

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PROPERTY PRACTITIONERS
BILL**

[B 21—2018]

*(As agreed to by the Portfolio Committee on Human Settlements
(National Assembly))*

[B 21A—2018]

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AMENDMENTS AGREED TO

Property Practitioners Bill [B 21—2018]

CLAUSE 1

1. On page 6, after line 5, to insert the following:
 - “**accounting records**”—
 - (a) means information in written or electronic form concerning the trust accounts of the property practitioner as required in terms of this Act, including but not limited to, records of all transactions involving trust monies, general and subsidiary ledgers and other documents and books used in the administration of the trust accounts; and
 - (b) in relation to the property practitioner’s business as such, means information in written or electronic form concerning the financial affairs of the business as required in terms of this Act or any other Act that may be applicable to the business of the property practitioner, including but not limited to, records of assets, liabilities, income and expenses, general and subsidiary ledgers and other documents and books used in the preparation of financial statements of the business;
 - “**audit**” has the meaning ascribed to it in the Auditing Profession Act, 2005 (Act No. 26 of 2005);
2. On page 6, in line 9, to omit “45” and to substitute “5”.
3. On page 6, in line 17, to omit “60” and to substitute “61”.
4. On page 6, in line 32, to omit “33” and to substitute “34”.
5. On page 6, in line 34, to omit “46” and to substitute “47”.
6. On page 6, in line 36, to omit “27” and to substitute “24”.
7. On page 6, in line 37, to omit “66” and to substitute “67”.
8. On page 6, after line 38, to insert the following:
 - “**principal**” means a property practitioner who is a director of a company, member of a close corporation, trustee of a trust, partner of a partnership or owner of sole proprietorship that operates as a property practitioner;
9. On page 6, from line 39, to omit the definitions of “Ombud” and “Ombud’s office”.
10. On page 6, in line 44, to omit “or business undertaking”.
11. On page 6, in line 46, to omit “or business undertaking”.
12. On page 6, in line 49, to omit “, in sale of execution”.
13. On page 7, in line 54, after “undertaking” to insert “by electronic or any other means”.

14. On page 7, from line 3, to omit all the words following “1990),” up to and including “property;” in line 8.
15. On page 7, in line 9, to omit “(vi)” and to substitute “(v)”.
16. On page 7, in line 25, to omit “(vii)” and to substitute “(vi)”.
17. On page 7, from line 31, to omit “but excluding a managing agent as defined in section 1 of the Community Schemes Ombud Service Act, 2011”.
18. On page 7, in line 37, to omit “33, 45, 47, 48, 58, 59, 60, and 64” and to substitute “34, 46, 49, 59, 60, 61, and 65”.
19. On page 7, in line 61, to omit “61” and to substitute “62”.
20. On page 8, in line 16, to omit “46” and to substitute “47”.
21. On page 8, in line 16, to omit “and”.
22. On page 8, in line 17, to omit the full stop and to substitute “; and”.
23. On page 8, after 17, to insert the following:
 - “**trust money**” means—
 - (a) money 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 referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of a “property practitioner”;
 - (c) any other money, including insurance premiums, collected or received by a property practitioner and payable in respect of any immovable property, business undertaking or contract for the building or erection of any improvements on immovable property.

Clause 3

1. On page 8, from line 35, to omit “(j)” and to substitute the following:
 - “(j) provide for the transformation of the property market and the establishment of the Property Sector Transformation Fund;”.

CLAUSE 6

1. On page 9, in line 55, to omit “estate agents” and to substitute “property practitioners”.
2. On page 9, in line 56, to omit “estate agents” and to substitute “property practitioners”.
3. On page 10, in line 2, to omit “61 and section 62” and to substitute “62 and section 63”.
4. On page 10, in line 4, to omit “estate agents” and to substitute “property practitioners”.
5. On page 10, in line 7, to omit “68” and to substitute “69”.
6. On page 10, in line 8, to omit “section 69” and to substitute “Chapter 4”.

CLAUSE 7

1. One page 10, in line 23, to omit “(iv)” and “(v)” and to substitute the following:
 - (iv) sufficient experience in rural and land reform;
 - (v) sufficient experience in the promotion of the consumer interest; and”
2. On page 10, in line 25, after “in” to insert “rural and land reform,”.
3. On page 10, from line 27, to omit “Rural Development and Land Reform” and to substitute “Trade and Industry”.

CLAUSE 8

1. On page 11, in line 7, after “citizen” to insert “or a permanent resident, and who is not ordinarily resident in the Republic”.

Clause 13

1. On page 13, in line 13, to omit “King III report” and to substitute “good corporate governance codes”.

Clause 16

1. On page 14, in line 3, to omit “as soon as possible” and to substitute “immediately”.

CHAPTER 4

Chapter rejected.

