

GNR 3415 of 26 DECEMBER 1992



## THE ESTATE AGENCY AFFAIRS BOARD

### CODE OF CONDUCT

#### 1. DEFINITIONS

In this code of conduct, unless the context otherwise indicates -

- (a) "board" means the Estate Agency Affairs Board;
- (b) "candidate estate agent" means a person referred to in paragraph c (ii) of the definition of "estate agent" in section 1 of the Act who has subject to the provisions of Government Notice R 1469 of 29 June 1990 been exempted from the standard of training prescribed by Government Notice R 1409 of 1 July 1983;
- (c) "client" means a person who has given an estate agent a mandate, provided that should an estate agent have conflicting mandates in respect of a particular immovable property, the person whose mandate has first been accepted by the estate agent, is regarded as the client;
- (d) "estate agency service" means any service referred to in subparagraphs (i) - (iv) of paragraph (a) of the definition of "estate agent" in section 1 of the Act;
- (e) "estate agent" means a person defined in section 1 of the Act, including a candidate estate agent;
- (f) "franchise" means an agreement, arrangement or understanding between a franchisor and a franchisee estate agent in terms of which the latter is entitled or required to operate under a trade name which is owned by, or which is associated with the business of, the franchisor or any other person;
- (g) "immovable property" means immovable property as defined in section 1 of the Act;
- (h) "mandate" means an instruction or an authority given to, and accepted by, an estate agent to render an estate agency service;
- (i) "sole mandate" means a mandate incorporating an undertaking on the part of the person giving the mandate, not to confer a similar mandate on another estate agent before the expiry of a determined or determinable period;
- (j) "the Act" means the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976).

#### 2. GENERAL DUTY TO PROTECT THE PUBLIC'S INTEREST

In terms of estate agents' general duty to members of the public and other persons or bodies, an estate agent -

- 2.1 shall not in or pursuant to the conduct of his business do or omit to do any act which is or may be contrary to the integrity of estate agents in general;
- 2.2 shall protect the interests of his client at all times to the best of his ability, with due regard to the interests of all other parties concerned;

- 2.3 shall not in his capacity as an estate agent wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent;
- 2.4 shall comply with both the Act and the regulations promulgated thereunder;
- 2.5 shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party as a front or nominee do anything which would not be permissible for him to do if he were operating as an estate agent;
- 2.6 shall not deny equal services to any person for reasons of race, creed, sex, or country of national origin;
- 2.7 shall not discriminate against a prospective purchaser of immovable property on the grounds that such purchaser will not, or is unlikely to, make use of financial assistance made available by any specific person or financial institution and which the estate agent offers to arrange on his behalf.

### 3. MANDATES

No estate agent shall -

- 3.1 offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee therefor, unless he has been given a mandate to do so by the seller or lessor of the property, or his duly authorised agent;
- 3.2 on behalf of a prospective purchaser or lessee, offer, purport or attempt to offer to purchase or lease any immovable property or negotiate in connection therewith or canvass, or undertake or offer to canvass a seller or lessor therefor, unless he has been given a mandate to do so by such prospective purchaser or lessee, as the case may be, or his duly authorised agent;
- 3.3 accept a sole mandate, or the extension of the period of an existing sole mandate, unless -
  - 3.3.1 all the terms of such mandate (or extension, as the case may be) are in writing and signed by the client;
  - 3.3.2 the expiry date of the mandate (or extension, as the case may be) which shall be expressed as a calendar date, is specifically recorded in the written sole mandate (or extension, as the case may be);
- 3.4 accept a sole mandate which contains a provision conferring upon him -
  - 3.4.1 an option to extend the sole mandate for a certain period after expiry of the sole mandate; or
  - 3.4.2 a mandate to continue to render the same estate agency service referred to in the sole mandate, after expiry of the sole mandate, unless -
    - (aa) the client has prior to his signature of the sole mandate expressly consented in a written document executed independently of the said sole mandate, to the inclusion of such provision or provisions (as the case may be); and
    - (bb) such document contains an explanation of the reasons for and implications of the inclusion of such provision; and
    - (cc) such document is signed by both the client and the estate agent in question;

- 3.5 accept a sole mandate which also confers upon him a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate;
- 3.6 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract;
- 3.7 accept any mandate or instructions for work in respect of immovable property if his interest therein would compete with his obligations towards an existing client in respect of the same immovable property without first disclosing such interest in writing to such client;
- 3.8 knowingly or negligently make a material misrepresentation concerning the likely market value or rental income of immovable property to a seller or lessor thereof, in order to obtain a mandate in respect of such property;
- 3.9 accept a mandate in respect of any immovable property if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client;
- 3.10 accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client -
  - 3.10.1 the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent; and
  - 3.10.2 what specific obligations in respect of the marketing of the property will be assumed by the estate agent in his endeavour to perform the mandate: Provided that such explanations, if contained in a standard pre-printed or typed sole mandate document, shall be in lettering not smaller than that generally used in the remainder of the document.

