



Office of the Chairperson

Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs

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NEGOTIATING MANDATE

To : The Chairperson: Select Committee on
Social Services

Name of the Bill : Property Practitioners Bill

Number of the Bill : [B21B-2018]

Date of Deliberation : 20 February 2019

Vote of the Legislature :

The Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs ("the Committee"), after considering the Property Practitioners Bill [B21B-2018] confers on the permanent delegate representing the Mpumalanga Provincial Legislature in the NCOP, the mandate to negotiate in favour of the Bill without any proposed amendments, and taking into consideration the views of the community members as contained in the attached report:

HON P NGOBENI

CHAIRPERSON: PORTFOLIO COMMITTEE

ON HUMAN SETTLEMENTS, CO-OPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS

20/02/2019
DATE

REPORT OF THE PORTFOLIO COMMITTEE ON HUMAN SETTLEMENTS, CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS ON PROPERTY PRACTITIONERS BILL, [B21B - 2018]

1. INTRODUCTION

The Speaker referred the Property Practitioners Bill [B21B-2018] to the Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs (the Committee) for consideration and report back to the House in accordance with the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution of the Republic of South Africa, 1996, the Legislature has a mandate to facilitate public involvement in the legislative and other processes of the Legislature and its committees. It is against this background that the Committee conducted a public hearing to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The purpose of the Property Practitioners Bill [B21B-2018] (the Bill) is mainly;

- To provide for the regulation of property practitioners;
- To provide for the continuation of the Estate Agency Affairs Board as the Property Practitioners Regulatory Authority;
- To provide for the appointment of the members of the Board and matters incidental thereto;
- To provide for the appointment of the Chief Executive Officer and other staff members of the Authority;
- To provide for the transformation of the property practitioners sector;
- To provide for the establishment of the transformation fund and establishment of the research Centre on transformation;

- To provide for compliance with and enforcement of the provisions of the Act;
- To provide for the continuation of the Estate Agents Fidelity Fund as the Property Practitioners Fidelity Fund;
- To provide for consumer protection;
- To provide for the repeal of the Estate Agency Affairs Act, 1976; and
- To provide for matters connected therewith

3. METHOD OF WORK

The Committee met with the National Council of Provinces (NCOP) permanent delegate, Hon LC Dlamini (the Member), the Directors, from the National Department of Human Settlements, as well as Mpumalanga Department of Human Settlements on 01 February 2019 for a briefing on the Bill. The Committee conducted public hearings after publishing an invitation in the print media, Lowvelder newspapers in order to solicit inputs/comments from interested stakeholders and members of the public. The Public hearings were conducted on the 12 February 2019 from 10h00 – 13h00 in the following Districts.

| DISTRICT | VENUE | No. of Attendees |
|--------------|---|------------------|
| Ehlanzeni | Govan Mbeki Foyer, Legislature Building – City of Mbombela Local Municipality | 41 |
| Gert Sibande | Kgotso Tsotetsi Lapa – Govan Mbeki Local Municipality | 101 |
| Nkangala | Adelaide Tambo Thusong Service Centre – Steve Tshwete Local Municipality | 105 |

The Committee thereafter met on 20 February 2019 to consider the Bill, inputs from the stakeholders and the public. A draft report was produced together with a negotiating mandate on the Bill and as such a negotiating mandate will be submitted to the NCOP.

4. INTERACTION BY THE COMMITTEE WITH NATIONAL COUNCIL OF PROVINCES (NCOP) PERMANENT DELEGATE, NATIONAL AND PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS ON THE BILL

The Member, Mrs LC Dlamini and the Directors made a presentation regarding the Bill. The Committee made some comments and asked clarity seeking questions. The Member and the Directors of the National Department of Human Settlements highlighted the background on the Bill as follows;

- ❖ Over the years, new market conditions dictated a paradigm shift from the traditional practices of estate agent and estate agency;
- ❖ There is mushrooming of new role-players, e.g. bond originators, bridging finance, etc.;
- ❖ There is a need to align the new legislation to the new market conditions;
- ❖ The current legislation is archaic and out of sink with the democratic dispensation;
- ❖ There is a need to align the new legislation to the constitutional imperatives;
- ❖ There are deep-seated disparities IRO the level of participation and representation within the property market;
- ❖ There is a need to comply with good corporate governance ethos and principles.

