



AN OVERVIEW OF THE PROPERTY PRACTITIONERS ACT AND REGULATIONS

The Property Practitioners Act replaced and repealed the Estate Agency Affairs Act of 112 of 1976 (hereinafter referred to as “the Act”). The Act will come into effect on 1 February 2022. Some of the pertinent provisions of the Act and its regulations are discussed herein.

1. Definition of property practitioners

The definition of “property practitioners” is extensive and will regulate all estate agents, the Act defines property practitioners as:

“property practitioner”—

- (a) *means any natural or juristic person who or which for the acquisition of gain on his, her or its own account or in partnership, in any manner holds himself, herself or itself out as a person who or which, directly or indirectly, on the instructions of or on behalf of any other person—*
 - (i) *by auction or otherwise sells, purchases, manages or publicly exhibits for sale property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a seller or purchaser in respect thereof;*
 - (ii) *lets or hires or publicly exhibits for hire property or any business undertaking by electronic or any other means or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor in respect thereof;*
 - (iii) *collects or receives any monies payable on account of a lease of a property or a business undertaking;*
 - (iv) *provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or lease of a property or a business undertaking, including a provider of bridging finance and a bond broker, but excluding any person contemplated in the definition of “financial institution” in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);*
 - (v) *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, but does not include—*
 - (aa) *a person who does not do so in the ordinary course of business;*
 - (bb) *where the person is a natural person and that person in the ordinary course of business offers a property for sale which belongs to him or her in his or her personal capacity;*

- (cc) *an attorney or candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); or*
 - (dd) *a sheriff as defined in section 1 of the Sheriffs Act, 1986 (Act No. 90 of 1986), when he or she performs any functions contemplated in paragraph (a) of this definition, irrespective of whether or not he or she has been ordered by a court of law to do so; or*
 - (vi) *renders any other service specified by the Minister on the recommendation of the Board from time to time by notice in the Gazette;*
- (b) *includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development;*
- (c) *includes any person who for remuneration manages a property on behalf of another;*
- (d) *includes a trust in respect of which the trustee, for the acquisition of gain on the account of the 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, performs any act referred to in paragraph (a);*
- (e) *for the purposes of sections 34, 46, 48, 59, 60, 61 and 65 includes—*
- (i) *any director of a company or a member of a close corporation who is a property practitioner as defined in paragraph (a);*
 - (ii) *any person who is employed by a property practitioner as envisaged in paragraph (a) and performs on his, her or its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of that paragraph;*
 - (iii) *any trustee of a trust which is a property practitioner as envisaged in paragraph (d);*
 - (iv) *any person who is employed by a property practitioner as envisaged in paragraph (b) and performs on its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of paragraph (a); and*
 - (v) *any person who is employed by a property practitioner contemplated in paragraph (a) or (b) to manage, supervise or control the day-to-day operations of the business of that property practitioner;*
- (f) *includes any person who is employed by or renders services to an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979, other than an attorney or candidate attorney, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i), (ii), (iii), (iv), or (vi) of paragraph (a), on behalf of such attorney or professional company whose actions will be specifically covered by the Attorneys' Fidelity Fund and not the Property Practitioners Fidelity Fund...*

2. Application of the Act (Chapter 1)

The Act applies to the marketing, promotion, managing, sale, letting, financing and purchase of immovable property, and to any rights, obligations, interests, duties or powers associated with or relevant to such property.

3. Property Practitioners Regulatory Authority (Chapters 1, 2 and 3)

The Property Practitioners Regulatory Authority (the “Authority”) will be the new regulatory body of property practitioners and will be governed by and will act through the Board of the Authority. This Authority will replace the Estate Agency Affairs Board and will be funded by Government monies and fees paid by property practitioners. The Act deals with administrative matters such as the composition, appointment, disqualification, and termination of members of the Board, powers and duties of the Board, meetings, committees and dissolution of the Board, appointment of the CEO and staff of the Authority.