#### 4. DUTY TO DISCLOSE

- 4.1 An estate agent shall -
  - 4.1.1 convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge and which are or could be material to a prospective purchaser or lessee thereof;
  - 4.1.2 if he conducts his business in terms of a franchise, disclose clearly and unambiguously in all his correspondence, circulars, advertisements and other written documentation that he operates in terms of a franchise and state thereon his name and the name of the franchisor;
  - 4.1.3 if he conducts his business under a trade name or style other than his own name, clearly disclose his full name in all correspondence, circulars and other written documentation;

- 4.1.4 not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate, which conflicts with the aforesaid mandate, has been accepted by him, unless he has disclosed to the person who has given the later mandate the existence of such prior mandate, and the fact that he will not be the estate agent's client in respect of that property;
- 4.2 No estate agent shall purchase directly or indirectly for himself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of, or interest in, such immovable property.

#### 5. DUTY NOT TO MAKE MISREPRESENTATIONS OR FALSE STATEMENTS OR TO USE HARMFUL MARKETING TECHNIQUES

No estate agent shall -

- 5.1 in his capacity as an estate agent publish or cause to be published any advertisement which could create the impression that it was published by the owner, seller or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;
- 5.2 wilfully or negligently, in relation to his activities as an estate agent, prepare, make or assist any other person to prepare or make any false statement, whether orally or in writing or sign any false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of account or other records;
- 5.3 claim to be an expert or to have specialised knowledge in respect of any estate agency service if, in fact, he is not such an expert or does not have such special knowledge;
- 5.4 advertise or otherwise market immovable property in respect of which has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;
- 5.5 without derogating from the generality of the foregoing -
- 5.5.1 wilfully or negligently mislead or misrepresent in regard to any matter pertaining to the immovable property in respect of which he has a mandate;
- 5.5.2 use any harmful or misleading marketing technique or method to influence any person to confer upon him a mandate to render any estate agency service or to sell, purchase, let or hire immovable property, having regard to the general experience which such person has concerning property transactions and the circumstances surrounding the transaction or proposed transaction;
- 5.6 use any firm or trading name in respect of his business if such name may give rise to confusion on the part of the public in respect of the nature of the business carried on by him;

- 5.7 inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from a purchaser or the seller (as the case may be), unless such offer -
- 5.7.1 is in writing; and
  - 5.7.2 has been signed by the offeror; and
  - 5.7.3 is to the knowledge of the estate agent concerned, a *bona fide* offer;
- 5.8 affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let unless -
- 5.8.1 the seller or lessor (as the case may be) has given his written consent to do so; and
  - 5.8.2 the estate agent concerned in fact has a mandate to sell or let the property, or in fact has sold or let the property, as the case may be.

## 6. DUTIES IN RESPECT OF OFFERS AND CONTRACTS

- 6.1 No estate agent -
- 6.1.1 who has a mandate to sell or purchase immovable property shall wilfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a contract of sale in respect of such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;
  - 6.1.2 who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to induce the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller;
  - 6.1.3 shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.
- 6.2 An estate agent shall -
- 6.2.1 explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he is unable to do so, refer such party to a person who can do so;
  - 6.2.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted by the expiry date thereof, forthwith notify the offeror of such fact;
  - 6.2.3 without undue delay furnish every contracting party with a copy of an agreement of sale, lease, option or mandate with which he is concerned as an estate agent, provided that the foregoing shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.

## 7. PROHIBITION AGAINST UNDUE INFLUENCE

No estate agent shall without good and sufficient cause, directly or indirectly, in any manner whatsoever, solicit, encourage, persuade or influence any party or potential party to a pending or a completed transaction to utilise or refrain from utilising -

- 7.1 the services of any particular attorney, conveyancer or firm of attorneys;
- 7.2 the services or financial assistance offered by any financial institution to members of the public in general; or
- 7.3 the financial assistance offered to such party by any person.

