

(17 August 2001 – to date)

## **ESTATE AGENCY AFFAIRS ACT 112 OF 1976**

*Government Notice 1240 in Government Gazette 5221, dated 23 July 1976. Commencement date:*  
*1 August 1977 [Proc. R. 110, Gazette No. 5580, dated 1 June 1977]*

## **REGULATIONS REGARDING CONDUCT DESERVING OF SANCTION**

*Government Notice 51 in Government Gazette 21997, dated 26 January 2001. Commencement date:*  
*26 March 2001.*

### **As amended by:**

*Government Notice R745 in Government Gazette 22569, dated 17 August 2001. Commencement date:*  
*17 August 2001.*

The Minister of Trade and Industry has, after consultation with the Estate Agency Affairs Board, under section 33(1)(h) of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), made the regulations in the Schedule.

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Prepared by:

## 1. Definitions

In these regulations, unless the context otherwise indicates, any word or expression defined in the Act, has that meaning, and -

**“charge”** means a charge of conduct deserving of sanction which shall be brought against any estate agent;

**“committee”** means a committee of inquiry appointed in terms of section 8B(1) of the act *[sic]*;

**“compensatory award”** means a compensation referred to in section 30(7)(a) of the Act;

**“complainant”** means any person who lodged a complaint against an estate agent in terms of regulation 2(1);

**“complaint”** means a complaint concerning the conduct deserving of sanction against any estate agent, acting in his or her capacity as such;

**“inquiry”** means an inquiry conducted by a committee;

**“penalty”** means any action contemplated in section 30(3) of the Act;

**“prosecutor”** means the person appointed or designated in terms of regulation 7(1);

**“respondent”** means an estate agent against whom a complaint or a charge has been laid; and

**“the Act”** means the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976).

## 2. LODGING OF COMPLAINTS

- (1) Any person who feels aggrieved by any act or omission of an estate agent may lodge a complaint with the Board.
- (2) A complaint referred to in subregulation (1) must be addressed to the Board and shall -
  - (a) be in writing;
  - (b) contain the name and address of the complainant and of the respondent (insofar known to the complainant);
  - (c) contain details of the conduct complained of; and

(d) be signed by or on behalf of the complainant.

- (3) The Board may of its own accord formulate a complaint in the manner prescribed by regulation 2(2) if on good cause it has reason to believe that the conduct of an estate agent may constitute conduct deserving of sanction.

### 3. CONSIDERATION OF COMPLAINT AND INVESTIGATION THEREOF

(1) The Board may -

- (a) on receipt of a complaint referred to in regulation 2(1) request the complainant to furnish it with such further information, in the form of an affidavit or otherwise, as it deems necessary;
- (b) carry out, or cause to be carried out, any investigation in respect of a complaint as it deems necessary or appropriate; and
- (c) notify the respondent in writing of a complaint and shall simultaneously with such notification -
  - (i) furnish the respondent with a copy of the complaint in question;
  - (ii) request the respondent in writing to furnish the Board with his or *[sic]* her comments on the complaint, if any, within the period referred to in subregulation (2)(a); and
  - (iii) advise the respondent of the provisions of subregulation (2)(b).

(2)

- (a) The respondent shall furnish the Board with his or her comments, if any, referred to in subregulation (1)(c)(ii) within 30 days after the date of the Board's request in terms of subregulation 1(c)(ii), or within such extended period as the Board may allow.
- (b) Comments furnished to the Board by the respondent in terms of paragraph (a) shall not be used against him or her if an inquiry is held.

(3)

- (a) If the Board is of the opinion that there is insufficient evidence to substantiate a complaint referred to in regulation 2(1) or that there is no reasonable likelihood that a committee will find that the conduct complained of, even if proven, constitutes conduct deserving of sanction, the Board shall in writing notify -
  - (i) the complaint; and

- (ii) the respondent, if he or she has already been notified by the Board of the complaint that the matter will not be proceeded with by the Board.
- (b) The Board may at any time and on good cause withdraw a complaint formulated by it in terms of regulation 2(3) and shall forthwith thereafter notify the respondent of such decision in writing, if he or she has already received notification of the complainant in terms of subregulation (1)(c).
- (4) Notwithstanding the provisions of subregulation (3)(a) and (b) the Board may at any time after having taken any step referred to in that subregulation and after notification to the complainant and the respondent (if he or she has already received a notification in terms of subregulation (3)(a) or (b)), reopen the matter or revoke the withdrawal of the complaint, as the case may be, if new evidence has become available which, in the opinion of the Board, justifies such reopening or revocation.

