



**Definition of the Property  
Practitioners Act No22 of  
2019 and Inspections  
Presentation**



# INTRODUCTION

- ❑ The Property Practitioner Bill was signed into law on the 02 October 2019. The Property Practitioner Act (PPA) will repeal the Estate Agency Affairs Board (EAA A).
- ❑ The PPA has introduced new categories of property practitioners which means the scope of inspections is going to increase.

## Provisions of PPA (section 1)

- ❑ Section 1 of PPA has some of the following as property practitioners;

***“Property practitioner means any natural, or juristic person who or which for the acquisition for gain on his, her, or its own account...”***

- a. By auction or otherwise sells, purchases, manages..... (i)
- b. Provides, procures, facilitates..... or markets financing..... (iv)

# DEFINITION OF A PROPERTY PRACTITIONER

- c. Includes a trust in respect of which the trustee, for the acquisition of gain on the account of 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, person, performs any act referred to in paragraph(a),
- d. In any other way acts or provides services as intermediary or facilitator with the primary purpose to or to attempt to effect the conclusion of an agreement to sell and purchase, or hire or let, as the case may be, a property or business undertaking, including, if performing the acts mentioned in this subparagraph, a home ownership association.....

# DEFINITION OF A PROPERTY PRACTITIONER CONT...

Therefore, new property practitioners' categories include:

- a. Bond Originators/ Bond Brokers
- b. Auctioneers
- c. Managing agents in so as it related to the management of trust monies (NAMA)
- d. Business Brokers
- e. Trusts
- f. Role players involved in selling, purchasing, hiring, letting, financing, managing, marketing of immovable property.
- g. Property development: to the extent to which they market properties
- h. Time Shares
- i. Home Owners Associations (HOA)
- j. Property Exhibitions
- k. Payment Processor Platforms.

# INSPECTIONS: PPA

The constitutional court in the matter between Auction Alliance and Estate Agency Affairs Board declared section 32A of the EAA Act unconstitutional this implied that the EAAB has no search and seize powers.

In terms of the PPA, the inspection powers provision have been included and aligned to the constitutional court decision. The PPA empowers the CEO to appoint any suitable person as an inspector, the CEO must issue each inspector with a certificate that is letter of appointment and identification card; Sec24(1).

A duly appointed inspector has the responsibility to inspect and monitor activities of Property Practitioners of their compliance with the PPA, code of conduct, education requirements and the regulations.

# POWERS OF INSPECTORS (section 25(1),(2),(3))

The inspectors have been conferred with the following powers:

- a. Powers bestowed on a peace officer in terms of the Criminal Procedure Act, 1977, (criminal procedure act defines a peace officer as “ including any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959, and in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1.), any person who is a peace officer under that section”) meaning that the official is granted the powers to execute the action described in the warrant.
- b. Enter and inspect business premises without a notice and warrant.
- c. Enter and inspect private residence after notifying the property practitioner (setting out the details of the inspections).
- d. Apply for a search warrant to enter any premises (includes private residence).

# SEARCH WARRANT (section 25(3)(a))

- Apply for search warrant to enter any premises and where the inspector has reasonable ground for believing that there is an article/ record therein that have a bearing on inspection (reasonable suspicion).

## PROCEDURE FOR ISSUE OF WARRANT (section 25(4))

- Search warrant may be issued by a judge / magistrate. It is an ex parte application (ex parte application- principles of audit alteram parterm is deviated from).by way of affidavit.
- The affidavit must meet all the legal requirements and confirm reasonable grounds for suspecting a contravention of the act, that the search is likely to yield information pertaining to alleged contravention and search is reasonably for the purpose of enforcing the Act.

# CONDUCTING A SEARCH WITH A WARRANT

- Entry to the premises shall be executed during the day (08:00-17:00) excluding Saturday, Sunday and public holidays.
- Prior to conducting the search, the inspector must identify themselves by producing a letter of appointment/ identification card.
- Inspector to hand over the copy of the search warrant and copy of this section to the person named in the search warrant or the person in control of the premises.
- If no such persons, affix a copy of a search warrant to a prominent and visible place of the premises.
- The inspector may be accompanied by one or more police officer (who may use force as is necessary to overcome resistance by any person to entry after having demanded admission or access and announced in an audible manner the purpose of the entry.