The Authority must in performing its functions, amongst others:

- regulate the conduct of the property practitioners in dealing with consumers;
- regulate the conduct of property practitioners in so far as marketing, managing, financing, letting, renting, hiring, sale and purchase of property are concerned;
- ensure that the Act is complied with;
- ensure that consumers are protected from undesirable and sanctionable practices (set out in sections 62 and 63);
- regulate any other conduct which falls within the ambit of the Act in as far as property practitioners and consumers in this market are concerned;
- provide for the education, training and development of property practitioners and candidate property practitioners;
- educate and inform consumers of their rights;
- implement measures to ensure that the property sector is transformed.

4. Inspectors and Compliance (Chapter 5)

The Authority (through the CEO) must appoint duly qualified persons to act as inspectors to determine whether the Act is being complied with. The inspector may at any reasonable time and without prior notice, conduct an inspection and may without a 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.

If a property practitioner conducts business from his private residence the inspector is required to notify the property practitioner in advance of such inspection and the details of the inspection.

If the inspector obtained a warrant from a judge or magistrate, then he/she has wider search and inspection powers.

5. Documents and Communication (regulation 40)

Regulation 40, prescribes that the following documents must be retained in accordance with the provisions of section 55, for a period of 5 (five years) –

- copies of all electronic communications sent or received by the property practitioner to and from members of the public in the course of carrying out its activities as a property practitioner, other than in circumstances where a property practitioner is acting in the course and scope of his or her employment by a person or entity that is a registered property practitioner in terms of the Act; and
- where the property practitioner employs other property practitioners, copies of all electronic communication sent or received by such employee property practitioner, to or from members of the public in the course and scope of carrying out his or her employment duties.

Provided that such obligation shall not extend to electronic communications on social media which are generally accessible by members of the public.

This is in addition to the documents prescribed in terms of Section 55 of the Act which includes all documents exchanged with the Authority, correspondence between a property practitioner and his or her employer and his or her franchisor, any agreement incidental to a practitioner carrying out the business of a property practitioner, any agreement, mandate, mandatory disclosure form or other document relating to the financing, sale, purchase or lease of a property and any advertising or marketing material related to any Property Practitioner carrying on the business of a Property Practitioner.

6. Fidelity Fund and Indemnity Insurance (Chapter 7)

The Estate Agents Fidelity Fund (in terms of the Estate Agents Affairs Act) will continue to operate but under the name Property Practitioners Fidelity Fund. The running costs of the Authority including insurance premiums will also be paid from this fund.

The primary purpose of the fund is to reimburse persons who suffer financial loss as a result of –

- theft of trust money committed by a property practitioner who was in possession of a Fidelity Fund certificate at the time of the theft; or
- the failure by a property practitioner to apply timeously or to make payment for, his or her Fidelity Fund Certificate.

No person has any claim against the Authority unless the claimant has—

- within three years after the circumstances giving rise to a claim came into being, given notice to the Authority of such claim; and
- Within three years from the date of written notification by the Authority addressed to the claimant or his or her legal representative informing the claimant that the Authority rejects the claim or requires the complainant to comply with a reasonable request made in writing by the South African Police or other organ of state investigating the criminal activity or the National Directorate of Public Prosecutions or any assistance required by an authority investigating the complaint.

Anyone seeking to claim compensation from the Fund must give notice (Regulation 18.1) thereof to the Authority in the prescribed manner, the Act further provides that **a person can't claim against the Authority in respect of theft of trust money by a property practitioner unless such a person has, before lodging a claim with the Authority, laid a criminal charge against that property practitioner.** As such it is clear that theft of trust monies will be dealt with seriously by the Authority and that criminal sanctions will be imposed.

A claimant may not recover from the Authority any amount larger than the difference between the amount of the loss suffered and the amount or other benefits received from another source in respect of such loss (such as insurance).

