
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF HUMAN SETTLEMENTS

NOTICE 312 OF 2018

EXPLANATORY SUMMARY OF THE PROPERTY PRACTITIONERS BILL, 2018

In accordance with Rule 241(1) of the Rules of the National Assembly –

1. The Minister of Human Settlements herewith gives notice of the intention to introduce into Parliament the Property Practitioners Bill, 2018 ("the Bill") during the Parliamentary session of 2018.
2. The principal object of the Property Practitioners Bill, 2018 ("the Bill") is to repeal the Estate Agency Affairs Act, 1976 (Act No. 112 of 1996) ("the Act"), which was meant to provide for the Estate Agency Affairs Board, the Estate Agency Fidelity Fund and for the control of certain activities of estate agents in the public interest.
3. The Act is outdated (40 years old) and does not assist government to achieve the outcome of improving the functioning of the property market which includes regulating the buying, selling and renting of land and buildings. Furthermore, the Act in its current form does not assist to meet the needs of the South African communities and also does not accommodate the dynamic needs of the real estate industry.

4. The South African total property value is estimated at 6 trillion and is significantly slow in terms of addressing transformation, especially encouraging the participation of the youth and the previously disadvantaged. The Act and its existing institutional arrangements has failed to bring an increase in the total number of industry participants especially in the previously disadvantaged groups, and has failed to provide mechanisms of aligning it with the South African demographic profile. In 2013 statistics, black estate agents constituted a mere 8% of the industry and the average age of an estate agent was estimated at about 57 years of age.

5. The legislation continue to perpetuate exclusion of some people in other areas, promote weak monitoring of estate agency matters, encourage rampant embezzlement of clients' funds and fails to provide mechanisms for monitoring the continuous mushrooming of unregistered estate agents, and therefore contributing negatively to the functional property market.

6. The real estate matters were previously dealt by the Department of Trade and Industry until Cabinet took a decision to transfer the Estate Agency Affairs Board and its enabling legislation to the National Department of Human Settlements, in October 2010. The process of crafting this legislation dates back to 2013 when it was consulted extensively, tabled at the FOSAD and SPCHD Cabinet Committee. Cabinet during November 2013 had approved that the Bill be published for public comment subject to insertion of certain elements such as ensuring that it is aligned with the provisions of the Public Finance Management Act.

7. The Bill:
 - 7.1 The Bill seeks to establish a Property Practitioners Regulatory Authority, provide for the appointment of the Board of the Regulatory Authority, set up a Property Practitioners Ombuds Office and provide for other matters connected therewith. It seeks

to put in place better monitoring mechanisms as compared to the current section 32A of the Act which provide inspectors with wide powers of search and seizure on premises without a proper authority. The Bill now requires that inspectors obtain a warrant to enter premises. The issue of section 32A has been a bone of contention and escalated to the Constitutional Court .e.g. the judgment of Auction Alliance vs EAAB.

4. **Chapter I** of the Bill, deals with the definitions, objects, exemption from the Act, establishment of Property Practitioners Regulatory Authority and functions of the Authority. The Bill defines "property practitioner" to include everyone involved in the selling; purchasing; letting; renting; financing; managing, marketing of property but excluding any person contemplated in the definition of "financial institution" in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), and "managing agent" in terms of the Community Scheme Ombud Service Act, 2011 (Act No. 9 of 2011) and Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011);
5. **Chapter II** of the Bill deals with governance and structures of the Authority. The chapter provides for the composition and appointment Board; disqualification; dissolution; termination; management of conflict of interest; code of ethics; meetings, powers and duties of the members of the Board and Committees of the Board.
6. **Chapter III** of the Bill provides for the appointment of the Chief Executive Officer, staff of the Authority, management of conflict of interest and delegations within the Authority.

7. **Chapter IV** of the Bill provides for the establishment, appointment, resources, powers and duties of an Ombud. It provides for the establishment of a Property Practitioners Ombud Office, the appointment of an Ombud, staff and resources of the Ombud, lodging of complaints, mediation, adjudication and accounting and reporting by the Ombud.
8. **Chapter V** of the Bill provides for compliance and enforcement measures. It provides for the appointment; powers and duties of inspectors to ensure compliance. It provides for the procedure of lodging complaints for non-compliance. It provides for the issuing of compliance notices by inspectors for non-compliance and fines as compensation. Inspectors are empowered to search premises and seize documents from property practitioners where there is non-compliance with the Act. Inspectors are empowered to issue compliance notices for non-compliance for a property practitioner to comply within a specific time. The Authority may determine a fine to be paid by the property practitioner concerned through a compliance notice. In compliance to the Constitutional Court judgment in the matter of Auction Alliance vs The Estate Agency Affairs Board, it was found to be unconstitutional for an inspector to seize documents without a search warrant and the provisions concerned have been drafted in alignment with this judgment.
9. **Chapter VI** of the Bill provides for the funds of the Authority and the financial year and deposits of the Authority.
10. **Chapter VII** of the Bill provides for the continuation of the Estate Agency Fidelity Fund under the new name "Property Practitioners Fidelity Fund". It provides for the management and control of the Fidelity Fund. It regulates the investment of monies and payment of funds from the Fidelity Fund. It regulates indemnity insurance and grants that may be authorised from the Fidelity Fund. It regulates exemption of the fund from insurance law. It

regulates fees payable by property practitioners, application of insurance monies, cooperation by claimant, purpose of the fund, claims and actions against the Authority in respect of the fund. The Bill provides for the transfer of rights and remedies against a property practitioner to the Authority.

11. **Chapter VIII** regulates the application for a Fidelity Fund Certificate and prohibits rendering services without a Fidelity Fund Certificate. It provides for the mandatory time periods for the issuing of Fidelity Fund Certificates. It provides for instances of disqualification to practice as a property practitioner. It sets out conditions for the amendment and withdrawal of a Fidelity Fund Certificate. It provides for mandatory display and communication of the status of a Fidelity Fund Certificate. It regulates the opening and keeping of trust accounts and obliges property practitioners to keep accounting records. It prohibits property practitioners from receiving remuneration in certain instances. It provides for mandatory indemnity insurance. It regulates instances of insolvency and liquidation of a property practitioner.
12. **Chapter IX** regulates the conduct and behaviour of property practitioners through the code of conduct; sanctionable conduct; prohibition of undesirable practices; measures concerning control and supervision of certain property practitioners. It provides for norms and standards in respect of advertising and marketing by a property practitioner. It prohibits payment of remuneration prior to the transfer of the property. It also regulates franchising in the industry.
13. **Chapter X** of the Bill regulates consumer protection and provides for a mandatory disclosure form; language of agreements; consumer education and information.

14. **Chapter XI** of the Bill deals with general matters which include, promotion of property sector transformation; making of regulations; penalties; delegation of powers by the Minister; legal proceedings against the Authority; liquidation of Authority; use of name of Authority and transitional provisions.

Copies of the Bill and the Memorandum on the Objects of the Bill can be obtained from:

The Department of Human Settlements: Chief Directorate: Legal Services
(for attention: Mr K Ngwenya)
Private Bag X 644
PRETORIA
0001
Tel: (012) 444 9081
E-mail: Khwezi.Ngwenya@dhs.gov.za