The National Director also reported and highlighted on the main objectives of the Bill:

- ❖ To transform the property market by ensuring that it is reflected of the SA demographics;
- ❖ To create alignment and synergy to the constitution and other relevant legislation, i.e. PAJA, CPA, etc.;
- ❖ To enhance corporate efficiency;
- ❖ To embark on a drive to professionalise the real estate industry;

It was further reported that it was important for the Portfolio Committee to note objectives the main content of the Bill. The Bill consists of the following Chapters:

Chapter 1: Definitions, Applications, Objects and Establishment of Authority.

- ❖ The Bill define “ Property Practitioners” to include everyone involved in the selling, purchasing, letting, renting, financing and marketing of property.

Chapter 2: Board of Authority

- ❖ Chapter two of the Bill provides for the governance and structures of the Property Practitioners Regulatory Authority (PPRA).
- ❖ Chapter two of the Bill provides for the composition, appointment, disqualification, dissolution, termination, management of conflict of interest, code of ethics, powers and duties of the members of the Board and committees of the Board.

Chapter 3: Appointment of Chief Executive Officer (CEO) and Staff of Authority

The Bill provides for the appointment of the Chief Executive Officer, staff of the Authority and management of conflict of interest within the Authority and delegation of functions and powers by the CEO

Chapter 4: Transformation of Property Sector

- ❖ Chapter four provides for the establishment of the Property Sector Transformation Fund, exemptions in respect of trust accounts as well as the Property Research Centre.

- ❖ The Bill stipulates that “When procuring property related goods and services, all organs of State must utilise the services of property practitioners who comply with the broad-based black economic empowerment and employment equity legislation and policies”.
- ❖ The Bill further provides for exemptions in respect of accounting records and trust account.

Chapter 5: Compliance and Enforcement

- ❖ The Bill provides for compliance and enforcement measures. It further provides for the appointment, powers and duties of inspectors to ensure compliance. It provides for procedure of lodging complaints of non-compliance.
- ❖ Inspectors are empowered to search premises and seize documents from property practitioners where there is non-compliance with the Act. They are empowered to issue compliance notices for non-compliance for a person to comply within a specific time.
- ❖ In the compliance notice the authority may determine a fine to be paid by the person concerned.
- ❖ Chapter five of the Bill further provides for mediation, adjudication and adjudication appeal Committee.

Chapter 6: Finances

- ❖ The Bill provides for the funds of the Authority and financial year of the Authority

Chapter 7: Property Practitioners Fidelity Fund

- ❖ The Bill provides for the continuation of the Estate Agency Fidelity Fund under the new name “Property Practitioner’s fidelity fund”.
- ❖ It provides for the management and control of the Fidelity Fund, regulates the investment of monies and payments of funds from the Fidelity Fund

Chapter 8: Property Practitioners

- ❖ Regulates the application for a Fidelity Fund certificate and prohibits rendering service without the Fidelity Fund certificate

Chapter 9: Conduct of Property Practitioners

- ❖ Regulates the conduct and behavior of Property Practitioners through the code of conduct, sanction able conduct, prohibition of undesirable practices and measures concerning control and supervision of candidate Property Practitioners.
- ❖ It also regulates franchising in the industry.

Chapter 10: Consumer Protection

- ❖ The Bill regulates consumer protection and provides for a mandatory disclosure form, language of agreements, consumer education and information.

Chapter 11: General

- ❖ Bill deals with the general matters which include making of regulations, penalties, delegation of powers by the Minister, legal proceedings against the Authority, the use of the name of the Authority , transitional provisions , repeal and short title and commencement of the Act.

The Committee welcomed the presentation.

5. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL

The following stakeholders were invited by the Committee to attend the public hearing.

