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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2024-148142**

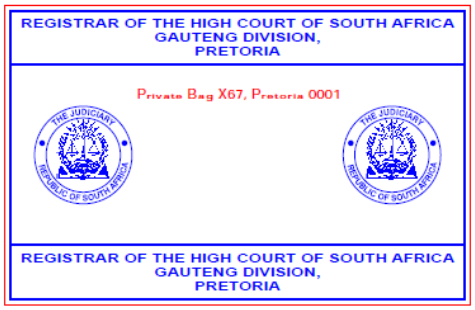
In the matter between:

SAKELIGA NPC	Plaintiff / Applicant / Appellant
and	
PPRA,MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION,MINISTER OF TRADE, INDUSTRY AND COMPETITION	Defendant / Respondent

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Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 17/12/2024 at 8:46:07 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:



Registrar of High Court of South Africa , Gauteng Division,Pretoria

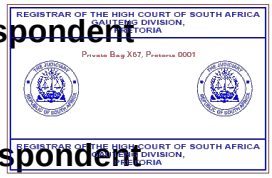
IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: _____/2024

In the application between:

SAKELIGA NPC	**1st Applicant**
and	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	**1st Respondent**
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	**2nd Respondent**
MINISTER OF TRADE, INDUSTRY AND COMPETITION	**3rd Respondent**



NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to make application to the above Honourable Court on for an order in the following terms:

1 That paragraphs (a)(iv) to (e) of the definition of “Property Practitioner” in Section 1 of the Property Practitioners Act 22 of 2019 be declared unconstitutional and invalid to the extent of such inconsistency.

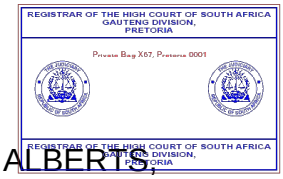
2 That section 50(a)(x) of the Property Practitioners Act 22 of 2019 be declared unconstitutional and invalid to the extent of such inconsistency.

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3 That Regulation 2 of the Regulations promulgated by the first respondent in Proclamation 47 of 14 January 2022 be declared unconstitutional and invalid to the extent of such inconsistency.

4 That the second respondent (and any other respondent who opposes this application) be ordered to pay the costs of this application, which costs include the costs of two counsel at scale C, where so employed.

5 That such further or alternative relief be granted to the applicant as the Court deems meet.



TAKE FURTHER NOTICE that the founding affidavits of TOBIAS VIVIAN ALBERTS, with attachments thereto, which is annexed to this notice of motion will be used in support of the relief sought herein.

FURTHER TAKE NOTICE that the applicant hereby appoints the address for service of all processes and documents in this application the address of KRIEK WASSENAAR & VENTER INC, 13 STAMVRUG STREET, VAL DE GRACE, PRETORIA, GAUTENG, as set out hereunder.

TAKE NOTICE FURTHER THAT if you intend to oppose the relief sought in this part of the Notice of Motion, you must file your Notice of Opposition within five (5) days of receipt of the application.

TAKE FURTHER NOTICE that if you intend to oppose this application you are required to:

(a) Within 15 (FIFTEEN) days after the date of receipt of this notice of motion, to deliver a notice to the applicant stating that you intend to oppose this application,

17/12/2024-8:46:07 AM

and in such notice, appoint an address within 25km of the office of the Clerk of this Honourable Court; and

(b) Within 15 (FIFTEEN) days after you have so given notice of your intention to oppose the application, deliver such answering affidavit(s) or other affidavit(s) together with any relevant documents as you may desire in answer to the allegations made by the applicant in the founding affidavit or any amendment or supplementation thereof.



TAKE FURTHER NOTICE that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

KINDLY TAKE FURTHER NOTICE that if you fail to notify the attorney for the applicant of your intention to oppose the application within 15 (FIFTEEN) days after date of receipt of this notice of motion and/or if you fail to serve and file an answering affidavit within 15 (FIFTEEN) days after expiry of the time period, this application will be set down on the unopposed motion roll on a date to be arranged with the Registrar.

TAKE FURTHER NOTICE that if no notice of intention to oppose and answering affidavit is received as aforesaid, the abovementioned applicant intends to make application to this Honourable Court on a date to be allocated by this Honourable Court.

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DATED AT PRETORIA ON 12 DECEMBER 2024

KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR THE APPLICANTS
3rd Floor, HB Forum Building
13 Stamvrug Street
Val de Grace
Pretoria
Tel: 012 803 4719
Email: kayla@kriekprok.co.za
REF: K Dames/QB1254

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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

TO: **THE REGISTRAR OF THE HIGH COURT**
PRETORIA

AND TO: **PROPERTY PRACTITIONERS REGULATORY AUTHORITY**
The First Respondent
36 Wierda Road East (Cnr Johan)
Wierda Valley
Sandton
Johannesburg

SERVICE BY SHERIFF

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AND TO: **MINSTER OF HUMAN SETTLEMENTS, WATER AND SANITATION**

The Second Respondent

Govan Mbeki House

240 Justice Mahomed Street

Pretoria

Gauteng

SERVICE BY SHERIFF

AND TO: **MINSTER OF TRADE, INDUSTRY AND COMPETITION**

The Third Respondent

77 Meintjies Street

Sunnyside

Pretoria

Gauteng



SERVICE BY SHERIFF

AND TO: **THE STATE ATTORNEY**

167 Andries Street

Arcadia

Pretoria

SERVICE BY SHERIFF

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION: PRETORIA

Case no: _____

In the matter between:

SAKELIGA NPC	Applicant
and	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	First Respondent
MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent

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FOUNDING AFFIDAVIT

I, the undersigned

TOBIAS VIVIAN ALBERTS

make oath and state:

1. I am a legal officer employed by the Applicant, employed at the Applicant's registered and business address at Block A, Floor 5, Loftus Park, 416 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

1

2. The facts herein deposed to fall within my personal knowledge unless otherwise indicated and are, to the best of my knowledge, both true and correct.

3. Where I make submissions of a legal nature, I do so on advice from the Applicant's legal representatives.

4. I am duly authorised to depose to this affidavit and bring this application as appears from a resolution attached hereto as **annexure X1**.



THE PARTIES

5. The Applicant is **SAKELIGA NPC**, a non-profit company with registration number 2012/043725/08 with registered address at Block A, Floor 5, Loftus Park, 416 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

6. The First Respondent is the **PROPERTY PRACTITIONERS REGULATORY AUTHORITY**, a statutory body established in terms of section 5 of the Property Practitioners Act, Act 22 of 2019 (hereinafter referred to as "*the Act*") with principal place of business at 63 Wierda Road East, Wierda Valley, Sandton, Gauteng Province.

7. The Second Respondent is **THE MINISTER OF HUMAN SETTLEMENTS, WATER AND SANITATION**, the Minister responsible for the administration of the Act, whose office is situated at Govan Mbeki House, 240 Justice Mahomed Street, Pretoria, Gauteng Province. The Minister is cited herein pursuant to the provisions of Rule 10A(1) of the Uniform Rules of the High Court.

8. The Third Respondent is **THE MINISTER OF TRADE, INDUSTRY AND COMPETITION**, the Minister responsible for the administration of the Broad-Based Black Economic Empowerment Act, Act 53 of 2005 (hereinafter referred to as "*the BEE Act*"), whose office is situated at 77 Meintjies Street, Sunnyside, Pretoria, Gauteng Province. The Minister is cited herein pursuant to the provisions of Rule 10A(1) of the Uniform Rules of the High Court.

PURPOSE OF THE APPLICATION

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GAUTENG DIVISION,
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GAUTENG DIVISION,
PRETORIA

9. This is an application in terms of section 172(1)(a) of the Constitution to declare unconstitutional and invalid certain provisions of the Act and Regulations promulgated thereunder as being inconsistent with the Constitution, alternatively irrational serving no legitimate Government purpose.

10. It will firstly be contended that Section 50(a)(x), which disqualifies a person who is not in possession of a valid BEE certificate, from being issued with a Fidelity Fund Certificate, contravenes section 22 of the Constitution.

11. It will secondly be contended that the definition of a "*Property Practitioner*" is overbroad and includes persons such as owners of property selling or renting such out without the intervention of an agent or intermediary, property developers selling or renting out their own properties without the intervention of agents or intermediaries, persons managing other persons' properties for reward, homeowner's associations, body corporates established to manage Sectional Title Schemes and other persons whilst the only legitimate Government purpose of the Act is to regulate the profession which can be

described as "*Estate Agents*" who perform the acts of letting, selling or managing properties of others as a profession on the instructions of or on behalf of any other person.

12. Furthermore, the purpose of the issue of a Fidelity Fund Certificate, is to ensure that property professionals handle the finances of their clients ethically and diligently. To withhold the issue of a Fidelity Fund Certificate for any other reason, such as the issue of a BEE Certificate, is irrational and illegal.



13. As an alternative to a declaration of invalidity, I am advised that it ought to be considered whether it may be possible to interpret the definition of "*Property Practitioner*" in a manner consistent with the legitimate Government purpose of the Act, by reading in certain words into the definition and if the Court so finds, the Applicant shall move for a declaratory order confirming such interpretation. I have, however, been advised that the Court is unlikely to follow this route.

14. Thirdly, I submit that Regulation 2 of the Regulations promulgated by the Second Respondent, purportedly in terms of "section 77" of the Act, be declared invalid as being outside of the powers bestowed upon the Minister in terms of section 70 of the Act.

15. The relief sought by the Applicant will impact on certain other provisions of the Act and/or the Regulations promulgated thereunder, and consequential relief will be sought to address those concerns.

4

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THE APPLICANT'S STANDING

16. The Applicant brings this application on behalf of its members in terms of section 38(e) of the Constitution, but also in the public interest in terms of section 38(d) and in the interest of all persons falling under the definition of "*Property Practitioners*" as defined in the Act. The Applicant specifically also acts in the interest of members who are required to procure a "valid BEE certificate" under section 50(a)(x) of the Act, in order to practice and conduct business as Property Practitioners.

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GAUTENG DIVISION,
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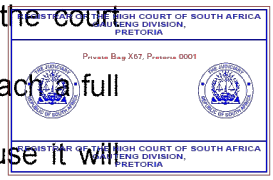
17. The Applicant is a business interest organisation with a supporter and donor base of more than 12,000 businesspeople, companies and organisations, and a network of more than 40,000 subscribers in South Africa.

18. The Applicant was established in 2011 and was incorporated and registered as a non-profit company in terms of the Companies Act, Act 71 of 2008, in 2012. The Applicant's main objective is the protection of constitutional rights, constitutional order, the rule of law, free-market principles, and a just and sustainable business environment within the Republic of South Africa.

19. In seeking to achieve its objectives, the Applicant works to promote a free market and economic prosperity to create a favourable business environment in the interest of its supporters and the common good. In order to give effect to its main objective, the Applicant also supports its supporters and the public at large, including providing legal support. Further, to achieve its objectives and to perform its functions and mandate, as an ancillary object, the Applicant seeks to act in the interest of its supporters and members of the public to

protect their businesses, their ability to meaningfully participate in the economy, their right to trade and practice a profession, and other constitutional rights.

20. What I have set out above is also evident from an extract of the Applicant's memorandum of incorporation, a copy of which I attach hereto marked **annexure X2**. I respectfully draw the court's attention to clause 4 of the memorandum of incorporation, which sets out in more detail the objects, ancillary objects, and the powers of the Applicant. I request that the court incorporate the content herein as if specifically set out. I do not attach a full copy of the memorandum of incorporation to these papers, because it will make these papers unnecessarily long. Should the court or any of the respondents wish to have sight of the full memorandum of incorporation, the Applicant shall make this available.



