

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

PROPERTY PRACTITIONERS BILL

(As read a First Time)

(Introduced by the Minister of Industrialisation and Trade)

BILL

To provide for the regulation of property practitioners; to provide for the continuation of the Namibian Estate Agents Board as the Property Practitioners Regulatory Authority; to provide for the governance, administration and financing of the Authority; to provide for the continuation of the Estate Agents Fidelity Fund as the Property Practitioners Fidelity Fund; to provide for the registration of property practitioners; to provide for the issuing of fidelity fund certificates; to provide for the keeping of trust accounts and records of transactions by property practitioners; to provide for the professional conduct and behavior of property practitioners; to provide for compliance with and enforcement of the provisions of the Act; to provide resolution of disputes between property practitioners and consumers; to establish an Appeal Board to hear and determine appeals against certain decisions; to repeal the Estate Agents Act, 1976; and to provide for incidental matters.

(Introduced by the Minister of Industrialisation and Trade)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1
PRELIMINARY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates –

“adjudicator” means an adjudicator appointed in terms of section 78(2);

“Appeal Board” means the appeal Board contemplated in section 83;

“auditor” means any person registered in terms of section 23 of the Public Accountants and Auditors’ Act, 1951 (Act No. 51 of 1951) as an accountant and auditor and engaged in public practice as such;

“Authority” means the Property Practitioners Regulatory Authority referred to in section 6;

“authority to practise” means an authority to practise issued in terms of section 53(4);

“banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act, 2023 (Act No. 13 of 2023);

“Board” means the Board of the Authority contemplated in Part 3;

“building society” means a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 2 of 1986);

“candidate legal practitioner” means a candidate legal practitioner as defined in section 1 of the Legal Practitioners Act;

“Chief Executive Officer” means the chief executive officer of the Authority appointed in terms of section 22 and any person acting as the chief executive officer;

“close corporation” means a close corporation as defined in section 1 of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“company” means a company as defined in section 1 of the Companies Act, 2004 (Act No. 28 of 2004);

“employee”, in relation to a property practitioner, includes –

- (a) an employee as defined in section 1 of the Labour Act, 2007 (Act No. 11 of 2007);
and
- (b) an independent contractor who has been engaged by a property practitioner to render any service which the practitioner is entitled to render to any person;

“fidelity fund certificate” means a fidelity fund certificate issued in terms of section 53(4);

“Fund” means the Property Practitioners Fidelity Fund referred to in section 30;

“independent contractor” means a self-employed individual who works for or renders services to a user enterprise or customer as part of that individual’s business, undertaking or professional practice;

“immovable property” includes –

- (a) any unit as defined in section 1 of the Sectional Titles Act, 2009 (Act No. 2 of 2009), and any proposed unit;
- (b) any right to claim transfer of immovable property;
- (c) any undivided share in immovable property;
- (d) any interest in immovable property, other than a right or interest registered or capable of being registered under the Minerals (Prospecting and Mining) Act, 1992 (Act No. 33 of 1992);
- (e) any share in a private company referred to in the Companies Act, 2004 (Act No. 28 of 2004), the whole or the major portion of whose assets consists of immovable property; and
- (f) any interest of a member of a close corporation, the whole or the major portion of whose assets consists of immovable property;

“inspector” means a person appointed as an inspector pursuant to section 72;

“intern property practitioner” means a person who has not yet met all the qualifications or experience required as prescribed, to practise as a property practitioner and who is undergoing training under the supervision of a property practitioner or a program created by the Authority;

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act;

“Legal Practitioners Act” means the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“mandatory disclosure form” means the form referred to in section 80;

“member”, in relation to the Board, means a member of the Board appointed in terms of section 11 and includes an alternate member and a member of a committee of the Board;

“Minister” means the Minister responsible for industrialisation and trade;

“Ministry” means the Ministry responsible for the administration of industrialisation and trade;

“prescribe” means prescribe by regulation made under this Act;

“property practitioner” means a person described as such in section 2 and registered to practise as a property practitioner;

“record” means any recorded information regardless of form or medium;

“register” means the register referred to in section 49;

“registered property practitioner” means a person who has been registered as a property practitioner under section 45, irrespective of whether that person actually practises as a property practitioner or not;

“registration certificate” means a registration certificate as contemplated in section 45(1) (a) and (b);

“this Act” includes any regulation made under this Act;

“trust money” includes –

- (a) money or other property entrusted to a property practitioner in his or her capacity as a property practitioner;
- (b) money collected or received by a property practitioner and payable in respect of or on account of any act which constitutes the practice of a property practitioner as described in section 2(1)(a); and
- (c) any other moneys, including insurance premiums, collected or received by a property practitioner and payable in respect of immovable property.

Meaning of “property practitioner”

2. (1) For purposes of this Act a property practitioner –
 - (a) means any natural who or juristic person which for the acquisition of gain on his, her or its own account or in partner ship, in any manner holds himself, herself or itself out as a person who or which, directly or indirectly, on the instruc tions of or on behalf of any other person –
 - (i) by auction, a sale in execution or by any other means –
 - (aa) sells, purchases, manages any immovable property or business undertaking;
 - (bb) publicly exhibits for sale any immovable property or business undertaking;
 - (cc) negotiates with a seller or purchaser in respect of the sale, purchase, management or exhibition for sale of any immovable property or business undertaking; or
 - (dd) canvasses or undertakes or offers to canvas a seller or purchaser in respect of the sale, purchase, management or exhibition for sale of any immovable property or business undertaking;
 - (ii) lets or hires or publicly exhibits for hire any immovable property or business undertaking or negotiates in connection with the letting, hiring or exhibition of the property or business under taking or canvasses or undertakes or offers to canvass a lessee or lessor in respect the letting, hiring or exhibition of the property or business undertaking;
 - (iii) collects or receives any monies payable on account of a lease of any immovable property or business undertaking;

- (iv) provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale or lease of any immovable property or business undertaking;
 - (v) in any other way acts or provides services as an intermediary or a facilitator with the primary purpose to, or attempt to, effect the conclusion of an agreement to sell and purchase or hire or let of any immovable 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 who in the ordinary course of business offers a property for sale which belongs to him or her in his or her personal capacity;
 - (cc) a legal practitioner or candidate legal practitioner; or
 - (dd) a deputy sheriff and messenger of court when they perform any functions contemplated in this subparagraph in terms of the relevant legislation governing their operations; or
 - (vi) renders any other service specified by the Minister on the recommendation of the Authority from time to time by notice in the *Gazette*; or
- (b) includes a 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 immovable property or property development;
- (c) includes a person who for remuneration manages any immovable 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 30, 32, 34, 38, 39, 53, 54 and 62, Part 9 and section 90 includes –
 - (i) any director of a company or a member of a close corporation which is a property practitioner as contemplated in paragraph (a);
 - (ii) any person who is employed by a property practitioner as contemplated in paragraph (a) and performs on his or 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 contemplated in paragraph (d);

- (iv) any person who is employed by a property practitioner as contemplated 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 a legal practitioner or a professional company as defined in section 1 of the Legal Practitioners Act, otherwise than as a legal practitioner or candidate legal practitioner, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph (a), on behalf of such legal practitioner or professional company whose actions will be specifically covered by the Legal Practitioners' Fidelity Fund and not the Property Practitioners' Fidelity Fund;
- (g) for the purposes of section 63 and any regulation made under section 90, includes any person who was a property practitioner at the time when he or she was guilty of any act or omission which allegedly constitutes improper and sanctionable conduct referred to in section 64.

(2) A property practitioner does not include a legal practitioner who on his or her account or as a partner in a firm of legal practitioners or as a member of a professional company as defined in section 1 of the Legal Practitioners Act or candidate legal practitioner who performs an act referred to in subsection (1)(a) in the course of and in the name of and from the premises of such legal practitioner's or professional company's practice, provided that such an act may not be performed –

- (a) in partnership with any person other than a partner in the practice of that legal practitioner; or
- (b) through the medium of or as a director of a company other than such professional company.

(3) For the purposes of this section “advertise” does not include advertising in compliance with the provisions of any law.

Exemption of legal practitioners from certificate requirements

3. (1) A legal practitioner who, on his or her own account or as a partner in a firm of legal practitioners or as a member of a professional company, as defined in section 1 of the Legal Practitioners Act or any other legal practitioner in the employment of such legal practitioner, partnership or professional company or a candidate legal practitioner attached to such legal practitioner for practical training may perform any of the functions or duties of a property practitioner without being the holder of a registration certificate and a fidelity fund certificate issued in terms of this Act, if such act is performed by the person while acting –

- (a) within the scope of such legal practitioner's functions and duties as a legal practitioner; and

- (b) under the name and from the premises of such legal practitioner or professional company.

(2) A legal practitioner or candidate legal practitioner referred to in subsection (1) is not entitled, in respect of the sale, exchange or other disposal of any immovable property or business in accordance with that subsection, to be remunerated for that work by commission in addition to, or instead of, any professional fees chargeable by that legal practitioner or candidate legal practitioner.

(3) Subsection (1) does not exempt any person employed or engaged to sell immovable property as an independent contractor by a legal practitioner or a professional company practice from the requirement of holding a registration certificate and a fidelity fund certificate to perform any function of a property practitioner for or on behalf of such practice.

Exemption of certain persons from registration and certificate requirements

4. A person is not required to hold a registration certificate or a fidelity fund certificate issued under this Act if that person performs any function of a property practitioner in his or her capacity as –

- (a) a staff member in the employment of the State, a public enterprise referred to in section 1 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019), a local authority as defined in the Local Authorities Act, 1992 (Act No. 23 of 1992) or a regional council as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992) in the performance of his or her functions as such staff member in terms of any law;
- (b) an executor or a trustee of a deceased insolvent estate or a liquidator or judicial manager of a company or close corporation or a curator or tutor appointed by the Master or a trustee of a registered trust executing the management and administration of the trust assets in the performance of their functions as such; or
- (c) a person who falls within a prescribed class of persons excluded from the requirement to be the holder of a registration certificate or fidelity fund certificate to perform any of the functions of a property practitioner.

Objects of Act

5. The objects of the Act are to –
- (a) regulate the profession of property practitioners;
 - (b) establish the powers, functions and governance of the Authority;
 - (c) provide for the continuation of the Estate Agents Fidelity Fund of Namibia;
 - (d) protect and promote the interests of consumers;
 - (e) provide a dispute resolution mechanism in the property market;
 - (f) educate, train and develop property practitioners and intern property practitioners;

- (g) provide a framework for the registration and certification of property practitioners;
- (h) provide a just and equitable legal framework for the financing, marketing, managing, letting, hiring, sale and purchase of property; and
- (i) promote meaningful participation of historically disadvantaged individuals and small and medium enterprises in the property market.

PART 2 PROPERTY PRACTITIONERS REGULATORY AUTHORITY

Property Practitioners Regulatory Authority

6. (1) The juristic person known as the Namibian Estate Agents Board established by section 2 of the Estate Agents Act, 1976 (Act No. 112 of 1976) continues to exist as a juristic person as if it was established under this Act but under the name Property Practitioners Regulatory Authority.

(2) The Authority is capable, in its own name, of suing and of being sued and, subject to the provisions of this Act, of performing all such acts as a juristic person may perform lawfully.

Functions and duties of Authority

7. (1) Subject to the provisions of this Act, the Authority must perform any or all of the following functions and duties –

- (a) administer the registration and certification regimes under this Act;
- (b) exercise control over and manage the Fund;
- (c) regulate and control the practice of property practitioners and their employees;
- (d) promote integrity and competence among property practitioners and their employees and to maintain or enhance their status;
- (e) administer examinations and a professional development framework for the purposes of registration and certification under this Act;
- (f) develop codes of practice, ethics and conduct for property practitioners and their employees;
- (g) conduct investigations and disciplinary proceedings in relation to offences and unsatisfactory conduct or misconduct in relation to property practitioners' work;
- (h) develop measures to equip consumers with the necessary knowledge to conduct their property transactions with prudence and diligence; and
- (i) perform such other functions and discharge such other duties as may be conferred on the Authority by this Act or by any other law.

(2) In addition to the functions and duties imposed under subsection (1), the Authority may undertake such other functions and duties that are not incompatible with those specified in that subsection as the Minister may, in writing or by notice in the *Gazette*, assign to the Authority and in so doing –

- (a) the Authority is deemed to be fulfilling the purposes of this Act; and
- (b) the provisions of this Act apply to the Authority in respect of such functions and duties.

(3) Nothing in this section may be construed as imposing on the Authority, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject to.

Powers of Authority

8. (1) Subject to the provisions of this Act, the Authority has the power to do what is necessary in terms of the laws applicable in Namibia for the purpose of performing its functions and discharging its duties under this Act or any other law or which is incidental or conducive to the performance and discharge of those functions and duties.

- (2) Without affecting the generality of subsection (1) the Authority may –
- (a) enter into such contracts as may be necessary or expedient for the purpose of discharging the functions and duties of the Authority;
 - (b) acquire or dispose of, in accordance with the provisions of this Act, any property, whether movable or immovable, which the Authority thinks necessary or expedient for the purpose of carrying out its functions or duties;
 - (c) charge fees for registration and certification under this Act and for any services rendered by the Authority or for the use of any facilities of the Authority;
 - (d) receive grants or contributions from any lawful source or raise funds by all lawful means and apply such funds for any of the functions and duties of the Authority;
 - (e) lease, let or otherwise utilise any property, movable or immovable, vested in or acquired by the Authority on such terms and conditions as the Authority considers appropriate; and
 - (f) take any action incidental to any of its functions, duties or powers.

(4) The Authority must provide mechanisms to settle disputes in respect of the marketing, managing, letting, hiring, sale and purchase of immovable property, and may do all that is necessary or expedient to achieve the objects of this Act.

(5) This section may not be construed as limiting any power of the Authority conferred by or under any other law.

(6) The Authority must furnish the Minister with information with respect to and concerning its assets and activities in such manner and at such times as the Minister may require.

Policy directives by Minister

9. (1) The Minister may give to the Authority such policy directives, not inconsistent with the provisions of this Act, as to the performance of its functions, the discharge of its duties and the exercise of its powers under this Act or any other law as the Minister may consider necessary, and the Authority must give effect to all such directives.