NEW CHAPTER

That the following be a new Chapter:

CHAPTER 4**TRANSFORMATION OF PROPERTY SECTOR****Property sector transformation**

20. (1) The Property Sector Transformation Charter Code as amended from time to time applies to all property practitioners.

(2) When procuring property related goods and services, all organs of state must utilise the services of property practitioners who comply with the broad-based black economic empowerment and employment equity legislation and policies.

(3) The Authority must from time to time—

- (a) implement and assess measures to progressively promote an inclusive and integrated property sector;
- (b) implement appropriate measures and assess the state of transformation within the property sector;
- (c) create such mechanisms for the continuous monitoring and evaluation of the sector performance on the transformation imperatives and granting of incentives as may be prescribed; and

- (d) introduce measures to be implemented, which may include incubation and capacity building programmes to redress the imbalances of the past.

Property Sector Transformation Fund

21. (1) The Authority must, within six months of its establishment, open a Property Sector Transformation Fund into which grants contemplated in section 38 are paid.

(2) The Minister may prescribe measures to promote economic transformation by facilitating the accessibility of finance for property ownership, property development and investment in order to enable meaningful participation of historically disadvantaged individuals including women, youth and people with disabilities.

(3) The Authority must utilise the Property Sector Transformation Fund in such a manner as may be prescribed, which may include the following transformation and empowerment programmes:

- (a) Principalisation Programme, to promote Black owned firms and principals.
- (b) Regularisation Programme, to promote and encourage participation of the historically disadvantaged due to non-compliance.
- (c) Consumer Awareness Programme, to promote awareness of property transactions and business undertaking.
- (d) Work Readiness Programme, to promote and enhance participation of the historically disadvantaged in the property sector.

(4) The Authority must in consultation with the services SETA develop special dispensation for the training and development of the historically disadvantaged which must include recognition of prior learning.

Property Sector Research Centre

22. (1) The Property Sector Research Centre is hereby established.

(2) The Property Sector Research Centre must conduct market research in partnership with the National Research Foundation and institutions of higher learning.

(3) The Property Sector Research Centre must—

- (a) be aimed at increasing the national scientific research and innovation capability through the development of human capacity and stimulating the generation of new knowledge in the property sector;
- (b) be the central repository of expert knowledge on pre-determined areas of the transformation of the property sector in South Africa; and
- (c) support the realisation of South Africa's transformation into knowledge-based economy in which the generation of knowledge translates into socio-economic benefits.

(4) The property sector research agenda must prioritise the following:

- (a) Identification of barriers to entry and meaningful participation in the property sector by historically disadvantaged individuals;
- (b) Demographic distribution of skills that determine resilience in the property sector;
- (c) An inclusive, accessible and transformatory curriculum development and enhancement in the technical and vocational education and training and higher education sectors in South Africa;
- (d) Systematic patterns of discriminatory behaviour in the property development and management value-chain;
- (e) Efficacy of compliance, monitoring and enforcement mechanisms to advance the transformation of the property sector;
- (f) The rural-urban dynamic in property sector growth and transformation; and

(g) The contribution of the property sector in urban spatial transformation and economy.

(5) The Property Sector Research Centre must annually promote consumer awareness and education, which must include:

- (a) The education of consumers on their rights and responsibilities in respect of property ownership and development;
- (b) All the empowerment programmes of the Authority; and
- (c) Consumer protection and lodging of claims

Exemptions in respect of accounting records and trust accounts

23. (1) A property practitioner whose turnover is below R2,5 million must cause his, her or its accounting records to be subjected to an independent review by a registered accountant subject to the provisions of section 54(1) to (7), applied with the necessary changes.

(2) The Minister may by notice in the *Gazette*—

- (a) determine the circumstances under which certain property practitioners may be exempted from keeping trust accounts; and
- (b) determine a different dispensation for the review of accounting records for those property practitioners.

NEW CLAUSES

That the following be new clauses:

Lodging of complaints

28. (1) Any person may, in the prescribed form, lodge a complaint with the Authority against a property practitioner in respect of financing, marketing, management, letting, hiring, sale or purchase of property.

(2) The Authority must, in writing, within seven days acknowledge receipt thereof and inform the complainant of the case number assigned to the complaint.

(3) After receiving the complaint, the Authority may require the complainant to submit further information or documentation in relation to the complaint.

Mediation

29. (1) An Authority may—

- (a) if it believes that a complaint may be resolved through mediation; or
- (b) on application by the person concerned, refer the complaint for mediation, as prescribed.

(2) Within seven days of referral to mediation, the Authority must appoint a suitably qualified person as a mediator.

(3) The mediator must within seven days of appointment—

- (a) give notice of the mediation as prescribed to all parties concerned; and
- (b) set the matter down for mediation within 30 days.

(4) (a) The mediator assists the parties to resolve the dispute.

