



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 156 Promulgation of Property Valuers Profession Act, 2012 (Act No. 7 of 2012), of the
Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 156

2012

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 7 of 2012: Property Valuers Profession Act, 2012.

Act No. 7, 2012

PROPERTY VALUERS PROFESSION ACT, 2012

ACT

To provide for the establishment of the Namibian Council for Property Valuers Profession; to provide for the registration of professional valuers, associate professional valuers, valuers in training, student valuers in training and specified categories in the property valuation profession; and to provide for incidental matters.

(Signed by the President on 9 June 2012)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

PART I
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates -

“actively practise” means to practise on an ongoing basis in one of the categories contemplated in section 16;

“associate professional valuer” means a person who is registered in terms of section 17(2)(a);

“committee” means a committee of the Council established in terms of section 14;

“Council” means the Namibian Council for Property Valuers Profession established by section 2;

“disciplinary tribunal” means a tribunal appointed in terms of section 28;

“investigating committee” means an investigating committee contemplated in section 14(1)(b);

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“Minister” means the Minister responsible for lands;

“Ministry” means the Ministry charged with the administration of lands;

“prescribed” means prescribed by a regulation;

“professional valuer” means a person who is registered in terms of section 17(2)(a);

“property” includes a right in respect of, or an interest in, immovable property which is subject to registration or is registered in any deeds registry in Namibia, and includes movable assets which forms part of an immovable property;

“property valuation” means the determination of the value of property in accordance with prescribed standards;

“registered person” means a person registered under one of the categories referred to in section 16;

“Registrar” means the person appointed as Registrar under section 15(1)(a);

“regulation” means a regulation made under section 34;

“student valuer in training” means any person registered in terms of section 17(2)(b);

“Valuer-General” means the incumbent of the post of Valuer-General in the Ministry;

“valuer in training” means any person registered in terms of section 17(2)(b);

“voluntary association” means any association of professional valuers, associate professional valuers or valuers in training recognised under section 22.

PART II**NAMIBIAN COUNCIL FOR PROPERTY VALUERS PROFESSION****Establishment of Namibian Council for Property Valuers Profession**

2. (1) There is established a juristic person to be known as the Namibian Council for Property Valuers Profession.

(2) The Council has its seat and head office in Windhoek.

Constitution of Council

3. (1) Subject to subsections (2), (3) and (4), the Council consists of -

(a) three professional valuers (including associate professional valuers), of whom at least two must actively practise in the property valuation profession, nominated by voluntary associations and registered persons who are not members of any voluntary association; and

(b) a professional valuer in the full-time employment of the Public Service, selected by the Minister after consultation with the Ministers responsible for regional and local government, works, finance and agriculture;

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- (c) a member of the public with expertise in property matters nominated by the public;
- (d) a person with expertise in law, nominated by the Minister responsible for justice,

and appointed by the Minister; and

- (e) the Valuer-General, by virtue of office.

(2) For the purposes of appointment of persons referred to in subsection (1)(a), (c) and (d) as members of the Council, the Minister must publish a notice in the *Gazette* and in at least two newspapers circulating in Namibia, inviting the Minister responsible for justice, any interested persons, voluntary associations or bodies to nominate such persons for appointment as members of the Council within 30 days of the publication of the invitation in the *Gazette*.

(3) If a nomination is not made to the Minister within the period referred to in subsection (2), the Minister may appoint any suitable person who holds the necessary qualification to be a member of the Council, and a person appointed under this subsection holds office as if he or she was nominated in accordance with subsection (2).

(4) The Minister, by notice in the *Gazette*, as soon as practicable after the appointment of the members of the Council in terms of subsection (1), must publish -

- (a) the name of every person appointed as a member;
- (b) the date from which the appointment takes effect; and
- (c) the period for which the appointment is made.

Powers and functions of Council with regard to registration

4. The Council must, subject to this Act -
- (a) consider and decide on any application for registration;
 - (b) prescribe the period of validity of the registration of a registered person;
 - (c) keep a register of registered persons and prescribe -
 - (i) the form of certificates and the register to be kept;
 - (ii) the maintenance of the register or issuing of certificates; and
 - (iii) the reviewing of the register and the manner in which amendments thereto may be effected.

