



Republic of Namibia  
Annotated Statutes

**REGULATIONS**

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REGULATIONS MADE IN TERMS OF

**Estate Agents Act 112 of 1976**  
section 33(1)(j),(k) and (l)

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**Regulations relating to Trust Account of an Estate Agent  
and Investment of Trust Moneys**

RSA Government Notice R.1472 of 1977

(RSA GG 5694)

came into force on date of publication: 29 July 1977

The Government Notice that publishes these Regulations notes that they were made by the Minister of Economic Affairs after consultation with the Estate Agents Board.

**as amended by**

**RSA Government Notice R.604 of 1979 (RSA GG 6364)**

came into force on date of publication: 23 March 1979

as amended by GN 221/2015 (GG 5845)

The Government Notice that publishes these Regulations notes that they were made by the Minister of Economic Affairs after consultation with the Estate Agents Board.

**RSA Government Notice R.2418 of 1980 (RSA GG 7312)**

came into force on date of publication: 28 November 1980

The Government Notice that publishes these Regulations notes that they were made by the Minister of Industries, Commerce and Tourism after consultation with the Estate Agents Board.

**RSA Government Notice R.948 of 1981 (RSA GG 7566)**

came into force on date of publication: 1 May 1981

The Government Notice that publishes these Regulations notes that they were made by the Minister of Industries, Commerce and Tourism after consultation with the Estate Agents Board.

**RSA Government Notice R.1415 of 1981 (RSA GG 7648)**

came into force on date of publication: 3 July 1981

The Government Notice that publishes these Regulations notes that they were made by the Minister of Industries, Commerce and Tourism after consultation with the Estate Agents Board.

**RSA Government Notice R.2499 of 1981 (RSA GG 7913)**

came into force on date of publication: 13 November 1981

The Government Notice that publishes these Regulations notes that they were made by the Minister of Industries, Commerce and Tourism after consultation with the Estate Agents Board.

**RSA Government Notice R.1157 of 1985 (RSA GG 9759)**

came into force on date of publication: 30 May 1985

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

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The Government Notice that publishes these Regulations notes that they were made by the Deputy Minister of Finance and of Trade and Industry acting on behalf of the Minister of Trade and Industry after consultation with the Estate Agents Board.

**Government Notice 221 of 2015 (GG 5845)**

**came into force on date of publication: 1 October 2015**

The Government Notice that publishes these Regulations notes that they were made by the Minister of Industrialization, Trade and SME Development after consultation with the Estate Agents Board. GN 221/2015 erroneously states that it amends the regulations contained in RSA GN R.604/1979.

**The administration of the underlying Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. However, the SWA Estate Agents Amendment Act 28 of 1987 (OG 5476) states in section 26(1):**

“The regulations published under section 33 of the principal Act in the *Government Gazette* of the Republic of South Africa which were of force and effect in the Republic immediately before the commencement of this Act [Act 28/1977, which commenced on 1 April 1988] shall, subject to the provisions of subsection (2), apply in the territory of South West Africa as if it were made by the Cabinet under the said section 33 and published in the *Official Gazette* on the date of commencement of this Act.”

**The Estate Agents Amendment Act 28 of 1987 (OG 5476) provides, without amending the regulations, that any reference -**

- (i) to the *Gazette* shall be construed as a reference to the *Official Gazette*;
  - (ii) to the Estate Agents Act, 1976, shall be construed as a reference to the said Act, as amended by the provisions of Act 28 of 1987;
  - (iii) to the Estate Agents Board shall be construed as a reference to the South West African Estate Agents Board;
  - (iv) to the Estate Agents Fidelity Trust Fund, shall be construed as a reference to the Estate Agents Fidelity Trust Fund for South West Africa; and
  - (v) to the Minister of Commerce and Consumer Affairs shall be construed as a reference to the Cabinet.
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## ARRANGEMENT OF REGULATIONS

[These regulations do not have headings.]

### FORM OF AUDITOR'S REPORT

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1. In these regulations, unless the context otherwise indicates -

“the Act” means the Estate Agents Act, 1976 (Act 112 of 1976);

“these regulations” includes the Schedule thereto;

“trust balance” means the balance standing to the credit of any person in the books and records of an estate agent, representing amounts held or received on behalf of such person, less any amount paid out in terms of a mandate from such person and less any commission and collection fee due to such estate agent up to the date of balancing.

- 2.

- 2.1

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

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- 2.1.1 An estate agent shall cause the accounting records intended in section 29(a) and 32(3)(a) of the Act to be audited in accordance with the provisions of section 29(b) and 32(3)(b), by the auditor intended in section 29(b), within four months of the date stated by him as the end of the financial year of his estate agency business in his application for the issue to him of his valid fidelity fund certificate.
- 2.1.2 The date intended in regulation 2.1.1 shall not be altered by an estate agent without the prior written consent of the board having been obtained.
- 2.1.3 The report to be submitted to the board in terms of section 32(4) of the Act shall be in the form specified in the Schedule to these Regulations.