21. The relief sought herein also concerns the wider community of "Property Practitioners" as defined in the Act and specifically addresses the uncertainty as to whether they need to register as such with the First Respondent and obtain Fidelity Fund Certificates or risk their businesses being rendered illegal by not registering and obtaining such certificates.

22. Finally, I submit that it is also in the interest of the wider public that the relief sought be granted and that clarity be obtained about the ambit of the Act and the rights of the general public to institute claims against the Property Practitioner's Fidelity Fund should a contravention of the Act or the Regulations be perpetrated by such practitioners, since the Act has been promulgated for the protection of the public at large.

SECTION 22 OF THE CONSTITUTION

23. Section 22 of the Constitution provides:

"Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law."

24. I am advised that section 22 comprises two elements: the right to choose a trade, occupation or profession freely and the proviso that the practice of a trade, occupation or profession may be regulated by law.

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GAUTENG DIVISION,
PRETORIA

25. Although both the choice of trade and its practice is protected by section 22, the level of Constitutional scrutiny that attaches to limitations on each of these aspects differs:

25.1. If a legislative provision would, if analysed objectively, have a negative impact on the choice of trade, occupation or profession, it must be tested in terms of the criterion of reasonableness in section 36(1) of the Constitution.

25.2. If, however, the provision only regulates the practice of that trade and does not negatively affect the choice of trade, occupation or profession, the provision will pass constitutional muster so long as it passes the rationality test and does not violate any other rights in the Bill of Rights.

26. It is contended that the impugned provisions infringe on the citizen's right to choose their trade, occupation or profession and place restrictions on that practice which are irrational and serve no legitimate Government purpose.

THE LEGISLATIVE MATRIX

27. Prior to 1 February 2022, the date of commencement of the Act, the profession of Estate Agents was regulated by the Estate Agents Affairs Act, Act 112 of 1976 ("*the Old Act*").

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GAUTENG DIVISION,
PRETORIA

28. The definition of an Estate Agent in terms of the Old Act was set out in section 1 thereof:

" ***'Estate Agent'*** –

(a) means any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instructions of or on behalf of any other person-

(i) sells or purchases or publicly exhibits for sale immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas a seller or purchaser therefor; or

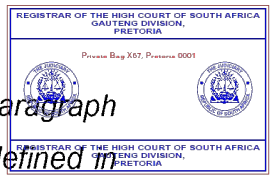
(ii) lets or hires or publicly exhibits for hire immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor therefor; or

(iii) collects or receives any moneys payable on account of a lease of immovable property or any business undertaking; or

(iv) renders any such other service as the Minister on the recommendation of the board may specify from time to time by notice in the Gazette;

(b) for purposes of section 3 (2) (a), includes any director of a company or a member who is competent and entitled to take part in the running of the business and the management, or a manager who is an officer, of a close corporation which is an estate agent as defined in paragraph (a);

(c) for purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30, 33 and 34B, includes-



(i) any director of a company, or a member referred to in paragraph (b), of a close corporation which is an estate agent as defined in paragraph (a); and

(ii) any person who is employed by an estate agent as defined in paragraph (a) and performs on his behalf any act referred to in subparagraph (i) or (ii) of the said paragraph;

(cA) for the purposes of sections 7, 9 (1) (a), 16, 26, 27, 28 and 33, includes any person who is employed by an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979), otherwise than as an attorney or an articled clerk, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i) or (ii) of paragraph (a) on behalf of such attorney or professional company;

(d) 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 (Act 53 of 1979), or an articled clerk as defined in the said section of that Act, 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: Provided that such an act is not 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 (Act 53 of 1979); or

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

(e) for the purposes of section 30 (2), (3), (4), (5), (6), (7) and (8) and of regulations made under section 33 (1) (h), includes any person who was an estate agent at the time when he or she was guilty of any act or omission which allegedly constitutes conduct deserving of sanction referred to in section 30: Provided that, for the purposes of this definition, 'advertise' does not include to advertise in compliance with the provisions of any law." (My emphasis).

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
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GAUTENG DIVISION,
PRETORIA

29. Important in this definition are the underlined words "*on the instructions of or on behalf of another person*".

30. The Old Act clearly applied to persons who act as agents on a mandate from others to sell or manage their properties. A legitimate purpose arises for regulation in that profession because Estate Agents regularly handle their client's money and need to properly account for it. As such, the Old Act falls within the ambit of regulating a trade or profession in section 22 of the Constitution.

31. The Old Act also contained, in section 27, a list of disqualifications to being issued with a Fidelity Fund Certificate. Those disqualifications all relate to the

question of whether an Estate Agent is a fit and proper person to be entrusted with a Fidelity Fund Certificate.

32. The Act, on the other hand, clearly exceeds the concept of an Estate Agent and the boundary of fit and proper. It has now created the all-encompassing definition of "*Property Practitioner*", which is defined in section 1 of the Act as follows:

" ***'Property Practitioner':***

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GAUTENG DIVISION,
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GAUTENG DIVISION,
PRETORIA

(a) means any natural or juristic person who or which for the acquisition of gain on his, her or its own account or in partnership, in any manner holds himself, herself or itself out as a person who or which, directly or indirectly, on the instructions of or on behalf of any other person-

(i) by auction or otherwise sells, purchases, manages or publicly exhibits for sale property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas[s] a seller or purchaser in respect thereof;

(ii) lets or hires or publicly exhibits for hire property or any business undertaking by electronic or any other means or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor in respect thereof;

(iii) collects or receives any monies payable on account of a lease of a property or a business undertaking;

(iv) provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or lease of a property or a business undertaking, including a provider of bridging finance and a bond broker, but excluding any

person contemplated in the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);

(v) in any other way acts or provides services as intermediary or facilitator with the primary purpose to, or to attempt to effect the conclusion of an agreement to sell and purchase, or hire or let, as the case may be, a property or business undertaking, including, if performing the acts mentioned in this subparagraph, a home ownership association, but does not include-

(aa) a person who does not do so in the ordinary course of business;

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
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GAUTENG DIVISION,
PRETORIA

(bb) where the person is a natural person and that person in the ordinary course of business offers a property for sale which belongs to him or her in his or her personal capacity;

(cc) an attorney or candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979); or

(dd) a sheriff as defined in section 1 of the Sheriffs Act, 1986 (Act 90 of 1986), when he or she performs any functions contemplated in paragraph (a) of this definition, irrespective of whether or not he or she has been ordered by a court of law to do so; or

(vi) renders any other service specified by the Minister on the recommendation of the Board from time to time by notice in the Gazette;

(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 timeshare and fractional ownership, in a property or property development;

(c) *includes any person who for remuneration manages a property on behalf of another;*

(d) *includes a trust in respect of which the trustee, for the acquisition of gain on the account of the trust, directly or indirectly in any manner holds out that it is a business which, on the instruction of or on behalf of any other person, performs any act referred to in paragraph (a);*

(e) *for the purposes of sections 34, 46, 48, 59, 60, 61 and 65 includes-*

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GAUTENG DIVISION,
PRETORIA
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(i) *any director of a company or a member of a close corporation who is a property practitioner as defined in paragraph (a);*

(ii) *any person who is employed by a property practitioner as envisaged in paragraph (a) and performs on his, her or its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of that paragraph;*

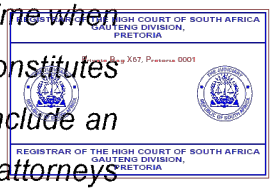
(iii) *any trustee of a trust which is a property practitioner as envisaged in paragraph (d);*

(iv) *any person who is employed by a property practitioner as envisaged in paragraph (b) and performs on its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of paragraph (a); and*

(v) *any person who is employed by a property practitioner contemplated in paragraph (a) or (b) to manage, supervise or control the day-to-day operations of the business of that property practitioner;*

(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), 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;*

(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, 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…"*

(My emphasis).

33. I draw the Honourable Court's attention to the words emphasised above, which make it clear that the words "*on the instructions of or on behalf of any other person*" qualify only those entities named in subparagraphs (a)(i) to (vi)

of the definition i.e., the typical "*Estate Agent*", but not the entities mentioned in sub-paragraphs (b) and (c).

34. Subparagraph (b) of the definition provides that the definition "*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 timeshare and fractional ownership, in a property or development.*"

35. I submit that this definition, read together with section 47(1) of the Act, now provides that a private seller who does not involve an intermediary in the transaction is also subject to registration as a "*Property Practitioner*" and liable to trade only if issued with a Fidelity Fund Certificate. The use of the singular implies that this provision also applies to a single transaction by a single seller.

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GAUTENG DIVISION,
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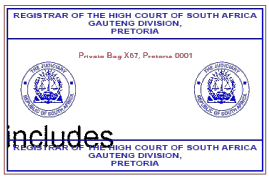
36. As such, any private homeowner who sells his or her home or apartment directly to any purchaser now falls under the definition of a "*Property Practitioner*" and is required to obtain a Fidelity Fund Certificate.

37. Likewise, property developers selling units from a development directly to the public (in order to save the purchaser the costs of an intermediary) will now also have to register as "*Property Practitioners*" and are required to obtain Fidelity Fund Certificates.

38. Further, persons who merely advertise or market such transactions and who previously did not fall under the definition of an Estate Agent, now also qualify as "*Property Practitioners*" (the definition of the word "*advertise*" that purports to exclude from the definition "*advertising in compliance with the provisions of*

any other law" is nonsensical in that all advertising must comply with the provisions of the law and resort under the watchful eye of the Advertising Regulatory Board. Moreover, it does not alter the meaning of the word "advertise" as used in sub-paragraph (b) so as to exclude advertising agencies or marketing firms from the ambit thereof.

39. This interpretation is reinforced by the possible exemption provided in Regulation 41.15, which exemption would not be necessary if the definition in sub-paragraph (b) were not overbroad.



40. Sub-paragraph (c) of the definition takes the matter to another level. It includes in the definition of "*Property Practitioner*" "*any person who, for remuneration manages a property on behalf of another*".

41. Whilst there is no difficulty with including a letting agent who collects rent and accounts to the owner for the rent received and money spent on managing the property of another in the definition (that is already provided for under subparagraph (a)(ii) or (iii) or (c)), the definition also includes a person who does not act as an intermediary and does not receive or has to account for money received but merely manages the property of another.

42. Naturally included therein is a caretaker of a block of flats, a farm manager employed to manage the farm of its owner or a factotum appointed to fix and maintain another person's property and a matron of a school or university residence. It would also notionally include the student who stays in an owner's residence and looks after his property whilst the owner is on holiday, for extra pocket money.

43. It is submitted that the definitions in sub-paragraphs (b) and (c) of the Act are overbroad and that, apart from the original governmental purpose to regulate the profession of Estate Agents, they serve no legitimate Government purpose.

44. This breadth of the definition cannot be cured by section 4 of the Act which, in section 4(1), empowers the First Respondent to exempt only singular applicants from compliance with any specific provision of the Act. The power in section 4(1) of the Act cannot be exercised to exempt entire industries or categories of persons. Nor can it be used by the Authority as a basis on which to undermine the provisions of the Act through exemption.

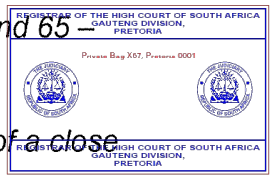
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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

45. This problem is illustrated in the Regulations promulgated in Government Gazette 45735 on 14 January 2022 where the Minister, whilst cross-referencing the definition of "*Property Practitioner*" to that contained in the Act, creates a separate category of Property Practitioners under the definition of "Estate Agent". This definition reads as follows:

> *"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;

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;

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;*

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

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;"*

46. From this definition only those Property Practitioners mentioned in subparagraph (a) of the definition of Property Practitioners in the Act are regarded as "estate agents". Other "Property Practitioners" are, however, also subject to the provisions of the Act.

