



## **Property Practitioners Bill - [B21B-2018]**

(As amended by the Portfolio Committee on Human Settlements (National Assembly))

Real Estate Business Owners of South Africa ("REBOSA") written submission to the Select Committee on Social Services

### **Background**

Real Business Estate Owners of South Africa NPC ("REBOSA) is an independent, non-profit company (NPC), registered with the Companies and Intellectual Property Commission (CIPC), Company Registration 2011/12976/08, which represents the interests of business owners and principals of small, medium and large estate agencies operating in South Africa, mostly in the residential real estate sector.

### **REBOSA is committed to:**

- raising the standards of real estate practice
- developing a favourable dialogue between real estate specialists, society and government and
- aggressively promoting professionalism and transformation in the industry.
- The real estate industry is a multi-billion Rand sector of the economy. A wide range of legislation and regulations govern it. These rules have far-reaching effects on real estate agency owners.

### **REBOSA supports:**

- Transformation of the real estate industry
- Creating opportunities for those previously excluded
- The replacement of the current Act with the Property Practitioners Bill
- A Bill that will create opportunities, not obstacles for future and current estate agents/property practitioners
- The protection and care of consumers

REBOSA represents more than 16,000 estate agents, being more than half the total number of registered, practising estate agents in South Africa and is by far the largest representative body for estate agents in South Africa.

As the principal representative of the residential real estate industry in South Africa, REBOSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory.

This submission is supported by REBOSA's Members.

Rebosa would like the opportunity to address the Select Committee on Social Services in person.

### **Contact Information**

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## **REAL ESTATE BUSINESS OWNERS OF SOUTH AFRICA SUBMISSION IN RESPECT OF THE PROPERTY PRACTITIONERS BILL, 2019**

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### **Introduction**

Rebosa supports the replacement of the current Act.

REBOSA has put a lot of work into drafting detailed comments on the Bill and submitted same to the Portfolio Committee on Human Settlements and the Department of Human Settlements both in 2017 and 2018.

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

It is important to ensure that the new Bill promotes industry transformation and growth as the Industry has to move forward.

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.

Please refer to addendum 1 – Highlights of Rebosa's submission to the Portfolio Committee on Human Settlements Stakeholder Engagements on the Property Practitioners Bill [B21-2018] on Tuesday, 4 September 2018, 09:00 – 16:00, Good Hope Chamber, Parliament.

In short our summary of concerns in the Property Practitioners Bill in its current form are:-

- 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.

Please refer to addendum 2 – Rebosa's full submission and commentary in response to the Bill as gazetted on 31 May 2018, GAZETTE NO. 41671.

The following highlight Rebosa's main concerns with the Property Practitioners Bill which will have far reaching effects on the industry if not addressed and amended in the final version of the Bill before it is promulgated.

#### **1. Section 48:**

This is the biggest single detrimental issue in the Bill. In terms of this section an entire business and all the agents employed in the business can be de-registered because of an omission/act of one of the directors of the business. The equivalent of this is the Authority not being able to function if one board member commits fraud.

The clause should be amended to read that the business can continue functioning and the business and its estate agents can remain registered provided there is at least one qualified and properly registered principal/director in the business.

## **2. Section 1 (Definitions):**

### **2.1 Business Property Practitioner:**

It is important to define a "business property practitioner" because only business practitioners for example must/could have trust accounts. Should this not be corrected it would for example imply that each individual must have a trust account/ BEE certificate.

### **2.2 Developers:**

The current definition excludes developers because they are selling their own properties. Developers however sell those properties to consumers (deal with consumers) and employ individuals to do so.

Currently neither the developers nor the individuals they employ have to comply with the Act and do not have the necessary training. In terms of the Bill they are also therefore not covered by the Fidelity Fund.

### **2.3 Attorneys:**

As per the current Act attorneys and candidate attorneys are still excluded. There is no motivation for this and attorneys are, like developers, employing more and more sales associates without the necessary training (albeit they are covered by the attorneys Fidelity Fund). Because attorneys are primarily interested in obtaining conveyancing work, they unfairly compete with estate agents as far as commission, etc. is concerned. The study curriculum for agents involve much more than just law.

Attorneys should at best should be exempted from NQF 4 & 5 but should comply with everything else in terms of the Act. The EAAB has admitted not being able to control attorney operating illegally at present therefore this is of extreme importance.

## **3. Section 23:**

The current amendment to the Bill will still result in 5,000 dormant trust accounts!

Many estate agents focus on selling only and do not do letting. Furthermore, according to our records more than 70% of estate agencies do not use their trust accounts and have to operate dormant trust accounts and pay dearly to have same audited. The exemption in the Bill in respect of practitioners with a turnover of less than R2,500,000 pa tries to address this - inadequately so, as it still leaves thousands of dormant trust accounts .

It is a better solution to allow estate agencies who want to/need to receive deposits from clients to have trust accounts and have same properly audited, but to allow estate agencies not wanting to do so, to not have trust accounts at all. These agents will, as they currently do, request clients to make deposits to the trust accounts of conveyancers. Using the turnover (keep in mind that it refers to gross commission not sales) is not an indication of the size of the deposit that might be made (an estate agency with a turnover of less than R2,500,000 per annum may well be selling one property of R49,000,000 and/or take a deposit equal to R49,000,000). Should the rand value be the indicator, it would be better to limit quantum of deposit rather than turnover of business.

There is no reason why all estate agencies should have trust accounts.

**4. Section 64 (3):**

Supervision of candidate property practitioners: It is obviously unfair to hold a principal responsible for acts or omissions of the candidate property practitioner even if the principal is unaware of same.

The employment of 22,000 candidates are threatened by this.

**5. Section 46:**

**Fidelity Fund Certificates:**

Allowing property practitioners to register every three years is a step in the right direction but it remains unnecessary to re-register at all. They should be allowed to register once and be compelled (as they are) to keep their data up to date at the Authority. Property Practitioners can, under such circumstances, be invoiced annually for their annual fees in the same way as they are currently invoiced for Continuing Professional Development (“CPD”) courses – the system is in place. This will further alleviate bottle necks and administration at the authority.

**6. Sections 47, 48 and 56:**

Sections 47 and 48 address the “issuing” of fidelity fund certificates under certain circumstances. Section 56 (1) however negates entitlement to commission in the absence of “having been issued” a fidelity fund certificate.

Certificates often don’t get to practitioners timeously, if at all.