

14 March 2019

The Chairperson  
The National Council of Provinces  
Western Cape Public Hearings

## PROPERTY PRACTITIONERS BILL

The Real Estate Business Owners of South Africa, "Rebosa", is a voluntary organisation that has more than 2,000 members and which members employ more than 16,000 estate agents.

It is the most representative body in the residential real estate industry.

Rebosa supports the replacement of the Estate Agency Affairs Act. We have submitted detailed comments on the Property Practitioners Bill to your office but it is my pleasure to highlight the most important issues in this document for your consideration.

1. **Business Property Practitioner:** It is important to define a "business property practitioner" because only business practitioners for example must/could have trust accounts. Should this not be corrected it would for example imply that each individual must have a trust account/ BEE certificate. Section 50(a)x on page 27 and Section 54 on page 29 refer.

Proposed inclusion:

### Definitions

"business property practitioner" means a property practitioner that is a company, a close corporation, a trust, a partnership or a sole proprietorship which in any manner holds out that it is a business that carries out any activity referred to in paragraph (a) of the definition of "property practitioner";

2. Reference is made to a "candidate property practitioner" but same is not defined. Section 64 on page 35 refers.

Proposed inclusion:

### Definitions

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

3. **Attorneys and Developers:** As per the current Bill attorneys and candidate attorneys are still excluded. There is no motivation for this and attorneys are, like developers, employing more and more sales associates without the necessary training (albeit they are covered by the attorneys Fidelity Fund). Because attorneys are primarily interested in obtaining conveyancing work, they unfairly compete with estate agents as far as commission, etc. is concerned. The study curriculum for agents involve much more than just law. Attorneys should at best should be exempted from NQF 4 & 5 but should comply with everything else in terms of the Act. The EAAB has admitted not

being able to control attorney operating illegally at present therefore this is of extreme importance. Developers are included except iro full title properties, a clear anomaly.

Proposed inclusions:

Definition: “property practitioner” (a) (v) (cc)

an attorney or candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979) when carrying out those legal services and functions normally performed in the course of an attorneys' practice; or

Definition: “property practitioner “ (b)

includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development and including any freehold properties in a property development;

Definition: ”property practitioner” (f)

includes 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 whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph

- (a) when carrying out those legal services and functions normally performed in the course of an attorneys' practice, on behalf of such attorney or professional company whose actions will be specifically covered by the Attorneys' Fidelity Fund and not the Property Practitioners Fidelity Fund;

Definition: “property practitioner” (g)

for the purposes of section 61 and any regulation made under section 70, includes any person who was a property practitioner at the time when he or she was guilty of any act or omission which allegedly constitutes sanctionable conduct referred to in section 62,

but does not include an attorney who, on his own account or as a partner in a firm of attorneys or as a member of a professional company, as defined in section 1 of the Attorneys Act, 1979, or a candidate attorney as defined in that section, who performs any act referred to in paragraph (a), in the course of and in the name of and from the premises of such attorney's or professional company's practice when carrying out those legal services and functions normally performed in the course of an attorneys' practice, provided that such an act may not be performed—

- (i) in partnership with any person other than a partner in the practice of that attorney as defined in section 1 of the Attorneys Act, 1979; or

- (ii) through the medium of or as a director of a company other than such professional company,

and “**advertise**” for the purposes of this definition does not include advertising in compliance with the provisions of any other law;

4. "Issued with" vs "possession of" Fidelity Fund Certificate. Certificates often don't get to practitioners timeously if at all. If not in "possession" no income can be earned.

Proposed amendment:

[Section 35 \(1\)\(a\)](#)

Subject to the provisions of this Chapter, the Fund must be maintained and applied to reimburse persons who suffer pecuniary loss by reason of—

- (a) theft of trust money committed by a property practitioner who ~~was in possession of~~ had been issued with a current Fidelity Fund certificate at the time of the theft; or
  - (b) the failure by a property practitioner to comply with section 54(1) or (3).
5. Every director/member must be issued with a fidelity fund certificate. This is the biggest single detrimental issue in the Bill. In terms of this section an entire business and all the agents employed in the business can be de-registered because of an omission/act of one of the directors of the business. The equivalent of this is the Authority not being able to function if one board member commits fraud. The clause should be amended to read that the business can continue functioning and the business and its estate agents can remain registered provided there is at least one qualified and properly registered principal/director in the business.