47. Pursuant to the provisions of subsection (a)(vi) of the definition of "*Property Practitioner*" in section 1 of the Act, the Minister has also included the following persons as "*Property Practitioners*" in Regulation 39.1.1 and 39.1.2, which provide as follows:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

"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 and to 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 the 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) and (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 or

as a going concern or as part of a business or by means of transferring the beneficial ownership in such enterprise."

48. It is therefore submitted that the definition of "Property Practitioner" in the Act is unconstitutional since it infringes the provisions of section 22 of the Constitution.

REGULATION 2

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GAUTENG DIVISION,
PRETORIA
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GAUTENG DIVISION,
PRETORIA

49. It is submitted that Regulation 2 as promulgated by the First Respondent, is illegal and *ultra vires* and should be set aside.

50. The Minister's powers to make regulations are set out in Section 70 of the Act. It provides that the Minister may make regulations "regarding any matter that may or must be prescribed" in the Act.

51. Section 4 deals with Exemptions from the Act. It is a function specifically allocated to the PPRA to be exercised on application by the person wanting to be exempted. The Minister only has the power to deal with appeals against the PPRA's decision. The Minister does not have the power to exempt, by regulation certain categories of Property Practitioners.

52. I consequently submit that the Minister exceeded his powers by promulgating Regulation 2 which ought to be reviewed and declared unlawful.

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SECTION 50(a)(x)

53. The Act and Regulations place onerous duties on all "*Property Practitioners*":

53.1. They have to apply for a Fidelity Fund Certificate (section 47);

53.2. They are prohibited from rendering services without a Fidelity Fund Certificate (section 48);

53.3. They must display their Fidelity Fund Certificate (section 53);

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
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GAUTENG DIVISION,
PRETORIA

53.4. They must keep a trust account (section 54);

53.5. They must keep accounting documents and other documents (section 55);

53.6. They are not entitled to remuneration in certain circumstances (section 56);

53.7. They have to maintain mandatory indemnity insurance (section 57);

53.8. Limitations are placed on relationships with other property market service providers (section 58);

53.9. They have to comply with the code of conduct of Property Practitioners (section 61);

53.10. They have to complete a mandatory disclosure form for each transaction (section 67);

53.11. They are liable to be inspected, searched and their property seized by inspectors (section 25); and

53.12. They are subject to the Board's compliance and enforcement procedures (Chapter 4).

54. Section 50(1) of the Act also provides for a list of disqualifications from issuing Fidelity Fund Certificates. It provides:



"The Authority may not issue a Fidelity Fund Certificate to-

(a) any person who-

(i) is not a South African citizen and does not lawfully reside in the Republic;

(ii) has, at any time in the preceding five years, been found guilty of contravening this Act, the Estate Agency Affairs Act, or any similar legislation in any other jurisdiction;

(iii) has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or of any other offence for which such person has been sentenced to imprisonment without the option of a fine;

(iv) is of unsound mind;

(v) *has, at any time in the preceding five years by reason of improper conduct, been dismissed from a position of trust;*

(vi) *is an unrehabilitated insolvent;*

(vii) *is not in possession of a valid tax clearance certificate;*

(viii) *has been prohibited by any legislation, enacted in the Republic or elsewhere, from practicing as a property practitioner or from occupying a position of trust, including any juristic person to whom the disqualifications in subparagraphs (ii), (iii), (vi) and (vii) apply with the necessary changes;*

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GAUTENG DIVISION,
PRETORIA
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GAUTENG DIVISION,
PRETORIA

(ix) *has been found guilty by a competent tribunal or a court of law of unfairly differentiating, distinguishing or excluding directly or indirectly anyone on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;*

(x) *is not in possession of a valid BEE certificate;*

55. Section 50(a)(x) is unique to the profession of Property Practitioners, and does not apply to any other profession, being regulated pursuant to section 22 of the Constitution.

56. Considering the framing and definitions of the Act, it is unclear what exactly is meant by "valid" and "BEE certificate".

57. It seems as if the legislator might have intended to refer to "B-BBEE certificates" which are issued in terms of the Codes of Conduct promulgated under section 9 of the Broad-Based Black Economic Empowerment Act, Act 53 of 2003 (the "*BEE Act*").

58. The BEE Act is a separate Act which has its own purpose and contains its own procedures and enforcement mechanisms. Its purpose, procedures and enforcement mechanisms differ from that of the Property Practitioners Act.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001

59. Section 20(1) of the Act also provides that the Property Sector Transformation Charter Code as amended from time to time, applies to all Property Practitioners.

60. The current Property Sector Transformation Charter Code was promulgated in 2017 i.e. five (5) years prior to the coming into effect of the Act. It provided *inter alia* for phasing in of a broad-based black economic empowerment compliance and the compulsory submission of B-BBEE certificates or QSE scorecards when tendering for contracts.

61. Importantly, the Property Sector Transformation Charter Code provides that Exempted Micro Enterprises and Qualifying Small Enterprises are only required to obtain a sworn affidavit or Certificate from the Companies and Intellectual Property Commission on an annual basis confirming their annual turnover and level of Black ownership.

62. Whilst the BEE Act provides a framework of scoring mechanisms, it does not proscribe and criminalise persons from practising their trade, occupation or profession without first having obtained a B-BBEE certificate.

63. Section 50(a)(x) provides that the First Respondent may not issue a Fidelity Fund Certificate to any person who "*is not in possession of a valid BEE certificate*". If it is to be understood that a "valid BEE certificate" refers to a B-BBEE certificate under the BEE Act, it would, in effect, proscribe and criminalise a property practitioner who does not possess such a "valid" "BEE certificate".

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GAUTENG DIVISION,
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GAUTENG DIVISION,
PRETORIA

64. The Act does not define or specify the requirements of "a valid BEE certificate" and it is left to the whims of the First Respondent to determine whether such certificate is "valid" or "invalid".

65. The First and Second Respondents are selective, and I submit unlawfully so, in their application of this requirement:

65.1. On 13 February 2024, the First Respondent issued a notice, a copy of which is attached marked **annexure X3**, to all principal Property Practitioners, reminding them that, in terms of section 50(a)(x) of the Act, the First Respondent may not issue a Fidelity Fund Certificate to any person who is not in possession of a valid BEE certificate;

65.2. At a webinar for property practitioners, hosted by the First Respondent, titled "BEE Compliance Webinar" held on 13 March 2024, the First Respondent presented a PowerPoint presentation, a

copy of which is attached marked **annexure X4**, wherein the First Respondent *inter alia* stated that:

65.2.1. based on Regulation 41.20 of the Regulations, natural persons who apply for a Fidelity Fund Certificate are exempted from complying with the requirement of section 50(a)(x) of the Act.

65.2.2. A "non-compliant contributor" would be any person who is unable to meet a minimum Level Eight threshold in terms of the Property Sector Scorecard.

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GAUTENG DIVISION,
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Private Bag X67, Pretoria 0001
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GAUTENG DIVISION,
PRETORIA

65.3. The First Respondent's statements regarding Regulation 41.20 are based on the Regulations, specifically Regulation 41.10 and 41.17 to 41.21 which resort under Schedule 1 to the Regulations and purport to relate to "Administrative Matters Relating to Exemptions" and which the Second Respondent has published relying on their power in terms of section 70(1)(a) of the Act, being incidental matters of a procedural or administrative nature.

65.4. The First and Second Respondents have therefore indicated that the requirement of section 50(a)(x) of the Act is only applicable to legal personae and not to natural persons, whilst the Act does not draw that distinction.

65.5. Furthermore, the power to grant any exemption from a provision of the Act is not an incidental matter of a procedural or administrative nature

but a substantive act which is solely afforded to the First Respondent in terms of section 4 of the Act.

65.6. In publishing the exemptions in the Regulations, the First Respondent has acted unlawfully and *ultra vires* the Act.

66. Subsequent to the 13 March 2024 webinar, the First Respondent proceeded to reject Fidelity Fund Certificate applications if the person applying fails to submit a B-BBEE certificate issued by a SANAS-accredited certifying agency. Moreover, the First Respondent proceeded to deem any such certificates that fail to meet the minimum Level Eight threshold (a non-compliant certificate under the Property Sector Scorecard) to be an "invalid" certificate.

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
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GAUTENG DIVISION,
PRETORIA

67. On 13 August 2024, the First Respondent sent letters to industry representative bodies in which it informed such bodies that it would be reviewing its position on what constitutes a "valid BEE certificate" seeing that the First Respondent was advised that "*the term "valid" in the context of BEE certificates does not imply "compliant"*. A copy of one of these letters, which has since circulated amongst property practitioners, is attached hereto as **annexure X5.** The First Respondent is clearly also unable to make sense of how to deal with section 50(a)(x).

68. Apart from the legal objections to the requirement of section 50(a)(x), an applicant for such a certificate is put to considerable expense in obtaining the services of a SANAS accredited certifying agency, whilst the result is a meaningless document.

69. I further submit that the requirement of a BEE certificate as a prerequisite to the issuing of a Fidelity Fund Certificate is also irrational, since the purpose of a Fidelity Fund Certificate is to ensure that Property Practitioners are honest in dealing with their client's money. The issue of a BEE certificate has nothing to do with honesty or the handling of a client's money. There is no rational connection between the requirement for a BEE certificate and the issue of a Fidelity Fund Certificate.

70. Consequently, section 50(a)(x) is reviewable on the grounds of irrationality as well.

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
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GAUTENG DIVISION,
PRETORIA

71. One need only refer to the 13 March 2024 webinar's PowerPoint to see that the process of obtaining a B-BBEE certificate in terms of the BEE Act is a costly and pyrrhic exercise.

72. The requirement in section 50(a)(x) determines, in an irrational manner whether a person may enter the profession of property practitioner or, having entered, is entitled to continue so practising.

73. It is also clear that the purposes of these Acts are very different, and that each statute is directed at achieving different goals. The stated aim of the BEE Act is promoting black economic empowerment. It has a legal life of its own. It has its own compliance mechanisms and determines who is and who is not bound thereby.

74. The Act, on the other hand, has as its primary objective the regulation of Property Practitioners. It provides for the establishment of a transformation

fund, but the transformation fund is not aimed at limiting entry to the profession.

75. The First Respondent does not fall within the statutory powers of the structures set up in terms of the Act to enforce the BEE Act.

76. The provision of section 50(a)(x) therefore clearly exceeds the boundaries of regulating the profession, is irrational and prevents the citizen from exercising their choice to enter or stay in the profession.

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

77. In the premises, it is unconstitutional for want of compliance with section 22 of the Constitution.

THE APPLICATION FORM

78. In the prescribed application form to be submitted by all persons applying for a Fidelity Fund Certificate or registration certificate, this overbroad and wide ambit of the Act becomes clear. I attach hereto as **annexure X6** a copy of that form.

79. On page 3 thereof, an applicant is required to indicate "*the industry in respect of which a Fidelity Fund Certificate is being applied for*".

80. Reference is therein made to auctioneers, bond originators, homeowners associations, managing agents, property facilitators and intermediaries, business brokers, developers, timeshare, property advertising platforms, payment processing agents, attorneys' employees and then "Property Practitioners".

81. Notable for its absence is any reference to "Estate Agents".

82. Apart from the fact that these denominations create untold confusion, it illustrates the fact that the First Respondent understands its authority to extend to property developers, bond and bridging finance originators (who are regulated by the Financial Advisory and Intermediary Services Act, Act 37 of 2002), advertising agencies (who are regulated by the Advertising Regulatory Board), and persons involved in property timesharing schemes (who are regulated by the Property Timeshare Control Act, Act 75 of 1983).