# INDIVIDUAL SEARCH

The search to be conducted with strict regard to decency, every person right to dignity, freedom, security and privacy

Female inspector to search female person and male inspector may search a male person.

# INSPECTIONS STRATEGIES TO COVER NEW ROLE PLAYER

The mandate of the inspections and investigation department is to determine and monitor compliance, the inspections department is proposing the following strategies in order to carry out its mandate:

- a. The inspections are conducted on a risk-based approach which is determined in terms of geographical spread, type of product, and categories of property practitioner;
- b. Conducting of onsite and offsite inspections;
- c. Conducting investigation pre and post inspection where there are breaches of the Act are found a institute a criminal charge against a Property Practitioner found to have committed serious breaches of the Act.

The PPA has listed the following provisions as criminal offences:

- i. Any person who acts as a Property Practitioner without a valid Fidelity Fund Certificate; section 48(3);

# INSPECTIONS STRATEGIES TO COVER NEW ROLE PLAYER

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- i. Any person who acts as a Property Practitioner without a valid Fidelity Fund Certificate; section 48(3);
- ii. Any person who refuses to refund a commission received while not in possession of a valid Fidelity Fund Certificate is guilty if an offense; section 48(5);
- iii. Any person who uses or displays a Fidelity Fund Certificate that has been withdrawn in terms of a court order or instruction of a adjudicator is guilty of an offense; section 52(10);
- iv. Any Property Practitioner who fails to ensure prescribe sentences regarding holding a Fidelity Fund Certificate is reproduces in legible letting on any letter head or marketing material relating to that Property Practitioners; section 53(1)(6);
- v. Any Property Practitioners who fails to include the prescribed clause which ensures that she or it guarantees the validity of the FFC is guilty of an offence; section 53(1)(c)

# INSPECTIONS STRATEGIES TO COVER NEW ROLE PLAYER

The PPA has listed the following provisions as criminal offences:

- vi. Any Property Practitioner who receives incentives to or otherwise influence an expert of the inspection of properties to write a favourable/change a report is guilty of a offense; section 66(2)
- vii. Any person who uses the name of the authority without authorization is guilty of a offense; section 74(2).
- viii. Any person convicted of an offence in terms of the PPA is liable to a fine or to imprisonment for a period not exceeding 10 years; section 7,1

# POLICY AND PROCESS DEVELOPMENT

Due to the broader scope the following guiding documents are required:

- a. Development of administrative fine policy and process document;
- b. Policy on the fines (minor and substantive contraventions);
- c. Create a pro- forma compliance notice;
- d. Create pro- forma receipts after documents have been seized;
- e. Draft regulations around;
- f. Guidelines on search and seize documents;
- g. Storage of documents seized,
- h. Disposal of documents seized;
- i. Power of entry without search warrant;
- j. Entry business premises policy;
- k. Policy on women inspectors;
- l. Receipt issued on seized documents;
- m. Conducting inspections been alone been a female or male policy;
- n. Record keeping Policy (Internal).

# COMMUNICATION AND PUBLIC AWARENESS

The following communication and awareness will be provided:

- a. Educating industry;
- b. Consultation with stakeholders, law enforcement agencies;
- c. Training of inspectors.

## HUMAN RESOURCE REQUIREMENTS

The increased scope requires increased capacity, therefore additional inspectors will be required, new staffing requirements includes; inspections manager, three senior inspectors, nine inspectors per province, four administrators: inspectors, four enforcement inspectors and one senior enforcement.

An aerial night view of a city skyline, likely Dubai, with numerous skyscrapers and buildings illuminated. A large white circle with a blue border is overlaid on the right side of the image, containing the text "THANK YOU" in bold black capital letters.

**THANK YOU**