PROPERTY PRACTITIONERS REGULATORY AUTHORITY

PRACTICE DIRECTIVE OF 2023 IN TERMS OF THE PROPERTY PRACTITIONERS ACT, 2019, ON INTEREST EARNED FROM TRUST ACCOUNTS

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GLOSSARY OF TERMS AND ACCRONYMS

"Fidelity Fund Certificate", means a fidelity fund certificate issued to a property practitioner in terms of section 47 of the Property Practitioners Act, 22 of 2019 and the Regulations;

"PPA", means the Property Practitioners Act, 22 of 2019;

"PPFF", means the Property Practitioners Fidelity Fund as contemplated in section 34 of the Property Practitioners Act, 22 of 2019;

"PPRA", means the Property Practitioners Regulatory Authority, a national public entity established in terms of section 5 of the Property Practitioners Act, 2019;

"Property practitioner", means a property practitioner defined by section 1 of the Property Practitioners Act, 22 of 2019;

"Regulations", means the Regulations published in terms of the Property Practitioners Act, 22 of 2019;

"Trust account", means a trust account as contemplated in section 54 of the Property Practitioners Act, 22 of 2019;

1. PURPOSE

The purpose of this Practice Directive is –

1.1 to provide guidelines on the administration of trust accounts by property practitioners.

1.2 To set-out practical measures for the handling and treatment of trust moneys by property practitioners.

1.3 To provide tangible guidelines on the treatment and payment of interest earned on trust accounts by property practitioners.

2. APPLICATION OF THE PRACTICE DIRECTIVE

2.1 This Practice Directive applies to all property practitioners who are keeping and maintaining trust accounts in terms of section 54 of the Property Practitioners Act, 22 of 2019;

2.2 Compliance to this Practice Directive by such property practitioners is mandatory;

3. PROBLEM STATEMENT

3.1 Efficient and effective trust account administration guarantees that proper and accurate trust accounting records are maintained. Failure to maintain efficient trust accounting records often results-in qualified audit reports. Non-compliance to acceptable trust accounting practices, may lead to renunciation of a Fidelity Fund Certificate. Additionally, this may also expose the Property Practitioners Fidelity Fund (PPFF) to potential risks such as claims against the PPFF, theft or misappropriation of trust moneys.

3.2 When these instances happen, they negatively affect the character, reputation, reliability and integrity of the trust account administration and practices. At all times, instances of non-compliance to the highest degree of trust accounting standards, should be prevented and avoided at all cost.

3.3 Consequently, property practitioners must ensure that the internal controls designed and implemented to safeguard trust accounts, are adequate to manage any potential risks before they occur. Compliance to the highest degree of trust accounting standards results-in effectiveness and efficiency of operations, reliability of financial reporting and compliance with applicable laws and objectives.

3.4 Failure by a property practitioner to receive a clean audit report adversely impacts the profiling of the trust account. This may result in the property practitioner's trust account, being subjected to an inspection or investigation as this poses a serious risk to the PPFF.

3.5 There is lack of tangible standards and guidelines on the treatment of interest earned from trust accounts by property practitioners. Interest earned from trust accounts aids property practitioners in upholding highest standards of trust accounting practices; helps the Property Practitioners Regulatory Authority in administering the trust accounting environment prudently; and additionally, improves the solvency and liquidity of the PPFF in order to protect consumer interests. This Practice Directive aims to explains how interest earned from trust accounts should be treated by property practitioners.

4. ADMINISTRATION OF TRUST ACCOUNTS

4.1 Regulation 30 requires property practitioners to administer their trust accounts by using digital or manual bookkeeping systems. The booking system should record all pertinent information regarding trust accounts and the movements of all trust monies and should include general and subsidiary ledgers, cash books and all other documents and books of entry necessary for the proper maintenance of trust accounts.

4.2 Proper and accurate trust account administration should include safeguarding the records against unauthorised access, alteration, destruction or manipulation; be kept in a readily retrievable format, should the PPRA or an auditor requires access.

4.3 Trust monies to be safeguarded by property practitioners includes, but not limited to the following:

- Money received and paid on own account;
- Any money received, held, or paid on account of any person;
- Money invested in a trust account or other interest-bearing account; and
- Any interest on money so invested, which is paid over or credited.

5. RESPONSIBILITIES OF PROPERTY PRACTITIONERS TO SAFEGUARD TRUST MONEYS

5.1 Property practitioners should create efficient and effective control environment for the safe-keeping of trust accounts and trust moneys. This should be embedded by a commitment towards openness, honesty, integrity and ethical behaviour.

