

**PRESENTATION FOR INSPECTIONS
AND INVESTIGATIONS DEPARTMENT
UNDER PROPERTY PRACTITIONER'S
ACT, 2019. ("PPA")**



**PROPERTY PRACTITIONERS
REGULATORY AUTHORITY**

BACKGROUND



The Strategic objectives of the inspections and investigations department include:

- Improve compliance with the PP Act;
- Improve compliance with the FIC Act;
- Reduce number of illegally trading Property Practitioners.

MANDATE OF THE INSPECTIONS AND INVESTIGATIONS DEPARTMENT



The mandate of the inspections and investigation department is to **determine and monitor compliance**, to regulate the conduct of Property Practitioners, to provide for the protection and promotion of the consumers through monitoring of the conduct of a property practitioner.

The Property Practitioners Regulatory Authority (PPRA) is the **Supervisory Body of the property practitioners** pursuant to the Financial Intelligence Centre Act and is obliged to take all steps required to prevent; alternatively, identify and report on, anti-money laundering and terrorist financing activities in the property practitioners sector.

THE RATIONAL UNDERPINNING PPA FOR INSPECTONS AND INVESTIGATION DEPARTMENT



- To ensure compliance with PPA and regulations by conducting inspections; investigations;
- To check compliance with the code of conduct of Practitioners.

KEY PROVISIONS OF PROPERTY PRACTITIONERS ACT, 2019 RELEVANT TO INSPECTIONS DEPARTMENT...

The PPA has introduced new categories of property practitioners which means the scope of inspections has increased include the following property practitioners' categories:

- a. Bond Originators/ Bond Brokers
- b. Auctioneers
- c. Managing agents in so as it related to the management of trust monies (NAMA)
- d. Business Brokers
- e. Trusts
- f. Role players involved in selling, purchasing, hiring, letting, financing, managing, marketing of immovable property.
- g. Property development: to the extent to which they market properties
- h. Time Shares
- i. Home Owners Associations (HOA)
- j. Property Exhibitions
- k. Payment Processor Platforms.

CATEGORIES OF INSPECTIONS



- Section 25(1) compliance inspections – to determine whether the provision of the Act are being complied with (excludes private residence);
- Inspections done in a private residence – inspector to notify Property practitioner in advance;
- Inspections on authority of search warrant – issued by a magistrate or judge.

APPOINTMENT OF INSPECTIONS

- The PPA empowers the CEO to appoint any suitable person as an inspector, the CEO must issue each inspector with a certificate that is letter of appointment and identification card; Sec24 (1).
- A duly appointed inspector has the responsibility to inspect and monitor activities of Property Practitioners of their compliance with the PPA, code of conduct, education requirements and the regulations.
- **The appointment of inspector is impact by the criminal procedure act.** – in particular a peace officer in relation to the inspections. – inspectors need to get certificate of appointment from **National commissioner of south African police services**

INSPECTIONS POWERS

Therefore the inspectors have been conferred with the following powers in terms of section 25(1), (2), (3):

- a. Powers bestowed on a peace officer in terms of the Criminal Procedure Act, 1977, **(criminal procedure act defines a peace officer as “ including any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959, and in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1.), any person who is a peace officer under that section”)** meaning that the official is granted the powers to execute the **action described in the warrant.**
- b. Enter and inspect business premises without a notice and warrant.
- c. Enter and inspect private residence after notifying the property practitioner and setting out the details of the inspections.
- d. Apply for a search warrant to enter any premises (includes private residence).

CONDUCTING AN INSPECTION IN TERMS OF PPA

A duly appointed inspector has the responsibility to inspect and monitor activities of Property Practitioners regarding compliance with the PPA, code of conduct, education requirements and the regulations, Therefore the inspection shall be conducted in **strict adherence** to the following factors;

- a. Entry to the premises shall be executed during the day **(08:00-17:00)** excluding Saturday, Sunday and public holidays.
- b. Prior to conducting the search, **the inspector must identify themselves** by producing a letter of appointment/ identification card.
- c. Inspector to hand over the **copy of the search warrant and copy of this section to the person named in the search warrant or the person in control of the premises.**
- d. If no such persons, **affix a copy of a search warrant to a prominent and visible place of the premises.**
- e. The inspector may be accompanied by one or more police officer (**who may use force as is necessary to overcome resistance by any person to entry after having demanded admission or access and announced in an audible manner the purpose of the entry.**
- f. The search to be conducted with **strict regard to decency, every person right to dignity, freedom, security and privacy**
- g. Female inspector to search female person and male inspector may search a male person.

