



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 1 October 2015

No. 5845

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Government Notices

MINISTRY OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT

No. 220 2015

AMENDMENT OF REGULATIONS RELATING TO STANDARD OF TRAINING OF ESTATE AGENTS: ESTATE AGENTS ACT NO. 112 OF 1976

Under section 33 of the Estate Agents Act, 1976 (Act No. 112 of 1976), after consultation with the Namibia Estate Agents Board, I have made the regulations set out in the Schedule.

I. NGATJIZEKO
MINISTER OF INDUSTRIALIZATION, TRADE
AND SME DEVELOPMENT

Windhoek, 15 September 2015

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the Regulations Relating to the Standard of Training of Estate Agents published under Government Notice R1409 of 1 July 1983 as amended by Government Notice No. 221 of 2 September 1996.

Amendment of regulation 4 of Regulations

2. Regulation 4 of the Regulations is amended by the substitution in paragraph (b) for the amount “N\$250” of the amount “N\$1000”.

MINISTRY OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT

No. 221

2015

AMENDMENT OF REGULATIONS RELATING TO AUDITORS'S
REPORT FORMAT: ESTATE AGENTS ACT, 1976

Under section 32 of the Estate Agents Act, 1976 (Act No. 112 of 1976), after consultation with the Namibia Estate Agents Board, I have amended the regulations as set out in the Schedule.

I. NGATJIZEKO
MINISTER OF INDUSTRIALIZATION, TRADE
AND SME DEVELOPMENT

Windhoek, 15 September 2015

SCHEDULE

Definitions

1. In these regulations “the Regulations” means the Regulations Relating to the Auditor’s Report Format published under Government Notice R604 of 23 March 1979 as amended by Government Notice R2499 of 13 November 1981.

Amendment of Annexure to Regulations

2. The Annexure to the Regulations is amended by inserting the letter “C” after the word “Annexure”.

Amendment of Regulations

3. The Regulations are amended by inserting after Annexure B of the following Annexure:

Annexure “C”

“AUDITOR’S REPORT IN TERMS OF SECTION 32(4) OF THE
ESTATE AGENTS ACT, 1976 (ACT 112 OF 1976)
(Regulation 2)

_____ 20_____

_____ (*Insert Name of the Estate Agency Entity*)

P O Box _____
Windhoek
Namibia

Report of the independent auditor _____ (*Insert Name of the Estate Agency Entity*) (“the estate agent”) in respect of the Estate Agent’s Trust Account(s) to the Director(s)/Member(s)/Practitioner(s) _____ (*Insert Name of the Estate Agency Entity*), and The Namibia Estate Agents Board.

We have completed our engagement to determine whether the estate agent's trust accounts of _____ (*Insert Name of the Estate Agency Entity*) were maintained in terms of Sections 29, 32(1)(2)(a)(b)(c) and (3)(a)(b) of the Estate Agents Act, No. 112 of 1976 (the "Act"), for the period from _____ 20____ to _____ 20____ or year ended _____ and report our conclusion thereon, together with any instances of non-compliance that came to our attention (Section A). We are also required to report on certain additional matters of compliance with other Acts (Section B) and report on certain information extracted from the accounting records (Section C).

Our engagement arises from our appointment as auditor of _____ (*Insert Name of the Estate Agency Entity*)

Director(s)/Member(s)/Practitioner(s) responsibility for Trust Accounts

The Director(s)/Member(s)/Practitioner(s) of _____ (*Insert Name of the Estate Agency Entity*) are responsible for ensuring that the estate agent's trust accounts are maintained in compliance with the provisions of the Act and the regulations of the Estate Agent Board of Namibia. The Director(s)/Member(s)/Practitioner(s) is/are also responsible for the implementation of accounting and internal control systems to ensure that the trust account(s) and extracts therefrom included in this report are free of material misstatement whether due to fraud or error.

Auditor's responsibility

Our responsibility is to report our conclusions and findings regarding the _____ (*Insert Name of the Estate Agency Entity*) maintenance of its trust account(s) in compliance with the Act, and extraction of certain information from the accounting records, based on our work performed.

We conducted our assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000, Assurance Engagements Other than Audits or Reviews of Historical Financial Information. That standard requires that we comply with ethical requirements and plan and perform the engagement to obtain reasonable assurance about the compliance of the estate agent trust account(s), in all material respects, with the Act and the regulations.

The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and the regulations, whether due to fraud and error.

In making those risk assessments the auditor considers internal control relevant to the circumstances of the engagement.

We have relied on evidence obtained in the course of our audit of the annual financial statements for the year ended _____ 20____, and exercised our judgement regarding matters coming to our attention in the course of our audit, together with evidence obtained from such additional procedures as we considered necessary in the circumstances.