(b) If the parties come to an agreement which resolves the matter or mediation has failed, the mediator must—

- (i) issue a certificate stating the outcome of the mediation; and
- (ii) serve a copy of that certificate on each party to the dispute;

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

(6) Notwithstanding the provisions of subsection (1), property practitioners may consent to refer an inter-property practitioners'

dispute for mediation by the Authority, and the Authority may provide such mediation service on a cost recovery basis.

(7) If a matter is not resolved as contemplated in this section, the matter must be adjudicated in accordance with section 30.

Adjudication

30. (1) If—

- (a) a person on whom a compliance notice has been served in accordance with section 26—
 - (i) fails to comply with this Act as demanded in the compliance notice;
 - (ii) fails to timeously comply with the compliance notice; or
 - (iii) fails to timeously pay the fine determined by the Authority; or
 - (b) mediation has been attempted in accordance with section 29 but has failed;
 - (c) the serious nature of the complaint and the contravention in question warrants,
- the Authority must cause a notice of adjudication to be served on the person concerned as prescribed.

(2) The Authority must appoint an independent legally qualified person as an adjudicator to conduct an adjudication of a complaint in terms of this section, who for purposes of this section is referred to as the “adjudicator”.

(3) The Authority may upon application 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—

- (a) give notice of the adjudication as prescribed to all parties concerned; and
- (b) set the matter down for hearing within 60 days.

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

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

(b) 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 an order of a magistrate’s court and must be executed accordingly.

(7) The order contemplated in subsection (6) may include—

- (a) a fine which may not exceed the amount determined by the Minister of Justice for the purposes of section 29(1)(a) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
- (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; and
- (c) any other appropriate order under the circumstances.

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

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

(10) Notwithstanding the provisions of subsection (2), property practitioners may consent to refer an inter-property practitioners’ dispute for adjudication by the Authority, and the Authority may provide such service on a cost recovery basis.

(11) Subject to the provisions of subsection (7)(b), any fine paid pursuant to an order made by the adjudicator accrues to the Fund.

Adjudication Appeal Committee

31. (1) Any person who is aggrieved by the decision of the adjudicator in terms of section 30 may appeal against such decision to the Adjudication Appeal Committee in the prescribed format.

(2) The Authority must, within 14 days of the date on which it received the notice of appeal in terms of subsection (1), establish an Adjudication Appeal Committee consisting of three independent suitably qualified persons to hear the appeal.

(3) Within 14 days of the appointment of the Adjudication Appeal Committee, the Adjudication Appeal Committee must-

(a) give notice of the appeal as prescribed to all parties concerned; and

(b) set the matter down for hearing within 60 days.

(4) The appeal must be held expeditiously, subject to upholding the rules of natural justice and in accordance with prescribed procedure.

(5) (a) The Adjudication Appeal Committee must upon conclusion of the appeal make a determination as to whether the complaint is upheld or not.

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

(6) The Adjudication Appeal Committee must upon finalisation of the appeal process provide written reasons for any of its determinations or orders.

(7) The Authority must keep the records of all appeals, including the order made and written reasons provided by the Adjudication Appeal Committee, as prescribed.

CLAUSE 30

1. On page 20, in line 51, to omit "56" and to substitute "57".
2. On page 20, in line 59, to omit "Ombud" and to substitute "Authority".
3. On page 21, in line 1 and 2, to omit "Ombud" where it appears and to substitute "Authority".

CLAUSE 31

1. On page 21, in line 9, to omit "32" and to substitute "33".
2. On page 21, in 25, to omit "53" and to substitute "54".

CLAUSE 33

1. On page 21, in line 51, to omit "32" and to substitute "33"

CLAUSE 34

1. On page 22, in line 9, to omit "53" and to substitute "54".
2. On page 22, in line 14, to omit "36" and to substitute "37".

CLAUSE 37

1. On page 22, in line 52, to omit “39” and to substitute “40”.
2. On page 23, in 1, to omit “35” and to substitute “36”.
3. On page 23, in line 4, to omit “38” and to substitute “39”.

CLAUSE 40

1. On page 23, in line 43, to omit “46” and to substitute “47”.

CLAUSE 42

1. On page 24, in line 29, to omit “41” and to substitute “42”.

CLAUSE 43

1. On page 24, in line 56, to omit “39” and to substitute “40”.
2. On page 25, in line 3, to omit “32” and to substitute “33”.

CLAUSE 46

1. On page 25, in line 20, to omit “annually” and to substitute “every three years”.
2. On page 25, in line 22, to omit “33” and to substitute “34”.
3. On page 25, in line 26, to omit “33” and to substitute “34”.
4. On page 25, in line 27, to omit “42 and 51” and to substitute “43 and 52”.
5. On page 25, in line 30, to omit “47” and to substitute “48”.
6. On page 25, in line 36, to omit “33” and to substitute “34”.

