

# LAND AND HOUSING PROFESSIONS

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*Estate Agents Act 112 of 1976*, as amended in South Africa to April 1978  

**Summary:** This Act ([RSA GG 5221](#)) establishes an Estate Agents Board and an Estate Agents Fidelity Fund and regulates the activities of estate agents. It was brought into force in South Africa and South West Africa on 1 August 1977 by RSA Proc. R.110/1977 ([RSA GG 5580](#)), pursuant to section 36 of Act.

**Applicability to SWA:** Section 1 defines “Republic” to include “the territory of South West Africa”. Section 36 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel”. It was amended in SWA by Act 28 of 1987 to state that the Act applied to SWA, but not the amendments: “This Act shall apply in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated **28 April 1978**. There were no amendments to the Act in South Africa prior to the date of transfer. (The *Estate Agents Amendment Act 60 of 1978* came into force on the date of its publication, 17 May 1978, shortly after the date of transfer.) None of the six amendments to the Act in South Africa after the date of transfer and prior to Namibian independence were made expressly applicable to SWA. (This was confirmed by the 1987 amendment referred to above.)

**Amendments:** Act 28/1987 ([OG 5476](#)), which is brought into force on 1 April 1988 by AG 5/1988 ([OG 5514](#)), amends the Act substantially.

**Regulations:** Act 28/1987 ([OG 5476](#)) states:

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.

This amending Act also contains rules about how certain terms in the South African regulations are to be construed, and amends the Regulations relating to the Standard of Training of Estate Agents published in RSA GN R.1409/1983 ([RSA GG 8783](#)).<sup>111</sup>

**Regulations relating to Trust Account of an Estate Agent and Investment of Trust Moneys** are contained in RSA GN R.1472/1977 ([RSA GG 5694](#)), as amended by RSA GN R.604/1979 ([RSA GG 6364](#)), RSA GN R.2418/1980 ([RSA GG 7312](#)), RSA GN R.948/1981 ([RSA GG 7566](#)), RSA GN R.1415/1981 ([RSA GG 7648](#)), RSA GN R.2499/1981 ([RSA GG 7913](#)), RSA GN R.1157/1985 ([RSA GG 9759](#)) and GN 221/2015 ([GG 5845](#)) (which erroneously states that it amends the regulations in RSA GN R.604/1979). Act 28/1987 ([OG 5476](#)) contains some rules of construction which apply to these regulations.

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<sup>111</sup> **Regulations NOT applicable to SWA:** RSA GN R.1485/1981 (RSA GG 7663) creates “regulations” to specify services under the definition of “estate agent”, but these regulations were made after the date of transfer in terms of paragraph (a)(iv) of the definition of “estate agent” in section 1 of the Act (which actually authorises “notices” rather than regulations in any event). They were therefore not made applicable to SWA by Act 28/1987 (OG 5476), which covered only regulations published under section 33 of the Act between the date of transfer (28 April 1978) and the date when that amending Act commenced (1 April 1988).

**Regulations relating to Investment of Moneys in Estate Agents Fidelity Fund** are contained in RSA GN R.2206/1978 ([RSA GG 6199](#)), which withdraws RSA GN R.388/1978. Act 28/1987 ([OG 5476](#)) contains some rules of construction which apply to these regulations.

**Regulations relating to the Standard of Training of Estate Agents** are contained in RSA GN R.1409/1983 ([RSA GG 8783](#)), as “deemed” to be amended by Act 28/1987 ([OG 5476](#)), and as amended by GN 221/1996 ([GG 1395](#)) and GN 220/2015 ([GG 5845](#)). Act 28/1987 ([OG 5476](#)) also contains some rules of construction which apply to these regulations.

**Regulations relating to the Manner in which a Charge of Improper Conduct against any Estate Agent shall be Brought and Investigated** are contained in RSA GN R.1263/1984 ([RSA GG 9269](#)), which withdraws RSA GN R.1471/1977 ([RSA GG 5694](#)) and its amendments. Act 28/1987 ([OG 5476](#)) contains some rules of construction which apply to these regulations.

**Regulations relating to Issue of Fidelity Fund and Registration Certificates** are contained in RSA GN R.1798/1986 ([RSA GG 10403](#)) as corrected by RSA GN R.2106/1986 ([RSA GG 10476](#)) (affecting only the Afrikaans text), and as amended by AG GN 97 of 1989 ([OG GG 5844](#)), GN 222/1996 ([GG 1395](#)) and GN 222/2015 ([GG 5845](#)). Act 28/1987 ([OG 5476](#)) contains some rules of construction which apply to these regulations. These regulations withdraw RSA GN R.956/1977 ([RSA GG 5568](#)) and its amendments, and RSA GN R.2071/1983 ([RSA GG 8900](#)) and its amendments.

