



INSPECTION POLICY

version 1.0

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ABBREVIATIONS

Abbreviations	Definitions
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PPA	Property Practitioners Act
Authority	Property Practitioners Regulatory Authority
Inspector	An Inspector appointed in terms of Section 24 of the PPA
The Minister	Minister of Human Settlements

1. PURPOSE OF THE POLICY

1.1 The main purpose of this inspection policy is to outline the processes and procedures for conducting the inspections and provide guidelines on how to deal with substantive issues arising from an inspection, thereby ensuring consistency in the manner in which the Authority carry out inspections.

1.2 While the policy aims first and foremost to create consistency, it also recognizes the diverse nature of inspections which is influenced by factors such as the size, nature, geography and others of an inspected institution and more importantly the facts of a particular inspection.

1.3 Therefore, although inspectors should strive to adhere to the processes, procedures and guidelines as set out herein; the policy is not aimed to inhibit a flexible approach to conducting inspections when warranted.

1.4 This policy does not in any way a substitute of the PP Act, the Regulations or the code of conduct. The Act, the Regulations and the Code of conduct takes preference over the policy.

2. INTRODUCTION

2.1 The Authority was established by the promulgation of the Property Practitioners Act, 2019 (the PP Act) and it is a public entity listed in Part A of Schedule 3 of the PFMA as a national public entity.

2.2 The principal objective of the Authority are:

- a. provide for the regulation of property practitioners;
- b. provide for the establishment of the Authority;
- c. provide for the powers, functions and governance of the Authority;
- d. provide for the protection and promotion of the interests of consumer;
- e. provide for a dispute resolution mechanism in the property market;
- f. provide for the education, training and development of property practitioners and candidate Property Practitioners;
- g. provide for a framework for the licensing of property practitioners;
- h. provide for a just and equitable legal framework for the marketing, managing, financing, letting, renting, sale and purchase of property; promote meaningful participation of historically disadvantaged individuals and small, micro and medium enterprises in the property market;
- i. provide for the transformation of the property market and the establishment of the Property Sector Transformation Fund.

3. INSPECTION SECTION

3.1 The Inspection section determines the level of compliance with the PP Act, the Regulations and Code of Conduct by all Property Practitioners.

3.2 In order to determine the level of compliance by the PPs the Inspection section conducts inspections on the PPs who are obliged to comply with the provisions in 3.1 above.

3.3 Inspectors are therefore required to exercise statutory powers in order to conduct such inspections and should therefore comply strictly with the provisions of the PP Act, the Regulations and at all times act in a responsible and law abiding manner.

3.4 The specific skills, capabilities and objectivity of the individual must be considered when an Inspector is appointed. The PP Act requires that the individual Inspector to be a suitably qualified person.

3.5 As the Inspector will by extension be appointed as a Peace Officer in terms of Section 334(1) of the Criminal Procedure Act, the individual should not have criminal record and/or have being declared unfit to possess a firearm

3.6 Inspections generally demand professional accounting and legal personnel in the first instance, an inspector requires investigative and analytical skills, a sound knowledge and understanding of the business and regulatory framework, a high standard of technical accounting and legal knowledge is essential.

3.7 The profile of an ideal inspector demands the following characteristics:

- a. technically highly skilled, an Inspector may be called to testify in a court/ adjudication hearings as a witness in relation to an inspection conducted by him / her;
- b. good judgement, each inspection presents new facts to be considered and the onus is on the Inspector to identify relevant and pertinent facts and to report thereon;
- c. objective, impartial and fair, an Inspector is required to be an objective and impartial in his or her findings;
- d. good communication and liaison skills, an Inspector is required to testify court or in adjudicating hearings, conduct interviews at varying levels, question witnesses, liaise with other regulators, supervisors and other stakeholders and to communicate with their principals;
- e. integrity, an Inspector is required to be honest, impervious to bribes and threats to uphold confidentiality;

- f. good writing skills, an Inspection report must convey facts and findings which might be complicated in an easily understandable well structured and concise manner;
- g. tenacity, an Inspector is required to obtain the relevant facts notwithstanding opposition, hostility and confrontation.
- h. project management skills, an Inspector has to deal with a number of tasks simultaneously, may need to manage tasks being outsourced and to apply careful planning in order to follow the correct sequence of the actions in the conduct of an inspection;
- i. diplomacy, difficult circumstances require the application of diplomacy and tact;
- j. flexibility, an Inspector needs to quickly recognise a need to align his or her approach to inspections.

