

BILL

Madam Chairperson, Members of the Committee

Thank you very much for the opportunity to address you on the Property Practitioners Bill.

I am Jan le Roux, CE of Rebosa. Our members employ 16500 practising estate agents, mostly focused on residential properties. I have been a registered agent for 35 years.

We support the replacement of the current Act

REBOSA has put a lot of work into drafting detailed comments on the Bill and submitted same to you. Obviously it will be impossible to address all those issues today - hence I will only touch on some.

Consumers must be protected. Transformation is imperative. More jobs must be created. Transformation without growth will not be enough.

It is important to use this opportunity to ensure that the industry transforms and grows and I do hope that would be top of mind when your committee deliberates on the Bill. The industry has to move forward.

The danger of course is that one can easily perpetuate the status quo or even regress.

There is not much in the Bill that will enhance the opportunities of current and future estate agents/property practitioners, and very much that will actually hinder same. We rely on the insight and expertise of this committee to ensure that the Bill will enable the industry to move forward and grow.

The scope of the Bill is too wide. Too many diverse persons and enterprises are brought into the ambit of the Authority's regulatory power. It, for example, will include caretakers of premises, land surveyors, bond consultants and apparently property portals and property papers. In fact thousands more individuals will be affected. In drafting these notes I often realised that important issues I am raising now will affect those we refer to as estate agents today and not many individuals that are referred to as property practitioners who don't belong in this Bill.

This is a step backwards as the Authority will have difficulty in coping with all that. The existing Estate Agency Affairs Board/ has difficulty regulating and policing the industry as it is. The EAAB recently shared that almost 8,000 of the 22,000 candidate estate agents currently registered are "serial" candidates, i.e. they have exceeded the time period of 1-2 years to complete their internship, yet they are still allowed to be candidates and many are operating illegally without the required supervision. That is half of the registered industry. It is reported that thousands more are operating entirely illegally. Last year in December almost 2,000 thousand agents were in danger of losing their right to trade due to various issues. It seems inappropriate to burden the Board /Authority with even more responsibility taking this into account.

It is another step backwards to retain the exemption for attorneys. Attorneys can and will still be able to trade as property practitioners without complying with the same rules as estate agents in order to obtain conveyancing work - to the detriment of the industry if not the consumers as well. I have reason to believe that most of the conveyancing work generated through the offices of attorneys operating estate agencies are done by the very same attorneys

Developers seem not to be included in the definition, but should be. Yes, they are selling their own properties - and employing sales people I might add - but at the same time are selling to consumers who should be protected. There is no reason why they should not be required to adhere to the same rules and regulations as property practitioners. That would be a step forward.

Another step forward as far as the definition of a property practitioner is concerned would be to differentiate between different types of property practitioners, i.e. a "business" property practitioners managed by "principal" property practitioners and employing "ordinary" and "candidate" property practitioners.

This differentiation is important because the Bill currently reads that all property practitioners, that would be all four categories, must operate trust accounts, submit audit reports, audit business and trust accounts, be in possession of BEE certificates, etc. It is obvious that all of the latter should only apply to "business" property practitioners.

Another step backwards is the retention of the stipulation that, should even one director/member/trustee of a business property practitioner for whatever reason not be registered with the Authority, the entire business and all the ordinary and candidate property practitioners working for the business be deregistered at the same time. The prejudice to the business and in particular the individuals is immense - and they are most often unaware of this even happening.....until it is too late and income is forfeited.

The equivalent to this in general terms would be that should one director of Absa Bank be deemed unfit as a director, the bank having to close its doors immediately. This is absurd and with the eye on growth and transformation it cannot stand.

The establishment of an ombud is a step forward but there are challenges with overlapping jurisdictions that will have to be addressed or serious issues will ensue.

The stipulations regarding the appointment of the Board of the Authority is also a step backwards. Currently industry is assured of 1/3 of board members being practicing estate agents, but this number is potentially dramatically reduced in the Bill. It is difficult to imagine how the Authority can really execute its duties without having an ear to the ground.

An alternative would be to have a permanent consultative body in which all representative bodies in the industry can participate to ensure that the Authority does consult with industry regularly.

Thanks to Madame Chair there is such a body, the Multi Stakeholder Group, in place at the moment although we are called together on an ad hoc basis and at the convenience of the EAAB by the EAAB, Thank you Madam Chair, I can assure you this has been very beneficial to the industry over the past number of years.

For the first 6 months, give or take, of last year there was no Board. Apart from the obvious downside, consumers suffered because claims submitted to the Fidelity Fund could not be finalised for a very long time. It would be a step forward to ensure that only 1/3 of board members retire on a yearly basis thereby always leaving two thirds of the Board in a position to execute its duties and to carry forward experience gained in the process.

