



INVESTIGATIONS POLICY
IN TERMS OF PPA, 2019

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1. PURPOSE

The investigations policy is established to provide guidelines into the investigation of complaints reports received as a result of illegal operations by Property Practitioners and other associated unlawful activities which may impact on the repute and integrity of the Property Practitioners industry, these complaints includes but not limited to operating without a valid fidelity fund certificate, acts of Fraud and unlawful practices.

2. POLICY STATEMENT

Prior to the transition from Estate Agency Affairs Board (“EAAB”) to Property Practitioners Regulatory Authority (“PPRA”), the regulator has been inundated with reports of unregistered Estate Agents (Property Practitioners). The complainants are of the view that the PPRA is unresponsive and lack of action about the Property Practitioners operating illegally and other unlawful activities. The PPRA is committed to ensuring compliance and monitoring of the real estate sector.

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

3. OBJECTIVES

The objective of this policy is to reduce illegal operation by Property Practitioners as well as unlawful activities thereby;

- a. Investigating all the complaints received in respect of illegal operational property practitioners and unlawful practices
- b. The PPRA has in place a whistle-blower platform where complaints are lodge against illegal property practitioners and intended to fully utilise this platform
- c. Ensuring compliance with regulatory mandate of PPRA
- d. Eliminate non –compliance and reduce illegal trading
- e. To approach the court for interdicts with sufficient evidence to prove illegal trading.

4. LEGISLATIVE PROVISIONS

Section 1 of PPA has some of the following as property practitioners;

- ***“Property practitioner means any natural, or juristic person who or which for the acquisition for gain on his, her, or its own account...”***
 - a. By auction or otherwise sells, purchases, manages..... (i)
 - b. Provides, procures, facilitates..... or markets financing..... (iv)
 - c. Includes a trust in respect of which the trustee, for the acquisition of gain on the account of 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, person, performs any act referred to in paragraph(a),
 - d. 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.....

Section 6(a) regulates the conduct of property practitioners in dealing with the consumers; section 6(b) regulates the conduct of property practitioners in so far as marketing, managing, financing, letting, hiring, sale and purchases of property are concerned; Section 6(c)and (e) empowers that Property Practitioner Regulatory Authority(“the Authority”) to regulate any other conduct which fall within the ambit of the Act in as far as property practitioner and consumers in this market are concerned and to ensure compliance with the Act by Property Practitioners

Section 48 of the PPA, 2019 provides that “ *No person or entity may act as a property practitioner unless, in addition to any other requirement provided for in or under this Act- (a) he or she or it has been issued with a fidelity fund certificate contemplated in section 47. (b) If he or she or it employs any other person as a property practitioner, that person has also been issued with a fidelity fund certificate contemplated in section 47.*”

The Financial Intelligence Centre Act 38 of 2001 directs the Financial Intelligence Centre to combat money laundering and the financing of terrorist and related activities; to make information collected by it available to facilitate the administration and enforcement of the laws of the Republic; to monitor, guide, assist and co-operate with supervisory bodies in supervising and enforcing compliance by accountable institutions with the provisions of the Financial Intelligence Centre Act 38 of 2001; to co-ordinate with supervisory bodies the exercising of powers and performing of functions so as ensure consistent application of the provisions of the Financial Intelligence Centre Act 38 of 2001;

In terms of Schedule 2 to the Financial Intelligence Centre Act 38 of 2001, the former Estate Agency Affairs Board was established in section 2 of the Estate Agency Affairs Act 112 of 1976, was appointed as a supervisory body; and responsible for supervision and enforcing compliance with the Act, or any order, determination or directives made in terms of the Act.

5. INVESTIGATIONS

Section 24 of the PPA, empower the CEO to appoint suitably qualified inspectors 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 and with the inspector identification card. The PPRA as the regulator has been empowered in terms of PPA, 22 of 2019 to investigate where non-compliance with Property Practitioners Act, 2019 Financial Intelligence Centre Act, 2001 and the regulations.

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.

6. INVESTIGATION PROCEDURE

- 6.1. The Investigation: Administrator within the Inspections Department shall receive complaints report from various sources such as whistle-blower received directly from the Chief Executive Officer of the PPRA including; Audit Compliance, Claims, Legal and External Stakeholders
- 6.2. The Investigation: Administrator shall open a case file on SAP and the following points shall be noted prior to investigation and shall be captured on SAP and Paper trail by the Administrator;
 - o File case no
 - o Allocation of the case file and supporting documents to an inspector
 - o Indexing of the case file and supporting documents on SAP and Paper trail
 - o Allocate the matter to an inspector
- 6.3. The inspector shall provide an **preliminary investigation report** incorporating a proposed plan as to the procedure for the investigation which preliminary investigation will include;