(2) Nothing in this section may be construed as enabling the Minister to exercise any power or control in relation to any particular application or other matter with which the Authority is concerned.

(3) The policy directives referred to in subsection (1) may only be issued if the Minister is satisfied that it is necessary to do so to promote the objects of this Act or to protect the stability of the immovable property market of Namibia and must be prepared after consultation with the Authority.

(4) Where appropriate the Minister may publish any directive issued in terms of subsection (1) in the *Gazette*.

PART 3 GOVERNANCE AND ADMINISTRATION OF AUTHORITY

Board of Authority

10. The Authority must have a board which, subject to this Act, is responsible for the policy, management and control of the affairs of the Authority.

Composition of Board

11. (1) The Board consists of seven members appointed by the Minister of whom –

- (a) one person is a staff member of the Ministry who must be at the level of a deputy director in the public service, selected by the Minister;
- (b) two persons must be registered property practitioners and one of whom must be practising as a property practitioner and those persons must apply for appointment as members in the manner contemplated in subsection (2); and
- (c) four persons are from the persons who apply for appointment as members in the manner contemplated in subsection (2) who have appropriate and relevant expertise and experience in one or more of the following fields, namely, finance, law, consumer protection, property development or management and financing of property.

(2) For the purposes of making an appointment in terms of subsection (1) (b) or (c) –

- (a) the Minister must in at least two newspapers circulating widely in Namibia invite written applications to be submitted to the Minister or to a person designated by the Minister within the period specified in the invitation; and
 - (b) if no application is submitted as contemplated in paragraph (a) within the period specified in the invitation referred to in that paragraph, the Minister, subject to this section, may appoint a suitably qualified person as a member of the Board.
- (3) A person appointed as a member of the Board under subsection (2) (b) is regarded as having been properly nominated for appointment as a member of the Board under subsection (1)(b) or (c).
- (4) The Minister must appoint a chairperson and a deputy chairperson from among the members of the Board.
- (5) The Chief Executive Officer is an ex officio member of the Board but the Chief Executive Officer has no voting right and may not serve as the chairperson of the Board.
- (6) The Minister may appoint an alternate member for each member of the Board.
- (7) The Minister must, as soon as possible after appointing the members of the Board in terms of subsection (1), make known in the *Gazette* –
- (a) the name of every person appointed as a member of the Board;
 - (b) the period for which the appointment is made; and
 - (c) the date from which the appointment takes effect.

Disqualifications for appointment

12. A person is disqualified for appointment as a member of the Board or as the Chief Executive Officer if that person –

- (a) is not a Namibian citizen or a permanent resident in Namibia, and is not ordinarily resident in Namibia;
- (b) is an unrehabilitated insolvent;
- (c) during a period of 10 years preceding the date of the proposed appointment as a member, has been convicted of any offence and sentenced to a period of imprisonment without the option of a fine;
- (d) has been removed from an office of trust as a result of improper conduct during the period of 10 years before the date of appointment;
- (e) has been declared mentally ill by a competent court under any law;
- (f) is an office-bearer of any political party;

- (g) is a member of Parliament, local authority council or regional council; or
- (h) has any other financial or other interest that is likely to prejudicially affect the performance of his or her duties as a member of the Board.

Functions and powers of Board

13. (1) The Board is responsible for the supervision and control of the management of the affairs of the Authority and it must subject to the overall policy directions issued by the Minister in accordance with section 9, on behalf of the Authority, perform all the functions assigned to, and exercise all the powers conferred on, the Authority or the Board by this Act or any other law.

(2) Without derogating from the generality of subsection (1) the Board must –

- (a) comply with any request by the Minister for information relating to the performance of the Authority's functions;
- (b) on an annual basis, establish the objectives of the Authority for the following year;
- (c) after consultation with the Minister, on an annual basis, review and approve the overall remuneration structure and other conditions of service of the Chief Executive Officer and senior management staff of the Authority;
- (d) on an annual basis, review and approve the overall remuneration structure and other conditions of service of the other management staff and other staff members of the Authority, as proposed by the Chief Executive Officer;
- (e) on an annual basis, review and approve the business and financial plan of the Authority for the following year, prepared and submitted to the Board by the Chief Executive Officer;
- (f) prepare the annual financial statements of the Authority in accordance with generally accepted accounting practices, and approve those statements, and cause those annual financial statements to be audited and submitted to the Minister in accordance with this Act;
- (g) prepare an annual report, which report must be submitted to the Minister in accordance with this Act; and
- (h) with the prior approval of the Minister, establish the investment policy, standards and procedures referred to in section 26(5).

Conduct of members of Board

14. (1) The Board must –

- (a) approve codes of conduct applicable to all members of the Board and staff members of the Authority, respectively submitted to the Board by the Chief Executive Officer pursuant to section 23(2); and

- (b) from time to time review the codes referred to in paragraph (a) to ensure compliance with all current law, principles of good governance and ethical behaviour.

(2) Nothing in this section prevents the Board from voluntarily adopting any code, protocol or charter not in conflict with any policy, code, protocol, guideline or similar document contemplated in subsection (1) and applicable to its members.

Conflict of interest

15. (1) A member of the Board must –

- (a) exercise the duty of utmost care to ensure reasonable protection of the assets and records of the Authority;
- (b) act with fidelity, honesty, integrity and in the best interests of the Authority in managing its financial affairs; and
- (c) comply with any applicable code of conduct referred to in section 14(1).

(2) A member or of the Board may not –

- (a) act in a way that is inconsistent with the responsibilities of the Board in terms of this Act; or
- (b) use the position and privileges of, or confidential information obtained as, a member of the Board for personal gain or to improperly benefit another person.

(3) A person who contravenes or fails to comply with subsection (2) or a code of conduct referred to in section (1)(c) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(4) A member of the Board who contravenes or fails to comply with subsection (1) or (2), in addition to the penalty provided for in subsection (3), commits an act of improper and sanctionable conduct for which he or she is liable to disciplinary action being taken against him or her, including removal from office as contemplated in section 17.

Term of office of members

16. (1) A member of the Board holds office for a term of three years and is eligible for re-appointment at the expiration of that term, provided that no member may serve for more than two terms.

(2) A member whose term of office has expired may be re-appointed as a member.

Vacation of office and filling of vacancies

17. (1) A member vacates office if that member –

- (a) resigns as a member by giving not less than 30 days' written notice to the Minister;

- (b) has without the leave of the chairperson of the Board, been absent from three consecutive meetings of the Board;
- (c) has become subject to any disqualification referred to in section 12; or
- (d) is removed from office under subsection (2).

(2) The Minister may remove any member from his or her office if –

- (a) the Minister is satisfied that such member is by reason of his or her physical or mental condition or for any other reason incapable of acting as such member;
- (b) such member is found guilty of conduct which renders him or her unable or unfit to efficiently discharge the functions of the office as a member or has taken part in the discussion of, or has voted in connection with, any matter in which he or she has a personal or financial interest; or
- (c) such member is guilty of conduct prejudicial to the objectives of this Act.

(3) The Minister may only so remove a member from office after giving notice to such member and after affording him or her a reasonable opportunity to be heard.

(4) The Minister may suspend a member from office without complying with subsection (3), if the Minister is satisfied that the member is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Authority or the immovable property market in Namibia, but the Minister must give notice to the member as soon as practicable thereafter and consider any representations made by the member on the matter.

(5) If a member of the Board dies or the office of a member becomes vacant as a result of the happening of an event referred to in subsection (1), the Minister may, within a period of 90 days from the date of the death or the happening of the event and with due regard to section 11, appoint a person to fill the vacancy for the unexpired portion of the term of office of the member concerned.

(6) If at any time during the term of office of the Board –

- (a) the offices of all the members of the Board become vacant; or
- (b) the number of members of the Board is reduced to less than the number of members required for a quorum of the Board,

the Minister may, despite anything to the contrary contained in this Act or any other law and if circumstances of a pressing or urgent nature so require, appoint suitably qualified persons on a temporary basis to serve on the Board until new members are appointed.

(7) The appointment of a person as member of the Board pursuant to subsection (6) ceases to be of effect upon the earlier of –

- (a) the expiry of a period of six months from the date of the appointment, but such period may be extended, once only, by the Minister for an additional period of not more than two months; or
- (b) the appointment of a person as a member of the Board pursuant to subsection (5).

Committees of Board

- 18.** (1) The Board may establish any committee –
- (a) to advise the Board on any matter in relation to the Board's functions; and
 - (b) to perform, subject to the directions of the Board, any function of the Board which the Board may delegate to the committee in writing.
- (2) A committee established under subsection (1) may consist of two or more members and not more than two other persons not being members whom the Board considers suitable to appoint, but the chairperson must be a member of the Board.
- (3) The Board may at any time dissolve or re-constitute a committee.
- (4) The Board is not divested or relieved from a power or duty delegated or assigned to a committee.
- (5) If, in the event of a committee consisting of two members, the members are not able to reach consensus on any matter, the matter is to be determined by the Board.
- (6) A recommendation of a committee in the exercise of a power delegated or a duty assigned to it is subject to approval by the Board.

Meetings and procedures of Board

- 19.** (1) The first meeting of the Board must be held at a place and time determined by the Minister and thereafter the Board must meet at the places and times determined by the Board.
- (2) The chairperson must convene the next meeting if a meeting determined by the Board cannot take place.
- (3) The Board must meet at least four times in every year.
- (4) The chairperson of the Board may at any time, and must at the written request of the Minister or of at least four members, convene a special meeting of the Board to be held at the time and place determined by the chairperson.
- (5) A notice whereby a special meeting of the Board is convened must specify the purpose of that meeting.
- (6) The chairperson or in his or her absence, the deputy chairperson must preside at a meeting of the Board.

(7) If both the chairperson and the deputy chairperson are for any reason unable to preside over a meeting of the Board, the members present must elect a member from among themselves to act as chairperson of the Board for that meeting.

(8) At a meeting of the Board –

- (a) a majority of the members for the time being in office and present at the meeting constitute a quorum;
- (b) all questions are decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.

(9) If there is a quorum at a meeting of the Board a decision taken by the Board is valid despite –

- (a) a vacancy in the membership of the Board at the time the decision was taken; or
- (b) the presence, at the meeting when the decision was taken, of a person who was not entitled to sit as a member if a majority of the members present and entitled to sit, voted in favour of the decision.

(10) The Board may make rules for the conduct of meetings of the Board or a committee.

(11) The Board must cause accurate minutes of its proceedings to be kept.

Disclosure of interest

20. (1) For the purposes of subsection (2) “direct or indirect financial or personal interest” –

- (a) includes a personal, professional, commercial or other relationship with another person who has an interest in a matter referred to in that subsection, which relationship is of a nature that is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member of independent judgment in performing his or her duties as member;
- (b) does not include an interest –
 - (i) held as a member of a public company common with other members of that company; or
 - (ii) in a matter that applies or will apply to property practitioners generally.

(2) A member of the Board or of a committee of the Board who has a direct or indirect financial or personal interest that is likely to impair the member’s objectivity in the exercise or performance of his or her powers or functions as a member of the Board or committee –

- (a) in a contract or proposed contract with the Authority; or
- (b) in a matter being considered or proposed to be considered by the Board or a committee of the Board of which the person is a member;

must, as soon as is practicable after the relevant facts have come to the attention of the member of the Board or member of the committee of the Board, disclose the nature of the interest at a meeting of the Board or of the committee of the Board.

(3) When a member has made a disclosure under subsection (1), the other members of the Board or a committee of the Board must –

- (a) in the absence of that member, discuss the nature of the interest on which a member has made the disclosure; and
- (b) determine whether the interest is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board or of a committee of the Board.

(4) If the members of the Board or a committee of the Board determine that the interest of the member is likely to impair the member's objectivity in the exercise or performance of his or her powers or functions as a member of the Board or of a committee of the Board, that member –

- (a) may not take any further part in any consideration or discussion or decision relating to or in connection with the –
 - (i) contract, proposed contract or other matter;
 - (ii) the future administration, or oversight over the administration, of the contract or other matter;
- (b) may not take part in any vote on the contract, proposed contract or other matter;
- (c) may not be counted for the purposes of a quorum; and
- (d) must absent himself or herself from the proceedings concerning the contract or matter in which he or she has an interest.

(5) The disclosure of an interest must be recorded in the minutes of the meeting of the Board or committee.

(6) A person who knowingly contravenes or fails to comply with subsection (2) or (4) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

Remuneration of Board and committee members

21. (1) A member of the Board and a member of a committee of the Board is entitled to be paid out of the funds of the Authority such remuneration or allowances in respect of his or her service as a member as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(2) Allowances or other remuneration determined under subsection (1) may differ according to the different offices held or functions performed by a member of the Board or a member of a committee.

Chief Executive Officer

22. (1) The Board, with the approval of the Minister and on such terms and conditions as the Board may determine, must, subject to section 12, appoint a suitably qualified person to be the Chief Executive Officer of the Authority who, in accordance with the policies and directions of the Board, is responsible for the daily management and administration of the Authority, and for ensuring that the objects and functions of the Authority are carried out and its powers exercised appropriately.

(2) The Chief Executive Officer is accountable to the Board.

(3) The Board must, prior to the appointment of the Chief Executive Officer, satisfy itself that the person whom it intends to appoint has a suitable combination of qualifications, skills and experience to lead and manage the day-to-day affairs of the Authority.

(4) The appointment of the Chief Executive Officer is subject to the conclusion of a written performance contract entered into between him or her and the Board within three months of the appointment.

(5) The Chief Executive Officer is appointed for a period of five years but the Chief Executive Officer may be re-appointed after the expiration of every period of appointment.

(6) The Chief Executive Officer may at any time resign from office by submitting a written resignation to the Board and the Minister at least 90 days before the intended date of vacation of office, unless the Board and the Minister allow a shorter period.

(7) The Board, with the approval of the Minister and after having given the Chief Executive Officer a reasonable opportunity to be heard, may by notice in writing remove the Chief Executive Officer from office on the grounds of misconduct, incapacity, incompetence or failure to comply with a provision of the written agreement referred to in subsection (4).

