



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Estate Agents Act 112 of 1976
section 33(1)(h)

**Manner in which a Charge of Improper Conduct against any
Estate Agent shall be Brought and Investigated**

RSA Government Notice R.1263 of 1984

(RSA GG 9269)

came into force on date of publication: 22 June 1984

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

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 Act as amended by the provisions of this Act;
- (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.

ARRANGEMENT OF REGULATIONS

[These regulations do not have headings.]

REGULATIONS
Estate Agents Act 112 of 1976

**Manner in which a Charge of Improper Conduct against any Estate Agent
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SCHEDULE A
FORM OF SUMMONS (REGULATION 5(2))

SCHEDULE B
FORM OF SUMMONS (REGULATION 6(2))

1. In these regulations any word or expression defined in the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates -

“charge” means a charge referred to in regulation 2(1);

“complainant” means any person who has laid a charge against an estate agent;

“disciplinary committee” means a disciplinary committee designated in terms of regulation 2(4)(a);

“improper conduct” means improper conduct as contemplated in section 30(1) of the Act;

“inquiry” means an inquiry as contemplated in regulation 5(1);

“party” in relation to an inquiry; means the respondent or the *pro forma* prosecutor;

“penalty” means any action contemplated in section 30(3) of the Act;

“*pro forma* prosecutor” means any person appointed in terms of regulation 2(4)(b);

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

“the manager” means the manager or the secretary of the board;

“the respondent” means an estate agent against whom a charge has been laid.

2. (1) Any person, including any member of the board or the manager, who feels aggrieved by any act performed by an estate agent or by an omission of an estate agent to perform any act may, by way of an affidavit containing the particulars referred to in subregulation (2), lay a charge of improper conduct with the board against such estate agent: Provided that no such affidavit but merely a written notification shall be required in the case of a charge [excluding a charge under section 30(1)(e) of the Act] laid by a member of the board or the manager.

[The text in square brackets appears in the *Government Gazette* in that manner.]

(2) An affidavit referred to in subregulation (1) shall contain the following particulars, namely -

- (a) The full name and address of the complainant and of the estate agent concerned;
- (b) a full exposition of the act or omission with which such estate agent is charged;
- (c) any other fact or information relating to the charge.

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(3) If a charge is laid against a respondent, the manager shall within 30 days after the laying of such charge -

- (a) notify the respondent in writing that such charge has been laid against him;
- (b) furnish the respondent with a copy of these regulations;
- (c) inform the respondent in writing of the nature of the act or omission with which he is charged;
- (d) invite the respondent in writing to furnish the board with an affidavit setting forth his comments on such charge, within a specified period, being not less than 21 days after the date on which he is so invited;
- (e) inform the respondent in writing that he is under no obligation to make any comments envisaged in paragraph (d) and that any comments furnished to the board may be used as evidence against him at any inquiry; and
- (f) invite the respondent in writing to furnish the board within a specified period, being not less than 21 days after the date on which he is so invited, with an affidavit setting forth any mitigating circumstances if he intends admitting the charge in terms of regulation 4 or intends pleading guilty on the charge in terms of regulation 9(1).

(4) The board -

- (a) may from time to time appoint such disciplinary committees as it deems fit, which disciplinary committees shall have the power to inquire into and decide upon any charge in terms of these regulations;
- (b) shall be entitled to appoint a competent person to exercise and perform the powers and duties of a *pro forma* prosecutor in terms of these regulations.

(5) A disciplinary committee shall appoint one of its members as chairman of such committee.

(6) The proceedings before a disciplinary committee shall be recorded by a staff member of the board.

(7) A disciplinary committee may for the proper performance of its functions in terms of these regulations obtain such legal or other advice and consult such persons as it may deem necessary or expedient.

3. (1) The manager shall deliver to the disciplinary committee, for its attention, an affidavit referred to in regulation 2(1), 2(3)(d) and (f), if any.