- 6.3.1. Information gathering activities
- 6.3.2. Obtaining evidence through various media platform including but not limited to advertisement, photographs of property practitioner , “for sale boards”, photos of the offices where the illegal operation is conducted
- 6.4. Upon completion of the preliminary investigation report , the inspector shall perform the **full investigation**, which investigation will involve the following;
 - 6.4.1. Obtaining and information gathering process within 2 days of receipt of a complaint report
 - 6.4.2. Providing notice of the investigation to the parties concerned within 7 days of the complaint reported
 - 6.4.3. Conducting physical investigation at the premises within 7 days of preliminary investigation.
- 6.5. Once the investigation is completed the inspector will provide a **final investigation report inclusive of recommendations**. where non -compliance has been established the inspector is expected to do the following;
 - 6.5.1. A compliance Notice shall be send to the Property Practitioner concerned indicating a contravention of this Act, which is of a minor nature as determined under section 26(1) which provides; “ *the Minister must, from time to time , determine- (a) contravention of the Act that are of a minor nature and contraventions of the Act that are of a substantial nature,*“ which is a formal compliance notice informs Property Practitioners of the contravention and where relevant to desist from operating illegally.
 - 6.5.2. The compliance notice shall be send via email, personal service or any other means which is available to the Board
 - 6.5.3. The Property Practitioners shall be provided 30 days upon receipt of the notification to remedy the non-compliance.
 - 6.5.4. The compliance notice calls on the property practitioner to comply with the Act within a period of 30 days
 - 6.5.5. The compliance notice shall contain a determined fine to be paid by the property practitioner concerned if such property practitioner , in writing , on the compliance notice acknowledges his, hers, or its failure to comply with the Act as stated in the compliance notice
 - 6.5.6 The non-compliance with the Compliance Notices must be referred to the Adjudicator for further processing. Section 30(1) of the Act provides that “if a person on whom a compliance notice has been served in accordance with section 26 fails to comply

with the Act as demanded in the compliance notice a notice of adjudication must be served to the property practitioner “

7. REMEDIAL PROCESS AND LEGAL PROCEEDINGS

- 7.1. The failure to remediate will result in an application to High Court for a prohibitory interdict against the estate agent
- 7.2. Application for interdict: The EM: Inspectorate, through SCM processes, will appoint firms of attorneys to act on behalf of the PPRA d to lodge the relevant application to the High Court. The panel of attorneys from previously disadvantage Individuals (PDI) shall be considered consideration of attorney with a vast experienced and competent, and having regional footprint will be taken into account.
- 7.3. Interim order- Interdicts: where the High Court has granted an interim order and a return date issued, the PPRA may do the following in terms of the Act;
 - a. Establish if the Property practitioner is willing to incorporate
 - b. Where the property practitioner agrees to incorporate the matter shall immediately be referred to legal department for charges to be brought against the property practitioner concerned
 - c. Regularisation of the property practitioner through disqualification process through formal inquiry process or Board resolution
 - d. Deregistration process: the property practitioner shall be advised of the winding up procedure as detailed in the Act
 - e. The property practitioner shall be advised of the provisions of section 54(8) wherein the property practitioner is prohibited from operating in any way on his trust, savings or other interest bearing account;
 - f. The PPRA shall apply to High Court to prohibit it any property practitioner from operating on his/ her trust, saving or interest bearing account and request the High Court to appoint a **curator bonis** to control and administer such trust, savings or interest bearing account with such rights, duties and power as the Court may deem fit
- 7.4. Final order- interdict: where the property practitioner refuse to incorporate and nor comply with the provisions of the Act , the Authority shall proceed to obtain a final order
- 7.5. The execution of the final order shall be effected by the sheriff office and return of service be provided to PPRA.

- 7.6. Where the property practitioner refuses to comply with the final order as served by the sheriff office the Authority shall approach the South African Police Services (SAPS) for assistance such as warrant of arrest.

8. MONITORING PROCESS

The EM: Inspectorate is expected to perform the following monitoring functions;

- 8.1. Verification of the final investigation reports
- 8.2. Progress on the application of the interdict by the appointed attorneys
- 8.3. Obtain reports from the appointed attorneys
- 8.4. Provide quarterly reports on the number of investigation received, investigated and completed
- 8.5. Provide quarterly reports on the number of interdict obtained per region/ province.

9. CONFIDENTIALITY AND DISCLOSURES

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 investigation. The inspector may not communicate any such matter to any person except; to the Authority, unless ordered to do so by a court of law or insofar as such communication is necessary and desirable to carry out the required investigation. The inspector will ensure compliance with Protection of Personal Information Act, in as far as the collection of information from property practitioners. Section 12 of the Protection of Personal Information Act provides that

1. *“Personal information must be collected directly from the data subject, except as otherwise provided for in subsection (2).*
2. *It is not necessary to comply with section 1 above if :-*
 - a. *The information is contained in or derived from public record or has deliberately been made public by the data subject*
 - b. *The data subject or a competent person where the data subject is a child has consented to the collection of the information from other sources*
 - c. *Collection of the information from another source would not prejudice a legitimate interest of the data subject*
 - d. *Collection of the information from another source is necessary :-*
 - i. *To avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences*

- ii. To comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of south African revenue service act, 34 of 1997*
- iii. For the conduct of proceeding in any court or tribunal that have commenced or are reasonably contemplated*
- iv. In the interest of national security*
- v. To maintain the legitimate interest of the responsible party or of a third party to whom the information is supplied*
- e. Compliance would prejudice a lawful purpose of the collection*
- f. Compliance is not reasonably practicable in the circumstances of the particular case.”*

10. COMMUNICATION

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

11. REVIEW OF POLICY

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