4. LEGISLATIVE REQUIREMENTS REGARDING THE INSPECTIONS

Appointment of Inspectors

4.1 A person conducting an inspection must be appointed in terms of Section 24 of the PP Act. The powers of appointing an Inspector are vested with the Chief Executive Officer (the CEO).

4.2 The certificate of appointment signed by the CEO will be issued to the Inspector. A sample of an appointment certificate is attached as **Annexure A**.

4.3 The Inspector must be in possession of the appointment certificate when conducting an inspection and make same available for perusal at the request of the PP being inspected.

Purpose of Inspection

4.4 The purpose of conducting an inspection is to determine the level of compliance with the provisions of the PP Act, the Regulations and Code of conduct.

Scope of Inspections

4.5 The scope of the inspections is therefore to assess the levels of compliance with the applicable provisions of the PP Act, the Regulations and the Code of Conduct.

List of contraventions

4.6 A matrix containing the obligations in terms of the PP Act, the Regulations and the Code of conduct as well as the maximum sanctions to be imposed for non-compliance with obligations is annexed hereto as **Annexure B**.

Powers of Inspectors

4.7 The PP Act vests the Inspector with the following powers when conducting an inspection without a search warrant:

- a. enter and inspect any business premises, except a private residence of a PP.
- b. require the PP, Manager, employee or an agent of the PP to produce his/her FFC; produce any book, record, other document related to the inspection; furnish him with information in respect of FFC, any book, other documents at such a place or in such a manner as the inspector might prescribe.
- c. examine or make extracts from or copies of such FFC, book, record or any other document.
- d. have the powers of a peace officer as defined in Section 1 of the Criminal Procedure Act and may exercise the powers conferred on a peace officer by law.

4.8 If PP conducts business from private residence, the Administrator must notify the PP in advance and in writing before conducting the inspection and set out the details of the inspection.

4.9 An Inspector may on authority of a search warrant

- a. enter and search any premises and any person on those premises
- b. examine such article, document or record on those premises
- c. request any person to unlock the premises and provide unhindered access to any safe, storage facility etc
- d. request information about any article, document or record
- e. take extracts from any document or make copies
- f. use computer systems on the premises
- g. seize any output from that computer
- h. attach and if necessary remove from the premises for examination and safekeeping anything that has a bearing on the inspection
- i. seize and retain such FFC book, record or document

4.10 Search warrants are issued by a Judge or a Magistrate on application by information given by the Inspector.

Female Inspectors

4.11 During the execution of the search warrant, a female Inspector / police officer may search a female person and only a male Inspector / police officer may search a male person.

4.12 In the appointment of Inspectors, the CEO should take paragraph 4.11 into account.

5. SELECTION CRITERIA OF INSPECTIONS TO BE CONDUCTED

5.1 Property Practitioners are selected for inspections randomly with Provinces with the largest PPs getting more attention. The selection on how many PPs to inspect in a year will be solely guided by the Authorities Annual Performance Plan.

5.2 When selecting PPs for inspection, the one following should be considered: a negative finding by the auditor regarding the registration with the Authority, failure of PPs to balance accounting books on a monthly basis, failure to repay commission unduly received, failure to comply with the PPA and Regulations, failure to comply with the code of conduct, negative media articles, complaints from the consumers, complaints from Whistleblowers, request for inspections from colleagues at the Authority, complaints from the stakeholders, previous Inspections Notices and reports.