Property practitioners currently, and now in the Bill, have to be licensed or be issued with Fidelity Fund Certificates in order to trade. When this was put into the current Act, fax machines did not even exist and hard copy, embossed certificates which had to be displayed on the premises was the rule. In the Bill the words "having been issued with" are replaced by "being in possession of" a FFC. This is problematic. A step forward would be to acknowledge that we have moved to a digital age and that certificates can be issued digitally and a databank could be accessible to all consumers to check on the status of Property Practitioners.

The technology is already practically in place.

Instead of submitting a certified copy of a piece of paper to a conveyancer to ensure payment of commission as the Bill now demands - which is a very good idea by the way - such conveyancer could easily access the databank to determine the status of the property practitioner. Data is live whereas paper of course dates the minute it is issued. Certified copies of withdrawn certificates can and will be presented easily and should rather not exist.

It is also a step backwards to retain yearly registration of property practitioners which causes bottlenecks at the Authority. A step forward would be to register a property practitioner once and retain same registration indefinitely provided such practitioner keeps her records, fees and attendance of the necessary CPD courses up to date at the Authority.

It should be noted that the penalty for not having been issued with an FFC is not a small fine, but forfeiture of commission of the individual and sometimes the commission of the entire business. This can and did happen due to lack of service delivery/negligence of the EAAB.

Much can be done to seamlessly allow property practitioners to resign from one business to join another without the current delay, loss of income and paperwork. Our proposal addresses this in detail.

A backward step in the Bill that affects the employment of candidate property practitioners is the notion that a principal is responsible for anything that a candidate might do even without the principal being aware of that. It is like taking responsibility with no qualification for somebody else's life. Of course candidates must be given clear guidelines and adequate training to ensure that they know what they should do, but this stipulation will bring the recruitment of new entrants to the industry to a grinding halt. It cannot stand. It will probably lead to the termination of the employment of up to 22,000 candidate property practitioners.

In principle the same applies to franchisors in that the Bill is holding the franchisor responsible for what the franchisee might or might not do. It is impossible for the franchisor to police franchisees on a day to day basis. This will bring the franchising business in the industry to a grinding halt. It cannot stand. Franchising is very important as it enables smaller operators to become part of a bigger brands which is a relatively easy way for new entrants to compete with other big brands.

Transformation of the real estate industry is overdue and imperative. Transformation however is not only existing businesses doing the necessary to obtain the required BEE status, it is also the enabling of individuals to start and manage their own businesses. Many of the big national companies in South Africa today started in garages or at home. It is in this instance that the Bill really fails in one of its main objectives - transformation. Insisting on business property practitioners having BEE certificates is not the only nor the most effective solution.

An individual who want to go into business for herself, that of course includes black entrants into the market, are prejudiced. Put differently, bigger established companies are in stronger positions and can afford the numerous compliance issues. Smaller firms battles with this.

Individuals working for themselves in their own firms, that is sole proprietors or family businesses, must have trust accounts albeit most often dormant and must have that account audited by a chartered accountant at huge cost. Trust accounts should be optional. The authority granted the Minister to exempt is not adequate. Trust accounts should be optional and only for those who need same.

Same principal practitioner must have her business account audited by a chartered accountant at another huge cost whereas other small businesses in South Africa can rely on having reviews done at a much lower cost. This is a step backwards.

The principal of a first time small business must, as an example, pay R 1,000 more for registration at the Authority than what a first time employed agent at another firm pays. This cannot be justified. Same principal sole proprietors must pay R500 annually more for CPD training than employed ordinary property practitioners. It would be a step forward if the Bill would prohibit the Authority from doing this. Incidentally, this approach seems to be based on the idea that a principal can more easily afford higher fees than an ordinary property practitioner which is not necessarily the case, in fact often not. One must also keep in mind that the administrative cost to the Authority in this example is the same.

A principal/ sole proprietor competing with an employed ordinary property practitioner faces many more challenges and has to cover a lot more expenses than the employed agent. Consider bank charges, two audit fees. I predict that should the Bill not address this we will end up with big conglomerates controlling the market instead of thousands of entrepreneurs working for themselves and building businesses, any one of which could become one of the biggest agencies in South Africa. Black agents are compelled to work for bigger white owned businesses as there are not that many black owned businesses yet, instead of working for themselves. Addressing this will be a step forward.

It will also be a step forward to allow businesses to have directors that don't necessarily have to be qualified property practitioners fulfilling specific functions like finance, marketing, human resources etc. This will amongst other things enhance transformation as it will enable black entrepreneurs who want

to enter the industry as shareholders and directors to do so without necessarily training as property practitioners and spending a year doing so. An equivalent example would be the fact that not all directors of Dischem are qualified pharmacists.

Please help the industry move forward by addressing the following in summary:

Definitions and scope

Appointment of Board

Issuing of Fidelity Fund Certificates

Position of interns and franchisees

Enabling of small businesses to realise effective transformation job creation.

Thank you Madam Chair.

REBOSA

Protection of Fidelity Fund

Powers of inspectors

Tax clearance certificate

Keeping of records

Language of contracts

Payment of commission prior to transfer