



# AUDIT & TRUST ACCOUNT REQUIREMENTS IN THE NEW PROPERTY PRACTITIONERS ACT

*31 JANUARY 2022*

# WHAT WILL BE COVERED IN THIS PODCAST

- Important definitions under the new Act
- Trust account requirements
- Financial statements requirements
- Exemptions from audit of financial statements
- Exemptions from keeping trust accounts
- Summary of audit requirements under the new dispensation in the Act
- Scope of audits on trust accounts
- Consequences of late audit report submissions
- Consequences of audit findings in submitted audit reports
- Transitional provisions

# IMPORTANT DEFINITIONS Cont'd

## Definition of accounting records:

### **Accounting records:**

- a. Means information in written or electronic form concerning the trust accounts of the of the property practitioner, including records of all transactions involving trust monies and other documents used in the administration of the trust accounts;
- b. In relation to the property practitioner's business, means information in written and electronic form concerning the financial affairs of the business as required by the Act or any other Act applicable to the business of a property practitioner, including records of assets, liabilities, income and expenses and other documents used in the preparation of financial statements of the business.

# IMPORTANT DEFINITIONS Cont'd

## Definition of trust money

### **Trust money means:**

- a. Money entrusted to a property practitioner in his or her capacity as a property practitioner;
- b. Money collected or received by a property practitioner and payable in respect of or on account of property practitioner activities as defined
- c. Any other moneys, including insurance premiums, collected or received by a property practitioner and payable in respect of any immovable property, business undertaking or contract for the building or erection of any improvements on immovable property

# TRUST ACCOUNT REQUIREMENTS

## Section 54(1) – (3 )

### **Every property practitioner business:**

- a. Must open and keep open one or more separate trust accounts, which must contain a reference to section 54(1), with a bank;
- b. Must immediately deposit all trust money held or received in the 54(1) trust account;
- c. May invest in a separate interest-bearing trust account, containing a reference to section 54(2), any trust monies not immediately required for any particular purpose;
- a. Must retain all trust money in the trust accounts until its lawfully entitled to such money or its lawfully instructed in writing to make payment therefrom

# TRUST ACCOUNT REQUIREMENTS

## Section 54(5) – (10)

### **Every property practitioner business:**

- f. Must keep separate accounting records for all monies deposited by it or invested by it in its trust accounts;
- g. Balance its trust accounting records monthly
- h. Cause the trust accounting records to be audited annually by an IRBA-registered auditor within six months of its financial year end, which financial year-end can be altered without the Authority's prior written approval;
- i. Submit, through its auditors, the audit report on the trust account within six months of its financial year-end
- j. Must pay unclaimed or unidentified trust monies which has been held for longer than three years to the Fidelity Fund, which should hold it in trust for 30 years before its forfeited to the Fidelity Fund.

# TRUST ACCOUNT REQUIREMENTS

## Section 54 (9) – Winding up the trust accounts

**If:**

- a. The Authority refuses under the provisions of the Act to issue a Fidelity Fund Certificate; or
- b. A Fidelity Fund Certificate issued under the Act is withdrawn or has lapsed without being renewed; or
- c. The property practitioner business ceases to trade; or
- d. The property practitioner business is disqualified in terms of section 50 of the Act

Then the property practitioner business must wind up its trust accounts and pay out the trust money to the persons entitled to it.

*Note: There is detailed prescribed manner in Regulation 31 of how to legally wind up a trust account.*

# TRUST ACCOUNT REQUIREMENTS

## Interest earned on trust accounts

**Section 54(4)** – Any bank which manages trust accounts must submit a certificate of interest earned on trust accounts to the Authority in the prescribed format

### **Regulation 34.2.1:**

A property practitioner business:

- a. Must not solicit or influence any person entitled to trust funds under its control to pay the interest earned on such funds to the property practitioner;
- b. Must, before receiving any trust funds in respect of a contract of sale or lease, disclose to the parties that unless agreed in writing to whom interest must be paid, such interest shall accrue to the Fidelity Fund



# FINANCIAL STATEMENTS REQUIREMENTS

## Section 55

### **Every property practitioner business:**

- a. Must keep accounting records of all its assets and liabilities and all its financial transactions and its financial position;
- b. Must cause the annual financial statements to be audited annually by an IRBA-registered auditor within six months after its financial year-end, which financial year-end can not be altered without the Authority prior written approval;

