



**ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA**

NOTICE TO: HOUSING OWNERS ASSOCIATIONS (HOAs)

ALL ESTATE AGENTS, MANAGING AGENTS; AND ALL STAKEHOLDERS

1. PURPOSE

To prohibit unlawful practices and promote acceptable standard of conduct within HOA's in the rendering of estate agency services.

2. UNLAWFUL PRACTICES PERPETUATED BY HOA'S

2.1 Home-owners Associations are established in terms of section 1 of the Community Schemes Ombud Service Act, 2011. The Principle aim of the Community Schemes Ombud Service Act, 2011 is to ensure good governance of community schemes which include home-owners associations.

2.2 In pursuit of its roles and responsibilities, particularly, when engaging services of estate agents, certain HOA's perform practices that are in contravention of the Estate Agency Affairs Act, 1976, the Code of Conduct and the Regulations made hereunder.

2.3 Some of these unlawful practices, include, amongst others:

- The practice of requiring estate agents to pay accreditation fees in return for the exclusive marketing of properties situated within the HOA's;

- The practice of restricting home-owners to utilize services of accredited estate agents and penalty levies for those who do not use such services thereby impairing such home-owners freedom of choice;
- The practice of claiming a percentage of the commission as earned by an estate agent;

3. **CONDUCT FALLING SHORT OF COMPLIANCE WITH THE CODE OF CONDUCT, THE REGULATIONS AND THE ESTATE AGENCY AFFAIRS ACT, 1976**

3.1 Regulation 2 OF THE Code of Conduct to the Estate Agency Affairs Act, 1976 dealing with the general **duty to protect the public interest** provides *that an estate agent shall not in or pursuant to the conduct of his business do or omit to do any act which is or maybe contrary to the integrity of estate agents in general.*

3.2 Sections 26 and 32 of the Estate Agency Affairs Act, 1976

3.3 Regulation 2.1 of the Code of Conduct and the provisions of sections 26 and 32 of the Estate Agency Affairs Act, 1976 as substantiated above, prohibits the following practices within HOA's:

Payment of accreditation fees to HOA's by estate agents in return for the exclusive marketing of properties situated within the areas governed or controlled by such HOA's;

- Involvement of estate agents in transactions that are unlawful in terms of consumer protection legislation due to their restrictive nature in relation to the choice that can be exercised by the home owner;
- Claiming of a percentage of the commission earned by an accredited estate agent thereby contravening sections 26 and 32 of the Estate Agency Affairs Act, 1976;

4. **LEGAL CONSEQUENCES**

4.1 Estate agents involved in practices of payment of accreditation fees to HOA's or performing any action impairing the integrity of such estate agent may be

subjected to a disciplinary process which may result in him/her being liable for a fine of up to R25 000 or an appropriate sanction prescribed by the Estate Agency Affairs Act, 1976.

- 4.2 A HOA involved in the determination of accreditation fees, restrictive marketing and sale of properties which are contrary to the consumer protection legislation or claiming of a percentage of commission earned by an estate agent may be subjected to disciplinary processes of the Estate agency Affairs Board and be held liable in terms of the Estate Agency Affairs Act, 1976.

5. **CONCLUSION**

This Practice Note is issued in the interest of ensuring good governance within HOA's and to ensure that estate agents operating within HOA's apply fair and lawful practices which promote the public interest generally.

Issued by:
B S CHAPLOG
Chief Executive Officer

ESTATE AGENCY AFFAIRS BOARD

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