Powers and functions of Council with regard to fees and charges

5. (1) With regard to fees and charges which are payable to the Council, the Council must determine -

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- (a) application fees;
- (b) registration fees;
- (c) annual fees, or any portion thereof in respect of a part of a year;
- (d) fees, or any portion thereof, payable in respect of any examination referred to in section 17, conducted by or on behalf of the Council;
- (e) any charge payable for the purposes of the education fund referred to in section 13(3)(c);
- (f) fees payable for a service referred to in section 7(c);
- (g) any other fee or charge it considers necessary; or
- (h) the date on which any fee or charge is payable.

(2) The Council, on application made or on its own accord, may grant exemption from the payment of application fees, registration fees, annual fees, charges or a portion thereof referred to in subsection (1).

Powers and functions of Council with regard to education in property valuation

- 6.** (1) The Council -
- (a) must, subject to sections 5 and 6 of the Higher Education Act, 2003 (Act No. 26 of 2003), conduct contact visits to any educational institution which has a department, school or faculty which offers property valuation education programmes, but must conduct at least one such visit during its term of office;
 - (b) may, either conditionally or unconditionally, grant, refuse or withdraw approval with regard to all educational institutions and their educational programmes with regard to property valuation;
 - (c) must consult with the National Council for Higher Education established by section 4 of the Higher Education Act, 2003 (Act No. of 2003), regarding matters relevant to education in property valuation;
 - (d) must consult with the Namibia Qualifications Authority established by the Namibia Qualifications Authority Act, 1996 (Act No. 29 of 1996), or any body established by it, and the voluntary associations, to determine occupational standards for the purpose of registration;
 - (e) must establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries;
 - (f) may recognise, or withdraw the recognition of, any examination contemplated in section 17;
 - (g) may enter into an agreement with any person or body of persons, within or outside Namibia, with regard to the recognition of any examination or qualification for the purposes of this Act;

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- (h) may give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;
 - (i) may conduct any examination for the purposes of section 17; and
 - (j) must determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.
- (2) If the Council has not conducted a contact visit within its term of office as contemplated in subsection (1)(a) it must -
- (a) notify the Minister accordingly 6 months prior to the expiration of its term of office; and
 - (b) provide the Minister with reasons for the failure to do so.

General powers of Council

7. (1) The Council may, in addition to any other powers conferred or imposed upon it by this Act -
- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
 - (b) determine the manner in which contracts must be entered into on behalf of the Council;
 - (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
 - (d) prescribe, subject to section 22, the requirements with which a voluntary association must comply to qualify for recognition by the Council;
 - (e) advise the Minister or any other minister on any matter relating to the property valuation profession;
 - (f) encourage and itself undertake research into matters relating to the property valuation profession;
 - (g) take any steps it considers necessary for -
 - (i) the protection of the public in their dealings with registered persons; and
 - (ii) the maintenance of the integrity and the enhancement of the status of the property valuation profession;
 - (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons;

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- (i) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers in order to achieve the objectives of this Act;
- (j) prescribe the minimum qualification requirements for registration.
- (2) The Council may -
 - (a) arrange insurance with an insurer who is registered or deemed to be registered under the Long Term Insurance Act, 1998 (Act No. 5 of 1998), or the Short Term Insurance Act, 1998 (Act No. 4 of 1998), for the indemnification by means of insurance of registered persons against claims arising from the performance of their functions as registered persons;
 - (b) arrange with an insurer referred to in subsection (1) for the provision of cover by means of insurance for -
 - (i) any member, the Registrar or any employee of the Council in respect of any bodily injury, disablement or death resulting from an accident occurring in the course of the performance of his or her functions in terms of this Act;
 - (ii) the Council against any loss, damage, risk or liability which it may suffer or incur, including cover in respect of any loss or damage caused to it by any person in its service and in respect of all property under the control of the Council;
 - (c) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the property valuation profession and related matters.

Term of office of members of Council

8. (1) Subject to subsection (3), the term of office of a member of the Council is four years, but members continue in office until the succeeding Council is duly constituted.

(2) A member of the Council other than the Valuer-General may not serve for more than two consecutive terms of office.

- (3) Despite subsections (1) and (2) the Minister may -
 - (a) by notice in the *Gazette*, after consultation with the Council, extend the term of office of a member or all the members of the Council for a period not exceeding 12 months;
 - (b) by notice in the *Gazette*, after consultation with the Council, and after the member concerned has been afforded an opportunity to be heard, terminate the term of office of a member or all the members of the Council.