In South Africa, these regulations were also amended by RSA GN R.1699/1988 ([RSA GG 11474](#)) and RSA GN R.1526/1989 ([RSA GG 12003](#)). However, both of these amendments post-dated both the date of transfer and the date referred to in Act 28/1987 regarding the applicability of South African regulations to SWA.

**Rules:** The most recent **Code of Conduct** is contained in GN 16/1996 ([GG 1242](#)), which substitutes the Code of Conduct promulgated in AG GN 98/1989 ([OG 5845](#)).<sup>112</sup>

**Exemptions:** RSA GN R.1474/1977 ([RSA GG 5694](#)) exempts a company as defined in section 1(1) of the Companies Act 61 of 1973 (replaced by the Companies Act 28 of 2004), registered in terms of section 4(9) of the Banks Act 23 of 1965 (replaced by the Banking Institutions Act 2 of 1998), as a banking institution, a director and an employee of such company from specified provisions of this Act.

Similar exemption regulations were published after the date of transfer in RSA GN R.31/1981 ([RSA GG 7356](#)), RSA GN R.1485/ 1981 ([RSA GG 7663](#)) and RSA GN R.1922/1986 ([RSA GG 10443](#)), but these were not made expressly applicable to SWA.

**Specification of services:** RSA GN R.1473/1977 ([RSA GG 5694](#)) states that acting as an agent for or a representative of any financial institution as defined in section 1 of the *Financial Institutions (Investment of Funds) Act 56 of 1964* is specified as a service for the purposes of paragraph (a)(iv)(cc) of the definition of “estate agent” in section 1 of the Estate Agents Act 112 of 1976. The *Financial Institutions*

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<sup>112</sup> Previous Codes of Conduct were issued by the Estate Agents Board in terms of section 8(b) of the Act in -

- RSA GN R.603/1979 ([RSA GG 6364](#)), as amended by RSA GN R.1122/1980 ([RSA GG 7054](#)), RSA GN R.2653/1983 ([RSA GG 8986](#)) and RSA GN R.2695/1983 ([RSA GG 8993](#))
- RSA GN R.571/1985 ([RSA GG 9620](#)), as corrected by RSA GN R.847/1985 ([RSA GG 9689](#)), which withdrew RSA GN R.603/1979 and its amendments.

These notices were *all* withdrawn by RSA GN R.1799/1986 ([RSA GG 10403](#)). All of these came after the date of transfer, but section 27 of Act 28/1987 ([OG 5476](#)), which is brought into force on 1 April 1988 by AG 5/1988 ([OG 5514](#)), states:

“Anything purporting to have been done by the Estate Agents Board, established by section 2 of the principal Act, before the commencement of this Act under any provision of the principal Act, as amended by the Estate Agents Amendment Act, 1978 (Act 60 of 1978), the Estate Agents Amendment Act, 1980 (Act 57 of 1980), the Estate Agents Amendment Act, 1982 (Act 53 of 1982), and the Estate Agents Amendment Act, 1984 (Act 51 of 1984), and the regulations made thereunder, shall be deemed to have been done as if those Amendment Acts and regulations were at all relevant times also applicable in the territory of South West Africa.”

RSA GN R.1799/1986 was withdrawn by AG GN 98/1989.

*(Investment of Funds) Act 39 of 1984*, as amended in South Africa prior to Namibian independence, repealed *Act 56 of 1964* with a general savings clause in section 11(2).

RSA GN R.1485/1981 ([RSA GG 7663](#)) is a notice in terms of section 1 of the Act containing regulations that specify services for the purposes of paragraph (a)(iv) of the definition of “estate agent” in section 1. RSA GN R.1922/1986 ([RSA GG 10443](#)) contains a notice that specifies services for the purposes of paragraph (a)(iv) of the definition of “estate agent” in section 1. Both of these notices were issued after the date of transfer and were therefore not applicable to SWA.

**Application of law:** The application of this law is affected by the Financial Intelligence Act 13 of 2012 ([GG 5096](#)), which places certain duties on estate agents and on the Estate Agents Board.

## Architects’ and Quantity Surveyors’ Act 13 of 1979

**Summary:** This Act ([OG 4029](#)) provides for the establishment of a Namibia Council for Architects and Quantity Surveyors, and for the registration of persons in these professions. It was brought into force, with the exception of section 13(1)(b), on 1 January 1980 by AG 36/1979 ([OG 4057](#)). Section 13(1)(b) was brought into force on 2 May 1983 by AG Proc. 10/1983 ([OG 4773](#)). The Act repeals the *Architects’ Act 35 of 1970* as amended, and the *Quantity Surveyors’ Act 36 of 1970*.

**Amendments:** Act 11/1992 ([GG 420](#)) amends sections 1, 2, 3, 11, and 25, and substitutes certain words and expressions and the long title of the Act to make it consistent with an independent Namibia.