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

83. The Act does not have a transition clause which retains the right of persons currently practising outside the ambit of the Act, or requiring them to convert their present states to Property Practitioners. Their practices are simply proscribed and rendered criminal. The only way in which a person can become a "Property Practitioner" is to first register as a "Candidate Property Practitioner", undergo certain training, pass certain qualifying examinations and thereafter register as a Property Practitioner and be issued with a Fidelity Fund Certificate.

84. Neither the Act nor the Regulations make any provision for the education and training of Property Practitioners as a whole.

85. Following the introduction of the Act, the First Respondent was inundated by queries as to how such training would work under the Act.

31

86. In a press statement dated 30 June 2022, the first Respondent stated that the "Education Regulations" existing under the old Act will continue to apply. A copy of the press statement is attached hereto as **annexure X7**.

87. I attach hereto as **annexure X8** a copy of those regulations. I point out that they only apply to Estate Agents, i.e. that category of Property Practitioners as defined in subparagraph (a)(i) to (iii) of the definition in the Act. They do not provide or allow for persons currently trading as property developers, members of homeowners associations, property advertising platforms or property managers to be trained.

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

88. As such, those persons are prohibited from trading and they have no way of legitimising their trades or professions. It will not be a legitimate answer for the Respondents to contend that they will not enforce the Act until such regulations have been issued.

89. Having regard to the obvious deficiencies of the Regulations to the Act in this respect, the President of the Republic of South Africa ought not have promulgated the Act until such time as the necessary Regulations were in place and could be implemented.

90. I submit that the provisions of the Act, and more particularly section 50(a)(x) thereof, effectively prohibit the choice of trade, occupation or profession of all persons who are included in the definition of Property Practitioners.

91. Those persons include, property developers, advertising agencies, timeshare developers and private sellers. The current definition of Property Practitioners

which include those categories of persons, is irrational and makes it impossible for such persons to choose and practice their trades or professions because it is currently impossible for them to be registered as such and obtain Fidelity Fund Certificates, an exercise which will in fact be fruitless because those persons do not handle their clients' money.

92. Added to their burden is the compulsory compliance with section 50(a)(x), which is irrational and serves no legitimate government purpose.

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
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GAUTENG DIVISION,
PRETORIA

LIMITATION OF RIGHTS IN TERMS OF SECTION 36 OF THE CONSTITUTION

93. Legislative provisions restricting the choice of trade, occupation or profession must be tested in terms of the criterion of reasonableness in section 36(1) of the Constitution. I submit that the Act does not pass that test:

93.1. The nature and ambit of the limitation is such that it would prevent all property developers, property managers, homeowners associations and other Property Practitioners that do not fall under subparagraph (a)(i) to (iii) of the definition of Property Practitioner in the Act, such that, since 1 February 2022 they are trading illegally and have no way of regularising their position. New entries into the trade are, for all practical purposes, impossible. Their rights in terms of section 22 of the Constitution are rendered nugatory.

93.2. Whereas the limitation and regulation of the conduct of Estate Agents has been commonplace for many years, there is no legitimate

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government purpose which is served by this limitation imposed on other persons falling under the definition of Property Practitioner.

94. The limitation placed on Section 50(a)(x) is also not warranted by section 36(1) of the Constitution, and adequate provision for Black Economic Empowerment is made in the BEE Act, which argument will be fully canvassed during legal argument.

95. I therefore submit that the limitations imposed by the Act are not warranted by section 36(1) of the Constitution and that the impugned provisions should be declared invalid and unconstitutional.

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GAUTENG DIVISION,
PRETORIA
Private Bag X67, Pretoria 0001
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GAUTENG DIVISION,
PRETORIA

SOLVING THE PROBLEM BY INTERPRETATION

96. I am advised that the Court will consider the possibility of solving the problem by interpretation. The only way that interpretation may possibly resolve the difficulties pointed out above, is to read into subparagraphs (b) and (c) of the definition of "Property Practitioner" the words "on the instructions of or on behalf of any other person". I have however been advised that the structure of the definition clearly indicates a legislative intent to omit those words in subparagraphs (b) and (c) and that, "reading in" of those words will transgress the separation of powers of legislation and adjudication.

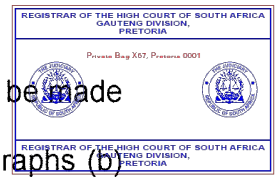
97. Moreover, having regard to the ostensible purpose of the Act to regulate the trade and professions within property sector, the Act has adopted overbroad definitions which affect other industries which do not properly fall within the

property sector such that a resolution by way of interpretation is not possible and is best left to the legislature.

98. The Applicant's complaint regarding section 50(a)(x) cannot be resolved by any interpretative exercise.

99. It is therefore submitted that interpretation cannot solve the problem.

RELIEF SOUGHT



100. In the premises I submit that the only method in which the Act can be made compliant with section 22 of the Constitution is by declaring paragraphs (b) and (c) of the definition of Property Practitioner and section 50(a)(x) of the Act and Regulation 2 unconstitutional and invalid.

101. In the premises I pray for an order as set forth in the Notice of Motion.

DEPONENT

THUS SIGNED AND SWORN TO BEFORE ME AT Pretoria. ON THIS 12 DAY OF DECEMBER 2024, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT IT IS BOTH TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT THE PRESCRIBED OATH WILL BE BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS
FULL NAMES : COMMISSIONER OF OATHS
DESIGNATION : CHRISTEL HUISAMEN
ADDRESS : 135 JACK HINDON STREET
PRETORIA NORTH
RO-23/09/2022

35

SAKELIGA NPC
REG: 2012/043725/08

DELEGATION OF AUTHORITY

I the undersigned

PIETER JACOBUS LE ROUX

hereby delegate to **TOBIAS VIVIAN ("TIAN") ALBERTS**, the following powers and authority:

1) The authority to authorise and/or institute on behalf of Sakeliga, such further legal proceedings which may include urgent proceedings, against the **Property Practitioners Regulatory Authority (PPRA) and such further parties as may be necessary**, which includes but is not limited to appeals and/or reviews of any matter related thereto, and/or the right to have Sakeliga appear, argue, act, support and/or oppose any matter before any state authority or judicial body in furtherance of this delegation.

2) the authority to represent Sakeliga in all matters referred to in paragraph 1) above, and to sign any document on behalf of and in the name of Sakeliga as its lawful representative.

3) the authority to incur costs on behalf of Sakeliga and to appoint, instruct and direct attorneys, experts and/or consultants to assist Sakeliga with any matters relating to paragraph 1) above.

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SIGNED AT PRETORIA ON 12/11/2024

Pieter J le Roux (Dec 11, 2024 12:33 GMT+2)

PIETER JACOBUS LE ROUX - CEO

17/12/2024-8:46:07 AM

X2

SAKELIGA

REPUBLIEK VAN SUID-AFRIKA
MAATSKAPPYEWET, 71 VAN 2008

AKTE VAN OPRIGTING VAN 'N MAATSKAPPY SONDER WINSOOGMERK MET LEDE

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SAKELIGA NPC
REG: 2012/043725/08
(hierna die "Maatskappy" genoem)

Hierdie Akte van Oprigting ("Akte") is behoorlik aanvaar by wyse van 'n Spesiale Resolusie van Direkteure kragtens die Maatskappyewet 71 van 2008 ("die Wet") tydens 'n vergadering van die Direksie gehou te PRETORIA op 28 Mei 2019 2019 en is vir identifikasiedoeleindes deur die Voorsitter van die Direksie onderteken.

Kragtens artikel 16(9)(b)(i) van die Wet sal hierdie Akte van krag kom met die liassering daarvan.

VOORSITTER

teenstrydigheid effektiewelik aan te spreek, en

3.3.3. Die aksies neem wat binne hul uitsluitlike diskresie nodig is om die oortreding, botsing en/of teenstrydigheid aan te spreek, wat insluit maar nie beperk is tot die voorstel van wysigings tot die Akte en die belê van 'n spesiale Ledevergadering ten einde daardie wysigings goed te keur.

4. DOELSTELLINGS EN MAGTE VAN DIE MAATSKAPPY

4.1. Ter nakoming van artikel 1 van bylaag 1 tot die Wet, verklaar die Maatskappy hiermee die volgende hoofdoelstellings:

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4.1.1. Die bevordering van konstitusionele orde, vryemarkbeginsels en 'n kapitaalkragtige, regverdige, en volhoubare sake-omgewing in die Republiek;

4.1.2. Die skepping van 'n selfstandige sakegemeenskap in die Republiek;

4.1.3. Die behoud van eiendomsreg, holisties gesien, ooreenkomstig die Grondwet van die Republiek;

4.1.4. Om, sonder inperking, bydraes en skenkings te doen tot die Helpende Hand Beursfonds en/of die Solidariteit Helpende Hand NPC;

4.1.5. Om kollektief namens Lede, ondersteuners en die publiek met Owerhede te onderhandel en verhoudinge met Owerhede asook plaaslike, nasionale en internasionale instansies en persone te beding te einde die doelstellings van die Maatskappy te bevorder;

4.2. Die Maatskappy verklaar hiermee die volgende aanvullende doelstellings, maar sonder inperking van die algemene aard van die Maatskappy hoofdoelstellings:

4.2.1. Om as 'n openbare sakewaghond wat fokus op die regte en belange van sy Lede, ondersteuners en lede van die publiek in die algemeen, op te tree;

4.2.2. Om ondersoek in te stel oor gevalle waar die regte van Lede, ondersteuners asook die publiek oor die algemeen, geskend en/of ingeperk word, en om waar nodig ook op te tree ten einde daardie regte te beskerm of te bevorder.

4.3. Die volgende magte word ook, sonder inperking van die algemene magte van die Maatskappy soos uitgeoefen Direksie kragtens die Wet, aan die Maatskappy verleen:

4.3.1. Om deur selfregulering en privaat institusionele infrastruktuur 'n alternatiewe

sake-omgewing te skep waarbinne ekonomiese aktiwiteit voortgesit kan word;

4.3.2. Om die Maatskappy se Lede, ondersteuners en lede van die publiek in die uitoefen van hul belange en regte, hetsy op plaaslike, nasionale of internasionale vlak, by te staan, te adviseer, te ondersteun en/of te verteenwoordig.

4.3.3. Om die publiek oor die algemeen by te staan met die bevordering van hul regte op `n plaaslike, nasionale en internasionale vlak;

4.3.4. Om 'n vrye, onafhanklike en goedgunstige sake-omgewing in die Republiek te beskerm, stimuleer en waar nodig te skep;

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4.3.5. Om regsgedinge in te stel, daartoe toe te tree, om sake te opponeer en/of te verdedig, om as *amicus curiae* in sake op te tree, deel te neem aan appelle, hersienings, en om voor enige Owerheid te verskyn, submissies te maak, te argumenteer, op te tree, teen te staan en/of te ondersteun.

4.3.6. Om met die Owerhede, politieke partye, lede van die sakewêreld, die media asook enige ander lid van die publiek te kommunikeer, te onderhandel, in te debat te tree en om ook waar nodige daardie persone en/of instansies te voorsien met voorstelle, vertoë, submissies, verslae, argument en/of inligting.

4.3.7. Om navorsing ter bevordering van hierdie doelstellings te doen asook om inligting in te samel, statistiek op te bou, te verwerk en te publiseer;

4.3.8. Om onafhanklike regsadvies oor enige saak wat enige doelstelling van hierdie Akte raak, te bekom en waar nodig om ook regsverteenwoordiging aan te stel om die Maatskappy te verteenwoordig in die bevordering van hierdie doelstellings.

