



133 No. 45735 GOVERNMENT GAZETTE, 14 JANUARY 2022

CONTENTS

1. Definitions	2
2. Introduction	3
3. Purpose	4
4. Applicability	4
5. Legislative mandate	4
6. The Code of Conduct under regulation 34	4
Regulation 34.1 Supplementation	4
Regulation 34.2 Duties Applicable to All Property Practitioners.....	5
Regulation 34.3 Duties Applicable to Estate Agents	6
Duty to disclose	8
Duty not to make misrepresentations or false statements or to use harmful marketing techniques	9
Duties in respect of offers and contracts	11
Regulation 35 UNDESIRABLE BUSINESS PRACTICES	12
Section 62 Sanctionable conduct	13

The Property Practitioners Authority, with the approval of the Minister of Human Settlement, has in terms of section 77 of the Property Practitioners Act, framed the code of conduct in regulations 34 as set out hereto.

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The rules in this Code should guide the conduct of Property Practitioners, in conducting their activities.

1. Definitions

- 1.1 "estate agent" means¹ –
- 1.1.1 any person who performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking or the management of any property;
- 1.1.2 a trust in respect of which the trustee, for the acquisition of gain on the account of the trust, directly or indirectly in any manner holds out that it is a business which, on the instruction of or on behalf of any other person, performed any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking;
- 1.1.3 for the purposes of sections 34, 46, 48, 59, 60, 61 and 65 –
- 1.1.3.1 any director of a company or a member of a close corporation that performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking;
- 1.1.3.2 any person who is employed by any person who performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act, other than insofar as it relates to any business undertaking;
- 1.1.3.3 any trustee of a trust referred to in sub- regulation 1.16.2

¹ Regulation 1.16

- 1.1.3.4 any person who is employed by any person who performs any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act other than insofar as it relates to any business undertaking, to manage, supervise or control the day-to-day operations of the business of that property practitioner;
- 1.1.4 any person who is employed by or renders services to an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979, other than an attorney or candidate Attorney, and his duties consist wholly or primarily of the performance of any act referred to in subparagraphs (i), (ii), (iii) of paragraph (a) of the definition of "property practitioner" in the Act other than insofar as it relates to any business undertaking, on behalf of such attorney or professional company whose actions will be specifically covered by the Legal Practitioners' Fidelity Fund and not the Property Practitioners Fidelity Fund;
- 1.1.5 includes any person who carries on any activity referred to in sub-regulation 39.1.1 and includes any person who fell within the ambit of any of subregulations 1.16.1 to 1.16.5 to 1.1.5 foregoing at the time when he or she was guilty of any act or omission which constitutes sanctionable conduct

2. Introduction

The Property Practitioners Act provides as one of its objects the protection of the consumer. Property Practitioners therefore have a duty to uphold and protect the interest of the consumer. A central feature of that duty is to ensure that Property Practitioners can uphold and maintain the highest standards of ethical conduct. This Code² attempts to assist Property Practitioners in achieving that goal. While the Code should be considered a reliable and instructive guide for property practitioners, the obligations it identifies are only the minimum standards of professional conduct expected of members of the profession.

Property Practitioners are encouraged to aspire to the highest standards of, integrity, honour and competence in the practice of their profession, whether or not such standards are formally addressed in this Code.

The Preamble provides³ amongst others as follows;

AND WHEREAS consumers require assistance when conducting property transactions;

AND WHEREAS property practitioners can play an important role in providing such assistance;

² Regulation 34

³ Property Practitioners Act 22/2019

AND WHEREAS it is necessary to ensure that such assistance is rendered in a professional way;

AND it is necessary to regulate circumstances when such assistance is not rendered in a professional way.

3. Purpose

The Act⁴ requires that every property practitioner should be able on request by a consumer provide the consumer with a copy of the code of conduct. The PPRA has re produced a copy of this code of conduct to enable property practitioners to comply with the requirement.

4. Applicability

This Code of Conduct applies to all Property Practitioners defined under section 1 of the Property Practitioners Act⁵

5. Legislative mandate

Section 61 (1) provides that, the Minister must, after consultation with the Authority, prescribe a code of conduct which every property practitioner must comply with, and;

Section 61 (2) provides that, the chief information officers of respectively the Authority and the Department, as the case may be, must on their respective websites publish the code of conduct current at the time. The publishing of this Code of conduct by the Authority is a fulfilment of the legislative requirement.