No right of action lies against the Authority in respect of any loss suffered by:

- the spouse, life partner, business partner or immediate family member of a property practitioner by reason of any negligent or intentional conduct including theft committed by such property practitioner; or
- any property practitioner by reason of any negligent or intentional conduct including theft committed:
 - by his, her or its business partner;
 - if such property practitioner is a company, by any director of such company;
 - if he or she is a director of a company, by any co-director in such company;
 - if such property practitioner is a close corporation, by any member of such corporation;
 - if he or she is a partner in a partnership, by any other partner of such partnership; or
 - by any person employed by him or her as a property practitioner;
 - any person as a result of negligent or intentional conduct including theft, or as a result of any other act or omission in connection with trust monies held or received on account of any other person, by any person referred to in paragraph (d) of the definition of "property practitioner" in section 1.

6.1 Fidelity Fund Certificates (Chapter 8)

In terms of section 47 every property practitioner must every 3 (three) years apply to the Authority for a Fidelity Fund certificate and such application must be accompanied by the prescribed fees and penalty fees applicable if any (penalties are payable if the application is made late or the fees were not paid with the application).

The Authority must supply the certificate within 30 days (unless extended by the Authority for a period of up to 20 working days on “good grounds” in writing), failing which it is deemed that the application for the certificate was compliant and the practitioner may then demand the issue of the certificate within 10 working days.

Property practitioners must notify the Authority within 14 days of any change in contact details.

Certain disqualifications apply, as set out in section 50, in which circumstances the Authority may not issue a Fidelity Fund certificate, one of which is if the property practitioner is not in possession of a BEE certificate or a valid tax clearance certificate. The Act does not further deal with minimum levels in this regard and does not otherwise deal with this aspect in detail.

No-one may act as a property practitioner unless he or she or it is in possession of a Fidelity Fund certificate, or, if he or she or it employs any other person as a property practitioner, that person is also in possession of a Fidelity Fund certificate. If an entity is a company, close corporation, a trust or a partnership, then every director of such a company, every member of such a close corporation, every trustee of such a trust and every partner of such a partnership, as the case may be, must be in possession of a Fidelity Fund certificate.

A person who contravenes this requirement must immediately upon receipt of a request from any relevant party in writing repay any amount received in respect of or as a result of any property transaction during such contravention (section 48 (4)) and is not entitled to remuneration in terms of Section 56.

A conveyancer may not pay any monies to a property practitioner unless he or she received a copy of the practitioner’s certificate (section 56 (5)).

Importantly the Fidelity Fund certificate must be prominently displayed in every place of business from where property transactions are conducted to enable consumers to easily inspect it, ensure that the prescribed sentence regarding holding a Fidelity Fund certificate is reproduced in legible lettering on any letter head or marketing material relating to that property practitioner and in any agreement relating to property transactions, include the prescribed clause which ensures that he, she or it guarantees the validity of the certificate.

6.2 Fees payable for a Fidelity Fund certificate (regulation 26)

Each property practitioner shall from the calendar year of 2020 pay to the Authority a levy of R2 340.00 for a Fidelity Fund certificate which will be valid for three (3) years. One may also elect to rather

annually pay R780.00 for such certificate. Candidate property practitioners are to pay R380.00 for each year in which he or she practices as a candidate. Should a person practice as a candidate property practitioner for longer than two (2) years he or she will be liable for payment at the same rate as a property practitioner.

All property practitioners will need to pay R400.00 to the Property Practitioners Fidelity Fund as a registration fee. Furthermore, all applications for Fidelity Fund certificates must reach the Authority on or before 31 October of each year and each certificate will be valid until 31 December of the year for which it was issued. When applying for a Fidelity Fund certificate the property practitioner will need to confirm that he or she is in possession of a valid tax clearance and BEE certificate.

A property practitioner will require, as per regulation 26.2, a Fidelity Fund certificate for each different industry in which such property practitioner operates and therefore a separate application and payment of the application fee, currently set at R125.00, for each industry will need to be made and paid. Regulation 41.22, however, provides that in respect of a natural person acting as property practitioner in different capacities, but in the same industry, a single Fidelity Fund certificate will be required. The Authority will define the various industries and categories of property practitioners at a later date.