**[regulation 2.1 substituted by RSA GN R.948/1981]**

2.2 If the auditor is unable to furnish an unqualified report in the form of the Schedule hereto, the fact thereof and the reasons therefor shall be fully set out in the report transmitted by him in place thereof which shall otherwise be as far as possible in the form of the said Schedule.

2.3 Every auditor who has commenced or carried out an audit in terms of sections 29(b) and 32(3)(b) of the Act shall without delay report direct to the board if -

- 2.3.1 it comes to his notice that at any date the aggregate of the amounts of the funds in an estate agent's trust account kept in terms of section 32(1) of the Act, together with any funds available in a separate savings or other interest-bearing account kept in terms of section 32(2)(a) of the Act and any trust moneys held according to the estate agent's books of account and accounting records in cash on hand, is less than the total of the trust balances shown in the trust account in the ledgers of the estate agent;
- 2.3.2 any material queries concerning the accounting systems, accounting records, the books of account or entries therein or the trust account, savings account or interest-bearing account referred to in 2.3.1 which he has raised with such estate agent have not been fully and promptly dealt with to his satisfaction.

**3.**

3.1 After the occurrence of an event contemplated in section 32(7) of the Act -

3.1.1 no moneys shall be withdrawn from or paid out of the trust account or savings or other interest-bearing account in question without the consent in writing of the board;

3.1.2 the estate agent concerned shall -

3.1.2.1 if it is an event contemplated in section 32(7)(b) of the Act, forthwith notify the board in writing thereof;

3.1.2.2 as soon as may be practicable in writing notify the bank, building society or institution referred to in section 32(2)(a) of the Act with which he keeps the trust account or savings or other interest-bearing account in question of the occurrence of any such event and also that in future no moneys may be withdrawn from or paid out of any such account without the consent in

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

---

writing of the board: Provided that the board itself may at any time so notify such bank, building society or other institution;

3.1.2.3 as soon as may be practicable in writing furnish the board with the name of the persons entitled to any moneys in any such account, the amount to which any such person is entitled and the reasons therefor;

3.1.2.4 having complied with the requirements of regulations 3.1.2.1, 3.1.2.2 and 3.1.2.3 and with the consent in writing of the board, pay to the persons referred to in regulation 3.1.2.3 and to such other persons who in the opinion of the board are entitled to any moneys in such accounts, out of such accounts the moneys to which they are entitled.

3.2 If after payment in accordance with regulation 3.1.2.4 a balance remains in any of the accounts in question, the board shall publish in the *Gazette* and in two newspapers circulating in the district in which the estate agent concerned acted as such, a notice stating that there is such a balance and inviting persons to lodge, within 30 days after the date of such notice, with the board in writing any claim which they may have to such balance or part thereof.

3.3 If no person has proved any claim in terms of regulation 3.2 to the balance in question or any part thereof, the estate agent concerned shall be entitled to such balance, or after payment of any part of such balance to any person who has proved that he is entitled thereto in terms of regulation 3.2 the estate agent concerned shall be entitled to the remainder.

3.4 After all the moneys in the accounts in question have been paid in terms of this regulation to the persons entitled thereto, the estate agent concerned shall wind up such accounts and in writing notify the board thereof.

#### 4.

4.1 Any interest received by or credited to an estate agent in respect of any period ending on the last of February in each year and payable to the fund in terms of section 32(2)(c) shall be paid regularly and promptly but in any event not later than the last day of May in that year, to the fund or its nominee.

4.2 The board may, in terms of section 32(2)(d), refund 50 per cent of all interest paid to the fund in terms of regulation 4.1, to such estate agent.

[regulation 4 substituted by RSA GN R.1415/1981]

5. For the purpose of balancing his books and records in terms of section 32(3)(b) of the Act an estate agent shall at intervals of not more than one calendar month extract a list of the balances standing to the credit of any person and shall keep the lists of such trust balances for not less than three years from the date of which the same were extracted.

[regulation 5 substituted by RSA GN R.604/1979 and amended by RSA GN R.2418/1980]

#### SCHEDULE

[The Schedule is substituted by RSA GN R.604/1979, amended by RSA GN R.2499/1981 (which substitutes paragraph 2.5 of the Auditor's Report Form in the Schedule), substituted by RSA GN R.1157/1985 and apparently substituted by GN 221/2015.]