4.3.9. Om met ander organisasies of persone met soortgelyke doelstellings te onderhandel, ooreenkomste te sluit, projekte te hardloop, sake te bevorder, befondsing te voorsien, befondsing te ontvang, ondersteuning te bied en/of te affilieer.

4.3.10. Om deel te neem in die bestuur, beheer of aktiwiteite van enige ander organisasie wat soortgelyke doelstellings as die van die Maatskappy het en om in hulle te belê, belange te bekom en/of om vennootskappe of samewerkingsooreenkomste met hulle aan te gaan.

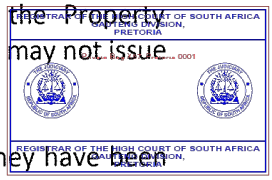
4.3.11. Om enige persoon of organisasie te vergoed vir hul dienste gelewer aan of

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NOTICE TO ALL PRINCIPAL PROPERTY PRACTITIONERS: COMMENCEMENT OF THE PROCESS OF OBTAINING A BEE CERTIFICATE

Principal property practitioners are reminded that, in terms of section 50(a)(x) of the Property Practitioners Act, 22 of 2019 (PPA), the Property Practitioners Regulatory Authority (PPRA) may not issue a fidelity fund certificate to any person who is not in possession of a valid BEE certificate.



Existing principal property practitioners are, therefore, advised that it is essential that they have been issued with, and are in possession of, a valid BEE certificate prior to the renewal date of any fidelity fund certiifcate currently held. New applicants will, of course, be required, in addition to the other prescribed registration requirements, to provide satisfactory evidence that they are in possession of a Black Economic Empowerment (BEE)certificate before a valid fidelity fund certiifcate may be issued to them. Therefore, it is imperative that existing principal property practitioners commence the process of obtaining a BEE certificate as soon as possible.

The PPRA is committed to ensuring and expediting positive transformation within the property sector so as to reflect the demographics of a democratic South Africa. The PPRA, to this end, is mandated to enforce and assess measures that actively promote an inclusive and integrated property sector and being in possession of a valid BEE certificate is but one of the necessary means to the attainment of this essential imperative. We will conduct a webinar in due course and provide guidance to all stakeholders.

Issued by:
Property Practitioners Regulatory Authority
Date: 13 February 2024

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Compliance

What this presentation covers…

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- The status of the Property Sector [PS] and the vision of an inclusive and integrated property sector
- The gazetting of Property Practitioners Act, 22 of 2019 (PPA) in 2022 and the role of the Property Practitioners Regulatory Authority (PPRA)
- The importance of BEE in the PS and specifically with respect to the Issuing of Fidelity Fund Certificates
- An introduction to BEE, the Property Sector Codes (PSC) and the 6-Elements that form the basis of The Codes
- The Verification Process and the 'Way Forward'

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The PPRA

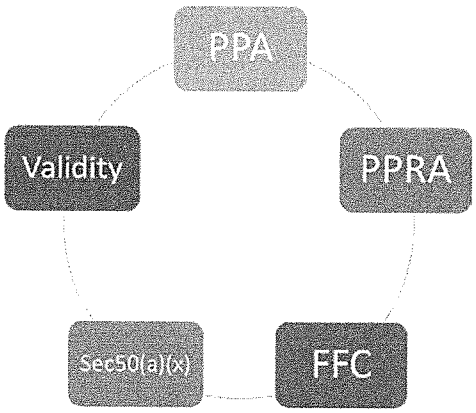
Our vision is that of a transformed, professional, and well-regulated property sector in a spatially integrated society.

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BEE, the PPRA and the FFC

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REGULATION

EDUCATION

TRANSFORMATION

4

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Sole Proprietor Exemption

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In addition natural persons, who apply for the FFC, are exempted from the having to have a BEE certificate.

- Regulation 41.20 states: "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."
- Section 50(x) relates to the provision in the Act that deals with disqualification from being issued with a FFC, and sub-regulation (x) deals with the requirement to be in possession of a valid B-BBEE certificate. Thus, it is claimed, that natural person (Sole Proprietors) need not obtain BEE certificates.

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Youth in Property

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The largest market opportunity

Market savvy

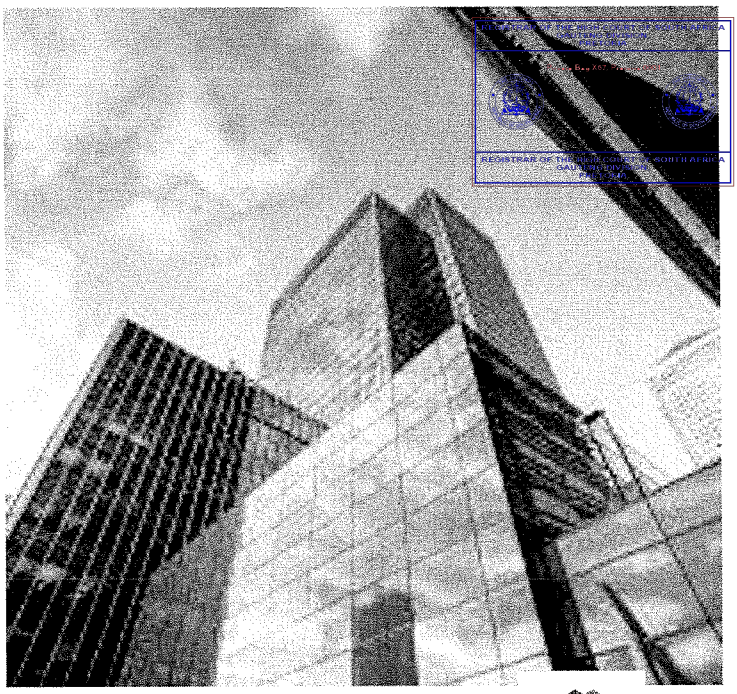
Tech and communication savvy

Hungry for learning, mentorship and opportunity



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An introduction to BEE, the Property Sector Codes (PSC) and the 6-Elements that form the basis of The Codes



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EME, QSE or Generic?

		Asset Based	Service Based	Estate Agencies /Broking/Valuation Companies
Exempt Micro Enterprise	Net Assets	Less than R80 M		
	Annual Turnover		Less than R10 M	Less than R2.5 M
Qualifying Small Enterprise	Net Assets	Less than R400 M		
	Annual Turnover		Less than R50 M	Less than R35 M

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Amended Property Sector Code Points

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BEE ELEMENTS	QSE WEIGHTINGS	GENERIC WEIGHTINGS
OWNERSHIP	27 POINTS	30 POINTS (+ 3)
MANAGEMENT CONTROL	9 POINTS	9 POINTS (+ 2)
	11 POINTS (+ 2)	13 POINTS (+ 3)
SKILLS DEVELOPMENT	17 POINTS (+ 3)	19 POINTS (+ 3)
ENTERPRISE AND SUPPLIER DEVELOPMENT	35 POINTS	39 POINTS (+ 4)
SOCIO ECONOMIC DEVELOPMENT	2 POINTS	2 POINTS
~~ECONOMIC DEVELOPMENT~~	~~4 POINTS~~	~~5 POINTS~~
TOTAL	105 POINTS (+ 5)	117 POINTS (+ 15)

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How the points are recognised / BEE level & Discounting

BEE Status	Qualification	Recognition Level
Level One Contributor	≥100 points on the amended Property Sector Scorecard	135%
Level Two Contributor	≥95 but <100 points on the amended Property Sector Scorecard	125%
Level Three Contributor	≥90 but <95 on the amended Property Sector Scorecard	110%
Level Four Contributor	≥80 but <90 on the amended Property Sector Scorecard	100%
Level Five Contributor	≥75 but <80 on the amended Property Sector Scorecard	80%
Level Six Contributor	≥70 but <75 on the amended Property Sector Scorecard	60%
Level Seven Contributor	≥55 but <70 on the amended Property Sector Scorecard	50%
Level Eight Contributor	≥40 but <55 [on the amended Property Sector Scorecard	10%
Non Compliant Contributor	<40 on the amended Property Sector Scorecard	0%

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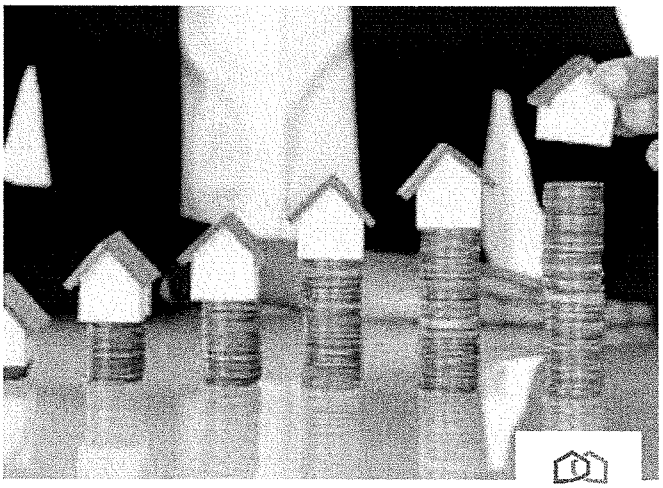
10

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ESD

Procurement,

Enterprise and Supplier Development



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ESD – Procurement Points Table

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MEASUREMENT CATEGORY AND CRITERIA	GENERIC		QSE	
PROCUREMENT SPEND BASED ON THE BEE PROCUREMENT RECOGNITION LEVELS AS A PERCENTAGE OF TOTAL MEASURED PROCURMENT SPEND	Weighting	Compliance	Weighting	Compliance
BBEE Procurement Spend fromall Empow ering Suppliers	2	80%	10	60%
BEE Procurement Spend fromall Empow ering Suppliers that are Qualifying Small Enterprises	2	15%		
BEE Procurement Spend fromall Empow ering Suppliers that are Exempted Micro-Enterprises	2	15%		
BEE Procurement Spend fromall Empow ering Suppliers that are at least 51% black ow ned	8	40%	15	15%
BEE Procurement Spend fromall Empow ering Suppliers that are more than 30% black w omen-ow ned based	4	12%		
Percentage of procurement spend w ith at least 51% Black ow ned Property Service enterprises	6	40%		

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The B-BBEE Recognition Levels and Preferential Procurement – "Who you buy from counts"

B-BBEE Status	Qualification	Recognition level
Level One Contributor	≥100 points on the amended Property Sector Scorecard	135%
Level Two Contributor	≥95 but <100 points on the amended Property Sector Scorecard	125%
Level Three Contributor	≥90 but <95 on the amended Property Sector Scorecard	110%
Level Four Contributor	≥80 but <90 on the amended Property Sector Scorecard	100%
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R1000 spend is recognised as R1350

R1000 Spend is recognised as R1000

R1000 Spend is recognised as R100

13

Bonus Points

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BEE Procurement Spent from designated group suppliers that are at least 51% Black Owned

Bonus points for graduation of one or more Enterprise Development beneficiaries to the Supplier Development level

Bonus points for creating one or more job directly in the beneficiary entity as a result of supplier Development or enterprise development initiatives by the measured entity

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Preferential Procurement- Easy Wins



Every rand you spend has a B-BBEE value based on the suppliers BEE Level. Use providers offering quality service with the highest BEE Level

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All support services

- Cell Phone Providers
- Stationery Suppliers
- Printing Company
- Cleaning Companies



Training Providers: e.g. Charter Academy, level 1 BBBEE (135% procurement spend)

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ESD – Ent Dev and Sup Dev Points Table

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MEASUREMENT CATEGORY AND CRITERIA	GENERIC		QSE	
SUPPLIER DEVELOPMENT	Weighting	Compliance	Weighting	Compliance
Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target.	10	2% of NPAT	5	1% of NPAT
ENTERPRISE DEVELOPMENT				
Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured Entity as a percentage of the target.	5	1% of NPAT	5	1% of NPAT

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Easy Wins Supplier and Enterprise Development

Skill transfer – Mentoring at least 12 days per year assisting Black EMEs and QSEs with their business operations.

