

## 34 CODE OF CONDUCT

### 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.

**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.

### 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.

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.

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.

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 foregoing shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.

Remuneration

- 34.6 No estate agent shall -
- 34.6.1 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 -
- 34.6.1.1 a suspensive condition, until such time as that condition has been fulfilled; or

- 34.6.1.2 a resolutive condition, during the time that the transaction may fall away as a result of the operation of the said resolutive condition;
- 34.6.2 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 Authority or any institute or association of estate agents or any other body;
- 34.6.3 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:
- 34.6.3.1 such person has already been introduced to such property or the seller or lessor thereof by another estate agent; and
- 34.6.3.2 that there is a likelihood that his client may have to pay commission to such other estate agent, or to more than one estate agent, should the sale or lease be concluded through his intervention;
- 34.6.4 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 whether the purchaser or lessee is financially able to fulfill his obligations in terms of the said contract;
- 34.6.5 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 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; or
- 34.6.6 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 -
- 34.6.6.1 good cause exists; and

- 34.6.6.2 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
- 34.6.6.3 such document contains an explanation of the implications and financial risks of such payment for the purchaser; and
- 34.6.6.4 such document is signed by both the seller and the purchaser and the estate agent in question; and
- 34.6.7 shall not operate a trust account, other than in compliance with the Act and these regulations.