SCOPE OF INSPECTIONS AND OFFENCES IN TERMS OF PPA

- i. Any person who acts as a Property Practitioner **without a valid Fidelity Fund Certificate; section 48(3);**
- ii. Any person who **refuses to refund a commission received** while not in possession of a valid Fidelity Fund Certificate is guilty of an offense; section 48(5);
- iii. Any person **who uses or displays a Fidelity Fund Certificate that has been withdrawn** in terms of a court order or instruction of an adjudicator is guilty of an offense; section 52(10);
- iv. Any Property Practitioner who fails to ensure prescribed sentences regarding holding a Fidelity Fund Certificate is reproduced in legible lettering on any letter head or **marketing material relating to that Property Practitioners;** section 53(1)(6);
- v. Any Property Practitioners who fails to include the prescribed clause which ensures that she or it guarantees the validity of the FFC is guilty of an offence; section 53(1)(c)
- vi. Failure to comply with the **educational requirement in terms of PPA regulations**
- vii. Trust account requirements** in terms of the PPA
- viii. Contraventions relating to **financial management and reporting**
- ix. Contraventions of the **Financial Intelligence Centre Act, 2001.(FICA)** compliance requirements

INSPECTIONS GUIDELINES



The inspections are conducted based on:

a. Risk Based Inspection Program –informed by:

- complaints,
- adverse information,
- type of service,
- whistle-blower,
- company structure,
- geographical spread, etc.(focussing on areas that pose the highest risk to the industry)

COMPLIANCE NOTICES



- The inspector is empowered to prepare a compliance notice – where contravention of minor nature have been identified in terms of section 26(4) which will be issued by the CEO upon signature;
- The regulation has prescribed the format of the compliance notice;
- A list of all minor contravention together with the relevant sanction is provided in the regulation;
- Administrative process for sanctioning for non compliance in respect of the issued compliance notice will be referred to enforcement department for adjudication process.

ESTABLISHING SYNERGIES WITH LAW ENFORCEMENT AGENCIES; SAPS

The appointment of inspectors is impacted by the criminal procedure Act in the following manner:

- The National commissioner of South African police service is required to issue the inspectors with certificate of appointment;
- Police officers are required to accompany inspectors where there is resistance or refusal to inspect;
- Inspectors are regarded as peace officer when it comes to serving /issuing of search warrants and searching of individual persons / property practitioner.

GUIDLENIES, POLICIES AND PROCESS DEVELOPMENT

The policies and standard operating procedure to be guide the inspections department in executing its mandate are listed below.

No	Deliverables	Description
01	Inspections standard operating procedures (SOP) in terms of PPA	Key Areas : <ul style="list-style-type: none">▪ Inspection Section▪ Legislative requirements▪ Types of inspections▪ Notice of inspections▪ Inspections reports▪ Confidentiality and disclosures

GUIDLENIES, POLICIES AND PROCESS DEVELOPMENT

The policies and standard operating procedure to be guide the inspections department in executing its mandate are listed below.

02	Investigation policy	<p>Key Areas:</p> <ul style="list-style-type: none">▪ Investigation section▪ Investigation procedure▪ Remedial process and legal proceedings▪ Confidential and disclosures
03	Administrative fine policy and payment process policy	<p>Key Areas :</p> <ul style="list-style-type: none">▪ Minor and substantive contravention▪ Compliance Notices and enforcement

GUIDELINES, POLICIES AND PROCESS DEVELOPMENT

No	Deliverables	Description
04	Create a pro-forma compliance notice	The compliance notice provided as provided in the PPA regulation
05	Create pro-forma receipts after documents have been seized	Inventory list and receipt book for seized documents

GUIDLENIES, POLICIES AND PROCESS DEVELOPMENT

No	Deliverables	Description
06	Guidelines on search and seize documents	<p>Key Areas :</p> <ul style="list-style-type: none">▪ Seizure of documents▪ Storage of seized documents▪ Disposal of seized documents▪ Receipt issued in respect of documents▪ Record keeping
07	Consultation with internal and external stakeholders	<p>Internal stakeholders :Registrations, Audit, Enforcement</p> <p>External stakeholders: - law enforcement agencies, industry bodies and consumers</p>

INVESTIGATIONS



Investigations further means an administrative process to gather and secure evidence for inquiry that may lead to a recommendation for prosecution and may involve activities such as obtaining search warrant, conducting interviews with potential witness and gathering of evidence.

The EAAB as the regulator has been empowered in terms of PPA , to intervene and investigate where breaches of the PPA , Financial Intelligence Centre Act, 2001 and the regulations law.

INVESTIGATIONS

- In terms of Section 3 of the Property Practitioners Act, 22 of 2019, the PPRA is obliged to regulate the standard of conduct of Property Practitioners and to provide for the protection and promotion of the interest of consumers, to this end, the PPRA is empowered to take such other steps and to perform such other acts as may be necessary or expedient in order to achieve the object Act;
- Section 75 – Transitional provisions governs transition of the EAAB into the PPRA, **therefore all the investigations that had commenced under the EAA Act must be disposed of as if the EAA Act has not been repealed, (Section 75(g)) therefore all the investigation will continue as provided in terms of the PPA;**
- Investigations are carried out by inspectors in terms of appointment letters;
- Investigations includes: preliminary investigations, final investigation and report issuing.

OPERATIONAL: CAPACITY REQUIREMENTS

The increased scope requires increased Human resource capacity, therefore additional inspectors will be required, new staffing requirements includes; Inspections Manager, Three Senior Inspectors, Nine inspectors which translate to one per province and administrative staff, investigation Manager , investigators, investigation : administrators

The Training and Education needs for inspectors in respect of the implementation of the New Act, provision of support to the internal staff to obtain buy-in and commitment and ensure productive and efficient team

Communication and public awareness will be provided;

- a. Educating industry on the new Act and compliance requirements;
- b. Consultation with key stakeholders within the industry such as industry bodies and third parties including consumers



Thank you