



Inspections guidelines for property practitioners

1. Background and Introduction

This inspections guideline is aimed at providing guidance to property practitioners in ensuring compliance with Property Practitioners Act, 2019(PPA). The guidance document outlines some of the pertinent aspects of inspections and what inspections is composed of in a practical manner and further touch on the areas of inspection, non – compliance and potential maximum fines.

2. Guidance paper

2.1. Inspections powers

- 2.1.1. When conducting inspections, the inspector is required to examine whether a Property Practitioners have complied with or are continuing to comply with the provisions of the Act and the Code of Conduct)- Section 25 of the PP Act provides for the Powers of inspectors to enter, inspect, search and seize;
- 2.1.2. Section 25. (1) An inspector may, at any reasonable time and without prior notice, conduct an inspection to determine whether the provisions of this Act are being or have been complied with, and for that purpose, may without a search warrant—
- (a) enter and inspect any business premises, except a private residence, of a property practitioner;
 - (b) require the property practitioner, manager, employee, or an agent of the property practitioner to—
 - (i) produce to him or her the fidelity fund certificate of that property practitioner;
 - (ii) produce to him or her any book, record or other document related to the inspection and in the possession or under the control of that property practitioner, manager, employee, or agent; or

- (iii) furnish him or her with such information in respect of the fidelity fund certificate, book, record, or other document at such a place and in such manner as the inspector may determine; and
- (c) examine or make extracts from, or copies of, any such fidelity fund certificate, book, record, or other document.

2.1.3. Section 25 (2) Where a property practitioner conducts his or her business at his or her private residence, the inspector must notify the property practitioner in advance and in writing before conducting the inspection in terms of subsection (1), and set out the details of the inspection.

2.2. Inspections under warrant

2.2.1. Section 25 (3) An inspector may, on authority of a search warrant—

- a) Enter and search any premises and any person on those premises if there are reasonable grounds for believing that there is an article or record therein that has a bearing on the inspection;
- b) Examine any such article or record that is in those premises;
- c) Request any person on the premises to unlock or otherwise provide unhindered access to any safe, storage facility or other receptacle on the premises, or to point out any other person on the premises who can do so;
- d) Request information about any article, document or record that has a bearing on the inspection;
- e) Take extracts from, or make copies of, any book, computer, document, or record that is on or in the premises and that has a bearing on the inspection.
- f) Use any computer system on the premises that has a bearing on the inspection, or require assistance of any person on the premises to use that computer system, to—
 - (i) Search any data contained in or available on that computer system; or
 - (ii) Reproduce any record from that data;
- g) Seize any output from that computer for examination and copying;
- h) Attach and if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the inspection; and
- i) Seize and retain any such fidelity fund certificate, book, record, or other document that may afford evidence of sanctionable conduct under this Act: Provided that the person from whom the fidelity fund certificate, book, record, or other document was taken shall, at his or her request and at his or her expense, be allowed to make copies thereof or extracts therefrom, under the supervision of the inspector concerned.

2.2.2. Section 25 (4) The search warrant contemplated in subsection (3) may only be issued by a judge or a magistrate if it appears from the information given by the inspector under oath or affirmation that—

- a) There are reasonable grounds for suspecting that a contravention of the Act has occurred or is occurring;
- b) A search of the premises is likely to yield information pertaining to the alleged contravention; and
- c) The search is reasonably necessary for the purposes of enforcing the Act.

2.3. The inspections scope will as set out in the Act includes amongst others:

- a) Whether the Property Practitioner is registered with PPRA;
- b) Whether a valid Property Practitioners Fidelity Fund Certificate is prominently displayed;
- c) Whether a Property Practitioners in conducting of his business acted contrary to the integrity of property practitioners in general;
- d) Whether you had being given a mandate to act on behalf of a seller / lessor;
- e) Whether you have appointed an auditor;
- f) Whether you keep separate records of all monies deposited in your trust account;
- g) Whether you kept your records for five years;
- h) Whether the commission you received you facilitated the transaction while in possession of a valid Fidelity Fund Certificate;
- i) Whether you have formally or informally encouraged a consumer to use the services of a particular transferring attorney; and
- j) Whether you are complying with the provisions of this Act / Regulations.

2.4. Non – Compliance

Where non-compliant is found, a separate process unfolds, and the following sanctions may be imposed against Property Practitioner:

- a) A property practitioner might be required to pay a fine.
- b) A property practitioner might be directed to remedy the non-compliance.
- c) A property practitioner Fidelity Fund Certificate might be withdrawn.