Grants

Infrastructure Support – Provide an office rent free.

Loans made to beneficiary

Direct costs incurred in hastening the development of black beneficiaries

Overheads costs – e.g., pay staff members salary

Facilitate access to credit facilities.

Provide Seed or Development Capital

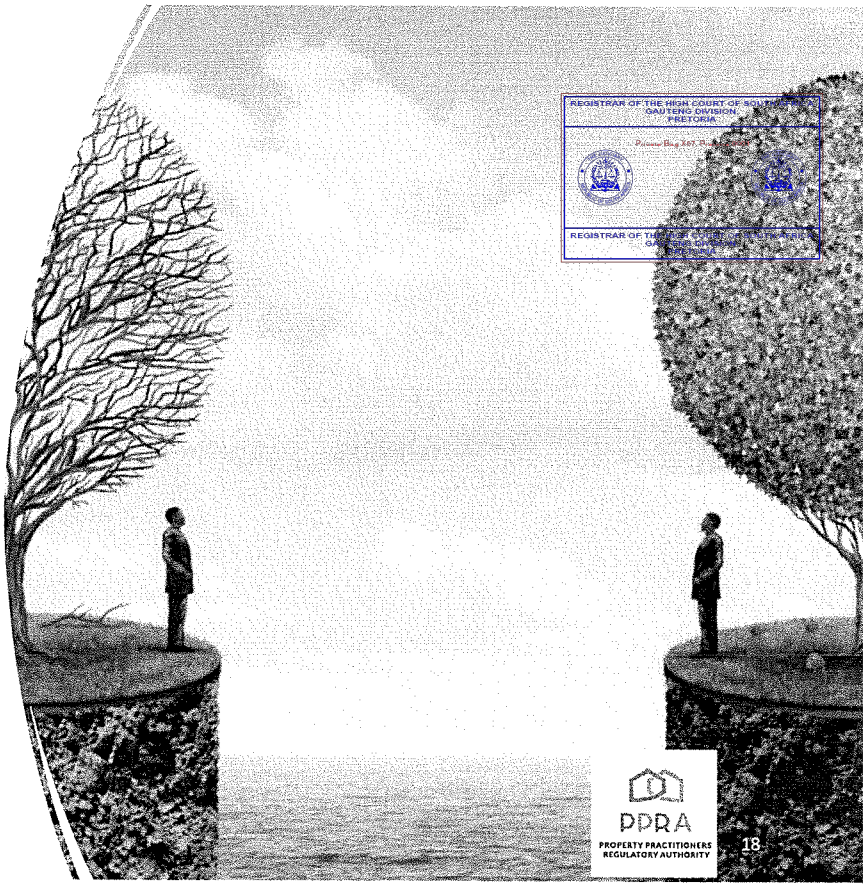
Signing a longer-term Contract with a BEE training company.

The above are only a few of the many options listed in the Code

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SED:

Socio-Economic Development



Socio-Economic Development Scorecard



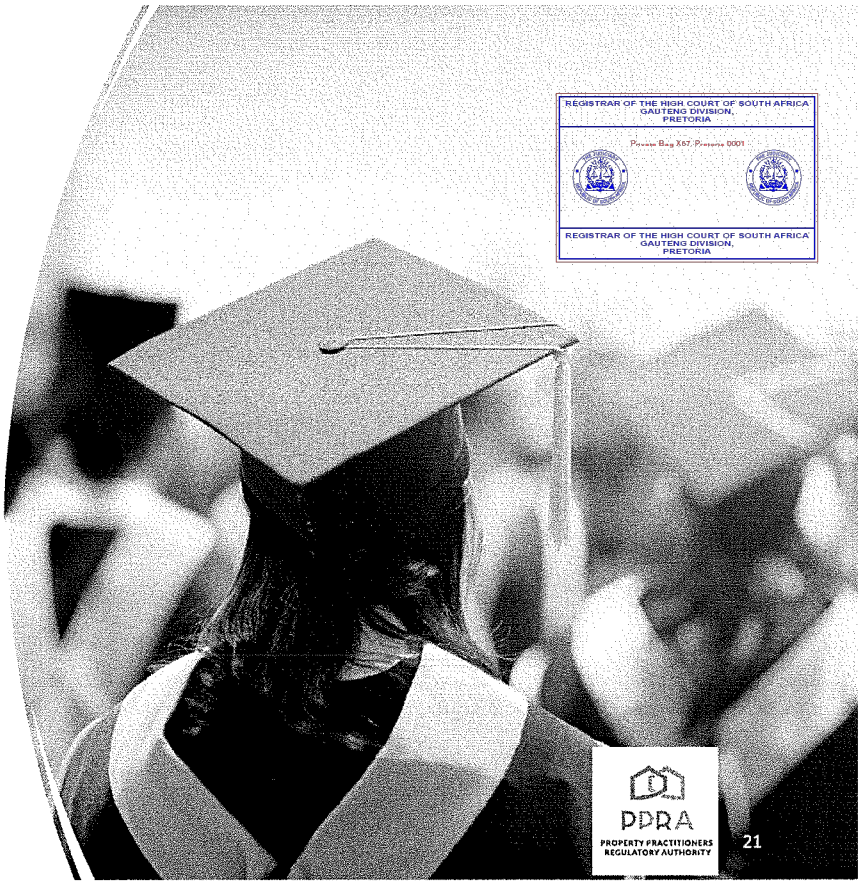
Criteria	Weighting Points	Compliance Target
Average annual value of all Socio-Economic Development Contributions and Qualifying Socio-Economic Development Contributions made by the Measured Entity as a percentage of the target.	2,00	1,00% of NPAT

Socio Economic Development Projects

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Community education facilities
Programmes which promote the sector (secondary and tertiary education)
Consumer education on property ownership
Community training for unemployed
Development programmes for black designated groups
Support of conservation projects, e.g. community clean-up projects, garden initiatives, preservation of flora and fauna
Support of arts & culture development programmes
HIV and AIDS awareness and support of community clinics
Support of sport developmental programmes

SD: Skills Development



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MEASUREMENT CATEGORY AND CRITERIA	Generic		QSE	
	Weighting	Compliance	Weighting	Compliance
Skill Development expenditure on any programme specified in the learning programme matrix for Black people as a percentage of leviable amount				
SD Expenditure on Learning Programmes for Black people	8	5%	12	3%
SD Expenditure on Learning Programmes for black people with disabilities	5	0.3%		
SD expenditure on learning programmes for Black Females			5	1%
Learnerships, apprenticeships and internship as a percentage of total employees				
Number of black employees participating in Learnerships, Apprenticeships and Internships	4	2.5%		
Number of previously unemployed black people participating in Learnerships, Apprenticeships and Internships	4	2.5%		
Bonus Points				
Number of black people in any sector absorbed by the measured entity and industry entity at the end of the learnership, internship or apprenticeship programme	3	100%	3	100%

Skills Development Spend and Points

- Your total Skills Development spend does not have to come out of your own pocket.

- Monies received from the SETA Grants can be used on training thereby contributing to your B-BBEE Skills spend.

Remember: Every company with payroll> R500K p.a. is required to pay 1% in skills levies.

QSE	Generic
3% of Payroll	5% of Payroll
17 Points	19 Points
Minimum of 40%	Minimum of 40%

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The Learning Programme Matrix

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	Narrative Description	Delivery Mode	Learning Achievement
A	Institution-based theoretical instruction alone – formally assessed by the institution	Institutional instruction - universities and colleges, schools, abet providers	Degree, diploma or certificate issued by institution of learning
B	Institution-based theoretical instruction as well as some practical learning with an employer or in a simulated work environment – formally assessed through the institution	Institutional instruction or workplace or workplace environment - universities and colleges, schools, ABET providers and workplace	Degree, diploma or certificate issued formal institution of learning
C	Recognised or registered structured experiential learning in the workplace that is required after the achievement of a qualification – formally assessed by a statutory occupational or professional body	Structured learning in the workplace with mentoring or coaching	Occupational or professional knowledge and experience formally recognised through registration or licensing
D	Occupationally-directed instructional and work-based learning programme that requires a formal contract – formally assessed by an accredited body	Institutional instruction together with structured, supervised experiential learning in the workplace	SAQA registered qualification, a certificate or other similar occupational or professional qualification issued by institution of learning

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The Learning Programme Matrix

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	Narrative Description	Delivery Mode	Learning Achievement
E	Occupationally-directed instructional and work-based learning programme that does not require a formal contract – formally assessed by an accredited body	Structured, supervised experiential learning in the workplace which may include institutional instruction	Credits awarded for registered unit standards
F	Occupationally-directed informal instructional programmes	Structured information sharing or direct instruction involving workshops, seminars and conferences and short courses	Continuing professional development, attendance certificates and credits against registered unit standards (in some instances)
G	Work-based informal programmes	Informal training in workplace	Increased understand of job or work context or improved performance or skills

NB: Category F& G programmes are capped at 15% of your total spend

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Key Points

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Skills Development is a Priority element with a sub-minimum of 40% of total points.

5% of leviable amount – total black spend (employed + unemployed)

0,3% of leviable amount – only employees living with disabilities

2,5% of total headcount – black people on Cat B/C/D programmes

2,5% of total headcount – of unemployed black people on Cat B/C/D programmes

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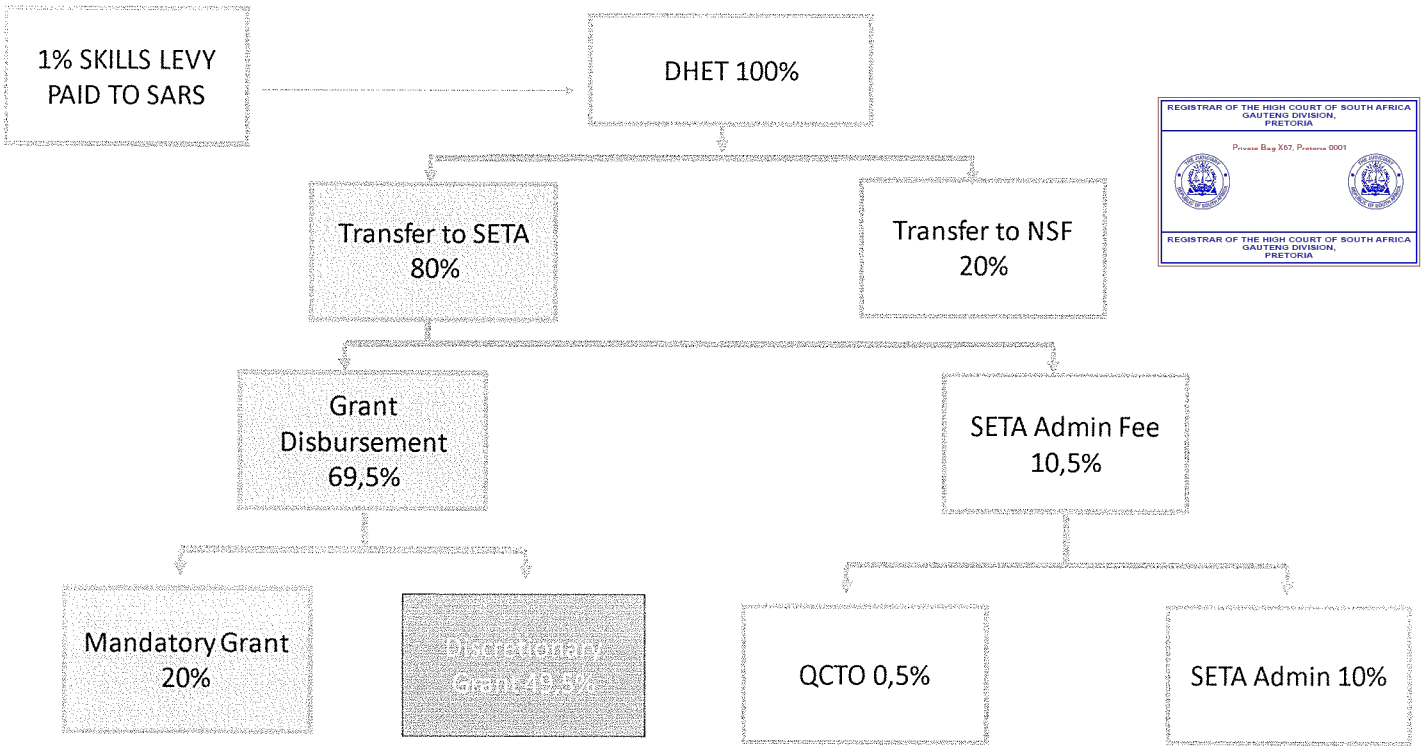
Key Points