**Regulations:** Regulations are authorised by section 18 of the Act. Section 18(2) of the Act contains a savings clause for any regulations made regarding for any work prescribed as being reserved for architects or quantity surveyors under the repealed laws, and provides directions on how to construe certain terms in such prior enactments, but the 1981 regulations discussed below explicitly repealed the regulations made under the repealed laws.

AG GN 91/1981 ([OG 4508](#)) contains regulations issued in terms of the Act. No amendments to these regulations have been located and no post-independence regulations have been promulgated under the Act.<sup>113</sup>

**Fees:** Section 18(2) of the Act contains a savings clause for any fees prescribed under the repealed laws, but the post-independence enactments on fees appear to have superseded any prior fee tariffs.

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<sup>113</sup> **Repealed regulations:** The regulations contained in AG GN 91/1981 ([OG 4508](#)) repeal the regulations contained in RSA GN R.314/1971 (RSA GG 3010), made under the *Architects’ Act 35 of 1970*, as amended by RSA GN R.2247/1973 (RSA GG 4091), RSA GN R.238/1976 (RSA GG 4985), RSA GN R.1966/1977 (RSA GG 5753) and RSA GN R.1967/1977 (RSA GG 5753).

They also repeal the regulations contained in RSA GN R.318/1971 (RSA GG 3010) made under the *Quantity Surveyors’ Act 36 of 1970*, as amended by RSA GN R.947/1973 (RSA GG 3919) and by RSA GN R.1150/1975 (RSA GG 4741).

The regulations in AG GN 91/1981 also repeal the following –

- RSA GN R.319/1971 (RSA GG 3010), a notice concerning requirements with which an association of quantity surveyors shall comply in order to qualify for recognition as a quantity surveyors’ association
- the Association of South African Quantity Surveyors Constitution and By-Laws (unnumbered) contained in RSA GG 3023 (mistakenly referred to in AG GN 91/1981 as Government Notice “3023 of 19 March 1971”), as amended by RSA General Notice 462/1977 (RSA GG 5655) (mistakenly referred to in AG GN 91/1981 as Government Notice “5655 of 15 July 1977”) and by RSA General Notice 645/1978 (RSA GG 6124) (mistakenly referred to in AG GN 91/1981 as Government Notice “6124 of 4 August 1978”).

The regulations also state that they repeal RSA GN 4527/1974, published on 6 December 1974. No such notice could be located. Perhaps the intention was to refer to RSA GG R.2295/1974 (RSA GG 4530) containing annual fees for quantity surveyors, which is the only document pertaining to either architects or quantity surveyors published on that date. (RSA GG 4527, published on 29 November 1974, was also checked, but contained nothing on the relevant topics.)

Minimum fees for architects and quantity surveyors are contained in GN 250/1998 ([GG 1968](#)), as amended by GN 221/2003 ([GG 3082](#)). (This tariff of fees has been included in the database of annotated regulations since it contains a number of rules about fees in addition to setting fee amounts.)

Minimum hourly fees for architects and quantity surveyors are contained in GN 105/2013 ([GG 5183](#)).<sup>114</sup>

**Exemptions:** Exemptions from the provisions of section 13 are contained in GN 190/1994 ([GG 948](#)).

Exemptions from the provisions of sections 11 and 13 in respect of work for the Millennium Challenge Account are contained in GN 12/2009 ([GG 4210](#)).

Exemptions of listed persons from registration, pursuant to section 23(1) read with section 11, were originally contained in GN 87/2017 ([GG 6285](#)), but this notice was repealed by GN 297/2017 ([GG 6472](#)).

**Reservation of work:** Section 24(2) of the Act contains a savings clause for any work prescribed as being reserved for architects or quantity surveyors under the repealed laws, and provides directions on how to construe certain terms in such prior enactments.

GN 19/1981 ([OG 4508](#)) lists reservations of work for architects in RSA GN R.1769/1979 ([RSA GG 6620](#)) in terms of section 7(3)(c) of the *Architects' Act 35 of 1970* which are deemed in terms of section 24(2) to have also been so reserved in SWA.

Similarly, GN 20/1981 ([OG 4508](#)) lists reservations of work for quantity surveyors in RSA GN R.1452/1973 ([RSA GG 3999](#)) in terms of section 7(3)(b) of the *Quantity Surveyors' Act 36 of 1970*, which are deemed in terms of section 24(2) to have also been so reserved in SWA.