2.5. Contraventions

The changes brought about by PPA, and the Regulations is that the Act has set out the minor and substantial contravention and equally set out the relevant fines applicable to each

contravention, some of the section do impact of the inspection carried and amongst those stated includes;

Substantial contraventions

| Sections | Contraventions | Maximum Fine |
|------------------|--|--|
| Section 47(1) | Every property practitioner excluding property practitioner described under para(g) of sec1, must within the prescribed period and in the prescribed manner, every 3 years apply for FFC accompanied by fees | R15 000. |
| Section 47(2) | Property practitioner referred to under para (d) of section 1, must within the prescribed period and in the prescribed manner, every 3 years apply for registration certificate accompanied by fees | R10 000. |
| Section 48(1) | No person or entity may act as a property practitioner unless he or she has been issued with FFC | R 25 000. |
| Section 48(4) | A person who contravenes or fail to comply with sec48(1) must immediately upon request from any relevant party in writing, repay any amount received in respect of the property transaction during such contravention | R10 000. |
| Section 52(2) | A person who is in possession or in control of any FFC which has been in terms of section 52(1) must refrain from using or displaying that FFC | R1 500. |
| Section 52(6) | A person whose FFC has been withdrawn in terms of section 52(1) or lapsed in terms of section 52(4) may not directly or indirectly participate in the management of any business carried out by a property practitioner in his, her or its capacity as such, or participate in the carrying out of such business or be employed, directly or indirectly, in any capacity in such business, except with the written consent of the Authority and subject to the conditions that the Authority may determine | R25 000. (withdrawal) R7500(lapsed) |
| Section 52(7) | A property practitioner may not directly or indirectly in any capacity whatsoever employ a person contemplated in section 52(6) or allow or permit such person directly or indirectly to participate in any management or the carrying on of his, her or its business as a property practitioner, except with the written consent of the Authority and subject to the conditions imposed by the Authority | R 25 000. |
| Section 53(1)(a) | A holder of FFC must prominently display his, her, or its FFC in every place of business from where he, she or it conducts property | R 1500. |

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| | transactions, to enable consumers to easily inspect it | |
| Section 55(1) (a-f) | Duty of property practitioner to keep accounting records and other documents for a period of 5 years | R 1500. per annum |
| Section 62(1)(h) | A property practitioner is guilty of sanctionable conduct if he, she, or it commits an offence involving element of dishonesty | R25 000. |

Minor contraventions

| Sections | Contraventions | Maximum Fine |
|------------------|--|--------------|
| Section 47(5) | A property practitioner may not use or display a lapsed FFC | R 1500. |
| Section 47(6) | A property practitioner must, upon request from any relevant, produce a FFC or certified copy thereof | R 500. |
| Section 47(7) | A property practitioner whose contact details change during the period of validity of his, her, or its FFC, must within 14 days of such change taking place in writing provide the authority with his, her or its new contact details | R 2000. |
| Section 54(1) | Every property practitioner must open and keep one or more separate trust account, which must contain a reference to this section, with a bank registered in terms of the Bank Act, 1990; must immediately after opening a trust account appoint an auditor; must immediately after opening a trust account and appointing an auditor provide the Authority as prescribed with all information in respect of such account(s) and such auditor; and his, her or its responsible or designated employee, must immediately deposit all trust money held or received by or on behalf of that property practitioner in the relevant account | R7 500. |
| Section 54(2)(a) | Any property practitioner may invest in a separate or other interest – bearing account opened by him, her, or it with any bank any monies deposited in his, her or its trust account which is not immediately required for a particular purpose provided that – savings or other interest-bearing accounts must contain a reference to this subsection | R750. |
| Section 54(2)(b) | Any property practitioner may invest in a separate or other interest – bearing account opened by him, her, or it with any bank any monies deposited in his, her or its trust account which is not immediately required for a particular purpose provided that- property practitioner must as prescribed provide the Authority with all information in respect of such account | R1500. |

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| Section 55(4) (a-b) | A property practitioner, in addition to the duties provided in section 55(1), in respect of his, her or its activities- keep at an address in the republic the accounting records that are necessary to fairly reflect and explain the state of affairs – of all monies received or expended by him, her or it including monies deposited to a trust account or invested in a savings or other interest bearing account ; of all his, her or its assets and liabilities; and of all his , her or its financial transactions and the financial position of his, her or its business and cause the accounting records to be audited by an auditor within six months after the final date of the financial year of the property practitioner, which final year may not be altered by him, her or it without the prior written approval of the Authority | R7 500. |
| Section 64(1) | A candidate property practitioner may not draft or complete any document or clause in a document- conferring any mandate on any property practitioner to perform any acts as defined in section 1 or relating to the sale or lease of property | R1500. |
| Section 64(2) | A person who contravenes section 64(1) and a property practitioner who allows an act contemplated in section 64(1) is not entitled to any payment, remuneration, consideration, or damages in respect of or by reason of any document contemplated in that subsection or for bringing about the transaction or agreement embodied in that document | R1500. |
| Section 69(2) | A property practitioner owes a buyer and seller a duty of care | R 1500. |

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ISSUED BY THE PROPERTY PRACTITIONERS REGULATORY AUTHORITY

DATE: 12 SEPTEMBER 2022