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

---

**GN 221/2015 directs that the “Annexure to the Regulations is amended by inserting the letter ‘C’ after the word ‘Annexure’”. However, the word “Annexure” could not be located in the principal regulations in RSA GN R.1472/1977 or in any the amendments to the regulations.**

**GN 221/2015 also directs the insertion of “Annexure C” after “Annexure B”. However, the regulations prior to that amendment have only one Schedule and no Annexures. The Schedule contains a form for an Auditor’s Report, which is also the subject of “Annexure C”. Therefore, it has been assumed that “Annexure C” was intended to replace the Schedule.]**

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

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**FORM OF AUDITOR'S REPORT**

To view content without printing, scroll down.

To print at full scale (A4), double-click the icon below.



GN 221/2015 - Form  
of Auditor's Report

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AUDITOR'S REPORT IN TERMS OF SECTION 32(4) OF THE  
ESTATE AGENTS ACT, 1976 (ACT 112 OF 1976)  
(Regulation 2)

\_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_ (*Insert Name of the Estate Agency Entity*)

P O Box \_\_\_\_\_  
Windhoek  
Namibia

Report of the independent auditor \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) ("the estate agent") in respect of the Estate Agent's Trust Account(s) to the Director(s)/Member(s)/Practitioner(s) \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*), and The Namibia Estate Agents Board.

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

---

We have completed our engagement to determine whether the estate agent's trust accounts of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) were maintained in terms of Sections 29, 32(1)(2)(a)(b)(c) and (3)(a)(b) of the Estate Agents Act, No. 112 of 1976 (the "Act"), for the period from \_\_\_\_\_ 20\_\_\_\_ to \_\_\_\_\_ 20\_\_\_\_ or year ended \_\_\_\_\_ and report our conclusion thereon, together with any instances of non-compliance that came to our attention (Section A). We are also required to report on certain additional matters of compliance with other Acts (Section B) and report on certain information extracted from the accounting records (Section C).

Our engagement arises from our appointment as auditor of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*)

**Director(s)/Member(s)/Practitioner(s) responsibility for Trust Accounts**

The Director(s)/Member(s)/Practitioner(s) of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) are responsible for ensuring that the estate agent's trust accounts are maintained in compliance with the provisions of the Act and the regulations of the Estate Agent Board of Namibia. The Director(s)/Member(s)/Practitioner(s) is/are also responsible for the implementation of accounting and internal control systems to ensure that the trust account(s) and extracts therefrom included in this report are free of material misstatement whether due to fraud or error.

**Auditor's responsibility**

Our responsibility is to report our conclusions and findings regarding the \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) maintenance of its trust account(s) in compliance with the Act, and extraction of certain information from the accounting records, based on our work performed.

We conducted our assurance engagement in accordance with the International Standard on Assurance Engagements ISAE 3000, Assurance Engagements Other than Audits or Reviews of Historical Financial Information. That standard requires that we comply with ethical requirements and plan and perform the engagement to obtain reasonable assurance about the compliance of the estate agent trust account(s), in all material respects, with the Act and the regulations.

The nature, timing and extent of procedures selected depend on the auditor's judgement, including the assessment of the risks of non-compliance with the Act and the regulations, whether due to fraud and error.

In making those risk assessments the auditor considers internal control relevant to the circumstances of the engagement.

We have relied on evidence obtained in the course of our audit of the annual financial statements for the year ended \_\_\_\_\_ 20\_\_\_\_, and exercised our judgement regarding matters coming to our attention in the course of our audit, together with evidence obtained from such additional procedures as we considered necessary in the circumstances.

**A. Compliance with the Act**

*Summary of work performed*

Additional procedures included:

1. Inquiries of the Director(s)/Member(s)/Practitioner(s) responsible for financial matters and compliance with the Act and the inspection of supporting documents to determine whether for the period reported on:

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

---

- the estate agent opened and kept a separate, properly designated, trust account during the entire period as required by Section 32(1) of the Act;
  - the estate agent had invested moneys deposited in a trust account in accordance with the requirements of section 32(2) of the Act and that any interest earned and kept in a separate interest bearing account was managed appropriately in terms of Section 32 (2) (a);
  - the estate agent had kept separate accounting records, as required by Section 32(3)(a) of the Act, and balanced the accounting records relating to any trust account at intervals of not more than one month, as required by Section 32(3)(b) of the Act;
  - the circumstances under which negotiable instruments deposited into the estate agent’s trust accounts at each month-end and not subsequently honoured, were satisfactory;
  - the system employed when transferring amounts (including interest earned) from the estate agent’s trust banking account to the estate agent’s business account appears to ensure that on each occasion any such transfer is made, the balance remaining to the credit of such trust banking amount or other interest-bearing account referred to in Section 32(2)(c) of the Act, together with any trust moneys held in cash on hand, amounts to not less than the trust balances.
2. Inspection of the estate agent’s accounting records to determine whether:
- The estate agent has kept such accounting records in terms of section 29 of the Act and that the business accounts were audited in terms of section 29(b) of the Act.