(8) The Board, with the approval of the Minister, may suspend the Chief Executive Officer without complying with subsection (7), if the Board is satisfied that the Chief Executive Officer is guilty of dishonesty, gross misconduct or other unbecoming or inappropriate conduct such that it is necessary to act expeditiously in order to protect the integrity of the Authority or the immovable property market in Namibia, but the Board must give notice to the Chief Executive Officer as soon as practicable thereafter and consider any representations made by the Chief Executive Officer on the matter.

(9) The office of the Chief Executive Officer becomes vacant if the Chief Executive Officer –

- (a) becomes subject to a disqualification referred to in section 12;
- (b) resigns from office pursuant to subsection (6);

- (c) is removed from office pursuant to subsection (7); or
- (d) is for any reason unable to perform his or her functions for a period exceeding four months.

(10) If the office of the Chief Executive Officer becomes vacant as a result of the happening of an event referred to in subsection (9) or a suspension under subsection (8), the Board, with the approval of the Minister, must designate a staff member of the Authority or another suitably qualified person individual to act as interim Chief Executive Officer, until a new Chief Executive Officer is appointed pursuant to subsection (11) or (12).

(11) Subject to subsection (12), if there is a vacancy the Board must, pursuant to subsection (1), appoint a new Chief Executive Officer as soon as possible, and not later than six months or such extended period that the Minister may allow which period in total must not exceed 12 months, after the vacancy arises.

(12) If, as required by subsection (11), a new Chief Executive Officer has not been appointed pursuant to subsection (1) within the period of six months or the extended period referred to in subsection (11), the Minister must appoint a suitably qualified person as Chief Executive Officer.

Functions and powers of Chief Executive Officer

23. (1) The Chief Executive Officer is responsible for the day-to-day operations of the Authority and, without limiting the generality of the forgoing, is responsible for ensuring that –

- (a) the operations of property practitioners are properly monitored and that the provisions of this Act or of any other applicable law are consistently applied;
- (b) the Authority employs such qualified persons as are required to carry out the provisions of this Act, and any other applicable law, and provides adequate training for such staff members;
- (c) the remuneration structure and other conditions of service of all staff of the Authority are appropriate;
- (d) the staff members of the Authority adhere to the code of conduct referred to in section 14; and
- (e) the staff members of the Authority follow high standards of professional conduct.

(2) The Chief Executive Officer must, subject to the approval of the Board –

- (a) establish a code of conduct containing acceptable ethical standards and conflict of interest guidelines applicable to the Board members, the Chief Executive Officer and the staff members of the Authority;
- (b) review and if appropriate revise the code of conduct at least once every two years; and

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- (c) submit a copy of that code of conduct and any revisions to it to the Board for its review and approval.

(3) The Chief Executive Officer must, within 90 days before the end of the financial year of the Authority referred to in section 28, prepare and submit to the Board for approval –

- (a) the business and financial plan for the following year, including the operational objectives and a detailed listing of estimated income and expenses, together with an explanation of major variances that may have occurred with respect to the business and financial plan for the previous year when compared to actual income and expenses; and
- (b) a review of and report on the operations of the Authority for the previous year, including the accomplishments of the Authority in light of the objectives that were established by the Board for that year.

(4) The Chief Executive Officer must at each quarterly meeting update the Board on the current and emerging issues being considered by the Authority and receive the Board's comments and suggestions on the issues.

(5) In addition to any powers granted elsewhere in this Act, the Chief Executive Officer has the power to –

- (a) outsource supervisory functions of the Authority to outside parties, subject to the Board's agreement, and the approval of the Minister, as long as there are adequate arrangements in place to assess their competence, monitor their performance and ensure compliance with appropriate standards of confidentiality and independence;
- (b) request such information from any person who or entity that is subject to this Act, or any other applicable law or any employee, officer, director, partner, auditor or valuator, shareholder or other owner of that person or entity as may, in the opinion of the Chief Executive Officer, be required to administer this Act or any other applicable law;
- (c) retain such outside advisors, auditors and valuers as may be required to properly administer the provisions of this Act or any other applicable law, subject to the same confidentiality requirements as they apply to the staff members of the Authority;
- (d) after any appropriate consultations, make recommendations to the Board with regard to any legislation, including regulations necessary or desirable to properly supervise the immovable property market in Namibia, in keeping with standards and principles established by the relevant international standard setting bodies; and
- (e) make such administrative arrangements as the Chief Executive Officer considers necessary for the operational effectiveness of the Authority, including, without limiting the generality of the foregoing, opening banking accounts, arranging for premises, purchasing materials, obtaining information technology and other services.

Staff of Authority

24. (1) The Chief Executive Officer, with the approval of the Board, must employ suitably qualified persons to efficiently and effectively perform the powers and duties of the Authority in accordance with an employment policy approved by the Authority.

(2) The Chief Executive Officer must ensure that all staff members of the Authority are adequately qualified and trained for their respective positions.

(3) Staff members of the Authority are employed on such remuneration and conditions of service as approved by the Board in terms of section 13(2).

(4) The code of conduct for staff members of the Authority contemplated in section 14 applies to all staff members of the Authority to the extent indicated in the code and any contravention or failure to comply with the code could result in disciplinary action being taken against the staff members in accordance with the applicable employment law.

(5) The Board and the Minister may conclude an agreement whereby staff members in the public service whose duties relate to the functions of the Authority may be transferred to the Authority under such conditions as are contained in the agreement in question.

Conflict of interest

25. (1) On appointment, a staff member of the Authority must submit to the Authority a statement in writing in which that person declares whether or not he or she has any direct or indirect interest, financially or otherwise, which –

- (a) may constitute a conflict of interest in respect of his or her functions and duties as a member of staff of the Authority; or
- (b) could reasonably be expected to compromise the Authority in the performance of its functions.

(2) If a staff member of the Authority acquires an interest contemplated in subsection (1), he or she must immediately in writing declare that fact to the Chief Executive Officer.

(3) A staff member of the Authority may not be present at, or take part in, the discussion of or the taking of a decision on any matter before the Authority in which that member has an interest contemplated in subsection (1).

(4) A staff member of the Authority may not use his or her position, or privileges, or confidential information obtained as a member of staff of the Authority, for personal gain or to improperly benefit another person.

(5) The Authority must institute disciplinary proceedings against a staff member of the Authority who fails or refuses to comply with or contravenes a provision of subsection (1), (2), (3) or (4) in accordance with the applicable employment and labour law.

(6) The Chief Executive Officer must keep a register of the interests of members of staff disclosed in terms of subsections (1) and (2) and must update that register every year.

PART 4
FINANCIAL MATTERS

Funds of Authority

26. (1) The funds of the Authority consist of –
- (a) money standing to the credit of the Authority having accrued to the Authority under the repealed law;
 - (b) money appropriated by Parliament for the purposes of the Authority and made available to the Ministry;
 - (c) annual membership fees payable to the Authority pursuant to section 47;
 - (d) money received by the Authority in respect of fees referred to in section 8(2)(c), and other money received by the Authority in terms of this Act, not being money received for the benefit of the Fund;
 - (e) money earned on investments of money of the Authority pursuant to subsection (4);
 - (f) money received by the Authority in respect of fines and costs in terms of any order made under section 78(8)(a);
 - (g) expenses recovered by the Authority in connection with an audit in terms of subsection (2); and
 - (h) other money lawfully received by the Authority from any other source.
- (2) If the Authority –
- (a) after an inspection or investigation has found that a property practitioner failed to comply with any duty imposed upon him, her or it in terms of this Act;
 - (b) has incurred any liability to pay costs in respect of any proceedings instituted by it in terms of this Act for the recovery from a property practitioner of any amount which is payable by him, her or it to the Authority or the Fund; or
 - (c) has incurred any liability to pay audit fees in respect of an audit done on the instructions of the Authority in a case where an audit contemplated in section 60(4)(b) has not been done,

the Authority may recover, for the benefit of funds of the Authority, the costs of such inspection or investigation in so far as it relates to such duty or the taxed amount of such costs on a legal practitioner and client scale or the amount of such audit fees, as the case may be, from the property practitioner concerned.

(3) The Authority must open such bank accounts with a registered banking institution or building society as the Authority considers necessary, and into which all money received by the Authority must be deposited.

(4) The Authority, subject to any investment policy established under subsection (5), may invest or deposit money of the Authority that is not immediately required for contingencies or to meet current expenditures with any registered banking institution, building society or financial institution within Namibia.

(5) The Authority, with the prior approval of the Minister, must establish an investment policy, standards and procedures for the purposes of the investment of moneys referred to in subsection (4).

(6) The Authority must submit to the Minister for prior approval any proposed changes to the investment policy, standards and procedures referred to in subsection (5).

(7) The Minister must by notice in the *Gazette*, prior to the commencement of this Act and thereafter annually prior to the beginning of a financial year of the Authority and after consultation with the Authority, determine the fees payable in terms of or under this Act.

(8) In determining the fees payable in terms of or under this Act the Minister may differentiate between the fees payable by different categories of practitioners including those payable by registered property practitioners who are not practising as property practitioners.

Utilisation of funds of Authority

27. The funds of the Authority must be applied only to defray the costs, expenses and other obligations incurred by the Authority in the performance of its functions, but money or other property donated or bequeathed to the Authority must be used only in accordance with the conditions of the donation or bequest.

Financial year and reporting

28. (1) The financial year of the Authority ends on 31 March of each year.

(2) The Board must ensure that –

- (a) proper accounts and records of the transactions and affairs of the Authority are kept in accordance with generally accepted principles to represent fairly the state of affairs of the Authority;
- (b) adequate control is maintained over the incurring of liabilities by the Authority;
- (c) all payments out of the money of or held by the Authority are correctly made and properly authorised; and
- (d) adequate control is maintained over the assets of, or in the custody, control and management of, the Authority.

(3) Within three months after the end of each financial year, the Board must prepare or cause to be prepared annual financial statements showing, with appropriate particulars –

- (a) the money received and expenditure incurred by the Board during the financial year; and
 - (b) the assets, liabilities and financial position of the Board as at the end of the financial year.
- (4) An auditor appointed by the Authority must audit the accounts, records and annual financial statements of the Authority.

Reports and financial statements

29. (1) The Board must –
- (a) furnish to the Minister such information as the Minister may from time to time in writing require in connection with the activities and financial statements of the Authority; and
 - (b) each year, within six months after the end of its financial year, submit to the Minister –
 - (i) copies of the Authority’s audited financial statements and the auditor’s report for that financial year;
 - (ii) a report on the Authority’s activities in respect of that financial year;
 - (iii) a detailed list of names and numbers of registered property practitioners the Authority entered in the register and those issued with fidelity fund certificates during the financial year;
 - (iv) a statement specifying the number and nature of complaints the Authority received in respect of property practitioners or their agents or employees during the financial year;
 - (v) a statement specifying the manner in which the Authority handled complaints during the financial year, setting out the number it dismissed, the number it dealt with in improper and sanctionable inquiries and the number outstanding at the end of the financial year; and
 - (vi) a statement giving details of any disciplinary action the Authority took against property practitioners or their agents or employees during the financial year.
- (2) The Minister must cause copies of the Authority’s report and financial statements received in terms of subsection (1) to be laid before the National Assembly –
- (a) if the National Assembly is in session, within 30 days of having received it from the Authority; or
 - (b) if the National Assembly is not then in session, within 30 days after commencement of the National Assembly’s next session.

PART 5
PROPERTY PRACTITIONERS FIDELITY FUND

Property Practitioners Fidelity Fund

30. (1) The Estate Agents Fidelity Fund for Namibia established by section 12 of the Estate Agents Act, 1976 (Act No. 112 of 1976) continues to exist as if it were established in terms of this Act but under the name Property Practitioners Fidelity Fund.

- (2) The following must be paid into the Fund –
- (a) all monies paid as fees in accordance with this Act to or on account of the Fund;
 - (b) income derived from the investment of monies of the Fund in terms of subsection (3);
 - (c) all monies recovered by or on behalf of the Fund in the exercise of any right of action conferred by this Act;
 - (d) all monies received on behalf of the Fund from any insurance company;
 - (e) interest derived from trust accounts paid to the Fund pursuant to section 59(2)(c); and
 - (f) any other monies lawfully accruing to the Fund from any other source.

(3) The Authority may, on such terms and conditions as are approved by the Minister, invest any monies in the Fund not immediately required for the purposes of the Fund, with or in an institution approved by the Minister responsible for finance.

Purpose of Fund

31. (1) Subject to the provisions of this Act, the Fund must be maintained and applied to reimburse persons who suffer pecuniary loss by reason of –

- (a) 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
- (b) the failure by a property practitioner to comply with section 59(1) or (3).

(2) A person is not entitled to claim against the Authority as contemplated in subsection (1) unless the claimant has –

- (a) within three years after the circumstances giving rise to a claim came into being, given notice to the Authority of such claim as contemplated in section 34; or
- (b) within the three-year period contemplated in paragraph (a) after a written request was sent to him or her by the Authority, furnished to the Authority such proof as it may reasonably require.

(3) If the Board is satisfied that, having regard to all the circumstances, a claim was lodged or the proof required by it was furnished as soon as practicable it may, in its discretion, extend any of the periods referred to in this section.

Control and management of Fund

32. (1) The Authority is responsible for the management and administration of the Fund.

(2) Each member of the Board owes a fiduciary duty and a duty of care and skill to the Fund.

(3) The Authority must cause to be deposited money of the Fund into a banking account to be known as the Property Practitioners Fidelity Fund held by the Fund at a registered banking institution or building society.

Payments from Fund

33. (1) Subject to the provisions of this Act, the following must, whenever required, be paid out of the Fund –

- (a) the amount of all claims, including costs, allowed or established against the Fund as provided for in this Act;
- (b) in the discretion of the Board, any contribution in respect of any expense incurred by any claimant in establishing a claim;
- (c) all legal, accounting and other expenses incurred in investigating and defending claims made against the Fund or otherwise incurred in relation to the Fund;
- (d) all premiums payable in respect of contracts of insurance entered into by the Authority in terms of section 39;
- (e) the expenses incurred in the management, control and administration of the Fund by the Authority, in accordance with terms and conditions approved by the Minister; and
- (f) any other monies which may be paid out of the Fund in accordance with this Act.