6. TYPES OF INSPECTIONS

6.1 Section 25(1) inspection of a PP business premises – without notice

6.2 Section 25(2) inspection of a PP private residence – with a notice

6.3 Section 25(3) inspections of a PP business premises or private residence with a search warrant

6A. ON-SITE OR OFF-SITE INSPECTIONS

6. A.1 On-site inspections could include physical visit to the PP business or private residence to check compliance with the PP Act, the Regulations and the Code of conduct.

6. A.2 Off-side inspections can include such things as self-assessment questionnaire, or any format of questionnaire, procedures, processes to check compliance with the PP Act, the Regulations and the Code of conduct.

6. A.3 The Authority shall harness and use technology to check compliance with the PP Act, the Regulations and the Code of conduct.

7. PRE-INSPECTION AUTHORIZATION

7.1 Where the Authority initiates an inspection / investigation, the following documents must be completed by the Administrator and approved by the Manager: Inspections at least 10 days prior to the inspection date:

- (a) Authorization to conduct an inspection;
- (b) Fact sheet – detailing background including previous inspections, reason for inspection etc
- (c) Notice of inspection in terms of Section 25(2 of the PP Act)

7.2 The reason for the authorization is to create an audit trail and to ensure that all jurisdictional factors are met in order to conduct an inspection as well as to justify the type of inspection to be conducted.

7.3 No inspection may be conducted without the approval of Executive Manager: Inspections or her/his delegated Manager.

8. PRE-INSPECTION

Who selects Property Practitioners for Inspection

8.1 The Administrator shall select PPs for inspection taking into account paragraph of 5 of this policy and take into account the inputs of the Inspector.

Planning

8.2 The planning must be done before visiting the soon to be inspected institution. The authorization should contain the following details:

- a. Address of premises and contact details of the PP;
- b. Inspection date and expected duration of the inspection;
- c. The background of the PP to be inspected, such as directors, services they render, and size;
- d. Determine the non-compliance profile of the PP.
- e. Off-site monitoring of information;
- f. Review of previous inspection reports, and working papers;
- g. Assessment of information such as Audit reports, accounting records. The process might involve consultation with the Audit Department, Finance Department, Legal and Enforcement Department, and Registration Department.

- h. Adverse information reports;

Execution

8.3 The inspection should be conducted in strict regard to the provisions of the Constitution, the PP Act and the law in general.

8.4 An Inspector who enters and inspects premises, must conduct the entry and inspection with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

Safety of inspectors

8.5 The safety of inspectors is paramount and should be protected at all times.

8.6 Inspectors should use rented vehicles when they conduct the inspections and or personal vehicles when safe to do so.

8.7 Inspectors should be in possession of their cell phones when conducting inspections so as to call for assistance when necessary or be reachable by colleagues.

Starting an inspections without notice

8.8 Section 25(1) of the PP Act requires inspections to be conducted at reasonable time without notice.

8.9 In order to comply with this requirement, Inspectors should:

- (a) use the business hours of the particular PP as reasonable time to start the inspection.

Starting an inspection with notice

8.10 Section 25(2) of the PP Act requires Inspectors to give notice to the PP in advance and in writing before conducting the inspections.

8.11 The Administrator shall prepare the Notice of inspection and it shall be signed by the Inspector after authorization by the Manager: Inspections.

8.12 The Notice of inspection should contain the following:

- a. Identify the private residence address to be visited;
- b. Date of the Inspection;
- c. Details of the inspection:

- i. require the PP to produce the valid Fidelity Fund Certificate;
- ii. produce any book, record or other document related to the inspection;
- iii. furnish him or her with such information in respect of Fidelity Fund Certificate, book, record, other document at such a place and in such a manner the Inspector may determine.
- iv. Inspector may make extracts from or copies of any such Fidelity Fund Certificate, book, record or any other relevant document.

8.13 Arriving at the premises, the Inspectors should introduce themselves to the person in charge of the business, or in his/her absence the most senior person available and show their appointment certificate to such a person and advise him/her of the following:

- a. the nature and purpose of the inspection;
- b. the applicable provisions of the PP Act;
- c. what assistance the inspector requires.