6.3 Trust accounts

Subject to what is set out in 6.4 below, a property practitioner is required to open and run a trust account (Section 54(1)) and to retain all trust monies invested in a separate savings or other interest-bearing account or his trust account until such stage as he is entitled to such monies or is lawfully instructed in writing to make payment therefrom to any person (Section 54 (3)).

6.4 Exemption from Trust Accounts (regulation 2)

According to regulation 2.5 only business property practitioners (a partnership, company, trust, Close Corporate or similar entity which carries on the business of a Property Practitioner) are required to have a trust account. A business property practitioner need not have a trust account if:

- that property practitioner has never received any trust monies, other than as permitted in regulation 2.4; or
- no longer receives any trust monies, other than as permitted in regulation 2.4; and
- that property practitioner submits to the Authority an affidavit in the form set out below in terms of which affidavit the property practitioner makes the required averments.

Regulation 2.4, as referred to above, provides:

“A property practitioner will further be exempt from operating a trust account if such property practitioner is otherwise compliant with the provisions of subregulation 2.1.1 and if –

- 2.4.1 such property practitioner has mandated one or more other property practitioners that specialise in collecting and distributing trust payments (“the payment processing agents”)*

to process such trust payments on its behalf, in respect of all trust funds received by that property practitioner;

2.4.2 each payment processing agent mandated by that property practitioner operates a trust environment that complies with the Act and associated regulations;

2.4.3 each payment processing agent mandated by that property practitioner operates a trust environment that complies with the Act and associated regulations; and

2.4.4 the trust environment and each of the client accounts operated by the payment processing agents are audited annually in compliance with the Act and regulations, and the audit reports in respect thereof are submitted to the Authority in compliance with the Act and the regulations; and

2.4.5 the property practitioner concerned holds no trust monies whatever outside of the manner provided for in subregulations 2.4.1 to 2.4.4 foregoing.”

6.5 Partial amnesty in respect of a Property Practitioner (Regulation 3.4)

In terms of Regulation 3.4 an applicant will not be prevented from registering as a property practitioner or obtaining a fidelity fund certificate as a result of him being non-compliant with any of the provisions of a previous act (the Estate Agent’s Act) unless the Authority shows that on the effective date he is subject to criminal prosecution or disciplinary proceedings which have commenced in respect of a failure on the part of the applicant to comply with the previous act or its regulations or the Authority is able to show that the applicant had a fidelity fund certificate issued under the previous act which was withdrawn for failure on the part of the applicant to comply with the provisions of the previous act or its regulations. If the property practitioner failed to register as an estate agent under the previous act or failed to obtain a fidelity fund certificate under the previous act when they are required to do so, they shall not be subject to prosecution or any disciplinary action in respect of such failure by the Authority provided that such person registers with the Authority within a period of no more than 6 months of the effective date and subsequently obtains the fidelity fund certificate in accordance with the provisions of the Act and the regulations within a period of no more than 12 months from the date on which such person registers with the Authority.

7. Conduct of Property Practitioners (Chapter 9)

The Minister in consultation with the Authority must prescribe a code of conduct to be complied with, which must be published on the Department and Authority’s websites. On request a property practitioner must provide a consumer with a copy of such code of conduct.

Section 62 of the Act sets out sanctionable conduct of property practitioners which include, if a property practitioner:

- in the same transaction acts as a property practitioner on behalf of two or more persons whose interests are not in all material respects identical and received remuneration from both (unless the parties agree thereto in writing);
- fails to give the Authority a full explanation in writing within 30 days of being called to do so;
- fails to pay any money due to the Authority or in respect of the Fund within one month after such monies become due;

- contravenes any provision of the code of conduct;
- carries on an undesirable practice prohibited under section 63;
- commits an offence involving an element of dishonesty;
- fails to inform the Authority within 14 days of a change in his, her or its contact details;
- differentiates, distinguishes or excludes consumers directly or indirectly on the basis of their race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth or commits a criminal offence while performing a function of a property practitioner;
- fails to comply with or contravenes any provision of this Act.

