in title) determines one or more forms of audit

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report to be used for the purposes of the Act (as read together with these regulations), then the auditor shall use such form of report, provided further that –

41.38.1 in carrying out his obligations the auditor shall comply with the auditing pronouncements in terms of the Auditing Profession Act, 26 of 2005; and

41.38.2 if the auditor is unable to furnish an unqualified report, the fact thereof and the reasons therefor will be fully set out in the report and all alterations to an audit report must be signed by the auditor concerned.

41.39 In carrying out its functions under the Act and the regulations, the Authority must consult in good faith with the various representative organisations in industries regulated by the Authority and must have due regard to both the expertise of such representative organisations in the relevant fields that they represent and the concerns and considerations raised by such representative organisations.

41.40 In carrying out its functions under the Act and the regulations, the Authority must, upon request being made by any person whose rights have been materially and adversely affected by any administrative action of the Authority who has not been given reasons for such action, furnish adequate reasons in writing to such person.

SCHEDULE 5

TRANSITION

41.41 An applicant shall not be precluded from registering as a property practitioner or obtaining a Fidelity Fund certificate under the Act in consequence of such person having been in any way non-compliant with any of the provisions of the previous Act unless -

41.41.1 the Authority is able to show that such applicant is on the effective date subject to criminal prosecution or disciplinary proceedings which has or have commenced in respect of a failure on the part of such person to comply with any provisions of the previous Act or its regulations; or

41.41.2 the Authority is able to show that such applicant had a fidelity fund certificate issued under the previous Act withdrawn as a result of a failure on the part of such applicant to comply with any of the provisions of the previous Act or its regulations.

41.42 A property practitioner who failed to register as an "estate agent" under the previous Act or failed to obtain a Fidelity Fund certificate under the previous Act when they were required to do so, shall not be subject to prosecution or any disciplinary action in respect of such failure, provided that such property practitioner registers with the Authority within a period of no more than six months of the effective date and such person subsequently obtains a Fidelity Fund certificate in accordance with the provisions of the Act and these regulations

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within a period of no more than 12 months following the date upon which such person registers with the Authority.

41.43 The Authority shall be entitled to from time to time in good faith consultation with the representative bodies of the industry or industries concerned, to take steps in respect of and arrange for the regularisation of the affairs of, the property practitioners in such industry or industries in order to enable the property practitioners concerned to bring themselves into compliance with the provisions of the Act and the regulations.

41.44 Each person who on the effective date holds a fidelity fund certificate issued under the previous Act shall be entitled to continue acting as a property practitioner under the Act, using such existing fidelity fund certificate, until the end of the year during which the effective date falls.

41.45 To the extent that any person has during the 12 month period preceding the effective date obtained any qualification which would entitle such person under the provisions of the previous Act and its regulations to be registered as an estate agent or to carry on the activities of an estate agent (including whether as non-principal or as principal), the Authority must recognise such qualifications for the purposes of the Act and these regulations and allow such person to register as an carry on the activities of, a property practitioner.