9. NOTIFICATION

9.1 Section 25(2) of the Authority requires the PP to be inspected be given notice before the inspection is conducted.

9.2 The inspection notice must be in the format of **Annexure C**.

9.3 The inspection notice shall be prepared by the Administrator and signed off by Inspector after authorization by the Manager: Inspections.

9.4 The inspection notice should be issued from the centralized email address: inspections@ppra.org.za.

9.5 A reasonable period for issuing the notice should be 10 business days unless circumstances direct otherwise.

9.6 Where it is not appropriate to give reasonable notice or any notice, such proposed action should be properly motivated by the particular Inspector and approved by the Executive Manager: Inspections.

10. WARRANTS

10.1 The Authority will as far as possible try to obtain consent from the representatives of the PP to conduct an inspection.

10.2 Where, however, an objection to the inspection is raised by the institution, or giving notice will defeat the purpose of the inspections, a search warrant needs to be obtained from the magistrate or judge.

10.3 The applications for the warrant shall be brought by an Inspector with the assistance of the Manager: Inspections.

10.4 When bringing an application for a search warrant, the Inspector should indicate to the Manager: Inspections the reason why Section 25(1) or 25(2) inspections failed.

10.5 The application for a search warrant shall be based on affidavit that shall be in line with the applicable law.

11. INSPECTIONS NOTICES

11.1 The Minister determines if a contravention of the Act is of a minor or substantive nature by publishing such in the Government Gazette.

11.2 The Minister prescribes fines to be paid for each contravention.

11.3 Where an inspection or investigation indicates that the contravention is of a minor nature, an Inspector shall issue a Compliance Notice to the PP to comply with this Act within the period specified in the notice and the Authority may impose a fine.

Minor / Substantive contraventions

11.4 Minor/substantive contraventions are listed on page 74– 76 of the Regulations and are attached here as **Annexure B**.

Who issues the Inspections notice

11.5 Inspections Notices for inspections or investigations to be conducted shall be prepared by the Administrator and signed off by the relevant Inspector.

11.5.1 The Administrator concerned shall email the Inspections Notice to the PP and keep proof of email sending thereof.

11.6 The Administrator shall register the Inspections Notice issued in the Inspections Notice register.

Who monitors Inspections with the Inspections Notice

11.7 The Administrator shall monitor if the PP has complied with the Inspections Notice and must note necessary remarks in the Inspections Notice register.

11.8 The Administrator shall notify the Inspector designated to conduct the inspection of any correspondence from the PP immediately regarding the Notice of Inspections delivered to the PP.

11.9 The Administrator in paragraph 11.6 shall notify the designated Inspector of non-compliance with Notice of Inspections within 2 days after being notified by the PP of their intention not to comply with the Notice of Inspection.

11.10 The Manager: Inspections shall notify the Executive Manager: Inspections of the status of the Inspections Notices report issued by the Inspector within 2 days after receipt of report.

11.11 The Executive Manager: Inspections shall refer the non-compliance with the Inspections Notices to the Adjudicator within 3 days of receipt of reports from the Manager: Inspections.

11.12 The Administrator shall update the Inspections Notice register on the compliance/ non-compliance with the Inspections Notices after having been referred to do so by the Executive Manager: Inspections within 3 days of receipt of such request.

12. FINE - See the fine policy attached.

13. INSPECTION REPORTS

13.1 The Inspector shall draft an inspection report detailing the nature of the inspection, indicate what provisions of the PP Act or Regulations or Code of Conduct was inspected/investigated, indicate contraventions noted, indicate if a Inspections Notice has been issued, indicate the fine imposed(if any).

13.2 The inspection report shall be drafted within 7 days of inspection and a copy shall be provided to the Manager: Inspections.

13.3 The Manager: Inspections shall consolidate all inspection report findings for the quarter for the Executive Manager: Inspections who shall present the findings to the Chief Executive Officer (if necessary).