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Focus on Black Women	Implement Skills Programmes - use the Learning Programme Matrix	Promote Continuous Professional Development
Estate agents required to complete verifiable and non verifiable CPD courses annually – target is 15 points per annum.	Learners are eligible for absorption after 6 months since commencement of learnership.	3 Bonus Points for absorption for employment (12 Months)

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27



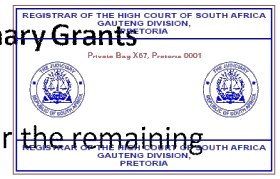
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How to tap into SETA Funding Mandatory vs Discretionary

Mandatory Grants

- 20% of your levies back for **reporting to Services SETA in April every year.**
- WSP = Workplace Skills Plan
  - 1Apl-31Mar
  - Training plan for the year ahead
- ATR = Annual Training Report
  - 1Apl-31Mar
  - Your report on training completed over the past year
- **Approval letter from SETA required by the B-BBEE Verification Agent**

Discretionary Grants



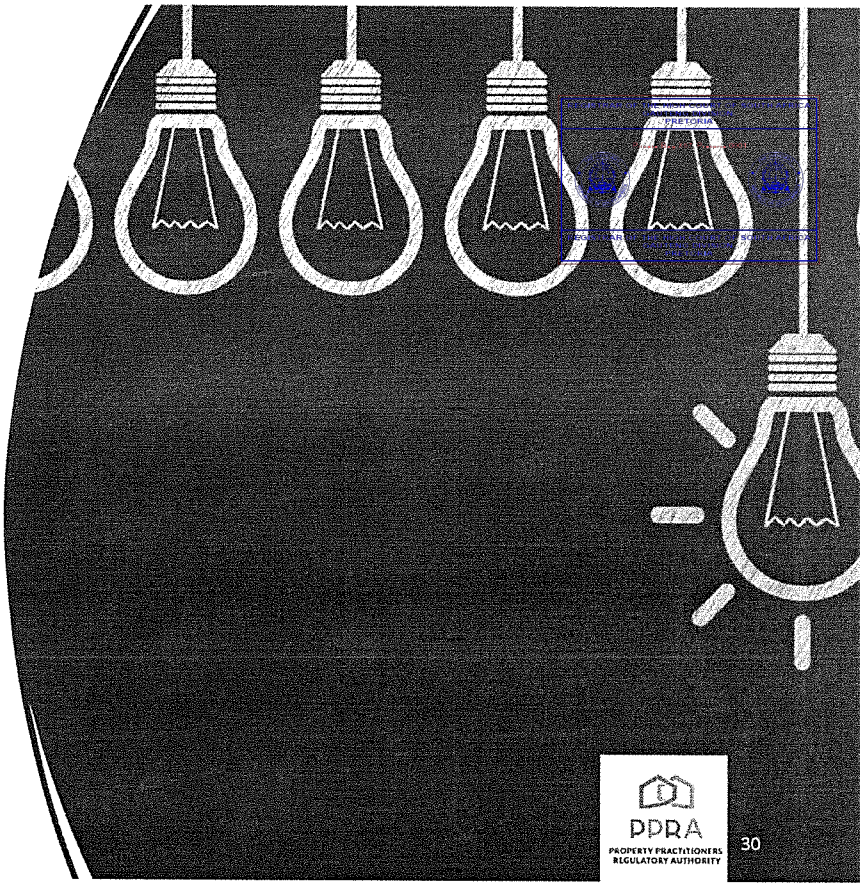
- Apply for the remaining 49.5%.
- Funding is awarded by the SETA at their discretion at intervals they determine.
- They notify you as to what they will fund.
- Eligibility :
  - Paid Levy
  - Submit WSP /ATR

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29

Skills Development Quick Wins

- Ensure you are registered with the correct Seta
- Pay Skills Levies – 1% of payroll.
- If more than 50 employees, appoint a Training Committee.
- Provide training for the Training Committee and meet at on a quarterly basis. Take minutes of the meetings.
- Verify that the training is QTCO accredited



How the verification process works

- Request for verification
- Quote
- Engagement Pack including agreement
- Submission of evidence/documents
- Onsite visit and interviews
- Analyst prepare file for sign off
- Technical Signatory sign off file, check evidence and calculations
- Issue of BEE Certificate

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A Strategic Framework – The Way Forward

- Conduct a Gap Analysis
- Plan Point Strategy to achieve goal contribution level
- Define key deadlines e.g. Submission of WSP and ATR
- Understand ROI Drivers and strategic objectives
- Appoint Verification agency as strategic partner
- Appoint collaboration partners e.g. SDF, ESD and SED

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A Strategic Framework – The Way Forward

Engage in Learnerships for employees or unemployed people.

Apply for SETA funding which may or may [illegible] OR fund through the company. A combination of both works best.

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Fund CPD training for staff. Document ALL internal training on training registers as this counts towards skill spend.

Identify Strategic Suppliers and implement procurement plan asap

Identify Strategic ESD beneficiaries and implement ESD plan asap to leverage ESD ROI

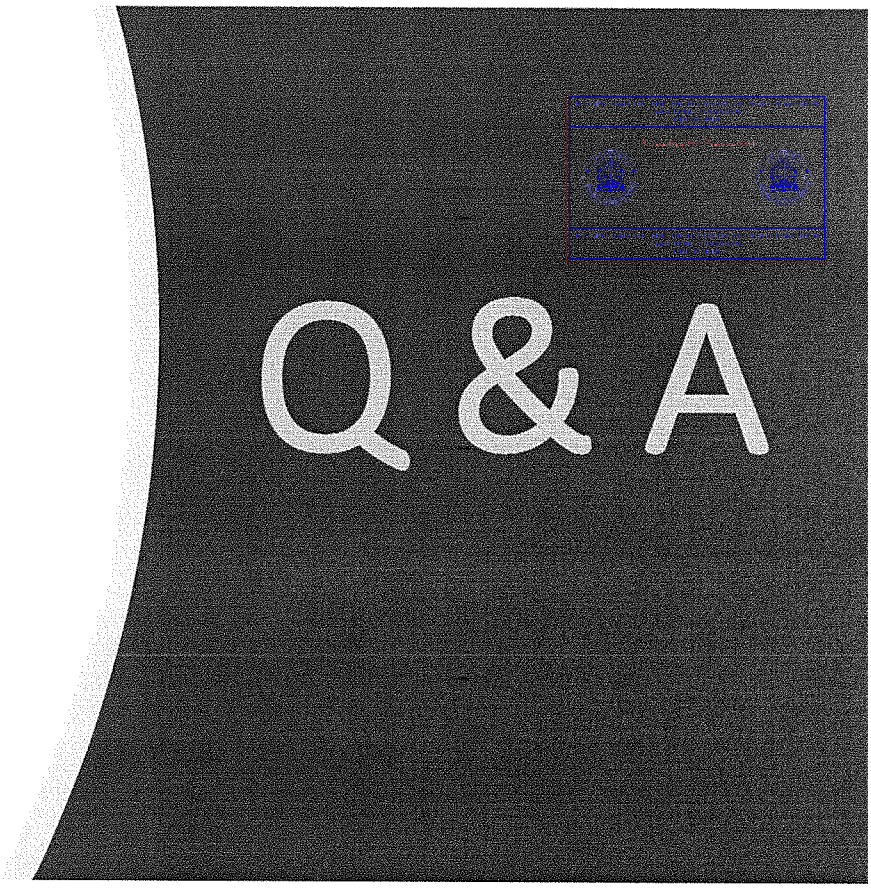
Identify Strategic SED beneficiaries and implement SED plan asap to leverage SED ROI

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33

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Acknowledgement and Contributions



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35

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PROPERTY PRACTITIONERS REGULATORY AUTHORITY

Real Estate Business Owners of South Africa (ReBOSA)
Cape Town
8005

Tuesday, 13 August 2024

Dear ReBOSA Board,

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

Re: Requirements relating to BEE and Issuance of FFC's

We are writing to inform you of the decision made by our Board regarding the requirements for Broad-Based Black Economic Empowerment (BEE) and the issuance of Fidelity Fund Certificates (FFC's).

After careful consideration and consultation with our legal advisors, we have resolved that the term "valid" in the context of BEE certificates does not imply "compliant". This decision aligns with the recent legal opinion received by our Board. In light of this decision, we will now require industry participants to submit BEE certificates that are valid. We believe this clarification will ensure a more accurate with the requirements of section 50(a)(x) of the Property Practitioners Act. Moreover, in accordance with our commitment to upholding democratic principles, the Board remains steadfast in its pursuit of realizing its obligations towards the transformation of the property sector. This endeavour will still be undertaken in strict adherence to the relevant legal and regulatory framework that falls within our jurisdiction and authority.

We will communicate this updated stance to the industry and appreciate your support in ensuring a smooth implementation of this decision. If you have any questions or concerns, please do not hesitate to contact us.

Thank you for your patience and to this matter.

Yours Faithfully

Dr STEVEN NGUBENI _ *Pr Plan, Pr Aval. MA; MSc; MPA; LLM; PhD.*
PPRA BOARD CHAIRPERSON

PROPERTY PRACTITIONERS REGULATORY AUTHORITY

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 –

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- 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.