(2) The Minister after consultation with the Board may by notice in the *Gazette* limit the amount which may be paid from the Fund in respect of any category of claims.

Claims from Fund

34. (1) A claim for compensation from the Fund must be lodged with the Authority in the prescribed manner.

(2) A person may not lodge a claim against the Authority in respect of a theft of trust money by a property practitioner unless such a person has before lodging the claim with the Authority laid a criminal charge against the property practitioner concerned.

(3) The Authority may hold an inquiry in the prescribed manner into any claim lodged with the Authority in respect of the Fund after which the Authority may allow or reject the claim and give written reasons for the rejection.

Cooperation by claimant

35. (1) A person who has lodged a claim contemplated in section 34 must on request by the Authority participate, cooperate and assist the Authority in respect of any matter concerning the claim.

(2) The Authority may withhold payment from the Fund of any amount payable to a person who fails or refuses to substantially comply with any reasonable request made in writing by –

- (a) the Namibian police or another organ of State responsible for investigating or monitoring crime or criminal activity, to cooperate and assist in its investigation of any criminal charge laid against a property practitioner;
- (b) the office of the Prosecutor General or any organ of State responsible for asset forfeiture investigations or proceedings, in respect of any investigation or proceedings in a court of law of which the relevant property practitioner is the subject or defendant; or
- (c) the Authority to cooperate and assist in.
 - (i) the investigation of any complaint against the relevant property practitioner; or
 - (ii) the exercise of the Authority's rights and remedies against the relevant property practitioner pursuant to the provisions of this Act.

(3) Neither the Fund nor the Authority is liable for payment of interest on any amount withheld in the circumstances contemplated in subsection (2).

Actions against Authority in respect of Fund

36. (1) A person may not commence any action against the Authority for payment from the Fund after the expiry of three years from the date of a written notification by the Authority addressed to the claimant or his or her legal representative, if any, informing the claimant that the Authority –

- (a) rejects the claim to which the action relates; or
- (b) requires compliance with sections 34 or 35.

(2) A person may not recover from the Authority any amount larger than the difference between the amount of the loss suffered by him or her and the amount or value of all monies or other benefits which he or she received or is entitled to receive out of any other source in respect of such loss.

(3) A right of action does not lie against the Authority in respect of any loss suffered by –

-
- (a) the spouse, including a spouse in a customary law union, 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;
 - (b) any property practitioner by reason of any negligent or intentional conduct including theft committed –
 - (i) by his or her business partner;
 - (ii) if such property practitioner is a company, by any director of such company;
 - (iii) if he or she is a director of a company, by any co-director in such company;
 - (iv) if such property practitioner is a close corporation, by any member of such corporation;
 - (v) if he or she is a partner in a partnership, by any other partner of such partnership; or
 - (vi) by any person employed by him or her as a property practitioner; or
 - (c) 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 section 2(1)(f).

(4) For the purposes of subsection (3), an “immediate family member” means a parent, child, brother or sister or any person married to such a property practitioner or a life partner of such a property practitioner.

Computation of future claims by Fund

37. Only monies in the Fund are available for the satisfaction of any judgment obtained in relation to the Fund or for the payment of any claim allowed by the Authority, but if the amount in the Fund is at any time insufficient to settle all such judgments and claims, they must, to the extent that they are not settled, be charged against future accumulations to the Fund.

Transfer of rights and remedies to Authority

38. If the Authority settles in full or in part any claim under this Act, all the rights and remedies of the claimant in respect of such claim –

- (a) against the property practitioner concerned or any other person; or
- (b) in the case of the death, insolvency or other legal incapacity of a property practitioner or other person, against the estate of that property practitioner or other person,

pass to the Authority, without qualification or diminution, to the extent of such settlement.

Insurance contracts and application of insurance monies

39. (1) The Authority may in the public interest and as prescribed enter into a contract of insurance with any registered insurer to insure the Fund against any claim arising under this Act.

(2) Any contract referred to in subsection (1) must be entered into in respect of property practitioners generally.

(3) A claimant having a claim against the Authority under this Part does not, by virtue of any contract entered into in terms of subsection (1) by the Authority with an insurer, have any right of action against that insurer.

(4) A claimant having a claim against the Authority under this Part does not have any right or claim in respect of any money paid or payable to the Authority by an insurer in accordance with a contract entered into in terms of subsection (1), but such money must be paid into the Fund and applied by the Authority in accordance with the provisions of this Part to settle any relevant claim.

Fund exempt from certain laws

40. (1) The revenue of the Fund is exempt from any law relating to the payment of income tax.

(2) The provisions of any law relating to insurance do not apply in respect of the Fund.

Financial year of Fund and reporting

41. (1) The financial year of the Fund ends on 31 of March of each year.

(2) Within three months after the end of financial year the Board must –

- (a) prepare or cause to be prepared the financial statements in respect of the Fund;
- (b) prepare or cause to be prepared a report in respect of the activities of the Fund;
- (c) submit to the Minister; and
- (d) in the manner prescribed, make available to all property practitioners and the public in general,

the financial statements of the Fund as audited by an auditor appointed by the Authority and report on the activities of the Fund within six months after the financial year end.

PART 6
REGISTRATION OF PROPERTY PRACTITIONERS

Registration of property practitioners

42. (1) A person may not –

- (a) practise as a property practitioner or describe himself or herself or allow himself or herself to be described, hold himself or herself out as a property practitioner unless that person is registered as a property practitioner in terms of this Act; or
- (b) in the case of a company, close corporation or partnership, practise as a property practitioner under any personal name which is not the name of a registered property practitioner who is or was a principal, an assistant or a working partner of the company, close corporation or partnership concerned.

(2) A person conducting the practice of a property practitioner may not employ in any capacity whatsoever any person –

- (a) who is not registered to practise as such in terms of this Act;
- (b) whose registration has been revoked in terms of this Act; or
- (c) who has been suspended from practice in terms of this Act while he or she is so suspended,

unless with the written consent of the Board which may be given for such period and subject to such conditions as the Board may impose.

(3) A person who wants to be registered as a property practitioner must, in the prescribed form and manner, apply for registration to the Authority and that application must be accompanied by any fees and documents, including evidence of identity, as may be prescribed.

(4) The Chief Executive Officer may, or must when so directed by the Board, require a statement made in an application for registration as a property practitioner or in connection with an application for registration as a property practitioner, to be supported by affidavit.

Qualifications for registration

43. A person does not qualify to be registered as a property practitioner unless that person –

- (a) has satisfied all the formalities prescribed in relation to the application for registration as a property practitioner;
- (b) is –
 - (i) a Namibian citizen;
 - (ii) lawfully admitted to Namibia for permanent residence and is ordinarily resident in Namibia; or
 - (iii) the holder of an employment permit issued in terms of section 27 of the Immigration Control Act, 1993 (Act No. 7 of 1993);
- (c) has passed the examinations prescribed for the category of registration that he or she wishes to be registered in, unless he or she is exempted under this Act;

- (d) meets the requirements relating to practical training and experience as may be prescribed, unless he or she is exempted under this Act; and
- (e) is a fit and proper person to be registered.

Reference of applications to Board

44. (1) The Chief Executive Officer must refer to the Board, any application and relevant documents referred to in section 42 together with any comments which the Chief Executive Officer may wish to make.

(2) The Minister may prescribe for the provisional registration of a person as a property practitioner and the Chief Executive Officer may so register such a person pending the determination of an application by the Board.

Board to determine applications

45. (1) On receipt of an application referred to it in terms of section 42 the Board must consider the application after which it may –

- (a) grant the application and direct the Chief Executive Officer to register the applicant in the register and issue a registration certificate to the applicant;
- (b) grant the application subject to any appropriate conditions which it may impose and issue a registration certificate to the applicant; or
- (c) refuse the application and provide written reasons for such refusal to the applicant.

(2) A person who is aggrieved by any decision by the Board or the Chief Executive Officer acting on behalf of the Authority in terms of this Part may within the prescribed period and in the prescribed form and manner appeal against that decision to the Appeal Board.

Disqualifications for registration

46. A person is disqualified from registration as a property practitioner if that person –

- (a) is an unrehabilitated insolvent;
- (b) has been convicted of an offence of which dishonesty is an element and sentenced to imprisonment without the option of a fine;
- (c) is considered a mentally ill person under the Mental Health Act, 1973 (Act No. 18 of 1973);
- (b) has at any time because of misconduct been dismissed from a position of trust; or
- (e) has been found guilty of improper and sanctionable conduct as contemplated in Part 9 and been prohibited from practicing as a property practitioner.

Membership fees

47. (1) Every registered property practitioner must, unless otherwise exempted under this Act, pay for the benefit of the funds of the Authority an annual membership fee as may be determined under section 26(7).

(2) The annual membership fee referred to in subsection (1) is payable at such times and in such manner as may be determined under section 26(7).

Revocation of registration

48. The Authority may revoke the registration of a property practitioner if that practitioner –

- (a) no longer meets the qualification requirements of section 43;
- (b) is subject to a disqualification referred to in section 46;
- (c) fails or to pay the annual membership fees within the period referred to in section 47(2);
- (d) has been found guilty of improper and sanctionable conduct as contemplated in section 64;
- (e) is subject to an order of the court declaring that he or she is not fit to continue practising as a property practitioner; or
- (f) has been found guilty of a contravention of any provision of this Act, whether in civil or criminal proceedings, and the Board is of the opinion that it would not be in the public interest that the practitioner continues to practise.

Register of property practitioners

49. (1) The Authority must open and maintain a register into which the Chief Executive Officer must enter prescribed particulars of registered property practitioners.

(2) If the Authority revokes the registration of a registered property practitioner or indicates in the register the suspension from practice of a registered property practitioner the Chief Executive Officer must in writing –

- (a) notify the property practitioner concerned; and
- (b) direct the property practitioner to surrender his or her or its registration certificate to the Chief Executive Officer within a period specified in the written communication.

Register as evidence

50. A certificate signed by the Chief Executive Officer –

- (a) of the entry of the name of a person in the register is prima facie evidence that the person is a registered property practitioner;

- (b) that the name of a person has been deleted from or does not appear in the register is prima facie evidence that the person is not a property practitioner; and
- (c) that the registration of a property practitioner has been revoked or that a registered property practitioner has been suspended from practice as such for a period specified in that certificate is prima facie evidence that the registration of that property practitioner has been revoked or that the property practitioner has been suspended from practice for that period.

Offences relating to registration and in connection with register

51. (1) A person who contravenes or fails to comply with section 42(1) or (2) commits an offence and on conviction is liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(2) On conviction of any person of an offence under subsection (1) the court convicting the person may, in addition to any penalty which may be imposed therefore in terms of that subsection, order the person convicted to pay a fine not exceeding the amount of any commission or remuneration paid in respect of any transaction which was the subject of the charge and for such purposes a court of a magistrate has, despite anything to the contrary contained in any other law, jurisdiction to order any such payment.

(3) A conviction for an offence under subsection (1) is not a bar to a further prosecution for the continuance of the offence.

- (4) A person who –
 - (a) makes or causes to be made an unauthorised entry or alteration or deletion in the register or a certified copy from the register or extract from the register or on a registration certificate;
 - (b) procures or attempts to procure for himself or herself or another person registration or a registration certificate by means of fraud, a false representation or the concealment of a material fact;
 - (c) makes or causes to be made in connection with an application for registration a false declaration in a document used for the purpose of establishing his or her identity;
 - (d) intentionally destroys or damages or renders illegible or causes to be destroyed, damaged or rendered illegible an entry in the register;
 - (e) without the permission of the holder, wilfully destroys, damages or renders illegible a registration certificate;
 - (f) forges or utters, knowing the same to be forged, a document purporting to be a registration certificate; or
 - (g) fails or refuses to comply with a directive issued under section 49(2)(b) to surrender the registration certificate to the Chief Executive Officer,

commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period exceeding two years or to both such fine and such imprisonment.

PART 7 FIDELITY FUND CERTIFICATE

Prohibition on practising without fidelity fund certificate

52. (1) A person may not practise as a property practitioner unless, in addition to any other requirements provided for in or under this Act –

- (a) he or she is in possession of a fidelity fund certificate or an authority to practise, if applicable;
- (b) if he or she employs any other person as a property practitioner, that person is also in possession of a fidelity fund certificate; and
- (c) if that person is an entity that is
 - (i) a company;
 - (ii) a close corporation;
 - (iii) a trust; or
 - (iv) a partnership,

every director of such a company, every member of such a close corporation, every trustee of such a trust or every partner of such a partnership is also in possession of a fidelity fund certificate.

(2) A person who contravenes or fails to comply with subsection (1) 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.

(3) Any person who contravenes or fails to comply with subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

- (4) The provisions of this section apply irrespective of –
 - (a) what appellation a person or an entity is described by; or
 - (b) whether he, she or it is registered, certified or appointed or acts in terms of or under or for purposes of any other law.

(6) A person may not receive any commission, remuneration or other benefit in connection with any action that constitutes the practice of a property practitioner, unless he or she is in possession of a fidelity fund certificate or has been exempted in terms of this Act or has been excluded under section 2(2).

(7) An agreement entered into by a person referred to in subsection (6) related to an action referred to in that subsection is unlawful and in terms of this section may be cancelled at any time by the other party, irrespective of whether he or she knew that that person was not in possession of a fidelity fund certificate.

(8) The person who is not in possession of the fidelity fund certificate referred to in subsection (6) must upon cancellation by the other party repay in full to the other party to the transaction any monies paid to him or her, together with interest calculated from the date of payment of the money in contravention of subsection (6) to the date of repayment to that other party, at the rate charged for current accounts by that other party's bank on the date of repayment, and any banking or transfer costs directly related to the payment and repayment of that money.

Application for fidelity fund certificate

53. (1) A registered property practitioner who is practising or who intends to practise as a property practitioner, unless he or she is a practitioner who is referred to in section 2(1)(f) or who is exempted under this Act, must within the prescribed period and in the prescribed manner apply to the Authority for the issue of a fidelity fund certificate.