Act No. 7, 2012**PROPERTY VALUERS PROFESSION ACT, 2012****Disqualification for appointment as member of Council**

- 9.** A person may not be appointed as a member of the Council if the person -
- (a) is not a Namibian citizen or a permanent resident of Namibia, and not ordinarily residing in Namibia;
 - (b) has been convicted of an offence and sentenced to imprisonment without the option of a fine, unless he or she has been pardoned or unless such imprisonment has expired at least 10 years before the date of appointment;
 - (c) is unrehabilitated insolvent;
 - (d) is of unsound mind and have been so declared by a competent court;
 - (e) is a member of Parliament, a regional council or a local authority council;
 - (f) has, as a result of improper conduct, been removed from an office of trust; or
 - (g) has in terms of this Act been found guilty of serious improper conduct.

Vacation of office and filling of casual vacancies

- 10.** (1) A member of the Council vacates his or her office if the member -
- (a) becomes disqualified in terms of section 9 from being appointed as a member of the Council;
 - (b) resigns by written notice addressed to the Minister;
 - (c) has, without the leave of the Council, been absent from more than two consecutive meetings of the Council;
 - (d) is withdrawn by the nominating authority that has nominated the member;
 - (e) was appointed in terms of section 3(1) (a),(b) or (c) and ceases to be in that category of persons;
 - (f) is removed from office under subsection (2).
- (2) The Minister, by notice in writing, may remove a member from office if the Minister, after affording the member an opportunity to be heard, is satisfied that the member -
- (a) is incapacitated by physical or mental illness; or
 - (b) is, for any valid reason, unable or unfit to properly, efficiently and effectively discharge the functions of a member.

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(3) Whenever the Minister acts under subsection (2), the Minister may first suspend the member concerned from his or her office pending a final decision on whether or not the member should be removed.

(4) If a member of the Council dies or vacates office before the expiration of his or her term of office, the Minister, after consultation with the Council, and subject to section 3 may appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.

Election of chairperson and vice-chairperson of Council

11. (1) The members of the Council must at the first meeting of every newly constituted Council elect a chairperson and a vice-chairperson of the Council -

- (a) who must be registered persons, but excluding valuer in training, student valuer in training and prescribed categories; and
- (b) of whom at least one must actively practise in the property valuation profession.

(2) The chairperson and vice-chairperson of the Council hold office for the duration of their terms of office.

(3) If the chairperson of the Council is for any reason unable to act as chairperson, the vice-chairperson of the Council must perform all the functions and may exercise all the powers of the chairperson.

(4) If both the chairperson and the vice-chairperson of the Council are for any reason unable to preside at a Council meeting the members present must elect a person from their number to preside at that meeting.

(5) A person elected as contemplated in subsection (4) may during that meeting and until the chairperson or vice-chairperson of the Council resumes his or her functions, perform all the functions and exercise all the powers of the chairperson.

Meetings and decisions of Council

12. (1) The Minister, as soon as practicable from the date of the appointment of the Council, must determine the date, time and place of the first meeting of the Council, and thereafter, subject to subsection (3), meetings of the Council must be held quarterly at the dates, times and places as the Council may determine.

(2) If the Council has not determined the date, time and place for its next meeting, the chairperson of the Council must determine the date, time and place.

(3) The chairperson of the Council -

- (a) may, in addition to the quarterly meetings referred to in subsection (1), convene a special meeting of the Council at any time; and
- (b) must convene a special meeting of the Council on the written request of the Minister or at least three members of the Council.

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(4) The chairperson of the Council must convene a meeting requested in terms of subsection (3) (b) within 14 days after the date of receipt of the request and at such date, time and place as he or she may determine.

(5) At a meeting of the Council -

- (a) a majority of two-thirds of all the members of the Council constitutes a quorum;
- (b) a decision of a majority of the members present and voting at any meeting of the Council constitutes the decision of the Council.

(6) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(7) Subject to subsection (5), a decision of the Council is not rendered invalid by reason only –

- (a) of a vacancy on the Council; or
- (b) of the fact that a person who is not entitled to sit as a member of the Council did so sit when the decision was taken,

if that decision was taken by the requisite majority of the members who were present at the time and entitled to vote.

(8) The Council may determine the manner in which meetings of the Council or any committee of the Council are convened, the procedure at such meetings and the manner in which the minutes of such meetings are kept.

Funds of Council and keeping and auditing of accounts

13. (1) The funds of the Council consist of money appropriated by Parliament for the purpose of the Council and any money received in terms of this Act and all other monies which may accrue to the Council from any other lawful source, including fines imposed by the Council.