**Conclusion on compliance with the Act**

3. Based on our work performed, we found that the estate agent’s trust account(s) were maintained in compliance with Sections 29, 32(1), (2) and (3) of the Act during the period from \_\_\_\_\_ 20\_\_ to \_\_\_\_\_ 20\_\_ OR year ended \_\_\_\_\_ except for the contraventions as set out below:

	Section of the Act	Details of Contravention/s of the Estate Agency Affairs Act in respect of Trust Accounts <sup>1</sup>

**B. Additional compliance**

**1. Estate Agents’ Act, No. 112 of 1976**

We have inspected that a valid fidelity fund certificate in the name of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) and for each Director(s)/Member(s)/Practitioner(s) was obtained, as required by Section 26(b) of the Act. The fidelity fund policy number is \_\_\_\_\_ (*Insert policy number*) and \_\_\_\_\_ (*insert number*) individuals practicing as estate agents have been insured for a period of \_\_\_\_\_ (*insert number of months*) months ending on the \_\_\_\_\_ (*insert date*).

<sup>1</sup> Any contravention of the items detailed in the bullet points above are regarded as material and should be reported. Specify sections of the Act and Rules contravened and provide details of contravention(s).



**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

**2. Financial Intelligence Act, No. 13 of 2012 (FIA)**

The Estate Agent has provided evidence that the Director(s)/Member(s)/Practitioner(s) of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) are aware of the relevant provisions of the FIA and its complementing regulations. The evidence obtained includes but is not limited to:

	Yes	No
• That the estate agent or agency has a written policy and procedure document in place which addresses certain key provisions of the FIA. The policy and procedures are approved by the Director(s)/Member(s)/Practitioner(s) and further require each employee of all departments to be aware of the requirements of the Financial Intelligence Act, especially the identification of clients, reporting of suspicious transactions, reporting of transactions in excess of the determined cash thresholds and the retention of documentation for transactions for at least 5 (five) years;		
• That the estate agent has been registered with the Financial Intelligence Centre; and		
• That the estate agent has appointed/designated an Anti-Money Laundering Compliance Officer.		

**C. Information extracted from the accounting records**

Monies deposited in a trust banking account in compliance with Sections 32(1) and 32(2)(a) of the Act:

	NS
1. Total interest received	
2. Less: Paid out in terms of express written mandates (Section 32(2)(c)) of the Act	
3. Balance	
4. Less: Amounts paid to the Fidelity Fund of the Board – 50% of above balance	
5. Amount retained by estate agent	

**D. Procedures performed**

1. We agreed the total interest received to supporting bank statements to determine that the total interest received has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
2. We agreed the total amount paid out in terms of express written mandates to the balance(s) reflected in the underlying trust accounting records to determine that the total amount paid out has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
3. We agreed the amounts paid out to the Fidelity Fund of the Board to the balance(s) reflected in the underlying trust accounting records to determine that the total amount paid out has been correctly extracted, but have not performed any additional procedures to substantiate the completeness or accuracy of the underlying amounts.
4. We agreed the amount retained by the estate agent to the balance recorded in the general ledger.

**REGULATIONS**  
**Estate Agents Act 112 of 1976**  
**Regulations relating to Trust Account of an**  
**Estate Agent and Investment of Trust Moneys**

---

The above information has been extracted from the underlying trust accounting records which were subject to our audit of the financial statements as a whole. With the exception of those procedures performed, as described above, the underlying information is unaudited and does not form part of our conclusion regarding compliance with Sections 32(1), (2) and (3) of the Act as set out in Section A, and accordingly, we express no conclusion thereon.

Additionally we were informed by the Director(s)/Member(s)/Practitioner(s) that the sellers of the properties deposit their funds into the attorneys trust accounts and not into the trust account(s) of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*).

**OR**

We inspected the bank statements of the \_\_\_\_\_ bank account and identified that \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*) does not earn any interest as the account is not interest-bearing.

Additionally we were informed by the Director(s)/Member(s)/Practitioner(s) that the sellers of the properties deposit their funds into the attorneys trust accounts and not into the trust account(s) of \_\_\_\_\_ (*Insert Name of the Estate Agency Entity*).

**E Restriction on use and distribution of the report**

The layout and wording of our report is in compliance with the requirements of the Estate Agents Board and may not be suitable for any other purpose, consequently, it is intended solely for the use of Director(s)/Member(s)/Practitioner(s) of the estate agent and the Estate Agents' Board and should not be distributed to any other parties without our prior written consent.

\_\_\_\_\_  
"Firm Name"  
PAAB registration number  
Registered Accountants and Auditors  
Chartered Accountants (Namibia)

Per: A Accountant  
Partner

Place: ..... Date: .....