14. FILING

14.1 All Notices of Inspections shall be allocated a case number generated on SAP(or any other ICT facility).

14.2 All Inspection reports shall be saved on Papertrail under the case number generated under Notice of Inspection.

14.3 All correspondences under each case number shall be saved together for record purposes.

14.4 All Inspections Notices shall carry the same case number generated under Notice of Inspection.

14.5 All matters referred for Adjudication shall be noted under the same case number generated under Notice of Inspection.

14.6 Any non-Inspections with the Inspections Notice shall be recorded under the case number generated under Notice of Inspection.

15. OUTSOURCING INSPECTIONS / SECONDMENT OF PERSONNEL

15.1 The Authority may outsource the performance of inspections to outside parties who are suitably qualified as required by Section 24(1) of the PP Act to conduct inspections.

15.2 The Authority may second any of its employees or other government entities may be second its employees to the Authority. The persons seconded should be suitable for appointment as required by Section 24(1) of the PP Act. The secondment should be for a limited duration of not more than six months.

16. RECOVERY OF INSPECTION COSTS

16.1 The Authority may in terms of Section 32(2) of the PP Act recover the costs of the Inspection or Investigation wherein the PP failed to comply with a duty to comply with the Act including the Regulations and Code of conduct.

16.2 While the Act does not prescribe under what circumstances the Authority may recover the costs of inspections or investigations, the costs of inspection or investigation should be recovered under the following circumstances:

16.2.1 wherein a PP refused to be inspected at its business premises despite compliance with Section 25(1) of the PP Act and the Authority was forced to obtain a search warrant as

provided for in terms of Section 25(3) of the PP Act and the inspection confirmed non-Inspections with the Act, the Regulations or Code of conduct.

16.2.2 wherein a PP refused to be inspected despite being given a notice of inspection as required by Section 25(2) of the PP Act and the Authority was forced to obtain a search warrant as provided for in terms of Section 25(3) of the PP Act and the inspection confirmed non-Inspections with the Act, the Regulations or the Code of conduct.

16.3 The costs of inspection will include but not limited to flights, audit fees, accommodation, transport, attorney's fees, forensics costs, care hire and all family of costs associated with inspections etc

16.4 The costs shall be computed by the Administrator using the following formula: Costs of the mode of transport used + accommodation costs + car hire costs + add other cost associated with the inspection = Total cost of inspection / number of inspection conducted that week = Cost to be recovered to from the Property Practitioner.

16.5 The Administrator shall have the Finance Department raise invoice as determined in paragraph 16.4 after it has been reviewed and approved by the Manager: Inspections.

16.6 The Administrator shall have the invoice delivered to the Property Practitioner by email and shall keep prove of email thereof.

16.7 The Administrator shall follow all the processes in the Fine policy regarding reporting, recording of fines, reporting etc.

17. CONFLICT OF INTEREST

17.1 No inspector may take part in any inspection if he/she has a conflict of interest, if in doubt about potential conflict, it should be declared with Executive Manager: Inspections.

18. CONFIDENTIALITY CLAUSE

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

18.2 An Inspector shall only divulge verbally or in writing information obtained from a PP which he or she ought to divulge:

- i. in terms of statutory provision

- ii. at the instructions of a court of law
- iii. where justified in the public interest
- iv. with the express intention of the PP

18.3 The confidentiality is not applicable between the Inspector and his/her colleagues in the furtherance of checking and enforcing compliance with the PP Act, the Regulations and the Code of conduct.

18.4 The PP shall not claim confidentiality on information, statements or documents that will prove compliance / non-compliance with the PP Act, the Regulations and Code of conduct.

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

18.6 The inspector will ensure compliance with Protection of Personal Information Act, in as far as the collection of information from property practitioners.

18.7 The confidentiality provisions are applicable to the Administrators, Managers and all involved in the Inspections department.

19. COMMUNICATION

This policy will be communicated to employees using the full range of communication methods available to Authority.

20. REVIEW OF POLICY

The investigation policy will be reviewed annually and revised as necessary.