PERSONAL INFORMATION														
Title	Mr.	Miss.	Mrs.	Advocate	Professor	Doctor	**Other:**		**Gender**	M	F			
Race(complete for statistical purposes)	African		White		Coloured		Indian		**Other:**					
Surname														
Full name(s)														
Identity number														
Date of birth									**Citizenship**					
CONTACT INFORMATION														
Residential address														
									Postal code					
Postal address														
									Postal code					
State Province	Eastern Cape		Free State		Gauteng		KwaZulu Natal		Limpopo		Mpumalanga		North West	Northern Cape	Western Cape

Telephone number				
Cell No.				
Email address				
STATUS/EMPLOYMENT INFORMATION				
What are you applying for (tick appropriate box)	Fidelity Fund Certificate (Property Practitioners)	Registration Certificate (For attorney employees)		
State the capacity in which you are applying (tick appropriate box)	Director	Partner	Employee of an attorney	Member
	Sole Proprietor	Non-principal	Trustee	Candidate
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		

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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	**Property Practitioner**		**Auctioneer**	
	Bond and Bridging Finance originators		**Home Owners Association**	
	Managing Agents		**Property Facilitators and intermediaries**	
	Business brokers		**Developers**	
	Time share		**Property advertising platforms**	
	Payment processing agents		**Attorney Employees**	

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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
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	

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ABOUT US
CONTACT INFORMATION
PROPERTY PRACTITIONER ACT NO. 22 OF 2019
CAREERS
PPRA SCHEDULE OF FEES 2022
PRESS RELEASES
LATEST NOTIFICATIONS
EXEMPTIONS
ARCHIVED NOTIFICATIONS
PUBLICATIONS
HOW TO INTERACT WITH THE EAAB IF YOU ARE AN ESTATE AGENT
MULTI STAKEHOLDER GROUP(MSG)
PROMOTION OF ACCESS TO INFORMATION ACT, 2000
AUDIT COMPLIANCE
EAAB PRACTICE NOTES
FINANCIAL INTELLIGENCE CENTRE
TRANSFORMATION
TRANSFORMATION GUIDELINES
'ONE LEARNER - ONE ESTATE AGENCY' YOUTH EMPOWERMENT BRIGADE
CONSUMER INFORMATION
PROPERTY SECTOR CHARTER COUNCIL
ONLINE LEGAL COMPLAINT
WHISTLE BLOWERS HOTLINE
TENDERS
ONLINE CUSTOMER SURVEYS
SERVICES SETA CUSTOMER CARE
KNOWLEDGE CENTRE LIBRARY HUB
BANKS AND MORTGAGE ORIGINATOR CONTACT DETAILS
EQUALITY PLEDGE
TERMS AND CONDITIONS FOR THE EAAB WEBSITE

CLARITY OF WHETHER OR NOT THE STANDARD OF TRAINING OF ESTATE AGENTS REGULATIONS OF 2008 ARE STILL APPLICABLE FOLLOWING THE COMING INTO EFFECT OF THE PROPERTY PRACTITIONERS ACT, No.22 OF 2019

Following the coming into operation and effect of the Property Practitioners Act, No.22 of 2019 (the PPA) on 1 February 2022, some industry bodies were of the view that the Standard of Training of Estate Agents Regulations of 2008 (the Education Regulations), are no longer applicable as we now have new PPA Regulations. The Property Practitioners Regulatory Authority (the PPRA) received an avalanche of queries in this regard from the industry.

However, the PPRA held a contrary view in light of the provisions of section 75(6) of the PPA which simply provides that all regulations made in terms of the Estate Agency Affairs Act No.112 of 1976 remain of full force and effect as if they were made in terms of the PPA.

If the view of the industry bodies prevailed, it would have meant that the standard education requirements for property practitioners to attain NQF4 & 5 Real Estate qualifications fall away and there is nothing in their place considering that the PPRA still in the process of conducting consultations in order to establish new qualification standards as provided in the new PPA Regulations. That would have also meant that the PPRA will not be in a position to conduct Professional Designation Examinations which are premised on the same qualifications. This would have had serious ramifications for the entire industry and the economy.

In order to provide a legally unassailable and correct position to the property sector, the PPRA sought a legal opinion to clarify this issue. The legal opinion was received and it agrees with the stance of the PPRA. Effectively, the Education Regulations of 2008 are still applicable and of full force and as such, the standard education requirement for property practitioners to attain NQF4 or NQF5 Real Estate (whichever is applicable), is still applicable and in operation until such time that the PPRA develops new qualification standards.

The PPRA would also like to confirm that it has already commenced with consultations with various industries as required in terms of the new PPA Regulations. The process of consultations is meant to yield the establishment of, amongst other things, the new qualification standards and the new standard of training.

Best Regards (30 June 2022)
Property Practitioners Regulatory Authority

SEARCH THE PPRA WEBSITE
GO

City, Region or Agent Name

City, Region or Agency Name

ONLINE COMPLAINT
Lodge a complaint against a Property Practitioner

'ONE LEARNER - ONE PROPERTY PRACTITIONER'
Youth Programme
Principal Pledge Form

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0800 223 225

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Standard of Training of Estate Agents Regulations, 2008

Published under

GN R633 in *GG* 31125 of 4 June 2008

In terms of section 33(1) of the Estate Agency Affairs Act, 1976 (Act 112 of 1976), I, Mandisi Mpahlwa, Minister of Trade and Industry, after consultation with the Estate Agency Affairs Board, hereby-

(a) repeal Government Notice R1409 of 1 July 1983 as amended by Government Notice R1923 of 15 October 1993, and Government Notice R1468 of 29 June 1990 as amended by Government Notice R631 of 23 June 2000, respectively; and

(b) make the regulations as set out in the Schedule hereto,

with effect from 15 July 2008.

M MPAHLWA
Minister of Trade and Industry

SCHEDULE

1 Definitions

In these Regulations any word or expression to which a meaning has been assigned in the Act bears the same meaning as in the Act, and unless the context otherwise indicates-

'effective date' means the date of coming into operation of these Regulations;

'non-principal estate agent' means any person referred to in paragraph *(c)*(ii) of the definition of 'estate agent' in section 1 of the Act;

'principal estate agent' means any person referred to in paragraph *(a)* or paragraph *(c)*(i) of the definition of 'estate agent' in section 1 of the Act;

'NQF' means the National Qualifications Framework as defined in section 1 of the South African Qualifications Authority Act, 1995 (Act 58 of 1995);

'Professional Designation Examination' means an integrated test of knowledge for estate agents contemplated in regulation 4;

'the Act' means the Estate Agency Affairs Act, 1976 (Act 112 of 1976).

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2 Intern Estate Agents

A person who, as from the effective date, intends to become an estate agent:

(1) Must serve as an intern estate agent, under the supervision of a principal estate agent, for a continuous period of 12 months from the date of the first issue to that person of an intern fidelity fund certificate by the Board.

(2) In the event of an intern estate agent being absent from the service contemplated in subregulation (1), for any reason whatsoever, for a continuous period exceeding 30 days during the compulsory internship period-

(a) the number of days of absence exceeding 30 days; and

(b) an additional number of days amounting to one half of the period of absence from service exceeding 30 days,

will be added to the compulsory internship period.

(3) In the case of an intern estate agent having failed to comply with the educational requirements contemplated in regulation 4 during the compulsory internship period contemplated in subregulation (1), the internship period must be extended for a further period until such time as the intern estate agent has duly complied with educational requirements, after which a full status fidelity fund certificate may be issued to the intern estate agent by the Board.

(4) An intern estate agent may not perform any act as an estate agent unless the intern estate agent-

(a) has duly disclosed in all printed material relating to the intern estate agent's activities as an estate agent, excluding authorised advertisements in the press, that the intern estate agent is an intern estate agent;

(b) is acting under the active supervision and control of a principal estate agent or of an estate agent who has continuously held a valid fidelity fund certificate issued by the Board for a period of not less than 3 years.

(5) An intern estate agent may not-

(a) in any way, directly or indirectly, hold himself or herself out as someone who or advertises that he or she has complied with the educational requirements contemplated in regulation 4 [*sic*];

(b) in any manner act or hold himself or herself out as a full status estate agent; or

(c) in his or her capacity as an intern estate agent, complete or draft any documentation relating to any transaction negotiated by him or her in his or her capacity as an intern estate agent, otherwise than in the presence of a principal estate agent or an estate agent contemplated in subregulation (4)*(b)*, and who certifies on the documentation in question that the said documentation has been completed in his or her presence.

3 Registration

A person who, as from the effective date, intends to register as an estate agent with the Board must comply with the internship requirements referred to in regulation 2 and with the educational requirements referred to in regulation 4, as prescribed by the NQF in accordance with the Regulations made under the South African Qualifications Authority Act, 1995 (Act 58 of 1995) under Government Notice R452 of 28 March 1998 and contained in *Regulation Gazette* 6140 of 28 March 1998.

4 Educational requirements

(1) No person may perform the functions and activities of-

(a) a non-principal estate agent, unless that person has completed the Further Education and Training Certificate: Real Estate (SAQA QUAL ID 59097); or

(b) a principal estate agent unless that person has completed the National Certificate: Real Estate (SAQA QUAL ID 201 88).

(2). The Further Education and Training Certificate: Real Estate and the National Certificate: Real Estate referred to in

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subregulation (1) will be a prerequisite for admission to the Professional Designation Examination for estate agents.

(3) No person may be registered by the Board as a full status estate agent unless that person has also successfully completed the Professional Designation Examination conducted by the Board.

5 Fidelity fund certificate

Subject to the proviso to section 27 and section 33(2) of the Act, no person may, as from the effective date, be issued with a full status fidelity fund certificate by the Board unless such person has complied with the educational requirements referred to in regulation 4.

6 Recognition of prior learning

(1) An estate agent who is already registered either as a non-principal estate agent or a principal estate agent, as at the effective date, will be required to undergo a process of Recognition of Prior Learning as contemplated in the NQF.

(2) The process contemplated in subregulation (1), which includes the identification, assessment and acknowledgement of skills and knowledge that has been obtained by that estate agent, will-

(a) be undertaken within the context of the Further Education and Training Certificate: Real Estate (SAQA QUAL ID 59097) and the National Certificate: Real Estate (SAQA QUAL ID 20188) referred to in regulation 4, whether such skills or knowledge have been obtained through-

(i) formal training and education; or

(ii) informal or non-formal training and education, including on-the-job training and life experience; and

(b) be completed on or before 31 December 2011 or within such extended period as the Board may, on reasonable grounds, grant for this purpose.

7 Remedial Training

(1) If, after completion of the Recognition of Prior Learning process contemplated in regulation 6(1), an estate agent fails to meet the required standard to be certified in respect of the educational requirements referred to in regulation 4, the said estate agent will be given an additional period of 2 years from the date of completion of the Recognition of Prior Learning process to undergo any remedial training that may be required to be certificated in respect of the relevant qualification.

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(2) A relevant SETA or any Recognition of Prior Learning Centre accredited by the Board must, within 30 days of the registration of a candidate for the purpose of undergoing the Recognition of Prior Learning process, and in a manner and form determined by the Board, inform the Board of the registration of such candidate for assessment purposes to enable the Board to determine the educational status of such estate agent for the purpose of the issue by the Board of a full status fidelity fund certificate to such candidate.

(3) Despite regulation 4(3), an estate agent who, on the effective date, is registered as either a non-principal or principal estate agent, will be exempted from the Professional Designation Examination referred to in regulation 4, if the said estate [agent] had continuously held a full status fidelity fund certificate, issued by the Board, for a period of not less than 5 years.

(4) The Recognition of Prior Learning process contemplated in regulation 6(1) must be conducted in accordance with the guidelines developed by the Board in accordance with the broad strategic guidelines captured in the Guideline Document published by SAQA in June 2004 under the title 'Criteria and Guidelines for the Implementation of the Recognition of Prior Learning' (ISBN: 0-9584572-2-0).

(5) Credits towards the educational qualifications referred to in regulation 4 must be granted to an estate agent whose knowledge and skills, after due assessment in accordance with the prescribed NQF procedures, matches the learning outcomes of either of the educational qualifications referred to in regulation 4.

8 Continuing Professional Development

(1) In addition to the educational qualifications referred in regulation 4, the Board may, at any time, prescribe any reasonable Continuing Professional Development requirements as contemplated in the NQF;

(2) Any Continuing Professional Development requirements prescribed by the Board in terms of subregulation (1) must be completed over a rolling three year cycle.

9 Short title

These Regulations are called the Standard of Training of Estate Agents Regulations, 2008.

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