

LEPPARD LEGISLATION WATCH

MAY 2017

Yet another month of little activity on legislation which may impact our industry, although some previously announced amendments came into effect on 1 April 2017. While not having a direct impact on us, those involved in the property industry or who have clients who are involved, should take note of the draft Property Practitioners Bill, which looks at repealing the Estate Agency Affairs Act (see brief note below).

What to watch – selected recent developments

Financial Zone

- ❖ Long-term Insurance Act – a reminder that the new requirements for contracts identified as health policies commenced on 1 April 2017. (See Leppard Legislation Watch February 2017)
- ❖ Short-term Insurance Act – a reminder that the new requirements for contracts identified as accident and health policies commenced on 1 April 2017. (See Leppard Legislation Watch February 2017)
- ❖ Income Tax Act – the requirements for tax-free investments were amended on 1 March 2017 and 1 April 2017.
- ❖ Unemployment Insurance Act – the UIF benefit threshold increased on 1 April 2017, to R 212 539 per annum, which translates to R 17 712 per month, or R 4 087 per week.
- ❖ Value-added Tax Act – a reminder that from 1 April 2017 a vendor that accounts for tax payable on a payments basis must use the invoice basis if the consideration of a supply is for an amount of R 100 000 or more (unless the vendor is an excluded public entity vendor or the supply involves fixed property costs).

General

- ❖ Property Practitioners Bill – The Bill proposes to repeal the Estate Agency Affairs Act and seeks to regulate a broad spectrum of people involved in the property industry. The proposed definition of a property practitioner is very broad and tries to catch almost any person dealing with property, regardless

of the amount or type of activity involved. In so doing, it covers some areas that are already covered by other legislation or would best be covered by other legislation, such as the Financial Advisory and Intermediaries Act, the Property Valuers Profession Act and the Communal Property Associations Act.

The proposed definition of a property practitioner includes estate agents, rental agents, mortgage originators, property inspectors, valuers (in certain instances), property managers and more. The definition seeks to regulate certain activities related to the: (i) Auction, sale in execution, and sale of a property or business undertaking; (ii) Letting, hiring, collecting or receiving lease money in relation to a property or business undertaking; (iii) Financing in connection with the management, sale or lease of a property or business undertaking, specifically including a provider of bridging finance and a bond broker; (iv) Assessment of property to determine defects, values and/or fitness for use; (v) Intermediaries or facilitators primarily involved in the selling, buying, hiring or letting of property or business undertakings, specifically including home ownership associations; (vi) Services to be added by the Minister from time to time; (vii) Selling or marketing any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development; and (viii) For remuneration managing a property for another. [No definition is provided for 'business undertaking']. The proposed definition also provides for the specific inclusion of certain trustees, directors, members of closed corporations, employees and past property practitioners.

The proposed definition of property refers to immovable property, and any associated interest, right or duty as envisaged in section 2 of the Draft Bill. Section 2 of the Draft Bill simply states the law will apply to: (i) The marketing, promotion, managing, sale, letting, financing and purchase of immovable property; and (ii) Any rights, obligations, interests, duties or powers associated with or relevant to such property.

The objectives of the Bill include, amongst others: (i) Licensing property practitioners; (ii) Promoting historically disadvantaged individuals and groups, and transforming the market; (iii) Structured interventions and the creation of property consumer owner programs; and (iv) Creating a mechanism for directives received from the Minister from time to time.

A new regulatory body to be called the Property Practitioners Regulatory Authority will replace the Estate Agency Affairs Board. The Board of the Authority must regulate the conduct of the property practitioners in dealing with the consumers in so far as marketing, managing, financing, letting, renting, hiring, sale and purchase of property are concerned; and generally ensure that the Act is complied with. It must also implement measures to ensure that the property sector is transformed.



A Property Practitioners Ombuds Office will be established to consider and dispose of complaints lodged in terms of the Act in respect of the financing, marketing, managing, letting, hiring, sale and purchase of property and to provide mechanisms for the resolution of those complaints. The Authority may also appoint inspectors to determine whether the Act is being complied with. The inspector may at any reasonable time and without prior notice, conduct an inspection and may without a warrant enter the premises of a property practitioner and request, inspect and seize a variety of documents from the property practitioner.

As in the past, there will be a Fidelity Fund called the Property Practitioners Fidelity Fund whose primary purpose will be to reimburse persons who suffer financial loss as a result of theft of trust money committed by a property practitioner who was in possession of a Fidelity fund Certificate at the time of the theft, or caused by the failure of a property practitioner to timeously obtain or make payment for such certificate. No-one will be able to claim against the Authority unless a criminal charge has been laid against the property practitioner accused of the theft, and the Minister may put a cap on the amount that the Fund may pay out in respect of any type of claim. The Bill makes provision for the possible introduction of a professional indemnity scheme by providing that the Authority may in the public interest arrange any group insurance scheme with any insurer registered as a short-term insurer in terms of the Short-term Insurance Act for the provision of insurance to cover property practitioners' liability to members of the public on the grounds of malpractice, up to an amount determined by the Board.

Every property practitioner must apply annually for a Fidelity Fund certificate and may not practice without being in possession of such certificate. Each individual is required to have a Fidelity Fund certificate, irrespective of the form of the entity through which the business is being conducted.

Every property practitioner must open and keep one or more separate trust accounts, and must also appoint an auditor.

A new Code of Conduct will be issued by the Minister and may also include a list or guideline on undesirable practices.

The comment deadline for the Bill was very short and closed on 30 April 2017.

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