(2) A property practitioner or prospective property practitioner referred to in section 2(1)(f) must, within the prescribed period and in the prescribed manner, apply to the Authority for an authority to practise.

(3) An application made in terms of subsection (1) or (2) must be accompanied by the applicant's registration certificate, if applicable, the prescribed fee and any other information which may be prescribed or determined by the Board.

(4) On receipt of an application contemplated in subsection (1) or (2) the Chief Executive Officer must refer the application to the Board and the Board if it is satisfied that the applicant concerned –

- (a) meets all requirements provided for in or under this Act; and
- (b) is not disqualified in terms of section 54 from being issued with a fidelity fund certificate,

must grant the application and direct to the Chief Executive Officer to, in the prescribed form, issue to the applicant concerned a fidelity fund certificate or an authority to practise, which is valid until 31 December of the year to which such application relates.

(5) A property practitioner –

- (a) who applies for a fidelity fund certificate or an authority to practise, after the prescribed period referred to in subsection (1) or (2); or
- (b) whose application is not accompanied by the prescribed fees,

must in addition to the applicable fee pay a prescribed penalty to the Authority and the Authority may not issue a fidelity fund certificate or an authority to practise to the property practitioner concerned until the penalty has been paid.

(6) A property practitioner may not use or display a lapsed fidelity fund certificate or authority to practise.

(7) A property practitioner must upon request from any person who requires the practitioner's services produce his, her or its fidelity fund certificate or authority to practise or certified copy of the certificate or authority.

(8) A property practitioner whose name or contact details change during the period of validity of his, her or its fidelity fund certificate or authority to practise must within 14 days of such a change taking place in writing provide the Authority with his, her or its new name or contact details.

Disqualifications for fidelity fund certificate

- 54.** (1) The Authority may not issue a fidelity fund certificate to
- (a) a person who –
- (i) is not in possession of a valid registration certificate;
 - (ii) has at any time in the preceding five years been found guilty of contravening this Act, the repealed law or any similar legislation in any other jurisdiction;
 - (iii) has been found guilty in any civil or criminal proceedings by a court of law, whether in Namibia or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty or of any other offence for which such person has been sentenced to imprisonment without the option of a fine;
 - (iv) is subject to a disqualification referred to in section 46;
 - (v) is not in possession of any prescribed document relating to tax, social security or affirmative action; or
 - (viii) has been prohibited by any legislation, enacted in Namibia or elsewhere, from practising as a property practitioner or from occupying a position of trust, including any juristic person to whom the disqualifications in subparagraphs (ii), (iii), (iv) and (v) apply with the necessary changes;
- (b) a property practitioner who or, if such property practitioner is a company, a director or member of management of that company, or if such property practitioner is a close corporation, a member, or if such property practitioner is a trust, a trustee, or if such property practitioner is a partnership, a partner, who –
- (i) in the preceding five years has been found guilty of contravention of this Act or the law repealed by section 91;
 - (ii) does not comply with the prescribed standard of training;
 - (iii) does not have the prescribed practical experience determined by the Authority;
 - (iv) has failed in respect of his or her or its financial year which has expired before the date on which application for a fidelity fund

certificate is made, to comply with any provision of section 59 or 60 unless the Authority has in the case of the duty to submit audit reports as contemplated in section 59, in its discretion allowed a property practitioner to make a late submission of that report; or

- (v) has at any time been found guilty of an act or omission in respect of which any person had to be compensated pursuant to the provisions of Part 5 from the Fund, unless the property practitioner has repaid the relevant amount in full to the Authority or the Authority is of the opinion that satisfactory arrangements for the settlement of such amount have been made and has confirmed such arrangements;
- (c) a property practitioner contemplated in section 2(1)(a), if such property practitioner carries or intends to carry on business as a property practitioner under a trade name which is identical or confusingly similar to the trade name of another property practitioner –
 - (i) already issued with a fidelity fund certificate; or
 - (ii) whose fidelity fund certificate is suspended or has lapsed or been withdrawn in terms of this Act;
- (d) a property practitioner who is a director of a company or who is a member of a close corporation –
 - (i) of which the fidelity fund certificate was withdrawn by the Authority in terms of section 58; or
 - (ii) which was prohibited in terms of section 59 from operating in any way on its trust, savings or other interest-bearing account referred to in that section; or
- (e) any property practitioner referred to in paragraph (d) who within a period of six months before or on the date on which such fidelity fund certificate was so withdrawn or such company or close corporation was so prohibited, was a director of such company or a member of such corporation.

(2) If the Authority is satisfied in respect of a person who is subject to a disqualification referred to in this section, with due regard to all the relevant considerations, that the issue of a fidelity fund certificate to that person is on good cause shown in the interests of consumers, the Authority may on application in the prescribed manner by that person issue, on the conditions that it may determine, a fidelity fund certificate to that person.

Fees payable by property practitioners

55. (1) A property practitioner must annually pay –
- (a) a prescribed application fee for a fidelity fund certificate or an authority to practise in accordance with the provisions of section 53(3); and

- (b) any amount that the Minister determines under section 26(7).

(2) The Minister must in exercising the powers conferred under section 26(7), specify a method or standard to determine the percentage by which the fees payable are automatically adjusted annually on 1 April of every subsequent year.

Mandatory time periods for issuing certificates

56. (1) The Authority must consider any application which fully meets the prescribed requirements and submitted to it in terms of or under this Act, within 30 working days, unless the Authority on good grounds in writing informs the applicant of the reasons why that period is to be extended, provided that such extension may not exceed 30 working days.

(2) The period of 30 working days contemplated in subsection (1) commences afresh if the Authority requests the applicant to submit additional information or to correct his, her or its application.

(3) If the Authority has failed to comply with subsection (1), the relevant application is deemed to have been approved and the Authority must upon written request by the applicant within 10 working days issue the applicant with the fidelity fund certificate or authority to practise.

Mandatory display of fidelity fund certificate and communication of certificate status

57. (1) Every holder of a fidelity fund certificate or must –

- (a) prominently display the fidelity fund certificate in every place of business from where he, she or it conducts immovable property transactions, to enable consumers to easily inspect it;
- (b) 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
- (c) in any agreement relating to immovable property transactions entered into by him or her or by his or her or its company, close corporation, partnership, trust or other entity permitted to conduct the business of a property practitioner, include the prescribed clause which ensures that he, she or it guarantees the validity of the certificate.

(2) A person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Withdrawal or lapse of fidelity fund certificate

58. (1) The Authority may, whether on its own initiative or pursuant to an instruction issued by a court of law or an adjudicator contemplated in section 78, withdraw –

- (a) a fidelity fund certificate or an authority to practise issued to any person, partnership or trust summoned in the prescribed manner to appear before the Authority if that person, partner or trustee without just cause fails to

comply with the summons and prior to the date of the appearance stated in the summons has not been excused in writing by the Authority, from so appearing;

- (b) a fidelity fund certificate issued to a company or close corporation, if –
 - (i) the fidelity fund certificate of a director of the company or of a member of the corporation has lapsed in terms of subsection (5); or
 - (ii) a director of such company or a member of such corporation or a trustee of a trust or the person responsible for the trust, becomes subject to a disqualification referred to in section 54(1)(b)(ii) and (iii) or (c); or
- (c) a fidelity fund certificate issued to a person or trust becomes subject to any disqualification referred to in section 54(1)(b)(ii) and (iii) or (c).

(2) A person who has in his or her possession or under his or her control any fidelity fund certificate or authority to practise withdrawn in terms of subsection (1) may not use or display that fidelity fund certificate or authority to practise.

(3) A court may, on good cause and upon application by the Authority or any other competent person, withdraw any fidelity fund certificate or authority to practise issued to any person, and order that the person contemplated in subsection (2) or any other person must immediately refrain from using and displaying that fidelity fund certificate or authority to practise.

(4) A fidelity fund certificate or an authority to practise, if applicable, lapses immediately and is of no force and effect if the person to whom it has been issued –

- (a) in the case of a natural person, the person dies or becomes subject to any disqualification referred to in section 54(1)(a);
- (b) is a company or a close corporation, the company or close corporation is being wound up, whether provisionally or otherwise, or is deregistered, as the case may be;
- (c) is a partnership, one of the partners is sequestrated; or
- (d) in the case of a trust with only one trustee, that trustee is sequestrated.

(5) A person who is in possession or control of a fidelity fund certificate or an authority to practise which has been withdrawn or has lapsed must immediately return that certificate or authority to the Authority, or if that fidelity fund certificate or authority to practise cannot be returned, submit a declaration made under oath or affirmed as to the reasons and circumstances preventing the property practitioner from doing so.

(6) A person whose fidelity fund certificate has been withdrawn in terms of subsection (1) or has lapsed in terms of subsection (4), may not directly or indirectly participate in the management of any business carried on by a property practitioner in his or her capacity as such, or participate in the carrying on 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.

(7) A property practitioner may not directly or indirectly in any capacity whatsoever employ a person contemplated in subsection (6) or allow or permit such person directly or indirectly to participate in any capacity in the management or the carrying on of his or her business as a property practitioner, except with the consent in writing of the Authority, and subject to the conditions that the Authority may impose.

(8) The Authority does not incur any liability in respect of the withdrawal or lapse of a fidelity fund certificate or an authority to practise.

(9) A person, partnership or trust whose fidelity fund certificate or authority to practise has been withdrawn or lapsed in terms of this section may re-apply for a fidelity fund certificate or authority to practise when it, he or she again qualifies for such a certificate.

(10) Any person who –

- (a) uses or displays a fidelity fund certificate or an authority to practise contemplated in subsection (2); or
- (b) contravenes or fails to comply with subsection (6) or (7),

commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART 8

OBLIGATIONS OF PROPERTY PRACTITIONERS AND RELATED MATTERS

Trust account

59. (1) Every property practitioner –

- (a) must open and keep one or more separate trust accounts, which must contain a reference to this section, with a registered banking institution or building society within Namibia;
- (b) must immediately after opening a trust account contemplated in paragraph (a) appoint an auditor as prescribed;
- (c) must immediately after opening a trust account as contemplated in paragraph (a) and appointing an auditor as contemplated in paragraph (a) provide the Authority as prescribed with all information in respect of such account or accounts and such auditor; and
- (d) must
 - (i) immediately deposit; or
 - (ii) ensure that his or her responsible or designated employee immediately deposits,

all trust money held or received by or on behalf of that property practitioner in the relevant trust account.

(2) Despite subsection (1), a property practitioner may invest in a separate savings or other interest-bearing account opened by him or her or it with any registered banking institution, building society or financial institution in Namibia any monies deposited in his or her or its trust account which are not immediately required for any particular purpose, provided that –

- (a) that savings or other interest-bearing account contains a reference to this subsection;
- (b) the property practitioner must as prescribed provide the Authority with all information in respect of such account;
- (c) interest on moneys deposited into a trust account referred to in subsection (1), and on moneys invested in terms of this subsection, subject to the express terms of the mandate in question which must be in writing, be paid to the Fund by the property practitioner concerned; and
- (d) the Authority may in the prescribed circumstances refund to a property practitioner a prescribed portion of the interest paid by such property practitioner to the Fund in terms of paragraph (c).

(3) A property practitioner must retain all trust money in an account deposited in terms of subsection (1) or invested in terms of subsection (2) until he, she or it is lawfully –

- (a) entitled to such money; or
- (b) instructed in writing to make payment from that account to any person.

(4) A banking institution, building society or financial institution which manages trust accounts for purposes of this Act must from time to time as prescribed submit a certificate to the Authority declaring the interest in that account.

(5) Every property practitioner must –

- (a) keep separate accounting records of all monies deposited by him or her or it in his, her or its trust account and of all monies invested by him or her or it in any savings or other interest-bearing account contemplated in subsection (2);
- (b) balance his, her or its books and records relating to any account contemplated in paragraph (a) at intervals of not more than one month, and cause them as well as all his, her or its business accounts or any other account into which moneys are deposited in connection with any immovable property transaction to be audited by the same auditor contemplated in subsection (1)(b), within six months after the final date of the financial year of the property practitioner concerned; and
- (c) administer the accounts referred to in subsection (1) or (2) in the prescribed manner.

(6) A property practitioner must immediately after receipt of an audit report contemplated in subsection (5)(b) submit that report to the Authority, but a property practitioner who submits that report later may upon payment of a prescribed penalty make a late submission of that report.

(7) Despite subsection (5), the Authority may on good cause at any time order a property practitioner by notice in writing to submit to the Authority within a period stated in such notice, but not less than 30 days, an audited statement prepared by an auditor fully setting out the state of affairs in respect of the matters referred to in subsection (5)(a).

(8) The High Court may on good cause, upon application by the Authority or any person who has a substantial interest in the matter, prohibit any property practitioner from operating in any way his or her or its trust, savings or other interest-bearing account contemplated in subsection (2) and may appoint a curator bonis to control and administer such trust, savings or other interest-bearing account with the rights, duties and powers that the court considers fit.

(9) If –

- (a) the Authority refuses under the provisions of this Act to issue a fidelity fund certificate to any property practitioner who applied for a fidelity fund certificate;
- (b) a fidelity fund certificate issued to any property practitioner has been withdrawn or lapsed without being renewed;
- (c) a property practitioner ceases to act as such; or
- (d) a property practitioner becomes subject to any disqualification contemplated in section 54,

the property practitioner concerned must immediately wind up his, her or its trust account, savings account or other interest-bearing account in the prescribed manner and pay out in the prescribed manner the amount standing to the credit of any such account to the persons entitled to it.

(10) A property practitioner who –

- (a) winds up an account as contemplated in subsection (9) which contains unclaimed or unidentifiable money; or
- (b) has held moneys in his, her or its trust account of which the owner or beneficiary could for longer than three years not be identified,

must pay that money into the Fund to be held in trust, but the Fund must upon application in the prescribed manner by the owner or beneficiary of such money and with the provision of sufficient proof pay that money to that owner or beneficiary.

(11) Any money paid into the Fund in accordance with subsection (10) which has remained unclaimed by the person entitled to it for a period of 30 years as from the date upon which such person became entitled to claim that money, is forfeited to the Fund.