(2) If a disciplinary committee, having considered the contents of an affidavit referred to in regulation 2(1) or 2(3)(d), is of the opinion that -

- (a) the act or omission with which the respondent is charged does not constitute improper conduct by the respondent; or
- (b) there is no reasonable prospect of proving the charge against the respondent;

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it shall forthwith notify the respondent as well as the complainant that the act or omission with which the respondent has been charged does not constitute improper conduct by the respondent or that there is no reasonable prospect of proving the charge against the respondent, as the case may be, and that the investigation of the charge shall not be proceeded with.

4. Should a respondent in his comments, referred to in regulation 2(3)(d), admit that he performed or failed to perform any act as charged and the disciplinary committee is satisfied that such act or omission constitutes improper conduct by the respondent, the disciplinary committee shall after considering the contents of the affidavit, if any, referred to in regulation 2 (3)(f), determine the penalty to be imposed and shall by notice in writing, sent by post or delivered to the respondent -

- (a) notify the respondent and the complainant that it finds the respondent guilty of improper conduct; and
- (b) notify the respondent and the complainant of the penalty it has imposed on the respondent.

5. (1) In the event of a charge not being disposed of in terms of regulation 3 or 4, a disciplinary committee shall summon the respondent to appear before it at a time and place specified in the summons for the purpose of an inquiry and to produce at such inquiry any book or other document specified in the summons which the respondent has in his possession or custody or under his control or which is suspected or believed to be in his possession or custody or under his control and which has a bearing on such charge.

- (2) A summons referred to in subregulation (1), shall be -
 - (a) as nearly as possible in the form specified in Schedule A;
 - (b) signed by the manager;
 - (c) served on the respondent by delivering or tendering it to the respondent personally or by sending it to the respondent by prepaid registered post at his address referred to in section 29(a) of the Act, or at his address last known to the board.

6. (1) A disciplinary committee may of its own accord or at the instance of the respondent or the *pro forma* prosecutor summon any person to be present at an inquiry in order to give evidence and to produce at such inquiry any book or other document which such person has in his possession or custody or under his control or which is suspected or believed to be in his possession or custody or under his control and which has a bearing on the charge which is a subject matter of such inquiry.

- (2) A summons referred to in subregulation (1) shall be -
 - (a) as nearly as possible in the form specified in Schedule B;
 - (b) signed by the manager;
 - (c) served on the person concerned by delivering or tendering it to him personally or by sending it to him by prepaid registered post at his business address or at his address last known to the board.

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(3) The board shall pay a witness summoned and present at an inquiry, such fees as the board may from time to time determine generally, or in any particular case, subject to the board's right to disallow such payment or any portion thereof, if in the opinion of the disciplinary committee, such witness's evidence or presence at the inquiry was unsatisfactory.

7. If the respondent, after the summons referred to in regulation 5(1) has been served on him but before the commencement of the inquiry, notifies the disciplinary committee in writing that he pleads guilty to the charge as set out in such summons and the disciplinary committee is satisfied that the charge against the respondent can be disposed of without the holding of an inquiry, the disciplinary committee shall in writing notify the respondent and the complainant and any person on whom a summons has been served in terms of regulation 6, that the inquiry in question will no longer be held, and thereupon the provisions of regulation 4 shall *mutatis mutandis* apply in respect of such charge.

8. (1) If any party proposes adducing evidence at the inquiry by way of an affidavit, he may at least 21 days before the commencement of the inquiry, deliver or send by registered post copies of such affidavit to the other party and the manager for transmission to the disciplinary committee, together with a notice requesting such other party, if he objects to such affidavit being admitted as evidence at the inquiry, to furnish him in writing with such objection at least seven days before the commencement of the inquiry and to lodge a copy thereof with the disciplinary committee.

(2) If any party has objected in terms of subregulation (1), the affidavit in question shall not be admitted as evidence at the inquiry unless such party agrees at the inquiry to such affidavit being tendered as evidence.

(3) If any party has not objected in terms of subregulation (1), the affidavit in question shall be admitted as evidence at the inquiry unless such party satisfies the disciplinary committee that he had sound reasons for not so objecting and that same should not be admitted as evidence.