#### **4. MEDIATION**

- (1) The Board may at any time, before or after a charge is brought in terms of regulation 5(1), attempt to resolve any dispute between the complainant and the respondent based on the complaint, by inviting the complainant and the respondent to participate in mediation proceedings.
- (2) When inviting the parties in terms of subregulation (1), the Board -
  - (a) shall notify both parties of the provisions of subregulation (6); and
  - (b) may conclude an agreement with the parties regarding the payment of the Board's costs in respect of the mediation proceedings and the appointment of a mediator.
- (3) If the complainant and the respondent are willing to participate in mediation proceedings, the Board (or its nominee) shall act as mediator in the matter.
- (4) The mediator shall determine the procedure to be followed in respect of a mediation in terms of subregulation (3).
- (5) If through mediation the dispute between the complainant and the respondent is settled -
  - (a) such settlement shall be recorded by the mediator in writing and shall be signed by both the complainant and the respondent as soon as is practicable; and
  - (b) the complainant in question and the charge (if any) against the respondent shall be deemed to be withdrawn, unless the respondent fails to implement any obligation imposed upon him or her in terms of the settlement as recorded and signed in terms of paragraph (a).

- (6) Neither the complainant nor the respondent shall be obliged to participate in mediation proceedings and nothing said or done by either party in an attempt to settle the dispute through mediation shall be used in evidence at an inquiry.
- (7) No person who acts as mediator in terms of this regulation may serve as a member of a committee to inquire into a charge based on or relating to a complaint which was the subject-matter of mediation proceedings before such mediator, or act as a prosecutor at any such inquiry.
- (8)
  - (a) The complainant and the respondent shall each be liable for their own costs incurred in respect of the mediation proceedings.
  - (b) Any costs incurred by the Board in respect of the mediation proceedings and the appointment of a mediator shall be borne by the Board, subject to the provisions of an agreement (if any) as referred to in subregulation (2)(b).
- (9) The Board may, if it has formulated a complaint as contemplated in regulation 2(3), at any time before or after a charge is brought in terms of regulation 5(1) attempt to settle the complaint informally or through mediation, in which event subregulation (4) - (8) shall apply *mutatis mutandis*.

## 5. CHARGE

- (1) Subject to regulation 4(5)(b) the Board shall, if it is of the opinion that there is -
  - (a) sufficient evidence to substantiate a complaint; and
  - (b) a reasonable likelihood that a committee will find that the complaint, if proved, constitutes conduct deserving of sanction,bring a charge against the respondent to be heard by a committee.
- (2) A charge contemplated in subregulation (1) shall be in writing, be dated and shall -
  - (a) contain the name and address of both the complainant and the respondent;
  - (b) contain an exposition of the conduct deserving of sanction with which the respondent is charged;
  - (c) be accompanied by -
    - (i) a summary, in the form determined by the Board, of the procedure applicable to an inquiry before a committee; and

*(Regulation 5(2)(c)(i) amended by GNR 745 of 2001)*

- (ii) a copy of the complaint on which the charge is based, if such copy has not already been furnished to the respondent in terms of regulation 3(c)(i);
- (iii) copies of all documents which are at that point in the possession of the Board and which the Board intends to submit in evidence at the inquiry;
- (d) invite the respondent to furnish the Board with an affidavit setting out his or her comments on the charge, if any, within 30 days;
- (e) notify the respondent that he or she is under no obligation to respond or to make any comments envisaged in paragraph (d) and that any such comments may and shall be used as evidence against him or her at an inquiry; and
- (f) notify the respondent that should he or she admit the charge within the period stated in paragraph (d), he or she -
  - (i) will not be required to appear at an inquiry; and
  - (ii) in the case of admitting the charge, may within the period mentioned in paragraph (d), furnish the Board with a written statement setting forth any mitigating circumstances.
- (3) The Board may at any time and on good cause withdraw a charge and shall forthwith thereafter in writing notify the complainant and the respondent of its decision and the reason therefor.
- (4) A charge contemplated in subregulation (1) and any notification referred to in subregulation (3) shall be delivered to the respondent personally or be sent to him or her by prepaid registered post at his or her business or residential address on record at the Board.