**Appointments:** Members of the Namibian Council for Architects and Quantity Surveyors are appointed in GN 15/1990 ([GG 33](#)), GN 143/1992 ([GG 512](#)), GN 61/1993 ([GG 662](#)), GN 114/1994 ([GG 870](#)), GN 86/1995 ([GG 1090](#)), GN 123/1996 ([GG 1320](#)), GN 44/1997 ([GG 1518](#)), GN 48/1998 ([GG 1816](#)), GN 128/1998 ([GG 1885](#)), GN 253/1999 ([GG 2229](#)), GN 280/1999 ([GG 2248](#)), GN 211/2001 ([GG 2630](#)), GN 84/2003 ([GG 2956](#)), GN 45/2004 ([GG 3169](#)), GN 198/2006 ([GG 3738](#)), GN 23/2009 ([GG 4216](#)), GN 207/2009 ([GG 4357](#)), GN 141/2010 ([GG 4523](#)), GN 217/2016 ([GG 6125](#)), GN 280/2019 ([GG 7009](#)) and GN 261/2020 ([GG 7373](#)).

#### **Cases:**

*Kondjeni Nkandi Architects & Another v Namibian Airports Company Ltd* 2016 (1) NR 223 (HC) (section 13); contradicted in *Claud Bosch Architects cc v Auas Business Enterprise 123 (Pty) Ltd* 2018 (1) NR 155 (SC) (section 13; departing from the approach taken in the *Nkandi* case “which was incorrectly decided”)

*Graceland Architects CC v Howard & Chamberlain Architects & Another* 2018 (1) NR 34 (HC) (sections 11 and 13; section 13(1)(b)(i) does not prohibit the utilisation of work performed outside Namibia in erecting a building which happens to be in Namibia).

## **Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act 32 of 1993**

**Summary:** This Act ([GG 769](#)) provides for the establishment of a Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians, and sets forth its powers and functions.

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<sup>114</sup> Previous minimum hourly fees were set in GN 94/1992 ([GG 449](#)), GN 237/1997 ([GG 1741](#)), GN 156/2002 ([GG 2810](#)), GN 145/2005 ([GG 3529](#)), GN 197/2006 ([GG 3738](#)) and GN 232/2009 ([GG 4386](#)). Each of these notices repeals the previous one.

It also provides for the registration of professional land surveyors, apprentice land surveyors, technical surveyors, survey technicians and apprentice survey technicians, and regulates their qualifications and their professional conduct and practice. The Act repeals the Land Surveyors' Ordinance 10 of 1963 and the Land Surveyors' Registration Act 14 of 1950. It was brought into force on 1 June 1994 by GN 85/1994 ([GG 863](#)).

**Amendments:** Act 16/1995 ([GG 1155](#)) inserts section 14A and amends section 15. Its primary purpose is to provide for the authorisation of professional land surveyors, technical surveyors and survey technicians in the public service.

**Regulations:** There is no savings clause for regulations that may have been made under the repealed laws. Regulations under the current Act are contained in GN 216/1998 ([GG 1945](#)).

**Notices:** The Institute of Land Surveyors is recognised as an approved society in GN 264/1998 ([GG 1982](#)).

**Fees:** Tariffs of fees are published from time to time, with the new tariffs replacing the previous ones. The current tariffs (with related regulations) are contained in GN 196/2015 ([GG 5820](#)).

**Appointments:** The Council is announced in GN 62/1996 ([GG 1273](#)), which is repeated in GN 74/1996 ([GG 1284](#)). Members of the Council are also announced in GN 36/1999 ([GG 2054](#)) and GN 68/2002 ([GG 2734](#)).

## Town and Regional Planners Act 9 of 1996

**Summary:** This Act ([GG 1354](#)) establishes a Namibian Council for Town and Regional Planners and provides for the registration and training of town and regional planners. It was brought into force on 20 July 1998 by GN 170/1998 ([GG 1909](#)).

**Amendments:** Act 32/1998 ([GG 1994](#)) (which is deemed to have come into force on 20 July 1998) amends section 3.

**Regulations:** Regulations are contained in GN 126/2001 ([GG 2561](#)), as amended by GN 149/2007 ([GG 3896](#)), GN 82/2010 ([GG 4473](#)) and GN 1/2014 ([GG 5389](#)) (all of which amend Annexure A).

**Fees:** Minimum fees and related guidelines are set forth in GN 62/2009 ([GG 4237](#)), as amended by GN 240/2009 ([GG 4391](#)) and GN 86/2014 ([GG 5497](#)).

**Appointments:** Appointments to the Namibian Council for Town and Regional Planners are contained in GN 33/2000 ([GG 2266](#)), with effect from 2 November 1999.

## \*Property Valuers Profession Act 7 of 2012

**Summary:** This Act ([GG 4973](#)) establishes the Namibian Council for Property Valuers Profession and provides for the registration of professional valuers and related professionals and trainees. The Act will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

**Amendments:** Act 2/2018 ([GG 6563](#)) amends several sections of the Act.

**Regulations:** Regulations are authorised by section 34 of the Act, but none have yet been promulgated.

**Appointments:** Appointments to the Namibian Council for Property Valuers Profession are announced in GN 304/2013 ([GG 5344](#)).

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (**EDUCATION**).