In terms of section 63 the Minister may after consultation with the Board declare a particular business practice in the property market to be undesirable and prohibited.

In terms of section 65 a franchisee property practitioner must clearly and unambiguously declare in all of his written communications, advertising and marketing materials that he operates in terms of a franchise agreement as well as the name of the franchisor.

Section 66 prohibits a property practitioner whether by means of financial and other incentives, to influence a person who issues a certificate in respect of the condition or defects of electric wiring, the presence of vermin, the presence of water or damp or any other matter or condition provided for in law. Any contravention hereof is an offence.

7.1 Candidate property practitioners (regulation 33.3 and 33.4)

Regulation 33.4.3.3 provides that a candidate property practitioner may not in his or her capacity as a candidate estate agent, complete or draft any documentation relating to any transaction negotiated by him or her in his or her capacity as a candidate estate agent, otherwise than under the active supervision of a property practitioner qualified in terms of regulation 33.1 and who is no longer subject to any restriction in terms of regulation 33.3, and who certifies on the documentation in question that the said documentation has been completed under his or her supervision.

Active supervision must be done by a property practitioner qualified in terms of regulation 33.1 and who is no longer subject to any restriction in terms of regulation 33.3. Such supervision and control may be exercised either in person or by means of any electronic medium or application allowing the property practitioner immediate contact with the candidate estate agent;

Regulation 33.3.1 provides that a person who has become qualified and registered as a non-principal property practitioner for the first time may not for six (6) months, in his or her capacity as property practitioner:

- enter into any mandate for the sale or purchase of any property or the letting or hiring of any property with any member of the public; or
- conclude or cause to be concluded any agreement for the sale or purchase of any property or the letting or hiring of any property, unless such mandate or agreement has first been reviewed and co-signed by another qualified property practitioner (other than a candidate property

practitioner as contemplated in regulation 33.4) operating in the same industry registered with the Authority who holds a Fidelity Fund certificate issued by the Authority and who is not subject to the foregoing restriction referred to in subregulation 33.3.1.

- a candidate Property Practitioner or candidate estate agent cannot in any way represent that he/she is a Property Practitioner and should declare that he/she is not. A candidate Property Practitioner can only remain a Property Practitioner for a period of 180 days without writing an exam. If the candidate estate agent fails the exam the candidate estate agent may apply for permission and on good cause shown, the Authority may permit such person to again register as a candidate estate agent for a further period of 180 days.

7.2 Mediation of complaints referred to the Authority (regulation 6 to 9)

A voluntary mediation process has been provided for under regulation 6.10. Should the parties elect to have their dispute mediated, nothing said or done at the mediation process may be used as evidence in any legal proceedings relating to the complaint. All mediation proceedings, but for those between property practitioners, are free of charge. If a complaint is not settled at mediation the same will be referred to adjudication by the Authority. Importantly, as per regulation 9.21, legal representatives will only be permitted at adjudication proceedings.

7.3 Duties of Property Practitioners

Regulation 34 provides for, amongst others, the following duties that are applicable to all property practitioners:

- must protect the interest of his or her client with due regard to the interests of all other parties;
- may not accept a mandate which requires specialised skill or knowledge if the same falls outside of his or her field competence;
- may not divulge to any third party, any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he or she acted as a property practitioner; and
- the property practitioner must convey to a purchaser or lessee or prospective purchaser or lessee of immovable property all facts concerning such property as are or should reasonably in the circumstances be, within the property practitioner's personal knowledge and which are or could be material to the prospective purchaser or lessee.

Regulation 34.4.1 provides property practitioners are compelled to present all offers to purchase received prior to such seller or purchaser having concluded another "legally valid" contract of sale in respect of the same property, unless the property practitioner has expressly been instructed not to present such offer. The regulation provides that a copy of any agreement of sale or lease or option or mandate must be provided to each contracting party without any undue delay by the property practitioner.

The regulations and more particularly regulation 34.3.4 prohibits any property practitioner from making any misrepresentations or false statements or to use harmful marketing techniques.