Proposed amendment:

[Section 48 \(2\)](#)

If an entity is—

- (a) a company;
- (b) a close corporation;
- (c) a trust; or
- (d) a partnership,

every at least one director of such a company, every at least one member of such a close corporation, every at least one trustee of such a trust and every at least one partner of such a partnership, as the case may be, must have been issued with a Fidelity Fund certificate contemplated in section 47.

6. Only business property practitioners should be obliged to have a valid BEE certificate.

Proposed inclusion:

[Section 50 \(a\) \(vii\) and \(x\)](#)

The Authority may not issue a Fidelity Fund certificate to—

(a) any person who—

(vii) is a business property practitioner and is not in possession of a valid tax clearance certificate;

(x) is a business property practitioner and is not in possession of a valid BEE certificate.

7. Exception iro trust accounts and accounting records. The current amendment to the Bill will still result in 5,000 dormant trust accounts! Many estate agents focus on selling only and do not do letting. Furthermore according to our information more than 70% of estate agencies do not use their trust accounts and have to operate dormant trust accounts and pay dearly to have same audited. The exemption in the Bill in respect of practitioners with a turnover of less than R2,500,000 pa tries to address this - inadequately so as it still leaves thousands of dormant trust accounts . It is a better solution to allow estate agents who want to/need to receive deposits from clients to have trust accounts and have same properly audited, but to allow estate agents not wanting to do so not to have trust accounts at all. These agents will, as they currently do, request clients to make deposits to the trust accounts of conveyancers. Using the turnover (keep in mind that it refers to gross commission not sales) is not indication of the size of the deposit that might be made (an estate agent with a turnover of less than R2,500,000 per annum may well be selling one property of R49,000,000 and/or take a deposit equal to R49,000,000). There is no reason why all estate agents should have trust accounts. Unnecessary audits are costing the industry in excess of R50 million pa.

Proposed inclusion:

**Section 54 (1) (d)**

Every property practitioner—

- (d) or his, her or its responsible or designated employee, as the case may be, must immediately deposit all trust money held or received by or on behalf of that property practitioner in the relevant trust account<sub>2</sub>

**unless such property practitioner has in the prescribed manner and form undertaken to the Authority that it has not during the preceding 18 months received any trust monies and it will not thereafter receive any trust money without complying with the requirements of paragraphs (a) to (d).**

8. "Issued" vs "possession" of FFC. Certificates often don't get to practitioners timeously if at all. No commission can be earned if not in "possession"

Proposed amendment:

**Section 56 (1)**

A property practitioner is under no circumstances entitled to any remuneration or other payment in respect of or arising from the performance of any act referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of "property practitioner" in section 1, unless at the time of the performance of that act—

- (a) the property practitioner; and
- (b) if the property practitioner is a company, every director of such company or, if such property practitioner is a close corporation, every member referred to in paragraph (b) of the definition of "property practitioner" in section 1, of that corporation,

**is in possession of has been issued with a current** Fidelity Fund certificate.

[Section 56 \(2\)](#)

A person referred to in paragraph (f) of the definition of “property practitioner” in section 1, and a property practitioner who employs such person, is not entitled to any remuneration or other payment in respect of or arising from the performance by that person of any act referred to in that paragraph, unless at the time of the performance of the act that person ~~is in possession of~~ has been issued with a current registration certificate.

9. Supervision of candidate property practitioners: It is obviously unfair to hold a principal responsible for acts or omissions of the candidate property practitioner even if the principal is unaware of same. The employment of 22,000 candidates are threatened by this.

Proposed amendment:

[Section 64 \(3\)](#)

In any proceedings in respect of sanction will conduct, it is no defence that the principal property practitioner was not aware of the acts or omissions of the property practitioner or the candidate property practitioner where such arises out of a failure by the principal property practitioner to exercise adequate supervision and control.

Thank you very much for this opportunity to present you with our thoughts.

Regards,  
Jan le Roux

083 600 8162 / [jan@rebosa.co.za](mailto:jan@rebosa.co.za)