CLAUSE 47

1. On page 25, in line 49, to omit “is in possession of” and to substitute “has been issued with”.
2. On page 25, in line 52, to omit “is also in possession of” and to substitute “has also been issued with”.
3. On page 25, in line 50, to omit “46” and to substitute “47”.
4. On page 25, in line 53, to omit “46” and to substitute “47”.
5. On page 26, in line 8, to omit “be in possession of the” and to substitute “have been issued with a”.
6. On page 26, in line 8, to omit “46” and to substitute “47”.

CLAUSE 49

1. On page 26, from line 51, to omit subparagraph (viii).

2. On page 27, in line 35, to omit “51” and to substitute “52”.
3. On page 27, in line 36, to omit “47” and to substitute “48”.

CLAUSE 51

1. On page 28, in line 15 omit “25” and to substitute “30”.
2. On page 28, from line 28, to omit “49” wherever it appears and to substitute “50”.
3. On page 28, from line 30, to omit “49” wherever it appears and to substitute “50”.
4. On page 28, in 41, to omit “49” and substitute “50”.

CLAUSE 53

1. On page 30, from line 17, to omit subsection (8).
2. On page 30, from 32, to omit “49” and to substitute “50”.

CLAUSE 54

1. On page 30, in line 60, to omit “10” and to substitute “five”.
2. On page 31, in line 19, to omit “in one of the official languages”.
3. On page 31, in line 23, to omit “53(1)” and to substitute “54(1)”.
4. On page 31, in line 24, to omit “53(2)” and to substitute “54(2)”

CLAUSE 55

1. On page 31, in line 61, after “payment” to insert:

: Provided that where all relevant conditions have been met, the conveyancer must pay the remuneration and other monies
2. On page 32, in line 3, to omit “35, 43 or 44” and to substitute “36, 44, or 45”.

CLAUSE 56

1. On page 32, in line 6, to omit “60” and to substitute “61”.
2. On page 32, in line 7, to omit “61” and to substitute “62”.

CLAUSE 59

1. On page 33, in line 8, omit “8” and substitute “9”.

CLAUSE 61

1. On page 33, in line 46, to omit “49 or 50” and to substitute “50 or 51”.

2. On page 33, in line 48, to omit “62” and substitute “63”.

CLAUSE 62

1. On page 34, from line 42, to omit subsection (3).
2. On page 34, in line 45, to omit “29” and to substitute “26”.

CLAUSE 64

1. On page 35, in line 13, to omit “he, she or it personally” and to substitute “a franchisee property practitioner”.
2. On page 35, from line 19, to omit subsection (4).

CLAUSE 66

1. On page 35, in line 52, to omit “private”.

CLAUSE 67

1. On page 36, in line 1, to omit Language of agreements” and to substitute “**Agreements**”.
2. On page 36, in line 3, to omit “66” and to substitute “67”.
3. On page 36, from line 4, to omit “, in an official language that is requested by the purchaser or the lessee”.

CLAUSE 69

Clause rejected.

CLAUSE 76

1. On page 38, in line 35, to omit “**and amendment**”.
2. On page 38, in line 36, to omit “laws mentioned in Schedule 1 are” and to substitute “Estate Agents Affairs Act, 1976 (Act No. 112 of 1976), is”.
3. On page 38, from line 36, to omit “or amended to the extent set out in the third column of that Schedule”.

SCHEDULE 1

Schedule 1 rejected.

LONG TITLE

1. On page 2, from the fifth line, to omit “**to provide for the establishment, appointment, powers and functions of the Property Practitioner’s Ombud Office;**” and to substitute “**to provide for transformation of the property practitioners sector; to provide for the establishment of the transformation fund and establishment of the research centre on transformation;**”.

ARRANGEMENT OF SECTIONS

1. On page 3, from line 32 to omit “**ESTABLISHMENT, APPOINTMENT, RESOURCES, POWERS AND DUTIES OF PROPERTY PRACTITIONERS OMBUD**”, and to substitute “**TRANSFORMATION OF PROPERTY SECTOR**”
2. On page 3, from line 34, to omit items 20 to 22, and to substitute the following items:
 - “20. Property sector transformation
 21. Property Sector Transformation Fund
 22. Property Sector Research Centre
 23. Exemptions in respect of accounting records and trust accounts
3. On page 3, to omit items 23 to 26.
4. On page 4, from line 3, to omit items 27 to 30, and to substitute the following items:
 24. Appointment of inspectors
 25. Powers of inspectors to enter, inspect, search and seize
 26. Compliance notices
 27. Fine as compensation
 28. Lodging of complaints
 29. Mediation
 30. Adjudication
 31. Adjudication Appeal Committee
5. On page 5, from line 8, to omit item 69.