(2) The Council may -

- (a) collect and invest funds of the Council;
- (b) raise money by way of loan for the purpose of effectively performing its functions;
- (c) with a view to the promotion of any matter relating to the property valuation profession, lend money against such security as the Council considers adequate; and
- (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).

(3) The Council -

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- (a) must pay from its funds to its members and committee members the allowances determined by the Minister as contemplated in subsection (7);
 - (b) may finance any publication referred to in section 7(3)
 - (c) may establish and administer an education fund for the education, training and continuing education and training of registered persons and students in the property valuation profession.
- (4) The Council must keep full and correct account of all monies received and expended by it.
- (5) Subject to subsection (9), the financial year of the Council ends on 31 March of each year.
- (6) The Council must -
- (a) annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates;
 - (b) have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951);
 - (c) have a copy of the audited statement and balance sheet available for inspection at the offices of the Council.
- (7) The Council must, within six months from the close of each financial year or such other period as may be agreed to by the Minister after a request by the Council, submit the audited statement and balance sheet to the Minister who must table them in the National Assembly -
- (a) within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session; or
 - (b) if the National Assembly is not then in ordinary session, within 30 days after commencement of its next ordinary session.
- (8) If, after consultation with the Council, the Minister is satisfied that the Council is financially strong and funds are enough to sustain the operations of the Council, the Minister must issue a notice in the *Gazette* to that effect.
- (9) After the publication of the notice referred to in subsection (8) –
- (a) the Council is no longer entitled to receive money from Parliament;
 - (b) subsection (7) ceases to apply; and
 - (c) the Council, by notice in the *Gazette*, may determine a different financial year that may be more suitable to its operations.

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(10) The Council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the Council.

(11) There must be paid to a member of the Council or a member of any committee who is not in the full-time employment of the State such remuneration and allowances, including subsistence and travel allowances, out of the funds of the Council as the Council, with the concurrence of the Minister, may determine.

(12) The Council may reimburse any member of the Council or a member of any committee for subsistence and travelling expenses reasonably incurred by him or her while attending a meeting of the Council or of a committee.

Committees of Council

14. (1) The Council -

- (a) may establish any committee to assist it in the performance of its functions; and
- (b) must establish an investigating committee if a charge of improper conduct is to be investigated,

and may appoint any person as a member of the committee concerned, but no member of the Council may be appointed as a member of an investigating committee.

(2) The Council must designate a chairperson for a committee.

(3) The Council may at any time dissolve or reconstitute a committee.

Appointment and remuneration of Registrar and other employees of Council

15. (1) The Council -

- (a) must appoint a Registrar on such conditions, including the payment of remuneration, allowances and other benefits, if any, as it may determine;
- (b) may appoint, on such conditions, including the payment of remuneration, allowances and other benefits, if any, as it may determine, such other employees as it may deem necessary for carrying out its functions;
- (c) arrange for the payment of pension and other benefits to the Registrar or any other employee of the Council and to the dependants of the Registrar or the employee concerned on the termination of the service of the Registrar or the employee;
- (d) may dismiss any person so appointed subject to the rules of natural justice.

(2) On acceptance of his or her appointment as such, the Registrar must enter with the Council into a performance agreement in the form determined by the Council.

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(3) The Registrar must perform, in addition to such functions as may otherwise be assigned to the Registrar by or under this Act, such functions as may from time to time be assigned to him or her by the Council.

PART III
REGISTRATION

Categories of registration

16. (1) The categories in which a person may register in the property valuation profession are -

- (a) professional valuer;
- (b) associate professional valuer;
- (c) valuer in training;
- (d) student valuer in training; or
- (e) other specified categories as prescribed by the Council.

(2) A person may only actively practise in any of the categories contemplated in subsection (1) if the person is registered in that category.

(3) A person who is registered in the category of valuer in training must perform work in the property valuation profession only under the supervision and control of a professional of a category as prescribed.

Registration in any category of valuers

17. (1) A person must -

- (a) apply in the prescribed application form to the Council for registration in a category referred to in section 16(1), and
- (b) pay the prescribed application fee when lodging the application.