(12) Despite any other law to the contrary, the amount standing to the credit of the trust, savings or other interest-bearing account contemplated in subsection (1) or (2) of any property practitioner, does not under any circumstances form part of the assets of such property practitioner or, if he or she was a natural person and has died or has become insolvent, of his or her deceased or insolvent estate.

(13) Despite any other law to the contrary, trust money which may have been paid into any account other than an account contemplated in subsection (1) or (2), whether erroneously or not –

- (a) may not under any circumstances become part of any such account; and
- (b) does not lose its nature or characteristics as a result of being paid into such other account.

(14) A property practitioner must annually confirm or update the details of his, her or its auditor as prescribed.

(15) A property practitioner who contravenes or fails to comply with the provisions of subsection (1), (2), (3), (4), (5) or (6) commits an offence and on conviction is liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Duty of property practitioner to keep accounting records and other documents

60. (1) Despite any other law to the contrary, a property practitioner must for a period of five years in respect of –

- (a) all documents exchanged with the Authority;
- (b) if applicable, correspondence with his, her or its employer or franchisor;
- (c) any agreement incidental to his, her or its carrying on the business of a property practitioner;
- (d) any agreement, mandate, mandatory disclosure form or other document relating to the financing, sale, purchase or lease of immovable property;
- (e) any advertising or marketing material related to his, her or its carrying on the business of a property practitioner; and
- (f) any other document prescribed by the Minister,

from the date of the document or the probable date of the document retain, that document and must upon request immediately provide the Authority with a legible certified copy of that document.

(2) The documents contemplated in subsection (1) may be stored electronically.

(3) A property practitioner who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) In addition to the duties contemplated in section 59, a property practitioner must in respect of his or her or its activities –

- (a) keep at an address in Namibia the accounting records that are necessary fairly to reflect and explain the state of affairs –

- (i) of all monies received or expended by him, her or it including monies deposited to a trust account referred to in section 59(1) or invested in a savings or other interest-bearing account referred to in section 59(2);
 - (ii) of all his or her or its assets and liabilities; and
 - (iii) of all his or her or its financial transactions and the financial position of his or her business; and
- (b) cause the accounting records contemplated in paragraph (a) to be audited by an auditor within six months after the final date of the financial year of the property practitioner, which final date may not be altered by him or her without the prior written approval of the Authority.

Property practitioner not entitled to remuneration in certain circumstances

61. (1) A property practitioner is under no circumstances entitled to any remuneration or other payment in respect of or arising from the performance of any act referred to in section 2(1)(a), unless at the time of the performance of that act –

- (a) the property practitioner; and
- (b) if the property practitioner is a company, every director of such company or, if such property practitioner is a close corporation, every member, of that corporation,

was or is in possession of a fidelity fund certificate.

(2) A person referred to in section 2(1)(f) and a property practitioner who employs such person is not entitled to any remuneration or other payment in respect of or arising from the performance by that person of any act referred to in that paragraph, unless at the time of the performance of the act that person is in possession of an authority to practise.

(3) A property practitioner, or anyone who performs any functions or exercises any powers normally performed or exercised by a property practitioner, who has received any remuneration or other payment contemplated in subsection (1) or (2) must immediately pay that amount to the Fund.

(4) A seller, purchaser, lessor or lessee affected by a transaction referred to in subsection (3) may within three years of that money having been paid to the Fund submit a written claim in respect of the money to the Fund, together with the necessary proof, and the Fund may pay that amount or a portion of that amount to that applicant which it in its discretion may consider equitable in the circumstances.

(5) Any amount paid to the Fund as contemplated in subsection (3) which is not claimed within three years irrevocably becomes the property of the Fund.

(6) A legal practitioner may not pay any remuneration or other moneys to a property practitioner unless that property practitioner has provided the legal practitioner with a certified copy of his, her or its fidelity fund certificate valid during the period or on the date of the transaction to which such payment relates, and on the date of such payment.

(7) Nothing in this section prevents the institution, conducting and concluding of criminal or any other proceedings in respect of any act contemplated in this section or in this Act.

Insolvency or liquidation of property practitioner

- 62.** (1) A property practitioner who –
- (a) commits an act of insolvency;
 - (b) is insolvent; or
 - (c) is placed under liquidation, whether provisional or final,

is immediately disqualified to be a holder of a fidelity fund certificate and must within a period of 30 days of the occurrence of any of the events contemplated in paragraphs (a) to (c) –

- (i) inform the Authority in writing of any matter contemplated in those paragraphs;
- (ii) refrain from using and displaying that fidelity fund certificate;
- (iii) inform his or her auditor and the banking institution or building society holding his or her trust account in writing about the disqualification;
- (iv) cease to perform the functions of a property practitioner;
- (v) inform his or her clients, employees or employers or any other affected person in writing of that disqualification;
- (vi) hand over the administration of his or her trust account, together with all relevant information and records to the Authority; and
- (vii) cause any outstanding matters in consultation with any affected person to be taken over by another property practitioner.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(3) The Authority must wind-down the trust account of a property practitioner contemplated in subsection (1) and effect payment of any trust moneys in accordance with the rights of affected consumers and other persons.

(4) In the event of insolvency or liquidation of the property practitioner's trust moneys in the trust account, those moneys do not form part of the insolvent estate.

PART 9
CONDUCT AND BEHAVIOUR OF PROPERTY PRACTITIONERS

Property practitioners' code of conduct

63. (1) The Minister, after consultation with the Authority, must prescribe a code of conduct which every property practitioner must comply with.

(2) The Authority must annually advise the Minister on the efficacy of the code of conduct current at the time.

(3) The Authority must make the code of conduct available to the public and, on request from any person, provide him or her with a copy of the code of conduct.

Improper and sanctionable conduct

64. (1) A property practitioner is guilty of sanctionable conduct if he or she or it –

- (a) 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 in respect of that transaction, and receives remuneration from all parties concerned in respect of such transaction, unless all affected persons in writing agree to the arrangement;
- (b) fails in respect of any act performed by him or her as a property practitioner to give a full and proper explanation in writing, within 30 days of being called upon in writing to do so, to any person having a material interest in the performance of such act;
- (c) fails to pay any money due to the Authority or in respect of the Fund within 30 days after such monies become due;
- (d) fails to furnish in writing within a period determined by the Authority any information that the Authority has requested in writing and reasonably requires in order to properly exercise its powers under this Act;
- (e) fails to comply with or contravenes any provision of the code of conduct;
- (f) fails to comply with or contravenes any provision of section 52, 53, 57, 59, 60, 61, 63 or this section;
- (g) in his or her capacity as a director of a company or member of a close corporation or trustee of a trust, which is a property practitioner and which failed to comply with section 52 or 53, did not take all reasonable steps to prevent such failure;
- (h) carries on a prohibited practice prohibited under section 65;
- (i) commits an offence involving an element of dishonesty; or
- (j) fails to inform the Authority within 14 days of a change in his, her or its contact details.

(2) Subsequent ratification or correction of any conduct contemplated in subsection (1) does not constitute a defence.

(3) The Authority may in the prescribed manner bring and investigate any charge of improper and sanctionable conduct against any property practitioner.

(4) If a property practitioner is found guilty of improper and sanctionable conduct, the Authority may after affording the property practitioner an opportunity to be heard –

- (a) revoke the registration of that property practitioner;
- (b) withdraw the fidelity fund certificate of that property practitioner;
- (c) impose on that property practitioner a fine determined by the Minister in terms of section 76; or
- (d) reprimand such property practitioner and note his or her or its transgression on its website on and on the Authority's database,

except that the Authority may suspend payment of a fine or any portion of the fine, the revocation of the registration or the withdrawal of any fidelity fund certificate for a period not exceeding three years and on the further conditions that the Authority may determine.

(5) The acquittal or conviction of a property practitioner by any court of law upon any criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper and sanctionable conduct, despite the fact that the facts set out in the charge of improper and sanctionable conduct would, if proven, constitute the offence set out in the criminal charge on which he or she was so acquitted or convicted or any other offence on which he or she might have been convicted at his or her trial on that criminal charge.

(6) Despite subsection (5), the Authority may impose a sanction under subsection (4) irrespective of any criminal liability or penalty to which the property practitioner may be subjected to, but where the property practitioner has been sentenced to any penalty following a conviction for an offence, the Authority must take the penalty imposed into account when assessing the sanction to be imposed under this section.

(7) If the improper and sanctionable conduct with which the property practitioner is charged amounts to an offence of which he has been convicted by a court of law, a certified copy of the record of his or her or its trial and conviction by such court of law is, upon the identification of such property practitioner as the person referred to in the record as the accused, be sufficient proof of the commission by him, her or it of such offence, unless the conviction has been set aside by a superior court, but the property practitioner charged is entitled to adduce evidence to show that he, she or it was in fact wrongly convicted.

Prohibited practices

65. (1) Subject to subsection (2), the Minister after consultation with the Authority may by notice in the *Gazette* declare a particular business practice in the immovable property market to be prohibited.

(2) When deciding whether or not a declaration contemplated in subsection (1) should be made, the Minister and the Authority must consider –

- (a) the constitutional right of every person to freely choose their trade, business, occupation or profession;
- (b) that the practice concerned, directly or indirectly, has or is likely to have the effect of –
 - (i) damaging the relations between property practitioners or any specific property practitioner, on the one hand, and any specific consumer, category of consumers or the general public on the other hand;
 - (ii) unreasonably prejudicing any consumer or category of consumers;
 - (iii) deceiving any consumer or category of consumers; or
 - (iv) unfairly affecting any consumer or category of consumers; and
- (c) that if the practice is allowed to continue, one or more of the objects of this Act as contemplated in section 5 will, or is likely to, be defeated.

(3) The Authority may issue a compliance notice contemplated in section 75 directing a property practitioner who, on or after the date of the publication of a notice contemplated in subsection (1), carries on a business practice in contravention of that notice to rectify to the satisfaction of the Authority anything which was caused by or arose out of the carrying on of the business practice concerned or otherwise deal with the matter as authorised by this Act or any other law.

Control and supervision of certain property practitioners

66. (1) An intern property practitioner may not draft or complete any document or clause in a document –

- (a) conferring any mandate on any property practitioner to perform any act referred to in section 2(2)(a), (b), (c) or (d); or
- (b) relating to the sale or lease of immovable property.
- (2) A –
 - (a) person who contravenes or fails to comply with subsection (1); or
 - (b) property practitioner who allows an act contemplated in subsection (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.

(3) In any proceedings in respect of improper and sanctionable conduct it is no defence that the principal property practitioner was not aware of the acts or omissions of the intern property practitioner.

(4) A principal property practitioner who conducts business from more than one business premises must supervise and control the property practitioner and intern property practitioner in his, her or its employment, despite the fact that those property practitioners conduct their business at other branches or other offices.

Franchising

67. (1) A franchisee property practitioner may not carry on business under the name of a franchise unless the franchisee property practitioner personally is the holder of a fidelity fund certificate.

(2) A franchisee property practitioner must disclose clearly and unambiguously in all his, her or its written communication, advertising and marketing materials that he, she or it operates in terms of a franchise agreement, as well as the name of the franchisor.

(3) The Authority may withdraw the fidelity fund certificate of a franchisee property practitioner who carries on business in contravention of subsection (1) or (2).

Limitation on relationships with other property market service providers

68. (1) A property practitioner may not –

- (a) practise in association with any person that or who is prohibited by any law, any professional code of conduct, any code of ethics or protocol or report or charter on corporate governance, from doing so; or
- (b) enter into any arrangement, formally or informally, whereby a consumer is obliged or encouraged to use a particular service provider including a legal practitioner to render any service or ancillary services in respect of any transaction of which that property practitioner was the effective cause.

(2) Any person who fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Mandatory indemnity insurance

69. (1) The Minister, for the purposes of providing redress in respect of the contravention of a code of conduct contemplated in section 63 or improper and sanctionable conduct contemplated in section 64, may prescribe indemnity insurance which a property practitioner must take out and maintain.

(2) When acting under subsection (1) the Minister may on reasonable grounds differentiate between –

- (a) categories of property practitioners to whom a regulation applies;
- (b) the minimum insured amounts in respect of which such insurance must be taken out and maintained;
- (c) the extent to which conduct in contravention of a code of conduct or improper and sanctionable conduct qualifies for redress under such insurance; and
- (d) the maximum amounts payable in terms of such insurance.

Consumer education and information

70. (1) The Authority must from time to time conduct campaigns to educate and inform the general public of their rights in respect of property transactions and property practitioners and their functions, duties and obligations.

(2) A property practitioner owes a buyer and a seller a duty of care.

Advertising and marketing

71. The Minister after consultation with the Authority may prescribe norms and standards in respect of advertising and marketing by property practitioners.

PART 10 COMPLIANCE AND ENFORCEMENT

Appointment of inspectors

72. (1) The Authority may –

- (a) appoint a staff member in its employment as an inspector; or
- (b) appoint any other suitably qualified person as an inspector,

and must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act and with the inspector's identification card.

(2) When an inspector performs his or her functions in terms of this Act, he or she must –

- (a) be in possession of a certificate of appointment or an inspector's identification card issued to that inspector in terms of subsection (1); and
- (b) immediately show that certificate or inspector's identification card to any person who –
 - (i) is affected by the inspector's actions in terms of this Act; or
 - (ii) requests to see the certificate or inspector's identification card;

(3) When an inspector performs his or her functions or duties in terms of this Act, he or she may be declared a peace officer pursuant to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in which case he or she will have the powers of a peace officer and may exercise the powers conferred on a peace officer by that Act.