# EXEMPTION FROM AUDIT OF FINANCIAL STATEMENTS

## Section 23(1)

**A business property practitioner with annual turnover below R2,5 million must:**

- a. Cause its accounting records to be subjected to an independent review by a registered accountant;
- b. Subject to the provisions of sections 54(1) to (7) applied with the necessary changes

*Note: The Companies Act requires any company which holds assets exceeding R5million in a fiduciary capacity, or its public interest score is 350 or more or is above 100 if its financials are internally compiled to be audited.*

# EXEMPTION FROM KEEPING TRUST ACCOUNTS

## Section 23(2)(a)

**The Minister may:**

- a. By notice in the Gazette;
- b. Determine the circumstances under which certain property practitioners may be exempted from keeping trust accounts

# EXEMPTION FROM KEEPING TRUST ACCOUNTS

## Regulation 2

**A property practitioner business is exempted from keeping a trust account if:**

- a. It has never received trust monies;
- b. It no longer receives trust monies;
- c. It has mandated one or more other property practitioners (“payment processing agents”) that specialise in collecting and distributing trust monies to process such trust monies on its behalf, in respect of all trust funds received, provided that the property practitioner holds no trust monies outside those held by the payment processing agent and the payment processing agent’s trust accounts environment is audited annually in compliance with the Act and the Regulations
- d. It is a managing agent where the funds of all the body corporates under its management are held in bank accounts opened in the name of the body corporates in terms of section 21(4)(a) of the Sectional Titles Management Act;

# EXEMPTION FROM KEEPING TRUST ACCOUNTS (Cont'd)

## Regulation 2

A property practitioner business is exempted from keeping a trust account if it has submitted to PPRA the prescribed affidavit, asserting the following:

- a. It has not received or no longer receives trust monies;
- b. It undertakes to not receive trust funds without first having opened a trust account and having provided the PPRA with at least 60 days advance notice, with full details of the trust account opened;
- c. It provides evidence to the PPRA that any previous existing trust accounts have been closed and all trust funds distributed in terms of the law, provided that a winding up audit report will be sufficient as evidence of compliance with this provision.

# SUMMARY OF THE AUDIT REQUIREMENTS

		BUSINESS ACCOUNTING RECORDS	TRUST ACCOUNTING RECORDS
Document to be audited/reviewed		Annual Financial Statements	Annual Trust Accounts Statement
Category 1	Property practitioner businesses that have not been granted an exemption from holding a trust account	<b>Audit (Above R2,5 million revenue)</b> - International Standards on Auditing (ISAs) - Registered Auditors	<b>Assurance engagement</b> - International Standards on Assurance Engagements (ISAE 3000) (Revised) - Registered Auditors
		<b>Independent Review (Below R2,5 million revenue)</b> - International Standards on Review Engagements (ISRE 2400) (Revised) - Registered Auditors	
Category 2	Property practitioner businesses that have been granted an exemption from holding a trust account	<b>Audit (Above R2,5 million revenue)</b> - International Standards on Auditing (ISAs) - IRBA Registered Auditors	N/A
		<b>Independent Review (Below R2,5 million revenue)</b> - Registered Auditor or a Chartered Accountant if the Public Interest Score is 100 or above or by a registered auditor, chartered accountant or any person qualified to be an accounting officer of a close corporation if the Public Interest Score is less than 100	
Formats of reports to be prepared by auditor/independent reviewer		<b>Audit</b> - Format as per South African Auditing Practice Statement 3 (Revised) - Illustrative Reports, issued by the Independent Regulatory Board for Auditors	Format available on the Auditors Portal and a new format to be developed in consultation with IRBA and in accordance with ISAE 3000 (Revised)
		<b>Independent Review</b> - Format as per ISRE 2400 (Revised)	

*Note: The Companies Act requires any company which holds assets exceeding R5million in a fiduciary capacity, or its public interest score is 350 or more (or its public interest score is above 100 if its financial statements are internally compiled) to be audited.*