- Community Members
- Department of Human Settlements
- Chairperson of Mpumalanga House of Traditional Leaders (HTL) and local houses
- Public Service Commission (PSC)
- South African Local Government Association (SALGA)
- Speakers of the local municipalities in the Districts
- Ward Committees
- Community Development Workers
- Housing Associations
- SANCO
- COSATU
- Estate Agents such as Chass Everitt and Pam Goldings
- South African Police Service (SAPS)

No written submissions were submitted.

During the public hearings, members of the committee explained the Bill thoroughly in the local languages spoken in each of the communities where the public hearings took place. The legislative processes and timeframes for processing the Bill through the relevant channels of the National Council of Provinces (NCOP) were also explained. The public was made to understand their Constitutional rights in relation to them making inputs in the processing of bills by the Legislature.

The Committee also reported that the Bill under review had some implementation challenges hence the proposed amendments. The Committee and the Directors National Department of Human Settlements also responded to the questions of clarity raised thereafter. The community members and stakeholders who were present at the public hearing generally supported the Bill. Most people raised concerns which were also related to the Bill as follows:

- The definition of candidate property practitioner must specify the period e.g. twelve months;
- Must eradicate discrimination;
- There must be transformation in Traditional and Rural Communities;
- Property is very lucrative business therefore the Legislature and business community should empower our children (youth) to be part of selling property (especially black children);
- Chapter two has strict measures, how will the Bill ensure that people who will be appointed as Board Members are fully qualified, will there be a geographical spread considered;
- The fidelity fund, will it be used for intended purposes;
- Consumers must be protected at all times;

- Is there a strategy from Government to assist people especially (Blacks who are interested in this field of selling property as its always been seen as white dominated);
- Government should assist in regulating registration and transfers;
- Estate Agents should be put under one umbrella so that corruption can be avoided at all costs;
- Evictions of people without proper processes should be avoided; government should intervene on these critical matters;
- Government to assist in building a strong relationship with Banks;
- Training of young people must be made accessible to whomever is willing to participate;
- Inspectors should be spread around the all the regions of Mpumalanga;
- Inspectors must also have the necessary skills and be vetted; offices of the inspectors should be nearer to the people;
- Board of Directors who will be appointed should at least have people from Mpumalanga Province; young people who qualify must be prioritised when appointments are done;
- The Property Practitioners Bill accommodates/allows for the reporting and discipline of individuals practicing without the Fidelity Fund Certificate by fellow colleagues or any person with such information, this is not provided for/addressed in the Estate Agents Affairs Act, 1976;
- The Bill strictly regulates Property Practitioners and does not include Property Evaluators (from municipalities or private entities);

- Land-lords by virtue of having back rooms for rentals in the townships are provided for in the Bill, however, they can apply for exemption according to section 4 of the Bill, processes will then be followed that will result in the exemption being granted or denied.

6. OBSERVATIONS AND FINDINGS MADE BY THE COMMITTEE

- ❖ Oral submissions that were made by the public were considered accordingly.
- ❖ Other submissions that do not talk to the content of the Bill will be dealt with in different ways by including in the Regulations and by the National Department of Human Settlements by ensuring that critical matters raised are taken into consideration.
- ❖ Generally, members of the public were in support of the Bill.

7. RECOMMENDATIONS

The Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to negotiate in favour of the Bill.

8. CONCLUSION

The Chairperson wishes to thank all members of the public for their worthwhile participation in the public hearings and for the inputs or comments they have made. A word of gratitude to the NCOP Permanent Delegate, Hon LC Dlamini, the Directors from the National Department of Human Settlements, Mpumalanga Department of Human Settlements, House of Traditional Leaders, South African Local Government Association (SALGA), Public Service Commission (PSC) Speakers, Councillors of the Local Municipalities, Members of the Portfolio Committee on Human Settlements, Co-operative Governance and Traditional Affairs, for their efforts in ensuring that the committee meets its obligation and the support staff who contributed to the success of the public hearings and the production of this report.



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