

NAMA Notice Board

Issue 6 | 14 February 2020



The EAAB and the Property Practitioners Act

Submission of Valid Fidelity Fund Certificates

THE EAAB AND THE PROPERTY PRACTITIONERS ACT

The Regulations pertaining to the promulgation of the Property Practitioners Act is currently deliberated on. NAMA and other relevant Stakeholders have been awarded exclusive opportunity to engage directly with the Estate Agency Affairs Board (EAAB) and the Department of Human Settlements to address several key aspects of the proposed Regulations.

During a Stakeholder engagement on 3 February 2020, NAMA was invited to participate in a discussion to elaborate on the issues that are most pertinent to the Property Management Sector.

It was noted that the Definition of a "Property Practitioner", see EAAB presentation (attached at the bottom of this email) on the Property Practitioners Act [Definitions], was poorly worded and remained open-ended, offering no clear definition related to the Property Management Sector and those who operate therein. Additionally, no provision has been made to indicate whether the definition would apply to the company and its principals/ directors, or whether it would extend to portfolio managers and other staff employed by the company.

NAMA further commented that the services rendered in terms of section 28 of the STSMA, provides for the appointment of a Managing Agent to:

- *perform specified financial, secretarial, administrative and other management services under the supervision of the trustees.*

The implication herein is that the function of the management of the scheme is supervised by the Trustees, not the Managing Agency/Agent themselves.

Another key factor discussed was that of the training requirements that will be required in terms of the legislation as individuals defined in the Act as "Property Practitioners." Here NAMA and several other stakeholders remain steadfast that training should be *industry-specific and* must be provided and vetted by the industry body to whom the "Property Practitioner" forms part of (that is, as a Managing Agent, and not Estate Agent or similar).

The requirement in relation to industry-specific training and the requirement under the proposed regulations that a "Property Practitioner" must first complete a compulsory candidate term is being contested. It has been reiterated that the services rendered by a Managing Agent are *not* similar to that of an Estate Agent and that the definition and requirement in its current form are incorrect, and do not cater for the duties and role of the Managing Agent in the context of the Property Industry.

The Regulator has been advised that each representative body's training should be a requirement before an Fidelity Fund Certificate (FFC) or rather a Licence to operate can be issued.

We confirm that NAMA has begun the process of registering as a Professional Body and NAMA training will be one of the requirements for NAMA membership.

A further concern is that in accordance with section 23 of the Act, the exemption in respect of accounting records and trusts accounts may be applied for specifically in relation to the audit of such accounts.

It is important to note that the FFC issued by the Regulator is and will remain compulsory and that the Fidelity Cover under this requirement is supplementary to the Fidelity Cover that must be taken out by the Community Scheme.

NAMA FULL MEMBERSHIP | SUBMISSION OF VALID FIDELITY FUND CERTIFICATES

Kindly be reminded that Full Membership of NAMA remains subject to a valid FFC.

During the Stakeholder engagement, NAMA brought to the attention of the EAAB that the non-issuing of FFC's by the EAAB, due to administrative challenges, adversely affected our members. Our records indicate that several Full Members have not submitted their FFC's.

The EAAB assured NAMA that FFC's had been issued where all the requirements had been met and that no FFC remained outstanding where such requirement had been met.

In order to assist our members, who have complied with all the EAAB's requirements for the issuing of an FFC, kindly complete the form (attached at the bottom of this email) and return to NAMA on or before the end of February 2020. The information provided by our Full Members will be used when we engage with the EAAB on the issue of outstanding FFC's.

Please note that this is only applicable where the issuing is being hampered by an EAAB administrative challenges and not where any Regulatory requirements such as CPD, non-payment and non-submitting of audit reports, have not been met.