# SCOPE OF AUDITS ON TRUST ACCOUNTS

**The auditor of a trust account should audit the trusting accounting records and reach a conclusion on whether:**

- a. The trust account opened by the property practitioner business contains a reference to section 54(1) as required;
- b. The trust account into which trust monies not immediately required are deposited contains a reference to section 54(2) as required;
- c. The trust accounting records are kept separately; are balanced monthly and there were no monthly trust account deficits as required by section 54(5);
- d. The property practitioner business has a valid Fidelity Fund Certificate as required by section 48.
- e. Trust monies were retained in the trust accounts until either the property practitioner is lawfully entitled to such monies or the property practitioner has been a lawful written instruction to pay out from the trust monies, as required by section 54(3)

# SCOPE OF AUDITS ON TRUST ACCOUNTS

**The auditor of a trust account should audit the trusting accounting records and reach a conclusion on whether:**

- f. Express written mandates are available for all interest earned on trust monies, in the absence of which the interest has been recorded as due to the Fidelity Fund, as required by Regulation 34.2.1
- g. Unclaimed or unidentified trust monies held for more than three year have all been accurately recorded, as recorded by section 54(10)
- h. The property practitioner business is registered as an accountable institution, as required by the Financial Intelligence Centre Act;
- i. The property practitioner business has reported cash transactions above the prescribed limit to the Financial Intelligence Centre, as required by the Financial Intelligence Centre Act



# CONSEQUENCES OF LATE AUDIT REPORT SUBMISSIONS

In terms of section 54(6) and Regulation 38, any property practitioner business which fails, through its auditor, to submit its annual audit report on the trust accounts within six months of its financial year end will be levied a fine of:

- R20 a day, up to a maximum of R5 000.

*Note: Estate agencies whose audit reports for the financial years that ended on 30 September 2021 and before 30 September 2021 will be levied penalties in accordance with the board resolution passed in terms of section 27 of the Estate Agency Affairs Act. The fine in Regulation 38 will only apply to those property practitioner businesses with financial year-ends on or after 31 October 2021, if their auditors submit their audit reports after the new six month deadline.*

# CONSEQUENCES OF AUDIT FINDINGS IN AUDIT REPORTS

**In terms of Regulation 38, the following contraventions will attract the stated fines:**

- a. The trust account opened by the property practitioner business does not contain a reference to section 54(1) as required – **R7 500**;
- b. The trust account into which trust monies not immediately required are deposited does not contain a reference to section 54(2) as required – **R750**;
- c. The trust accounting records are not kept separately as required by section 54(5) – **R25 000**;
- d. The trust accounting records are not balanced monthly and/or there were monthly trust account deficits as required by section 54(5) – **R25 000**;
- e. Trust monies were not retained in the trust accounts until either the property practitioner is lawfully entitled to such monies or the property practitioner has been a lawful written instruction to pay out from the trust monies, as required by section 54(3) – **R40 000 and R7 500**

# CONSEQUENCES OF AUDIT FINDINGS IN AUDIT REPORTS

In terms of Regulation 38, the following contraventions will attract the stated fines:

- f. Unclaimed or unidentified trust monies held for more than three year have not been accurately recorded, as required by section 54(10) – **R25 000**
- g. The property practitioner business has a valid Fidelity Fund Certificate as required by section 48 – **R25 000**
- h. The property practitioner business is registered as an accountable institution, as required by the Financial Intelligence Centre Act – **to be referred for a disciplinary process;**
- i. The property practitioner business has reported cash transactions above the prescribed limit to the Financial Intelligence Centre, as required by the Financial Intelligence Centre Act – **to be referred for a disciplinary process**

# TRANSITIONAL PROVISIONS

**The following will be the applicable transitional provisions in relation to audit requirements:**

- a. Estate agencies whose audit reports for the financial years that ended on 30 September 2021 and before 30 September 2021 were late or were submitted after the previous 4-month deadline will be levied penalties in accordance with the board resolution passed in terms of section 27 of the Estate Agency Affairs Act.
- b. The late audit report submission fine in Regulation 38 will only apply to those property practitioner businesses with financial year-ends on or after 31 October 2021.
- c. The six month deadline for submission of audit reports will only apply to the audit reports for financial years that has a submission deadline under the old Act that fall after the effective date of the new Act i.e. from 31 October 2021
- d. The interest earned on trust accounts before 1 February 2022 that has no express written mandates will be accounted for as 50% to the Fidelity Fund and 50% to be retained by the estate agency as per the previous Estate Agency Affairs Act, while 100% of interest earned after 1 February 2022 will all accrue to the Fidelity Fund if there are no express written mandates.



Thank you