## **6. ACKNOWLEDGEMENT OF GUILT**

- (1) If a respondent admits the charge as contemplated in regulation 5(2)(f) the Board shall deliver to a committee a copy of the charge and the statements, if any, referred to in regulation 5(2)(d) or (f).
- (2) The committee shall consider the charge and the respondent's statements, if any, and if it is satisfied that the conduct complained of constitutes conduct deserving of sanction and that the respondent is found guilty of such conduct, it shall -
  - (a) find the respondent guilty on such charge; and

- (b) impose an appropriate penalty, having due regard to the respondent's statement referred to in regulation 5(2)(f)(ii), if any.
- (3) The Board shall in writing notify the complainant and the respondent of the committee's decision referred to in subregulation (2).

## **7. BOARD'S POWERS AND DUTIES IN RESPECT OF INQUIRY**

The Board -

- (1) may appoint any person, or designate any staff member of the Board; to perform the specific functions entrusted to a prosecutor in terms of these regulations;
- (2) shall cause such proceedings to be recorded;
- (3) shall appoint one of the members of a committee as the chairperson of such committee.

## **8. SUMMONING OF RESPONDENT AND WITNESS**

(1) The Board -

- (a) shall, if the respondent does not admit the charge as contemplated in regulation 5(2)(f), summon the respondent to appear before a committee at a time and place specified in the summons for the purpose of an inquiry; and
- (b) may summon any witness of its own accord, or at the instance of the committee or the respondent, to be present at an inquiry in order to give evidence.

(2)

- (a) A summons referred to in subregulation 8(1)(a) hereof shall be in the form specified in Annexure A and a summons referred to in subregulation 8(1)(b) hereof shall be in the form specified in Annexure B.

*(Regulation 8(2)(a) substituted by GNR 745 of 2001)*

- (b) A summons referred to in paragraph (a) shall be served on the respondent or a witness, as the case may be, by -
  - (i) delivering or tendering it to him or her personally; or
  - (ii) sending it to him or her by prepaid registered post at his or her business or residential address last known to the Board; or

- (iii) delivering or tendering it at his or her place of employment, business or residential address to any person over the age of 16 years that resides or is employed at such address.

- (3) The Board shall pay a witness who is present at an inquiry at the instance of the Board or a committee, the costs as the Board may from time to time determine generally, or in any particular case.
- (4) The Board may require the respondent to first deposit a sum of money sufficient to cover the costs of preparing and service of the summons for any witness who is summoned by the Board at the instance of the respondent and any surplus amount shall be repaid without interest to the respondent.

## **9. PLEA OF GUILTY BEFORE INQUIRY IS HELD**

- (1) The respondent may before commencement of an inquiry, notify the committee in writing that he or she pleads guilty to the charge as set out in the summons referred to in subregulation 8(1), and may with such notification submit to the committee a written statement setting forth any mitigating circumstances.
- (2) If, after having received a notification in terms of subregulation (1), the committee is satisfied that the charge against the respondent can be disposed of without the holding of an inquiry -
  - (a) the Board shall in writing notify the respondent and the complainant and any person on whom a summons has been served in terms of regulation 8(1)(b) that the inquiry in question will no longer be held; and
  - (b) the committee shall *mutatis mutandis* apply regulation 6(2), having due regard to the respondent's statement in mitigation (if any) referred to in subregulation (1).
- (3) The Board shall in writing notify the complainant and the respondent of the committee's decision referred to in regulation 6(2).

## **10. PROCEEDINGS AT INQUIRY**

- (1) At the commencement of an inquiry the chairperson of the committee shall ask the respondent to plead guilty or not guilty to the charge as set out in the summons, and the plea shall be recorded.
- (2) If the respondent refuses or fails to plead to the charge, a plea of not guilty shall be recorded.
- (3) A respondent is entitled to be assisted at an inquiry by a legal representative.



- (4) Evidence at an inquiry shall be given orally or be tendered by way of affidavits: Provided that no affidavit shall be admitted in evidence if a committee is satisfied that there is sufficient grounds why it should not be admitted.
- (5) The chairperson of the committee shall administer an oath to or accept an affirmation from any person called to give evidence.
- (6) If the respondent has pleaded guilty to the charge and the committee is satisfied that -
  - (a) the charge can be disposed of without hearing evidence;
  - (b) the act or omission with which the respondent is charged constitutes conduct deserving of sanction; and
  - (c) the respondent is guilty as charged,

it shall find the respondent guilty and such finding shall either be made known at the inquiry or be conveyed in writing to the Board by the chairperson within 14 days of the date of the respondent's plea, whereafter the Board shall in writing notify both the respondent and the complainant of the finding.