6. The Code of Conduct under regulation 34

NO:	REGULATION
1.	Regulation 34.1 Supplementation This code of conduct may be supplemented by the Authority after the effective date so as to provide for the regulation of any industry not catered for in this code of conduct as at the effective date, provided always that the Authority shall consult in good faith with the industry representative bodies in the industry concerned as to the terms of such proposed code of conduct prior to any such supplementation.

⁴ Section 61(3)

⁵ Section 1 (a) to (g)

2.

Regulation 34.2 Duties Applicable to All Property Practitioners

34.2.1 In terms of a property practitioner's general duty to members of the public and other persons or bodies, a property practitioner –

34.2.1.1 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 property practitioners in general;

34.2.1.2 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;

34.2.1.3 shall not accept a mandate if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence, or he has not completed the required qualifications, 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;

34.2.1.4 shall not in his capacity as a property practitioner willfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of a property practitioner;

34.2.1.5 shall comply with both the Act, these regulations and all applicable bylaws; and

34.2.1.6 shall not through the medium of a company, close corporation or third party, or by using such 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 a property practitioner.

34.2.1.7 A property practitioner –

34.2.1.8 shall not solicit or influence any person entitled to trust funds under his control to make over or pay to the property practitioner directly or indirectly any interest on moneys deposited or invested in terms of section 54 (1) or 54 (2) of the Act;

34.2.1.9 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 may accrue to the Property Practitioners Fidelity Fund; and 34.2.1.10 shall, if any money is invested by him pursuant to section 54 (2) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the property practitioner – 34.2.1.10.1 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 34.2.1.10.2 pay the full amount of the interest which accrued on the investment to the party entitled to such interest. 34.2.2 No property practitioner 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 a property practitioner.
3.	Regulation 34.3 Duties Applicable to Estate Agents Mandates 34.3.1 No estate agent shall – 34.3.1.1 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; 34.3.1.2 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; 34.3.1.3 accept a sole mandate or the extension of the period of an existing sole mandate,

	unless –
34.3.1.3.1	all the terms of such mandate (or extension, as the case may be), are in writing and signed by the client in a manner acceptable in law, including by way of an electronic signature as permitted under the Electronic Transactions and Communications Act, 2002; and
34.3.1.3.2	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);
34.3.1.4	accept a sole mandate which contains a provision conferring upon him –
34.3.1.4.1	an option to extend the sole mandate for a certain period after expiry of the sole mandate; or
34.3.1.4.2	a mandate to continue to render the same service referred to in the sole mandate, after expiry of the sole mandate;
34.3.1.5	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;
34.3.1.6	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;
34.3.1.7	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;
34.3.1.8	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;

	34.3.1.9 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; or 34.3.1.10 accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client – 34.3.1.10.1 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 34.3.1.10.2 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 34.3.2 An estate agent shall – 34.3.2.1 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; 34.3.2.2 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; and 34.3.2.3 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 only client in respect of that property. 34.3.3 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 34.3.4 No estate agent shall – 34.3.4.1 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; 34.3.4.2 willfully 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; 34.3.4.3 claim to be an expert or to have specialised knowledge in respect of any service if, in fact, he is not such an expert or does not have such special knowledge; 34.3.4.4 advertise or otherwise market immovable property in respect of which he 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; 34.3.4.5 without derogating from the generality of the foregoing –

34.3.4.5.1	willfully or negligently mislead or misrepresent in regard to any matter pertaining to the immovable property in respect of which he has a mandate; or
34.3.4.5.2	use any harmful or misleading marketing technique or method or undesirable practice as declared in terms of section 63 of the Act to influence any person to confer upon him a mandate to render any 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;
34.3.4.6	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;
34.3.4.7	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 seller (as the case may be), unless such offer –
34.3.4.7.1	is in writing;
34.3.4.7.2	has been signed by the offeror in manuscript, albeit that the offer was subsequently electronically transmitted to the estate agent; and
34.3.4.7.3	is, to the knowledge of the estate agent concerned, a bona fide offer; or
34.3.4.8	affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let, unless –
34.3.4.8.1	the seller or lessor (as the case may be) has given his consent to do so; and
34.3.4.8.2	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; or
34.3.4.9	affix or erect any advertising board or notice to solicit business –