Powers and duties of inspectors

73. (1) An inspector may at any reasonable time and without prior notice, conduct an investigation to determine whether the provisions of this Act have been or are being complied with or not, and for that purpose may without a warrant enter and search any premises, other than premises used as a home, if it is reasonably suspected that –

- (a) a person on those premises is performing an act as a property practitioner;
 - (b) that the premises are reasonably connected with an act performed by a property practitioner; or
 - (c) there are books, records or documents to which the provisions of this Act apply are kept at or on those premises.
- (2) After having identified himself or herself as an inspector acting in terms of or under this Act to the person who seems to be in control of such premises, the inspector may –
 - (a) instruct any person in or at those premises to –
 - (i) produce to him or her any registration certificate, fidelity fund certificate or authority to practise;
 - (ii) produce to him or her any book, record, or other document relevant to the inspection in the possession of or under the control of that person; or
 - (iii) furnish him or her at such premises and in such manner as he or she may reasonably specify with such information in respect of the registration certificate, fidelity fund certificate, authority to practise, book, record or other document referred to in subparagraphs (i) or (ii) as he or she may direct;
 - (b) prohibit the removal or destruction of any digital data, book, record or other document relevant to the inspection in the possession of or under the control of that person;
 - (c) examine or make extracts from or copies of any such registration certificate, fidelity fund certificate, authority to practise, book, record or other document which may be in or on those premises; or
 - (d) seize and retain any such registration certificate, fidelity fund certificate, authority to practise, book, record or other document in or at those premises to which any charge of improper and sanctionable conduct under this Act may relate, but the person from whose possession any registration certificate, fidelity fund certificate, authority to practise, book, record or other document was taken, must at his or her request forthwith be allowed to make, at his or her expense and under the supervision of the inspector concerned, copies thereof or extracts from the certificate or authority at the premises where the relevant object is being removed from.
- (3) Where a routine compliance inspection is to be conducted at premises used as a home or a place of business where the property practitioner performs his, her or its business is a home, an inspector with an inspection authority must at all reasonable times notify the property practitioner in a prescribed manner about the inspection.
- (4) The provisions of subsections (1) and (2) apply with the necessary required changes to an inspection under subsection (3).

(5) If –

- (a) an inspector on reasonable grounds suspects that a criminal offence has been or is being committed in terms of or under the Act; or
- (b) the premises to be entered and searched is used as a home and the owner or person in control of the premises has refused entry and search after having been notified in terms of subsection (3);

the inspector may enter the premises and conduct the search, on behalf of the Authority, according to a warrant issued by a magistrate or a judge.

(6) A magistrate or a judge may issue a warrant only on written application by an inspector, setting out under oath or affirmation the grounds why it is necessary for the inspector to gain access to the relevant premises or to conduct the search in question.

(7) The magistrate or judge may issue the warrant if it appears from the information on 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 contravention; and
- (c) the search is reasonably necessary for the purposes of this Act.

(8) An inspector, otherwise required to obtain a warrant under subsection (5), may enter and search any premises without a warrant if the inspector on reasonable grounds believes that –

- (a) a warrant would be issued in terms of subsection (7) if the inspector applied for it; and
- (b) the delay in obtaining the warrant is likely to defeat the object of the search.

(9) A warrant contemplated in subsection (7) may be issued at any time and must –

- (a) identify the premises that may be entered and searched; and
- (b) specify the parameters within which the inspector may perform an entry, search or seizure.

(10) An inspector on the authority of a warrant or acting under subsection (8) may –

- (a) enter and search any premises where he or she has reason to believe that any provision of this Act has been or is being contravened;
- (b) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of a book, document or record that has a bearing on the inspection;

- (c) examine any book, document or record that is on or in those premises that has a bearing on the inspection;
- (d) request any person to unlock or otherwise provide unhindered access to any safe, storage, facility or other receptacle, or to point out any other person on the premises who can do so;
- (e) request information about any book, document or record;
- (f) take extracts from, or making copies of, any book, document or record that is on or in the premises and that has a bearing on the inspection;
- (g) use any computer system on the premises that has a bearing on the inspection, or require assistance from any person on the premises to use that computer system, to –
 - (i) search any data contained in that system; or
 - (ii) reproduce any record from that data;
- (h) seize any output from that computer for examination and copying; and
- (i) attach, and if necessary remove from the premises for examination and safe-keeping, anything that has a bearing on the inspection, but the person from whose possession any book, record or other document was taken must at his or her request immediately be allowed to make at his or her expense under the supervision of an inspector concerned copies of or extracts from the book, record or other document at the place where the relevant object is being removed from.

(11) A warrant to enter and search may be executed only during the hours of 07h00 and 18h00 on a day other than a Sunday or public holiday, unless the judge or the magistrate who issued it authorises that it may be executed at any other time that is reasonable in the circumstances.

(12) Immediately before commencing with the execution of a warrant, the inspector executing that warrant must either –

- (a) if the owner, or person in control, of the premises to be searched is present –
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand exact copies of the warrant and of this section to that person or to the person named in it; or
- (b) if no person is present, affix an exact copy of the warrant at the entrance to the premises in a prominent and visible place.

(13) An inspector authorised to conduct an entry and search under subsection (10) may be accompanied and assisted by one or more police officers.

(14) An inspector and any police officer accompanying him or her must when entering and searching any premises under subsection (10) conduct that entry and search

with strict regard to decency and every person's right to dignity, freedom, security and privacy.

(15) During a search, only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(16) An inspector who removes anything from premises being searched must –

- (a) issue a written receipt for it to the owner of or person in control of the premises in sufficient detail to identify each specific thing so removed; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed to the person from whose control it was taken, unless it is to be used as evidence in any subsequent proceedings, in which case the inspector must immediately in writing inform the person from whose control it was taken of that fact.

(17) During a search conducted under subsection (10) a person may refuse to permit the removal of an article, document or record on the grounds that it contains privileged or protected information, but that person may not cause such article, document or record to be amended, altered or destroyed until the inspector has been afforded a reasonable time to act under subsection (18).

(18) If the owner or person in control of an article, a document or record refuses in terms of subsection (17) to give the article, document or record to the inspector conducting the search, that inspector may in writing request the registrar or deputy sheriff of the High Court which has jurisdiction to attach and remove the article, document or record for safe custody until a court determines whether or not the information is privileged or protected.

(19) A police officer who is assisting an inspector who is authorised to enter and search premises under subsection (10) may use as much force as may be reasonably necessary, including breaking a door or window of the premises or the breaking of any lock or other barrier which prevents the search of any safe, storage facility or other receptacle on the premises, to overcome resistance by any person to the entry, search or seizure.

(20) Before using force in terms of subsection (19) a police officer must audibly demand admission or access and must announce the purpose of entry, unless it is reasonable to believe that doing so may induce someone to destroy, dispose of or conceal an article, a document or record that forms part of the search or is otherwise relevant to the search.

(21) A person who submits any information to an inspector or makes any statement to him or her, may indicate to the inspector that he or she claims confidentiality in respect of any information or statement so provided, and the inspector must deal with such information as such.

(22) Any person who –

- (a) obstructs, hinders or prevents an inspector from carrying out his or her functions or duties;

- (b) removes or destroys any digital data, book, record or other document in respect of which an inspector has issued a prohibition;
- (c) fails, on demand to place at the disposal of an inspector, anything in that person's possession or under his or her control or on his or her premises which may relate to any inspection;
- (d) contrary to subsection (17), causes an article, document or record to be amended, altered or destroyed; or
- (f) falsely holds himself or herself out to be an inspector,

commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(23) In so far as this section authorises the interference with a person's right to privacy of his or her person and home as guaranteed by Article 13 of the Constitution, this section is enacted on the authority of that Article.

Lodging of complaints

74. (1) Any person may in the prescribed form and manner lodge with the Authority a complaint against a property practitioner in respect of any act done or omitted to be done while conducting his or her or its functions or duties as a property practitioner in terms of this Act.

(2) On receipt of a complaint lodged under subsection (1) the Authority must in writing acknowledge receipt of the complaint and inform the complainant of the case number assigned to the complaint.

- (3) An inspector –
 - (a) must investigate a complaint submitted by any person against any property practitioner or person who appears to be carrying on the business of a property practitioner, whether registered in terms of this Act or not; and
 - (b) may on his or her own initiative and on reasonable grounds investigate any alleged contravention of or non-compliance with the provisions of this Act, and he or she must refer the matter to a member of the Namibian police where the evidence indicates a *prima facie* case of a criminal contravention of this Act or any other law.
- (4) The inspector may –
 - (a) issue a compliance notice contemplated in section 75;
 - (b) refer the matter for mediation as contemplated in section 77; or
 - (c) refer the matter for adjudication as contemplated in section 78.

Compliance notices

75. (1) Where an inspection or investigation indicates a contravention of the Act, the Authority or an inspector may issue a compliance notice in the prescribed format to the person so allegedly contravening this Act, calling on him or her to comply with this Act within a period specified in the compliance notice, which period must be reasonable in the circumstances.

(2) The Authority may in the compliance notice determine a fine determined under section 76 to be paid by the person concerned if he or she in writing on the compliance notice acknowledges his or her failure to comply with this Act as stated in the compliance notice.

(3) The fine contemplated in subsection (2) must be paid to the Authority within the period specified in the compliance notice.

(4) Any person named in that notice who pays the fine as contemplated in subsection (3) may not be prosecuted for having committed such contravention.

Determination of fines

76. The Minister may by notice in the *Gazette* determine the maximum fines in respect of each type of contravention which the Authority may impose.

Mediation

77. (1) An inspector may where he or she believes that a matter may be resolved through mediation, or on application by the person concerned, refer a matter for mediation, as prescribed.

(2) The Authority must appoint a suitably qualified person as a mediator within the prescribed period after referral of the matter to mediation.

(3) Within 14 days of referral to mediation, the mediator must set the matter down for mediation within 30 days and give notice of the mediation as prescribed to all parties concerned.

(4) The mediator assists the parties to resolve the dispute, and if the parties come to an agreement which resolves the matter complained of, the mediator must record that agreement in writing and conclude the proceedings.

(5) The Authority must keep the records of all mediation proceedings, including the agreements where applicable, as prescribed.

(6) If a matter is not resolved as contemplated in this section the matter must be adjudicated in accordance with section 78.

Adjudication

78. (1) If –

(a) a person on whom a compliance notice has been served in accordance with section 75 –

- (i) fails to comply with this Act as demanded in the compliance notice;
 - (ii) fails to timeously comply with the compliance notice;
 - (iii) fails to timeously pay the fine determined by the Authority; or
- (b) mediation has been attempted in accordance with section 77 but has failed; or
- (c) the serious nature of the complaint and the contravention in question warrants,

an inspector must cause a notice of adjudication to be served on the person concerned as prescribed.

(2) The Authority must appoint an independent legal practitioner as an adjudicator to conduct an adjudication of a complaint in terms of this section.

(3) The Authority may upon request from the adjudicator on good grounds appoint independent assessors to assist him or her.

(4) Within 14 days of the appointment of the adjudicator, the adjudicator must set the matter down for hearing within 60 days and must give notice as prescribed of the adjudication to all parties concerned.

(5) The adjudication must be held informally and expeditiously, subject to upholding the rules of natural justice and in accordance with prescribed provisions.

(6) The adjudicator must upon conclusion of the adjudication make a determination as to whether the complaint is upheld or not.

(7) If the complaint is upheld, the adjudicator must make an order which in the circumstances is appropriate, and such an order has the status of a judgment in a magistrate's court and must be executed accordingly.

(8) The order contemplated in subsection (7) may include –

- (a) a fine which may not exceed the amount determined by the Minister in terms of section 76;
- (b) if appropriate in the circumstances, an order that the Authority pays not more than 80 percent of the fine as a compensation award to the complainant;
- (c) a determination that the registration of the property practitioner be revoked by the Authority or that the fidelity fund certificate of the property practitioner be withdrawn by the Authority; or
- (d) any appropriate order under the circumstances.

(9) The adjudicator must upon finalisation of the adjudication process provide written reasons for any of his or her determinations or orders.

(10) The Authority must keep the records of all hearings, including the order made and written reasons provided by the adjudicator, as prescribed.

Fine as compensation

79. (1) The Authority may whenever a fine has been imposed on a property practitioner under this Act, in its discretion order that any portion of the fine be applied towards the payment of compensation to any person who suffered a pecuniary loss as a result of the conduct of that property practitioner.

(2) The Authority may on receipt of a fine imposed on a property practitioner make the payment contemplated in subsection (1), but no such payment may be made until all appeals in respect of the imposition of the fine have lapsed or have been finalised or abandoned.

(3) This section does not preclude any person from pursuing any civil remedy against a property practitioner contemplated in subsection (1) or other person, but if an award is made by a court in favour of a person who has received payment from the Authority as contemplated in subsection (2), the court must take that payment into account.

PART 11 GENERAL

Mandatory disclosure form

80. (1) A property practitioner –
- (a) may not accept a mandate unless the seller or lessor of the immovable property has provided the property practitioner with a fully completed and signed mandatory disclosure in the prescribed form; and
 - (b) must provide a copy of the completed mandatory disclosure form referred to in paragraph (a) to a prospective purchaser or lessee who intends to make an offer for the purchase or lease of immovable property.
- (2) The completed mandatory disclosure form signed by all relevant parties must –
- (a) be attached to any agreement for the sale or lease of immovable property and forms an integral part of that agreement, but if such a disclosure form was not completed, signed or attached, the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchaser lessee; and
 - (b) record the commission payable to the property practitioner.
- (3) A property practitioner who fails to comply with subsection (1) may be held liable for any loss or damage suffered by an affected consumer because of the non-compliance.
- (4) Nothing in this section prevents the Authority from taking action against a property practitioner or imposing an appropriate sanction.

Exemptions

81. (1) A person who wishes to be exempted from the application of this Act may in the prescribed form and manner apply for such exemption to the Authority.

(2) The Authority must consider and decide on the application taking into account whether –

- (a) the granting of the exemption is likely to impact negatively on the interests of the general public;
- (b) the granting of the exemption is likely to impact negatively on competition in the immovable property market or the property practitioners' industry;
- (c) the granting of the exemption is likely to benefit one section of the property practitioners' industry to the detriment of another;
- (d) appropriate, sufficient and effective regulatory protection of consumers' rights and interests exists; and
- (e) the exemption would not defeat the objects of this Act.

(3) The Authority may –

- (a) approve the application for a period specified by the Authority;
- (b) refuse the application and give written reasons for the refusal; or
- (c) refer the application back to the applicant for further investigation or consideration.

(4) If the Authority approves the application the Authority must publish the decision in the prescribed manner.

