



## **SEIZURE OF RECORD, DOCUMENT, INFORMATION PROCEDURE GUIDELINES**

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## **1. INTRODUCTION**

The PPRA is established in terms of Property Practitioners Act, 22 of 2019 with a mandate to regulate the conduct of property practitioners. The PPRA (formerly known as EAAB) is also designated as a supervisory body in terms of schedule 2 of FIC Act 38 of 2001 as amended, and is obliged to take all steps required to prevent, alternatively, identify and report on money laundering and terrorist financing activities in the Property Practitioners' sector.

The Property Practitioners Act requires the Chief Executive officer to appoint suitably qualified persons as an inspector and must be issued with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of the Act. The inspector has the powers of a peace officer as defined in section 1 of the criminal procedure Act 51 of 1977 and may exercise the powers conferred on a peace officer by law. The PPRA is therefore empowered to conduct inspections to ensure compliance with Property Practitioners Act; Section 25 of the Act set out the powers of inspectors to enter, inspect and seize, to this end, the PPRA is committed to ensuring lawful exercise of these powers as contained in the Act.

These procedure guidelines are intended to give effect to the provisions of section 24 and 25 of the Property Practitioners Act; and to provide guidelines for proper and lawful seizure of record, documents and information.

## **2. SCOPE AND APPLICATION**

These guidelines are applicable to all seized record, information, documents in terms of section 25 of the Act and for the purpose of inspections and / or investigation.

## **3. THE CIRCUMSTANCES UNDER WHICH DOCUMENTS MAY BE SEIZED**

The seizure of any information, documents, record where an inspection and / or investigation is carried out to give effect to the Act.

The inspector may only seize the information that is relevant or believed to be relevant to an inspections and / or investigation, which may include;

- Property Practitioner fidelity fund certificate;
- Any book, record or other documents related to the inspections and or investigation and in possession or under the control of the property practitioners;
- Examine or make extract from , or copies of , any such fidelity fund certificate , book, record (electronic and hard copies) or other document, articles, computer (

computerised system, storage devices, cloud systems, communication, including third –party software), use of any computer system on the premises that has a bearing on the inspections and or investigation.

#### **4. FROM WHOM SHOULD THE RECORD, DOCUMENTS AND/ OR INFORMATION BE OBTAINED**

The inspector may, for the purpose of investigation and /or investigation requires the Property Practitioner, Manager, Employee or an agent of the property practitioner to provide the information’.

#### **5. PROCEDURE FOR REMOVING DOCUMENTS, INFORMATION AND / OR ITEMS FROM PREMISES THAT IS SUBJECTED TO A SEARCH AND SEIZURE**

Upon having been granted access to the documents, the property practitioner must assist the inspector in providing;

- Providing full access to the premises, relevant information, documents, records;
- Disclosure of all relevant computer system or software in use at the premises;
- Provide relevant password and access paths to the computer systems or software;
- Answer truthfully all questions posed by the inspector as they relate to the inspection and receive written receipt of the documents subject to the property practitioner verifying that the correct information is contained in the receipt.

Upon seizure of the records, documents, information, the inspector must give the property practitioner a reasonable opportunity to make copies of the documents taken, if so requested and issue a written receipt for documents taken from the premises during the search and seizure process.

The receipt issued should provide a list of the documents, description of the documents and the nature of the document.

During a search conducted under a search warrant, a person may refuse to permit the removal of an article, document, or record on the ground that it contains privileged or protected information, to this end, subject to the nature of the records seized, the records should be placed in a sealed bags and or containers, to avoid any damage or destruction.

The inspector should in writing request the registrar or the sheriff of the High Court that has jurisdiction to attach and remove the article, document, or record for safe custody until a court determines whether or not the information is privileged or protected.

The person in control of such premises may not cause such article, document, or record to be amended, altered or destroyed until the inspector has been afforded a reasonable time to request attachment of the documents, records as per the Act.

## **6. OBJECTION TO QUESTIONS OR DISCLOSURE OF DOCUMENTS / INFORMATION DURING SEIZURE PROCESS**

A property practitioner requested to produce record, document, information may object to the disclosure of such record, documents or information on the basis that the document, record, information is protected by legal privilege, in which case the property practitioner must;

- Identify each item of the documentation and information requested which is alleged to be covered by legal privilege;
- Specify the circumstance in which he/ she obtained the information and documentation;
- Identify the author of the information, documentation and the capacity in which the information was produced; and
- The property practitioner and inspector ensure that documents, record, information is placed under the safe custody of the registrar as referred to above.

## **7. LIMITATION ON THE SEIZURE OF DOCUMENT, INFORMATION, RECORD**

The inspector may only seize information, record, documents that are reasonably believed to be relevant to the inspection and /or investigation;

The inspector may only ask questions that are relevant to the search and seizure for the purpose of inspections and/or investigation.

## **8. RETENTION AND PRESERVATION OF RECORD, DOCUMENT, INFORMATION SEIZED**

The record, documents and information seized during inspection and / or investigation must be kept in accordance with section 25(14) of the Act and must be;

- Be kept in a safe custody and the integrity thereof preserved;
- Be protected from loss, tampering and destruction;
- Be access only by inspector and property practitioner as directed and authorised by the office of the registrar of the High Court; and

- Digital record, document, information shall be safeguard by ensuring non-disclosure of password.

## **9. USE OF RECORD, DOCUMENT, INFORMATION SEIZED**

The record, documents, information obtained during inspection and or investigation may only be used for the purpose of conducting an inspection and /or investigation in compliance and enforcement of the Act

In terms of Section 25(17) of the Act an Inspector who obtained information or statement from a Property Practitioner and the Property Practitioner claimed confidentiality on the information obtained and statement so provided, the Inspector shall treat that information and statement with confidentiality.

In the performance of their functions and duties under this policy guideline, the inspector should at all times maintain strict confidentiality regarding all matters that come to their knowledge during the inspection and / or investigation.

The inspector will ensure compliance with Protection of Personal Information Act, insofar as the collection of information from property practitioners. The inspector may make such disclosures when required by the Court of law.

## **10. RETURN OF SEIZED RECORD, DOCUMENT, INFORMATION**

The inspector must ensure that any documentation, information, record taken from the premises is returned to the person in charge of the premises, when;

- The inspection and or investigation has been finalised and a report issued;
- The inspector has made copies of the record, information, document and satisfied that all the relevant information is in his possession;
- That the information, record, documents are no longer necessary for the purpose of the inspection and or investigation;

Notwithstanding the above, the information seized may not be return where the return will be in contravention of the law and it is also not in the public interest to return the information, record, documents and same will be handed to the law enforcement agencies

## **11. COMMUNICATION**

These guidelines will be communicated to employees using the full range of communication methods available to PPRA.

## **12. REVIEW OF POLICY**

The seizure procedure guidelines will be reviewed annually and revised as necessary.