A. Compliance with the Act

Summary of work performed

Additional procedures included:

1. Inquiries of the Director(s)/Member(s)/Practitioner(s) responsible for financial matters and compliance with the Act and the inspection of supporting documents to determine whether for the period reported on:

- the estate agent opened and kept a separate, properly designated, trust account during the entire period as required by Section 32(1) of the Act;
 - the estate agent had invested moneys deposited in a trust account in accordance with the requirements of section 32(2) of the Act and that any interest earned and kept in a separate interest bearing account was managed appropriately in terms of Section 32 (2) (a);
 - the estate agent had kept separate accounting records, as required by Section 32(3)(a) of the Act, and balanced the accounting records relating to any trust account at intervals of not more than one month, as required by Section 32(3)(b) of the Act;
 - the circumstances under which negotiable instruments deposited into the estate agent's trust accounts at each month-end and not subsequently honoured, were satisfactory;
 - the system employed when transferring amounts (including interest earned) from the estate agent's trust banking account to the estate agent's business account appears to ensure that on each occasion any such transfer is made, the balance remaining to the credit of such trust banking amount or other interest-bearing account referred to in Section 32(2)(c) of the Act, together with any trust moneys held in cash on hand, amounts to not less than the trust balances.
2. Inspection of the estate agent's accounting records to determine whether:
- The estate agent has kept such accounting records in terms of section 29 of the Act and that the business accounts were audited in terms of section 29(b) of the Act.

Conclusion on compliance with the Act

3. Based on our work performed, we found that the estate agent's trust account(s) were maintained in compliance with Sections 29, 32(1), (2) and (3) of the Act during the period from _____ 20__ to _____ 20__ OR year ended _____ except for the contraventions as set out below:

| | Section of the Act | Details of Contravention/s of the Estate Agency Affairs Act in respect of Trust Accounts ¹ |
|--|--------------------|---|
| | | |
| | | |
| | | |

B. Additional compliance

1. Estate Agents' Act, No. 112 of 1976

We have inspected that a valid fidelity fund certificate in the name of _____ (*Insert Name of the Estate Agency Entity*) and for each Director(s)/Member(s)/Practitioner(s) was obtained, as required by Section 26(b) of the Act. The fidelity fund policy number is _____ (*Insert policy number*) and _____ (*insert number*) individuals practicing as estate agents have been insured for a period of _____ (*insert number of months*) months ending on the _____ (*insert date*).

¹ Any contravention of the items detailed in the bullet points above are regarded as material and should be reported. Specify sections of the Act and Rules contravened and provide details of contravention(s).

2. Financial Intelligence Act, No. 13 of 2012 (FIA)

The Estate Agent has provided evidence that the Director(s)/Member(s)/Practitioner(s) of _____ (*Insert Name of the Estate Agency Entity*) are aware of the relevant provisions of the FIA and its complementing regulations. The evidence obtained includes but is not limited to:

| | Yes | No |
|--|-----|----|
| <ul style="list-style-type: none"> That the estate agent or agency has a written policy and procedure document in place which addresses certain key provisions of the FIA. The policy and procedures are approved by the Director(s)/Member(s)/Practitioner(s) and further require each employee of all departments to be aware of the requirements of the Financial Intelligence Act, especially the identification of clients, reporting of suspicious transactions, reporting of transactions in excess of the determined cash thresholds and the retention of documentation for transactions for at least 5 (five) years; | | |
| <ul style="list-style-type: none"> That the estate agent has been registered with the Financial Intelligence Centre; and | | |
| <ul style="list-style-type: none"> That the estate agent has appointed/designated an Anti-Money Laundering Compliance Officer. | | |

C. Information extracted from the accounting records

Monies deposited in a trust banking account in compliance with Sections 32(1) and 32(2)(a) of the Act:

| | N\$ |
|--|-----|
| 1. Total interest received | |
| 2. Less: Paid out in terms of express written mandates (Section 32(2)(c)) of the Act | |
| 3. Balance | |
| 4. Less: Amounts paid to the Fidelity Fund of the Board – 50% of above balance | |
| 5. Amount retained by estate agent | |

D. Procedures performed

- We agreed the total interest received to supporting bank statements to determine that the total interest received has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
- We agreed the total amount paid out in terms of express written mandates to the balance(s) reflected in the underlying trust accounting records to determine that the total amount paid out has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
- We agreed the amounts paid out to the Fidelity Fund of the Board to the balance(s) reflected in the underlying trust accounting records to determine that the total amount paid out has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
- We agreed the amount retained by the estate agent to the balance recorded in the general ledger.