(5) Despite section 82, any person may at any time in writing request the Minister to review any exemption granted in terms of this section.

(6) The Minister must instruct the person requesting the review to notify the Authority as well as any other person specified by the Minister, for the account of the person requesting that review, and to submit any comments received to the Minister.

(7) The Minister after taking into account the comments of the Authority and the person requesting the review may set aside the decision of the Authority or allow the decision of the Authority to stand.

(8) The Authority may where it considers it appropriate amend, suspend or withdraw an exemption granted in terms of this or section (15).

Right of appeal

82. (1) A person who is aggrieved by –

- (a) any decision taken by the Authority under section 34(3), 35, 36, 45, 48, 53(4) or (5), 58, 64, 75 or 81;

-
- (b) any other decision taken by the Authority in the performance of its supervisory or regulatory functions in terms of this Act or exercise of its supervisory or regulatory powers under this Act other than a decision to institute an investigation –
 - (i) for improper and sanctionable conduct by a property practitioner; or
 - (ii) following a complaint by any person,
 under this Act; or
 - (c) any decision of an adjudicator made under section 78, may appeal against that decision to the Appeal Board.
- (2) An appeal must be lodged within the prescribed period after the delivery of the decision of the Authority or the adjudicator in the manner prescribed, and on payment of the prescribed fees.
- (3) An appeal under subsection (1) takes place on the date at the place and time determined by the Appeal Board.
- (4) An appeal is decided on the affidavits and supporting documents presented to the Appeal Board by the parties to the appeal.
- (5) Despite the provisions of subsection (4), the Appeal Board may –
- (a) summon any person who, in its opinion, may be able to give information for the purposes of deciding the appeal or who it believes has in his, her or its possession, custody or control of any article, document or record which has any bearing upon the decision under appeal to appear before it on a date time and place specified in the summons, to be questioned or to produce any relevant article, document or record and retain for examination any article, document or record so produced;
 - (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and
 - (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any article, document or record in his or her possession, custody or control.
- (6) All members of the Appeal Board constitute a quorum of the Appeal Board.
- (7) Proceedings before the Appeal Board are to be conducted as informally and expeditiously and in accordance with the rules made under subsection (18) and the requirements of natural justice.
- (8) A hearing before the Appeal Board may be held in camera at the request of any party if the party establishes to the satisfaction of the Appeal Board that the circumstances of the case so require.
- (9) The Appeal Board must exercise its jurisdiction under this Act as if it were a magistrates' court established in terms of the Magistrates' Courts Act, 1944 (Act

No. 32 of 1944) and the Appeal Board has the same powers, privileges and immunities available to a magistrate's court in a civil matter.

(10) An appellant or respondent to an appeal is entitled to be represented at an appeal by a legal practitioner or any person of his or her choice.

(11) The Appeal Board may –

- (a) confirm, set aside or vary a decision of the Authority or adjudicator; or
- (b) refer a matter back for consideration or reconsideration by the Authority or adjudicator in accordance with the directions of the Appeal Board.

(12) The decision of a majority of the members of the Appeal Board constitutes the decision of the Appeal Board.

(13) The decision of the Appeal Board must be in writing, and a copy of the decision must be made available to the parties to the appeal.

(14) If the Appeal Board sets aside any decision of the Authority, the fees contemplated in subsection (2) paid by the appellant in respect of the appeal in question must be refunded to the appellant.

(15) If the Appeal Board varies any such decision, it may direct that the whole or any part of such fees be refunded to the appellant.

(16) Subject to subsection (18), a decision of the Appeal Board may, in the manner prescribed, be taken on appeal to the High Court as if it were a decision of a magistrate's court in a civil matter.

(17) The launching of appeal proceedings in terms of subsection (16) does not suspend the operation or execution of a decision, unless the High Court directs otherwise.

(18) The Minister may make rules relating to –

- (a) the manner of lodging appeals to the Appeal Board and the period within which the appeals must be lodged, including condonations for lodging of appeals outside the time limits;
- (b) the conduct of proceedings before the Appeal Board and the procedures to be followed by the Appeal Board, including matters relating to condonation for non-compliance with the rules and the admissibility of evidence;
- (c) witnesses, including payment of expenses and costs incurred by witnesses, offences by or relating to witnesses and other matters relating to witnesses;
- (d) sittings of the Appeal Board;
- (e) the integrity of the Appeal Board and measures that are necessary or expedient to prevent the Appeal Board or a member of the Appeal Board from being insulted, disparaged or belittled or to prevent the proceedings or findings of the Appeal Board from being prejudiced, influenced or anticipated;

- (f) the fees payable by the appellant and situations in which the fees are refundable; and
- (g) any other matter which the Minister considers necessary to ensure effective and expeditious resolution of matters before the Appeal Board.

(19) Rules made under subsection (18) may create offences for contraventions or failure to comply with any provision of the rules, and may prescribe a penalty of a fine not exceeding N\$20 000 or imprisonment for a period not exceeding two years or both such fine and imprisonment.

Appeal Board

83. (1) Upon receipt of a notice of appeal lodged under section 82 against the decision of the Authority or adjudicator, the Minister must appoint an Appeal Board to hear and determine the appeal.

(2) The Appeal Board consists of –

- (a) one person who has a qualification in law and with at least 10 years' experience the field of law, who is the chairperson; and
- (b) two other persons who have appropriate and relevant expertise and experience in one or more of the following fields, namely, finance consumer protection, property development or management and financing of property and the practice of property practitioners.

(3) The Minister may prescribe additional qualifications, terms and conditions and other requirements for appointment as members of the Appeal Board.

(4) If before or during the consideration of any appeal it transpires that any member of the Appeal Board has any direct or indirect personal or financial interest in the outcome of that appeal, the member must declare his or her interest and recuse himself or herself and must be replaced by another person appointed by the Minister.

(5) A member of the Appeal Board may be paid from the Fund such remuneration and allowances as the Minister may prescribe.

(6) The Ministry is responsible for the administrative support of the Appeal Board and expenditure incurred in that regard must be defrayed from the Fund.

(7) Any person who contravenes or fails to comply with subsection (4) commits an offence and on conviction is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

Delegation by Chief Executive Officer

84. (1) The Chief Executive Officer may in writing delegate any of his or her functions or powers to any of staff member of the Authority subject to any qualifications he or she may determine.

(2) The delegation of any function or power under subsection (1) does not preclude the Chief Executive Officer from exercising such function or power.

(3) The Chief Executive Officer remains responsible and accountable for all acts and/or omissions in terms of or under such a delegation.

(4) The Chief Executive Officer may in writing revoke any delegation under subsection (1).

(5) The Chief Executive Officer must maintain a register of all delegations under subsection (1) and section 85.

Delegation by Minister and Board

85. (1) The Minister may delegate any power or duty assigned to him or her in terms of this Act, excluding the power to make appointments, to publish notices in the *Gazette* or to make regulations or any subordinate measures to –

(a) the Executive Director of the Ministry or to any other staff member in the Ministry; or

(b) the Authority.

(2) The Board may delegate any power or duty assigned to it in terms of this Act to –

(a) the Chief Executive Officer; or

(b) a senior staff member of the Authority.

(3) A delegation in terms of subsection (1) or (2) –

(a) is subject to any qualifications, limitations, conditions and directions that the Minister or the Board may impose;

(b) must be in writing;

(d) does not divest the Minister or the Board of the responsibility concerning the exercise of the power or the performance of the duty.

(4) The Minister or the Board may confirm, vary or revoke any decision taken in consequence of a delegation in terms of a provision of this Act or the repealed law.

Preservation of secrecy

86. (1) A person referred to in subsection (2) may not disclose to any person information relating to the affairs of the Authority or of any other person, acquired in the performance of duties or the exercise of powers under this Act, except –

(a) for the purpose of the exercise of powers or the performance of duties under this Act; or

(b) when required to disclose that information before a court or under any law.

(2) The persons to whom subsection (1) apply are –

- (a) a member of the Board;
- (b) the Chief Executive Officer or any staff member of the Authority;
- (c) an inspector;
- (d) a former member of the Board, a former Chief Executive Officer or staff member of the Authority; and
- (e) any other person performing a function or exercising a power that he or she is lawfully required or requested to perform or exercise in terms of this Act.

(3) Despite subsection (1), the Authority may share information concerning any matter dealt with under this Act with the Minister and with all other entities, whether inside Namibia or elsewhere, responsible for regulating or supervising property practitioners or the immovable property industry in accordance with section 88.

(4) Any person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine of N\$20 000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

Limitation of liability

87. (1) The Minister or any person referred to in subsection (2) is not personally liable in respect of anything done or omitted to be done in good faith and without gross negligence in the exercise of any power or the performance of any duty under this Act.

- (2) The persons to whom subsection (1) apply are –
 - (a) a member of the Board;
 - (b) the Chief Executive Officer or any staff member of the Authority;
 - (c) an inspector; and
 - (c) any other person performing a function or exercising a power that he or she is lawfully required or requested to perform or exercise in terms of this Act.

Cooperation with other institutions and organisations

- 88.** (1) The Authority may –
- (a) enter into an arrangement or agreement with any other institution or organisation within Namibia; or
 - (b) with the approval of the Minister, enter into an arrangement or agreement with any other institution or organisation outside Namibia,

that performs functions that are similar to those of the Authority, that has objects that are similar to those of the Authority or that performs functions related to the regulation or supervision of property practitioners.

- (2) An arrangement or agreement referred to in subsection (1) may provide for –
- (a) the sharing of information between the Authority and the institution or organisation relating to persons that fall under their respective jurisdictions or on any matter that falls within the ambit of the functions or powers of the respective parties;
 - (b) the confidentiality relating to information referred to in paragraphs (a); and
 - (c) any other matter which the parties may consider of importance relating to the conducting of the practice of property practitioners.

Liquidation

89. The Authority may not be placed into liquidation, except by an Act of Parliament.

Regulations

90. (1) The Minister, subject to subsections (3), may make regulations regarding any matter that may or must be prescribed in terms of this Act or any incidental matter of a procedural or administrative nature that the Minister considers necessary to prescribe in order to achieve the objects of this Act.

(2) Without derogating from the generality of subsection (1) the Minister make regulations –

- (a) to regulate, control or prohibit any practice followed by property practitioners;
- (b) prescribing the tariff of fees at which property practitioners may act as such;
- (c) prescribing the form of, and the period within, and the manner in which, an application may be made for a registration certificate, and the format of the register;
- (d) prescribing the form of, and the period within, and the manner in, which an application may be made for a fidelity fund certificate or an authority to practise;
- (e) prescribing the manner in which money in the Fund not needed for immediate use may be invested;
- (f) relating to the qualifications and standard of training and practical experience for property practitioners;
- (g) prescribing the manner in which a charge of improper and sanctionable conduct, or a complaint lodged, against any property practitioner may be brought and investigated;

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- (h) prescribing the manner in which an inquiry into a charge of improper and sanctionable conduct, or a complaint lodged, against a property practitioner must be conducted;
 - (i) prescribing the fees payable in terms of this Act and the manner in which fines are to be determined under this Act;
 - (j) prescribing the form and manner in which the books of account referred to in section 60 and the trust accounts referred to in section 59 are to be administered;
 - (k) prescribing the portion of the interest which, and the circumstances in which such portion may be refunded to the property practitioner concerned in term of section 59(2)(d);
 - (l) prescribing the manner in which any account referred to in section 59(9) must be wound up and the amount standing to the credit of such account may be paid out;
 - (m) prescribing the form of a report referred to in section 59(6);
 - (n) prescribing the conditions on which any persons may carry on his or her business as a property practitioner from any residential premises;
 - (o) prescribing other functions and powers of an adjudicator, the manner in which disputes are brought before the adjudicator, the conduct of proceedings before the adjudicator and any other matter that is relevant to the adjudication of disputes under this Act; and
 - (p) the procedure to be followed when lodging appeals in terms of this Act and other matters relating to the Appeal Board.
- (3) Before making any regulation under subsection (1) or (2) the Minister must –
- (a) consult the Authority; and
 - (b) in the prescribed manner publish the proposed regulations for public comments and allow at least 30 days for submission of such comments.
- (4) Regulations made under this section –
- (a) must be published in the *Gazette*;
 - (b) may create an offence for any contravention of such regulations or any failure to comply with a provision of the regulations;
 - (c) may prescribe penalties in respect of any such offence not exceeding a fine of N\$20 000 or imprisonment for a period of two years or both the fine and imprisonment.
- (5) Different regulations may in terms of subsection (1) be made in respect of different property practitioners or categories of property practitioners.

Repeal of laws

91. The Estate Agents Act, 1976 (Act No. 112 of 1976), in so far as it is applicable to Namibia, and the Estate Agents Amendment Act, 1987 (Act No. 28 of 1987) are repealed.

Transitional provisions

92. (1) The repeal referred to in section 91 does not affect anything done in terms of the repealed law and it remains valid until it is lawfully invalidated.

(2) Without derogating from the generality of subsection (1) as from the date of commencement of this Act –

- (a) all funds of the Estate Agents Fidelity Fund are transferred to the Fund;
- (b) a member of the Board constituted in terms of the repealed law, continues to hold office for the unexpired term of his or her term of office and is deemed to have been appointed in terms of the corresponding provisions of this Act;
- (c) the Chief Executive Officer and any staff member of the Namibia Estate Agents' Board continue to hold office as if they were appointed under a corresponding provision of this Act;
- (d) any regulation, rule or code of conduct or rule made in terms of the repealed law made remains in full force and effect as if it was made in terms of or under this Act.

(2) Despite anything to the contrary in this Act, on the date of commencement of this Act –

- (a) any person who had passed the Namibia Estate Agents' Board examination as prescribed under the law repealed by section 91 and has paid the prescribed membership fees is deemed to be registered as a property in terms of this Act; and
- (b) any fidelity fund certificate or registration certificate that was issued in terms of the law repealed by section 91 remains valid and entitles the holder of that certificate to continue to practice as a property practitioner until that certificate is withdrawn or lapses in terms of this Act or expires.

Short title and commencement

93. (1) This Act is called the Property Practitioners Act, 2024 and it comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (2).