	34.3.4.9.1 on local authority property, without express written approval by the local authority; or 34.3.4.9.2 which is in contravention of the regulations of the advertising by-laws of the applicable local authority.
6.	Duties in respect of offers and contracts 34.4 No estate agent – 34.4.1 who has a mandate to sell or purchase immovable property shall willfully 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 legally valid 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; 34.4.2 who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to unduly influence the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller; 34.4.3 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. 34.5 An estate agent shall – 34.5.1 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; 34.5.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted forthwith notify the offeror of such fact; and 34.5.3 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

	aforegoing shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.
8.	Regulation 35 UNDESIRABLE BUSINESS PRACTICES 35.1 Pursuant to the provisions of section 63 (1) of the Act, the following business practices are prohibited – 35.1.1.1 any arrangement in terms of which any party or person that directly or indirectly controls or manages any franchised business, requires that any franchise operation or outlet of such franchised business may only be marketed, promoted or disposed of through the agency of the franchisor or a property practitioner designated by the franchisor or which imposes any form of penalty in respect of a failure to do so; and 35.1.1.2 any arrangement in terms of which any party or person that directly or indirectly controls or manages any residential property development, including anybody corporate or homeowners' association (the "managing organisation") – 35.1.1.3 receives money or any other reward in exchange for a benefit, advantage or other form of preferential treatment in respect of the marketing of properties in such property development; 35.1.1.4 requires that any property in such property development may only be disposed of through the agency of the managing organisation or a property practitioner designated by the managing organisation or which imposes any form of penalty in respect of a failure to do so; 35.1.1.5 requires that any property in such property development may only be disposed of to the managing organisation or a person or entity designated by the managing organisation; 35.1.1.6 effectively provides an advantage to any one property practitioner or group of property practitioners over and above any other property practitioners, in providing services in relation to properties in such property development; or 35.1.1.7 effectively excludes or disadvantages any property practitioner or group of property practitioners from being able to provide services in relation to properties in such property development.

9.	Section 62 Sanctionable conduct 62. (1) A property practitioner is guilty of sanctionable conduct if he or she or it— (a) in the same transaction acts as a property practitioner on behalf of two or more persons whose interests are not in all material respects identical in respect of that transaction, and receives remuneration from all parties concerned in respect of such transaction, unless all affected persons in writing agree thereto; (b) fails in respect of any act performed by him or her or it as a property practitioner to give a full and proper explanation in writing, within 30 days of being called upon by the Authority in writing to do so, to any person having a material interest in the performance of such act; (c) fails to pay any money due to the Authority or in respect of the Fund within one month after such monies become due; (d) fails to furnish in writing within a period determined by the Authority any information that the Authority has requested in writing and reasonably requires in order to properly exercise its powers under this Act; (e) fails to comply with or contravenes any provision of the code of conduct; (f) in his or her capacity as a director of a company, or member contemplated in paragraph (b) of the definition of “property practitioner” in section (1), of a close corporation, or trustee of a trust, which is a property practitioner and which failed to comply with section 50 or 51, did not take all reasonable steps to prevent such failure; (g) carries on an undesirable practice prohibited under section 63; (h) commits an offence involving an element of dishonesty; (i) fails to inform the Authority within 14 days of a change in his, her or its contact details; (j) differentiates distinguishes or excludes consumers directly or indirectly on the basis of their race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age,

	disability, religion, conscience, belief, culture, language and birth or commit a criminal offence while performing a function of a property practitioner; or (k) fails to comply with or contravenes any provision of this Act. (2) Subsequent ratification or correction of any conduct contemplated in subsection (1) does not constitute a defence. (3) If a property practitioner is found guilty of sanctionable conduct, the Authority may after the application of sections 3 and 5 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)— (a) withdraw the Fidelity Fund certificate of that property practitioner; (b) impose on that property practitioner a fine not exceeding the maximum amount determined by the Minister of Justice and Correctional Services for the purposes of section 29(1)(a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); or (c) reprimand such property practitioner and note his, her or its transgression on its website, provided that the Authority may suspend payment of a fine or any portion thereof or the withdrawal of any Fidelity Fund certificate for a period not exceeding three years and on the further conditions that the Authority may determine. (4) The acquittal or conviction of a property practitioner by any court of law upon any criminal charge is not a bar to proceedings against him or her or it under this Act on a charge of sanctionable conduct, despite the facts set forth in the charge of sanctionable conduct constituting, if proved, the offence set forth in the criminal charge on which he, she or it was so acquitted or convicted or any other offence on which he, she or it might have been convicted at his, her or its trial on that criminal charge.
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