Furthermore, regulations 41.33 stipulates that a property practitioner, who is a natural person, acts on behalf of any business property practitioner, that natural person property practitioner must reflect on all emails, letters, contracts, business cards, marketing materials and similar forms of communication the full name, email address and telephone number of the business property practitioner on behalf of whom that natural person property practitioner is acting.

Regulation 41.34 stipulates that all communications and marketing material must indicate whether a Fidelity Fund certificate is held in the capacity of a business property practitioner, whether or not a business property practitioner operates a trust account and name of a natural person practicing as property practitioner under such business property practitioner, whether such natural person holds a Fidelity Fund certificate and the capacity of such natural person i.e. principal, full status property practitioner or an intern.

8. Consumer Protection (Chapter 10): Mandatory disclosure

In terms of section 67 a property practitioner may not accept a mandate unless a lessor or seller of the property has provided him with a fully completed and signed mandatory disclosure form and such practitioner must provide a copy of the completed mandatory disclosure form to each of the prospective lessees or purchasers who intend to make an offer to lease or buy the property. The mandatory disclosure must be signed by all parties and forms an integral part of the agreement. If such disclosure form is not completed, signed or attached, the agreement must be interpreted as if no defects or deficiencies in the property were disclosed to the purchaser. If a property practitioner fails to obtain a completed mandatory disclosure from the seller or lessor the property practitioner may be held liable by the affected consumer.

Section 68 provides that an agreement to sell or lease and the mandatory disclosure form must be drafted by the seller or developer for his own account. In addition, the Authority must publish updated guideline agreements on its website from time to time. Please see Annexure "A".

Section 69 states that the Authority must conduct campaigns to educate and inform the general public of their rights in property transactions and property practitioners of their functions, duties and obligations. **Importantly section 69(2) provides that the property practitioner owes a buyer and seller a duty of care.** It is noted that no corresponding duty of care towards both a lessor and lessee is recorded in the Act (although such duty is required in terms of the Consumer Protection Act).

8.1 Commission (regulation 34)

No property practitioner may convey to his or her client or any other party to a completed or proposed transaction in which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the Authority or any institute or association of estate agents or any other body.

Regulation 34.6.6 states that commission cannot be paid from the purchaser's monies unless:

- good cause is shown;

- the purchaser prior to signature of the contract in question, consented in writing and the document executed independently of the contract;
- such document contains the implications and financial risks of such payment for the purchaser; and
- such document is signed by both the seller and the purchaser and the estate agent in question.

9. Chapter 11 (General)

Section 71 provides that a person convicted of an offence in terms of the Act is liable to a fine or to imprisonment for a period not exceeding 10 years.

Section 75 deals with transitional provisions where members of the Estate Agents Affairs Board become members of the Property Practitioners Board.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

COMPANIES WITHIN THE DYKES VAN HEERDEN GROUP

DYKES VAN HEERDEN INC

Tel : (011) 279-5000
 Fax : (011) 955-4799
 E-mail info@dvh.net.za
 19 Ontdekkers Road
 Roodepoort 1724, South Africa

Docex 24, Roodepoort
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (CAPE) INC

Tel : 0861 110 210
 Fax : (021) 910-4911
 E-mail admin@dvh.law.za
 Unit E4/2, Edward IV
 120 – 122 Edward Street
 Bellville 7530, South Africa
 Docex 42, Tygerberg
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (KZN) INC

Tel : (031) 903- 1851
 Fax : (031) 903-1101
 E-mail thomas@kzndvh.za.net
 Nr. 18 Ridge Road
 Amanzimtoti
 Durban 4120, South Africa
 Docex 7, Amanzimtoti
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN SLABBERT HOPKINS INC

Tel : 0861 110 210
 Fax : (021) 910-4911
 E-mail admin@dvh.law.za
 Unit E4/2, Edward IV
 120 – 122 Edward Street
 Bellville 7530, South Africa
 Docex 42, Tygerberg
 Web-site: <http://www.dvh.law.za>

ANNEXURE A - EXAMPLE OF MANDATORY DISCLOSURE FROM TAKEN FROM THE REGULATIONS

36 **MANDATORY DISCLOSURE**

36.1 The mandatory disclosure referred to in section 67 of the Act shall be in the following format -

IMMOVABLE PROPERTY CONDITION REPORT IN RELATION TO THE SALE OF ANY IMMOVABLE PROPERTY

1 Disclaimer

This condition report concerns the immovable property situated at *[insert deeds office and physical description]* (the "Property"). This report does not constitute a guarantee or warranty of any kind by the owner of the Property or by the property practitioners representing that owner in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the Property.