(4) An affidavit not delivered or sent to the other party and not lodged with the disciplinary committee in terms of subregulation (1) shall be admitted as evidence at the inquiry only if such party agrees and the pro forma prosecutor agrees at the inquiry to such affidavit being tendered as evidence.

9. (1) At the commencement of an inquiry the chairman of the disciplinary committee shall read the charge as set out in the summons, referred to in regulation 5(1), to the respondent and shall ask the respondent to plead guilty or not guilty thereto.

(2) If the respondent refuses or fails to plead to the charge at the inquiry, it shall be recorded that he pleaded not guilty, and thereupon the inquiry shall be proceeded with as if the respondent had in fact pleaded not guilty to the charge.

(3) A respondent shall be entitled to the assistance of his legal adviser at an inquiry.

10. (1) Subject to the provisions of these regulations, evidence at an inquiry shall be given orally or be tendered by way of affidavits.

(2) The chairman of a disciplinary committee shall administer an oath to or accept an affirmation from any person called to give evidence orally at an inquiry.

11. Whenever the respondent has pleaded guilty to a charge in terms of regulation 9(1) -

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- (a) and the disciplinary committee is satisfied that the respondent is guilty of improper conduct, the disciplinary committee, with the concurrence of the respondent, may decide not to hear or accept any further evidence in connection with the charge;
- (b) the disciplinary committee may and at the instance of the respondent shall hear or accept further evidence in connection with the charge, irrespectively of whether or not the disciplinary committee is satisfied that the respondent is guilty of improper conduct.

12. (1) Whenever the respondent has pleaded not guilty to the charge in terms of regulation 9(1) or whenever the disciplinary committee has decided to hear or accept further evidence in connection with the charge in terms of regulation 11(b), the disciplinary committee shall give the *pro forma* prosecutor the opportunity of adducing evidence in support of the charge.

(2) After the *pro forma* prosecutor has adduced evidence in support of the charge in terms of subregulation (1), the disciplinary committee shall give the respondent the opportunity to adduce evidence in his defence against the charge.

(3) The disciplinary committee may at any stage of the inquiry call any person except the respondent, unless he has already given evidence orally at the inquiry or unless an affidavit by him has already been admitted as evidence, as a witness and examine or, if he has already given evidence, re-examine him.

(4) After the respondent has adduced evidence in his defence against the charge in terms of subregulation (2), the disciplinary committee may allow the *pro forma* prosecutor to adduce evidence in relation to a matter raised for the first time in the evidence for the respondent, and thereafter shall give the respondent the opportunity to adduce evidence in rebuttal of the evidence so adduced by the *pro forma* prosecutor.

(5) A witness called by the *pro forma* prosecutor may be cross-examined by the respondent and may also be examined by the disciplinary committee.

(6) A witness called by the respondent may be cross-examined by the *pro forma* prosecutor and may also be examined by the disciplinary committee.

(7) A witness called by the disciplinary committee may be cross-examined by the respondent and by the *pro forma* prosecutor.

(8) After a witness has been cross-examined he may be re-examined by the party who called him but only in respect of a matter revealed for the first time in his cross-examination or to explain any matter raised in his cross-examination.

13. A disciplinary committee may at any time, for sufficient cause, adjourn the inquiry to a date determined by it.

14. (1) After all the evidence in connection with a charge has been adduced or if the disciplinary committee has decided in terms of regulation 11(a) not to hear or accept any further evidence in connection with the charge. the *pro forma* prosecutor may address the disciplinary committee and thereafter the respondent may address the disciplinary committee.

(2) The *pro forma* prosecutor may reply on any matter of law raised by the respondent in his address and may with the concurrence of the disciplinary committee reply on any matter or fact raised by the respondent in his address.

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15. (1) After the *pro forma* prosecutor and the respondent have addressed the disciplinary committee in terms of regulation 14, the disciplinary committee shall consider the evidence submitted at the inquiry, in order to come to a decision whether the respondent should be convicted of improper conduct as specified in the charge, or acquitted and shall be entitled to adjourn the inquiry for the purpose of coming to such decision.