The above information has been extracted from the underlying trust accounting records which were subject to our audit of the financial statements as a whole. With the exception of those procedures performed, as described above, the underlying information is unaudited and does not form part of our conclusion regarding compliance with Sections 32(1), (2) and (3) of the Act as set out in Section A, and accordingly, we express no conclusion thereon.

Additionally we were informed by the Director(s)/Member(s)/Practitioner(s) that the sellers of the properties deposit their funds into the attorneys trust accounts and not into the trust account(s) of _____ (*Insert Name of the Estate Agency Entity*).

OR

We inspected the bank statements of the _____ bank account and identified that _____ (*Insert Name of the Estate Agency Entity*) does not earn any interest as the account is not interest-bearing.

Additionally we were informed by the Director(s)/Member(s)/Practitioner(s) that the sellers of the properties deposit their funds into the attorneys trust accounts and not into the trust account(s) of _____ (*Insert Name of the Estate Agency Entity*).

E Restriction on use and distribution of the report

The layout and wording of our report is in compliance with the requirements of the Estate Agents Board and may not be suitable for any other purpose, consequently, it is intended solely for the use of Director(s)/Member(s)/Practitioner(s) of the estate agent and the Estate Agents' Board and should not be distributed to any other parties without our prior written consent.

"Firm Name"

PAAB registration number

Registered Accountants and Auditors

Chartered Accountants (Namibia)

Per: A Accountant

Partner

Place: Date:

MINISTRY OF INDUSTRIALIZATION, TRADE AND SME DEVELOPMENT

No. 222

2015

**AMENDMENT OF REGULATIONS RELATING TO ISSUE OF FIDELITY FUND AND
 REGISTRATION CERTIFICATES: ESTATE AGENT ACT, 1976**

Under section 33 of the Estate Agent Act, 1976 (Act. No. 112 of 1976), after the consultation with the Namibia Estate Agents Board, I have amended the regulations set out in the Schedule.

I. NGATJIZEKO

**MINISTER OF INDUSTRIALIZATION, TRADE
 AND SME DEVELOPMENT**

Windhoek, 15 September 2015

SCHEDULE

Definitions

1. In these regulations “the Regulations” means the Regulations Relating to the Issue of Fidelity Fund and Registration Certificates published under Government Notice No. R2106 of 3 October 1986 as amended by Government Notice Nos. AG 97 of 1 November 1989 and 222 of 2 September 1996.

Substitution of regulation 2 of Regulations

2. The regulations are amended by the substitution for regulation 2 of the following regulation:

“2. (1) Any estate agent -

(a) shall for the calendar year 2015 and annually thereafter pay to the board a levy of N\$1200; and

(b) excluding the estate agent referred to in paragraph (d) of the definition of ‘estate agent’ in section 1 of the Act, shall for the calendar year 2015 and annually thereafter pay to the fund a contribution of N\$300;

(2) Any person who applies to the board for the issue of a fidelity fund certificate or registration certificate shall pay to the board a levy of N\$300 in addition to the levy referred to in subregulation (1)(a); and

(3) Any estate agent to whom a fidelity fund certificate or a registration certificate has already been issued for a particular year, but failed to –

(a) apply before the date referred to in regulation 4(1) to the Board for the issue to him or her of such certificate in respect of the succeeding or any later calendar year; and

(b) make such application after that date shall pay to the board a levy of N\$1000 in addition to the levy referred to in subregulation (1)(a).

(4) Any person who has passed the Board’s examination becomes an estate agent in terms of the Act as long as that person remains registered and pays membership fees to the NEAB.

(5) Any estate agency and every estate agent shall pay an additional membership fee of N\$500 to the Board on or before 1 October every year.

(6) Any estate agent who has not paid his or her annual membership fees before 1 November each year shall automatically cease to be an estate agent and an estate agency which fails to pay its annual membership fees by 1 November each year shall not be issued with a fidelity fund certificate for the ensuing year.

(7) Any person who has ceased to be an estate agent in terms of subregulation (5) may be required to re-write and pass the applicable examinations before he or she can be registered again.”

Amendment of regulation 4 of Regulations

3. Regulation 4 of the regulations is amended by the substitution for subregulation (3) of the following subregulation:

“(3) Any estate agent who carries on a business otherwise than as an employee in more than one branch or outlet, shall -

- (a) apply for a separate fidelity fund certificate in respect of each branch or outlet, irrespective of the trading name or style under which business is carried on in each such branch or outlet; and
- (b) display each fidelity certificate to the satisfaction of the Board in a prominent place in each branch or outlet.

(4) Each fidelity fund certificate shall be issued to the estate agent only if each business, branch or outlet has paid the levies referred to in regulation 2(1)(a) and (b).”