2 Definitions

In this form -

2.1 "to be aware" means to have actual notice or knowledge of a certain fact or state of affairs; and

2.2 "defect" means any condition, whether latent or patent, that would or could have a significant deleterious or adverse impact on, or affect, the value of the property, that would or could significantly impair or impact upon the health or safety of any future occupants of the property or that, if not repaired, removed or replaced, would or could significantly shorten or adversely affect the expected normal lifespan of the Property.

3 Disclosure of information

The owner of the Property discloses the information hereunder in the full knowledge that, even though this is not to be construed as a warranty, prospective purchasers of the Property may rely on such information when deciding whether, and on what terms, to purchase the Property. The owner hereby authorises the appointed property practitioner marketing the Property for sale to provide a copy of this statement, and to disclose any information contained in this statement, to any person in connection with any actual or anticipated sale of the Property.

4 Provision of additional information

The owner represents that to the best of his or her knowledge the responses to the statements in respect of the Property contained herein have been accurately noted as "yes", "no" or "not applicable". Should the owner have responded to any of the statements with a "yes", the owner shall be obliged to provide, in the additional information area of this form, a full explanation as to the response to the statement concerned.

5 Statements in connection with Property

	YES	NO	N / A
I am aware of the defects in the roof			
I am aware of the defects in the electrical systems			
I am aware of the defects in the plumbing system, including in the swimming pool (if any)			
I am aware of the defects in the heating and air conditioning systems, including the air filters and humidifiers			
I am aware of the defects in the septic or other sanitary disposal systems			
I am aware of any defects to the property and/or in the basement or foundations of the property, including cracks, seepage and bulges. Other such defects include, but are not limited to, flooding, dampness or wet walls and unsafe concentrations of mould or defects in drain tiling or sump pumps			
I am aware of structural defects in the Property			
I am aware of boundary line dispute, encroachments or encumbrances in connection with the Property			
I am aware that remodelling and refurbishment have affected the structure of the Property			
I am aware that any additions or improvements made to or any erections made on the property, have been done or were made, only after the required consents, permissions and permits to do so were properly obtained.			

I am aware that a structure on the Property has been earmarked as a historic structure or heritage site			
ADDITIONAL INFORMATION			

6 Owner's certification

The owner hereby certifies that the information provided in this report is, to the best of the owner's knowledge and belief, true and correct as at the date when the owner signs this report.

7 Certification by person supplying information

If a person other than the owner of the property provides the required information that person must certify that he/she is duly authorised by the owner to supply the information and that he/she has supplied the correct information on which the owner relied for the purposes of this report and, in addition, that the information contained herein is, to the best of that person's knowledge and belief, true and correct as at the date on which that person signs this report.

8 Notice regarding advice or inspections

Both the owner as well as potential buyers of the property may wish to obtain professional advice and/or to undertake a professional inspection of the property. Under such circumstances adequate provisions must be contained in any agreement of sale to be concluded between the parties pertaining to the obtaining of any such professional advice and/or the conducting of required inspections and/or the disclosure of defects and/or the making of required warranties.

9 **Buyer's acknowledgement**

The prospective buyer acknowledges that he/she has been informed that professional expertise and/or technical skill and knowledge may be required to detect defects in, and non-compliant aspects concerning, the property.

The prospective buyer acknowledges receipt of a copy of this statement.

10 **Signatures**

Signed _____ at _____ on _____

Signature of owner _____

Signature of purchaser _____

Signature of property practitioner _____