5.2 Property practitioners should periodically and on an ongoing basis, c*onduct risk assessment by s*etting clear operating goals and objectives, identifying risks that could impede achievement of those objectives, and to mitigate exposure to those risks to acceptable levels.

5.3 Property practitioners should i*mplement effective and efficient control activities which include* policies and procedures to ensure that organisational directives are carried out towards the safe-custody of trust accounts and trust moneys.

5.4 Property practitioners should design and implement ***efficient and effective information and communication systems to disseminate information*** throughout the organisation.

5.5 Periodically and on an ongoing basis, property practitioners should **m*onitor and evaluate the adequacy*** *and* ***efficiency*** *of* internal control systems, designed to safeguard trust accounts and trust moneys.

5.6 Property practitioners should implement efficient and effective preventative, detective and corrective controls to safeguard trust accounts and trust moneys.

6. DECLARATION OF INTEREST FROM TRUST ACCOUNT

6.1 The banking institution at which a trust account is kept, must annually declare interest from such trust account.

6.2 A declaration from a bank contemplated in section **54(4) of the Property Practitioners Act, 2019 (Act No. 22 of 2019) ("The PPA"),** should be **submitted to the Property Practitioners Regulatory Authority ("The PPRA") in a secure manner and frequency agreed between the PPRA and the individual banks.**

6.3 **After completion of an audit, the auditor should declare the interest from the trust account as audited.**

7. PAYMENT OF INTEREST EARNED FROM TRUST ACCOUNT

7.1 Having audited a trust account as contemplated in section 54(1)(a) of the PPA, the auditor should declare all interest earned in terms of such trust account.

7.2 Interest earned from a trust account must be split between the property practitioner and the PPRA on a 50:50 equal basis, except where parties to a contract of lease or sale agree in writing to whom interest earned, must be paid.

7.3 The 50% accruing to the PPRA, should be paid into the PPFF.

8. CONSEQUENCES FOR NON-PAYMENT OF INTEREST EARNED FROM TRUST ACCOUNTS

8.1 Failure to maintain proper and accurate trust accounting records leads to a qualified audit report. Audit reports are submitted to the PPRA and are used as part of the requirements for promoting good governance, protecting consumer interests, reduction of claims against the PPFF and elimination of theft and misappropriation of trust moneys.

8.2 Subject to section 62(1)c), of the PPA, a property practitioner who fails to pay interest earned from trust account, due to the PPRA or in respect of the Fund within one month after such monies become due, commits an offence. Property practitioners found to have administered their trust accounts improperly and inaccurately, may be issued with a compliance notice or be referred to an adjudication proceedings. Such property practitioners could potentially be disqualified from operating as property practitioners. Qualified reports often lead to non-approval of the report by the PPRA.

9. CONCLUSION

9.1 Property practitioners should implement efficient and effective operational efficiency environment to safeguard their physical and financial assets from fraud, theft, errors and irregularities; ensuring reliable financial reporting; maintaining compliance to meet regulatory reporting requirements. Properly implemented internal controls can help streamline operations and increase operational efficiency, in addition to preventing fraud.

9.2 The PPRA is empowered by its enabling legislation, to inspect the trust accounting records of property practitioners to satisfy itself that the provisions of section 54 of the PPA are complied with.

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9.3 Additionally, the PPRA may conduct inspection to determine compliance to the provisions of section 54, Property practitioners are normally faced with the reality that they employ individuals to provide certain services to their clients, and at times employ people with ulterior motives, whose main intent is to enrich themselves by committing illegal acts, which may lead to claims lodged against the PPFF for misappropriation or theft of trust moneys.

9.4 It is important that property practitioners do not merely develop internal controls to deal with trust account issues but also monitor the effectiveness thereof. Property practitioners should ensure that the updating and/review of trust accounting records is holistic to avoid concealment and/or errors reflecting on their books resulting in unwanted consequences. When trust deficit positions and trust accounts in debit, and even incorrectly determined trust surplus positions, are discovered by inspectors and/or auditors, these lead to non-compliance and qualified reports respectively issued. These in turn have a negative impact on the profile of the property practitioner. Property practitioners with such reports risk the potential of being denied issuance of Fidelity Fund Certificates by the PPRA, thus limiting their economic activities.

9.5 Accordingly, property practitioners should submit their audits reports, six months after the end of their financial year; declare interest earned from such trust accounts; and pay over the 50% accruing to the PPRA to enable the efficient administration of the PPFF and the audit compliance process.

ISSUED BY THE PROPERTY PRACTITIONERS REGULATORY AUTHORITY

THATO RAMAILI
CHIEF EXECUTIVE OFFICER
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