- (7)
  - (a) If the respondent has pleaded not guilty to the charge, or if the committee decides to hear evidence on the charge notwithstanding a plea of guilty, the procedure to be followed in respect of the inquiry shall be determined by the committee, having due regard to the requirements and principles of natural justice.
  - (b) The committee may -
    - (i) proceed inquisitorially to ascertain the relevant facts and may at any stage during the inquiry question the complainant, the respondent and any witness on any matter it considers relevant;
    - (ii) allow the prosecutor (if appointed) to present evidence in support of the charge and to cross-examine the respondent and any witness called by the respondent; and
    - (iii) allow the respondent or, if applicable, the respondent's legal representative, to present evidence rebutting the charge and to cross-examine any witness called by the prosecutor of the committee:*[sic]*

- (8)
  - (a) In respect of each charge the committee shall find the respondent either guilty or not guilty.

- (b) The committee may find the respondent not guilty even if he or she has pleaded guilty.
  - (c) If the committee finds the respondent not guilty it shall determine whether or not to make a recommendation as referred to in section 30(8)(a) of the Act.
  - (d) The committee's decision referred to in paragraphs (a) and (c) shall either be made known at the inquiry or be conveyed in writing to the Board by the chairperson within 60 days after all evidence in respect of the charge has been heard.
  - (e) The Board shall forthwith after obtaining the committee's decision in writing notify the complainant and the respondent -
    - (i) of the decision referred to in paragraph (a); and
    - (ii) of the committee's recommendation referred to in paragraph (c), if such recommendation has been made.
- (9) If the committee has found the respondent guilty of conduct deserving of sanction, it shall -
- (a) determine whether the respondent has previously been convicted of a charge deserving of sanction;
  - (b) give the respondent the opportunity of adducing evidence in mitigation; and
  - (c) give the respondent and the prosecutor (if appointed) the opportunity of addressing the committee in connection with the appropriate penalty to be imposed.
- (10) A computer generated extract from the records of the Board stating the particulars of any prior charge brought against the respondent, the conviction of the respondent and the penalty imposed by the Board or a committee, shall be *prima facie* proof that the respondent has previously been convicted of conduct deserving of sanction; unless the respondent disputes the conviction.
- (11)
- (a) After the requirements of subregulation (9) have been complied with, the committee shall deliberate in camera to determine the appropriate penalty to be imposed on the respondent.
  - (b) The Board shall in writing notify the complainant and the respondent of the penalty imposed on the respondent by the committee.
- (12) A committee may for the proper performance of its functions in terms of these regulations obtain such legal or other advice and consult such person or persons as it may deem necessary or appropriate.

- (13) Notwithstanding anything contained in these regulations, the chairperson of a committee may give directions to expedite the inquiry or settle any dispute between the complainant and the respondent relating to the subject-matter of the charge against the respondent.

## 11. COMPENSATORY AWARD

- (1) In order to exercise the discretion conferred upon it in terms of section 30(7)(a) of the Act, and to determine the amount referred to in that section and to whom such amount is to be paid, the committee -
- (a) shall have due regard to the evidence placed before the committee at the inquiry in question;
  - (b) may call any person as a witness or re-call any witness who has testified at the inquiry, inquisitorially examine him or her on issues relevant to such determination;
  - (c) may allow the prosecutor (if appointed) and the respondent to lead evidence in respect of any matter pertaining to the determination of a compensatory award by the committee, and to address the committee on the desirability of such award, the amount to be awarded and to whom it should be awarded, if at all;
  - (d) may inquisitorially examine any witness called by the prosecutor or the respondent as referred to in paragraph (c); and
  - (e) may generally make such enquiries and accept such proof as it considers necessary or appropriate in order to determine the issues referred to in subregulation 1.
- (2) If the committee has determined that a compensatory award is to be made *[sic]*, the Board shall in writing notify the complainant and the respondent of -
- (a) the amount of the award;
  - (b) the person to whom the award will be paid by the Board in terms of section 30(7)(b) of the Act; and
  - (c) the provisions of section 30(7)(b) and (c) of the Act.

## 12. GENERAL

- (1) The Board may publish a notice in the *Government Gazette* or any other publication, or release to the news media in a notice, announcing the conviction of the respondent of conduct deserving of sanction, together with details of the charge and the penalty imposed: Provided that if the respondent has filed

an appeal against such conviction in terms of section 8C or section 31 of the Act, such notice may be published only if appeal has been dismissed or has not been proceeded with.

(2)

(a) The complainant and the respondent may request the Board in writing to furnish him or her with reasons for a decision of a committee, provided such request -

(i) shall be made to the Board within 30 days after he or she has been informed in writing by the Board of the committee's decision; and

(ii) be accompanied by an amount determined by the Board from time to time.