## 8. REMUNERATION

No estate agent shall -

- 8.1 stipulate for, demand or receive directly or indirectly any remuneration, commission, benefit or gain arising from or connected with any completed, pending or proposed contract of sale or lease which is subject to -
  - 8.1.1 a suspensive condition, until such time as that condition has been fulfilled; or
  - 8.1.2 a resolutive condition, during the time that the transaction may fall away as a result of the operation of the said resolutive condition: Provided that the foregoing shall not apply if -
    - (aa) good cause exists; and
    - (bb) the party liable for the payment of the remuneration, commission, benefit or gain has expressly consented in a written document executed independently of the contract in question, to such payment at any time, notwithstanding the fact that the said contract is subject to a suspensive or resolutive condition, as the case may be; and
    - (cc) such document contains an explanation of the implications and financial risks for such party of such payment; and
    - (dd) such document is signed by such party and the estate agent in question;
- 8.2 convey to his client or any other party to a completed or proposed transaction in which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the board or any institute or association of estate agents or any other body;
- 8.3 introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that such person has already been introduced to such property or the seller or lessor thereof by another estate agent and that there is a likelihood that his client may have to pay commission to such other, or to more than one estate agent, should the sale or lease be concluded through his intervention: Provided that the foregoing shall not apply if the estate agent has informed his client of such likelihood and obtained his written consent to introduce such party to the property or the seller or lessor thereof;
- 8.4 include, or cause to be included, or accept the benefit of, any clause in a mandate or in a contract of sale or lease of immovable property, providing for payment to him by the seller or lessor of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of the fact whether the purchaser or lessee is financially able to fulfill his obligations in terms of the said contract: Provided that the foregoing shall not apply if -

- (aa) good cause exists; and
  - (bb) the seller or lessor has, prior to his signature of the contract or mandate (as the case may be) consented in writing in a document executed independently of the said mandate and contract, to such payment; and
  - (cc) such document contains an explanation of the implications and financial risks for the seller or lessor of such payment; and
  - (dd) such document is signed by both the estate agent and the seller or lessor;
- 8.5 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, entitling him to deduct from any money entrusted to him in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract: Provided that the foregoing shall not be so construed so as to prohibit an estate agent from making such deduction when such money is actually paid over by him to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain.

## 9. TRUST MONEY AND INTEREST

An estate agent -

- 9.1 shall not solicit or influence any person entitled to trust funds in the agent's possession or under his control to make over or pay to the estate agent directly or indirectly any interest on moneys deposited or invested in terms of section 32(1) or 32(2)(a) of the Act;
- 9.2 shall, before he receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that unless they agree in writing to whom interest earned on such money must be paid, the interest shall, in terms of section 32(2)(c) of the Act, accrue to the Estate Agents Fidelity Fund;
- 9.3 shall, if any money is invested by him pursuant to section 32(2)(a) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the estate agent -
  - 9.3.1 invest such money at the best interest rate available in the circumstances at the bank or building society where he normally keeps his trust account or accounts; and
  - 9.3.2 pay the full amount of the interest which accrued on the investment to the party entitled to such interest, or the board (as the case may be), subject to any written agreement in this regard between him and such party;
- 9.4 shall not include, or cause to be included, or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser: Provided that the foregoing shall not apply if -
  - (aa) good cause exists; and
  - (bb) the purchaser has prior to his signature of the contract in question, consented in writing in a document executed independently of the said contract, to such payment; and
  - (cc) such document contains an explanation of the implications and financial risks of such payment for the purchaser; and
  - (dd) such document is signed by both the seller and the purchaser and the estate agent in question.

**10. CONFIDENTIALITY**

No estate agent shall, without just cause, divulge to any third party any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he acted as an estate agent.

**11. VICARIOUS RESPONSIBILITY**

Every estate agent who is the sole proprietor of an estate agency business or a partner in a partnership or a director of a company or a member of a close corporation contemplated in paragraph (b) of the definition of "estate agent" in section 1 of the Act carrying on the business of an estate agent, shall be held responsible for any contravention of or failure to comply with this code of conduct by any other partner, director, or member or by any estate agent in the service of such sole proprietorship, partnership, company or close corporation, unless he has prior to such contravention or failure to comply taken all reasonable steps to prevent the same and could not in the circumstances have prevented such contravention or failure to comply.

**12. GOVERNMENT NOTICES R 1799 OF 29 AUGUST 1986 AND R 2106 OF 3 OCTOBER 1986 ARE HEREBY REPEALED.**

**13. THIS NOTICE WILL COME INTO OPERATION ON 1 APRIL 1993.**