(2) A decision made by a disciplinary committee in terms of subregulation (1) shall be conveyed to the respondent and the complainant by the chairman immediately after the hearing, either verbally or by registered post.

16. (1) If the disciplinary committee had decided in terms of regulation 15 (1) that the respondent be convicted of improper conduct, it shall give -

- (a) the *pro forma* prosecutor the opportunity of proving whether the respondent has previously been convicted of improper conduct by the board, or by a disciplinary committee; and
- (b) the respondent the opportunity of adducing evidence in mitigation and the respondent and the *pro forma* prosecutor the opportunity of addressing it in connection with the penalty which the disciplinary committee should impose upon the respondent.

(2) A certificate signed by the manager and purporting to be an extract from the minutes of the proceedings of the board or a disciplinary committee stating the particulars of the charge brought against the respondent, the conviction of the respondent by the board or a disciplinary committee, and the penalty imposed upon the respondent by the board or a disciplinary committee, shall, upon its mere production by the *pro forma* prosecutor to a disciplinary committee, be sufficient proof that the respondent had previously been convicted of improper conduct until the respondent proves that he had not been so convicted.

(3) After the provisions of subregulation (1) have been complied with, the disciplinary committee shall convey to the complainant and the respondent the penalty imposed upon the respondent.

17. If the respondent has not filed an appeal in terms of section 8B or 31 of the Act, against his conviction on a charge of improper conduct or the imposition of a penalty in terms of these regulations, the board may publish a notice in the *Gazette* in both official languages announcing the conviction of the respondent of improper conduct, as well as the specific section of the Act or the specific regulation promulgated in terms of the Act and in pursuance of which the respondent was convicted as well as the penalty imposed upon him.

[The term “both official languages” refers to the period before independence when English and Afrikaans were both official languages of “South West Africa”. The only official language of Namibia is English (Namibian Constitution, Art 3(1)).]

18. (1) Any person who requests the board in writing to furnish him with reasons for a decision of a disciplinary committee shall pay an amount of R10 to the board and such request shall be made to the manager within 30 days of the date of such decision.

(2) The board shall be entitled to make such charge for the furnishing of a copy of the record of the proceedings of an inquiry, as the Board may determine from time to time.

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19. No person -

- (a) having been duly summoned to be present at an inquiry, shall without lawful excuse fail so to appear;
- (b) having been called as a witness at an inquiry, shall without lawful excuse refuse to be sworn or to make an affirmation or to produce any book or other document or to answer any question which he may be required to produce or answer.

20. Government Notices R.1471 of 29 July 1977, R.446 of 12 March 1982 and R.1895 of 3 September 1982 are hereby withdrawn.

SCHEDULES A AND B

To view content without printing, scroll down.

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Schedules A and B

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SCHEDULE A

ESTATE AGENTS ACT, 1976 (ACT 112 OF 1976)

Form of summons referred to in regulation 5 (2)

To

You are hereby summoned to appear on 19.....at
.....h...at.....
before a disciplinary committee of the Estate Agents Board for the purposes of an inquiry into improper conduct by you and to produce the following books and documents at the said time and place.....

The charge against you which will be inquired into at the said time and place and of which you have already been notified in writing by the board on..... is the following.....

If you fail, without lawful excuse, to be present at the time and place stated above, you will be guilty of an offence in terms of section 34 of the Estate Agents Act, 1976, and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Signed at on 19.....

.....
Manager
Estate Agents Board

SCHEDULE B

ESTATE AGENTS ACT, 1976 (ACT 112 OF 1976)

Form of summons referred to in regulation 6 (2)

To

You are hereby summoned to appear on 19.....at
.....h...at.....
before a disciplinary committee of the Estate Agents Board in order to give evidence at an inquiry into improper conduct by
..... and to produce the following books and documents at the said time and place.....

If you fail, without lawful excuse, to be present at the time and place stated above, you will be guilty of an offence in terms of section 34 of the Estate Agents Act, 1976, and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Signed at on 19.....

.....
Manager
Estate Agents Board