(b) If the Board has received a request in terms of subregulation 2(a), the reason in question shall be furnished in writing to the party making the request within 60 days thereafter.

(c) The Board shall be entitled to make such charge for the furnishing of a copy of the record of the proceedings at any inquiry or a transcription thereof, as the Board may determine from time to time.

(3) No person who has been -

(a) duly summoned to be present at any inquiry, shall without lawful excuse fail to -

(i) appear at an inquiry; or

(ii) remain present at an inquiry until he or she has been discharged by the committee; and

(b) called as a witness at an inquiry, shall without lawful excuse refuse to be sworn or to make an affirmation of to produce any book or other document or to answer any question which he may lawfully required *[sic]* to answer.

(4) No person shall disrupt the proceedings at an inquiry, or directly or indirectly threaten or insult any member of a committee in the performance of his or her functions or duties as such, or act in a manner which, if a committee were a court of law, would constitute contempt of that court.

(5)

(a) The proceedings at any inquiry shall be open to the public, except in so far as these regulations provide otherwise.

(b) The committee may on good cause -

(i) direct any evidence adduced or to be adduced during an inquiry be heard in camera; and

- (ii) order that no person may at any time in any way publish any information which may reveal the identity of any particular person or party to the proceedings.

- (6) The Board shall record in its records full details of any decision, recommendation order or determination made by a committee pursuant to these regulations or the Act.

### **13. WITHDRAWAL OF REGULATIONS**

Government Notices R 1471 of 29 July 1977, R446 of 12 March 1982, R 1895 of 3 September 1982 and R 1263 of 22 June are hereby withdrawn.

### **14. TRANSITIONAL ARRANGEMENT**

An inquiry in terms of the regulations referred to in regulation 13 which commenced immediately prior to the commencement of these regulations shall be conducted and finalised under the procedures prescribed by that regulations as if those regulations had not been withdrawn.

### **15. COMMENCEMENT**

These regulations shall be called the Regulations regarding Conduct deserving of Sanction and shall come into force 60 days after publication thereof in the *Government Gazette*.

**ANNEXURE A**  
**ESTATE AGENCY AFFAIRS ACT, 1976 (ACT No. 112 OF 1976)**

**Form of summons referred to in regulation 8(1)(a) of Government Notice No. R. 51 of 26 January 2001**

To: .....

You are hereby summoned to appear on .....  
at .....or so soon thereafter as the matter may be heard on that date,  
at .....  
before a committee of inquiry of the Estate Agency Affairs Board for the purposes of an inquiry into conduct  
deserving of sanction by you and to produce the following books and documents at the said time and place:  
All documents in your possession or under your control relating to the above-mentioned matter and  
.....

The inquiry will be in respect of the charge which has already been delivered to you personally, alternatively  
sent to you by prepaid registered post at your business or residential address on record at the Board.

Should you fail without just cause, to comply with this summons or to remain present at the inquiry until  
lawfully excused therefrom:

1. You will be guilty of an offence in terms of section 34 of the Estate Agency Affairs Act, 1976, and liable  
on conviction to a fine or to imprisonment for a period not exceeding five years, or to both such fine  
and such imprisonment; and
2. The committee of inquiry may, in terms of section 28(1) of the Estate Agency Affairs Act, 1976  
withdraw the fidelity fund certificate issued to you.

Signed at ..... on this ..... day of ....., .....

.....  
Chief Executive Officer  
Estate Agency Affairs Board

*(Annexure A inserted by GNR 745 of 2001)*

**ANNEXURE B**  
**ESTATE AGENCY AFFAIRS ACT, 1976 (ACT No. 112 OF 1976)**

**Form of summons referred to in regulation 8(1)(b) of Government Notice No. R. 51 of 26 January 2001**

To: .....

You are hereby summoned to appear on .....  
at ..... or so soon thereafter as the matter may be heard on that date,  
at .....  
before a committee of inquiry of the Estate Agency Affairs Board in order to give evidence at an inquiry into  
conduct deserving of sanction involving .....  
and to produce the following books and documents at the said time and place:  
All documents in your possession or under your control relating to the above-mentioned matter and  
.....

Should you fail, without lawful excuse, to be present at the time and place stated above you will be guilty of  
an offence in terms of section 34 of the Estate Agency Affairs Act, 1976, and liable on conviction to a fine or  
to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Signed at ..... on this ..... day of ....., .....

.....  
Chief Executive Officer  
Estate Agency Affairs Board

*(Annexure B inserted by GNR 745 of 2001)*