(2) Subject to subsection (4), if, after consideration of an application, the Council is satisfied that the applicant -

- (a) in the case of a person applying for registration as a professional valuer or an associate professional valuer -
 - (i) is ordinarily resident in Namibia and is a Namibian citizen or has been admitted to Namibia for permanent residence;
 - (ii) has passed the prescribed examination, any examination recognised by the Council or competency test prescribed or recognised by the Council;
 - (iii) has gained practical experience in property valuation in Namibia which is of the prescribed scope, variety, nature and standard; and

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- (iv) in the case of an associate professional valuer, has not actively practiced in Namibia within the last six months;
- (b) applying for registration as a valuer in training, a student valuer in training or in a specified category -
 - (i) is ordinarily resident in Namibia and is a Namibian citizen or has been admitted to Namibia for permanent residence;
 - (ii) is enrolled at an educational institution approved by the Council for a course which includes the prescribed or recognised examinations;
 - (iii) has passed any other examination prescribed by the Council; and
 - (iv) has proved that he or she has satisfied the relevant educational outcomes prescribed,

the Council must register the successful applicant in the relevant category and issue a registration certificate to the applicant in the prescribed form.

(3) The Council may prescribe the restrictions and conditions, if any, applicable to an applicant applying in the category of associate professional valuer, valuer in training, student valuer in training or in a specified category.

- (4) Despite subsection (2), the Council may refuse to register an applicant -
 - (a) if the applicant has been removed from an office of trust on account of improper conduct;
 - (b) has been convicted of an offence and sentenced to imprisonment without the option of a fine, unless he or she has been pardoned or unless such imprisonment has expired at least 10 years before the date of registration;
 - (c) is of unsound mind and have been so declared by a competent court;
 - (d) for as long as the applicant is disqualified from registration as a result of any penalty imposed on him or her under this Act; or
 - (e) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for registration.

(5) The Council must provide an applicant whose application is refused as contemplated in subsection (4), with a written notice of refusal providing reasons for the refusal.

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18. (1) The Council may cancel the registration of a registered person if the person -

- (a) becomes disqualified from registration as contemplated in section 17(4);
- (b) has erroneously been registered or has been registered on information subsequently proved to be false; or
- (c) fails to pay the prescribed annual fee or any portion thereof within 60 days from it becoming due or within such further period as the Council may allow, either before or after expiry of the 60 days.

(2) The Council must provide the person whose registration has been cancelled as contemplated in subsection (1), with a written notice of cancellation providing reasons for the cancellation.

(3) If a person who is registered as a valuer in training qualifies to be registered as a professional valuer or an associate professional valuer in terms of section 17(2)(a), the Council must cancel his or her registration as a valuer in training.

(4) The Council must at the written request of any registered person cancel his or her registration, but if an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.

(5) Despite the cancellation of the registration of a registered person in terms of this section, the person remains liable for any fee, arrears or penalty imposed by the Council in respect of the period that the person was so registered.

Authorised titles

19. (1) A person who is registered in any of the categories referred to in section 16(1)(a) to (d) may describe himself or herself and use the title -

- (a) professional valuer;
- (b) associate professional valuer;
- (c) valuer in training; or
- (d) student valuer in training.

(2) A person registered in a specified category prescribed by the Council as contemplated in section 16(1)(e) may use a title prescribed by the Council for the specified category.

(3) A registered person must use his or her title in all property valuation reports and other documentation relating to his or her work in the property valuation profession prepared by or for him or her.

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(4) The Council may determine abbreviations or acronyms for the titles referred to in subsections (1) and (2).

Renewal of registration

20. (1) A registered person must apply at least 90 days prior to the prescribed expiry date of his or her registration in the prescribed manner to the Council for the renewal of his or her registration.

(2) The Council may prescribe conditions for the renewal of registration, but if the conditions concerned are less favourable to the registered person than the previous conditions, if any, the Council must afford the registered person concerned an opportunity to be heard before the new conditions are imposed.

(3) Subject to section 17, the Council must register on application a person who was previously registered and whose registration was cancelled in terms of section 18(1)(a) or (c), if the person has paid -

- (a) the prescribed application fee;
- (b) any arrear annual fee or any portion thereof;
- (c) any expenses incurred by the Council in connection with the recovery of any arrear fees; or
- (d) any penalty imposed on the person by the Council.

Return of registration certificate

21. A person whose registration has been cancelled in terms of this Act must return his or her registration certificate to the Registrar within 30 days from the date of cancellation.

Recognition of voluntary associations

22. (1) Any voluntary association may apply to the Council to be recognised as such.

(2) The Council may recognise a voluntary association and issue it with a certificate of recognition, if the voluntary association complies with the requirements prescribed in terms of section 7(d).

(3) A certificate of recognition is valid for a period of five years from the date of issue.

(4) A voluntary association must display its certificate of recognition in a prominent place at its head office.

- (5) The recognition of a voluntary association lapses -
 - (a) if the association no longer complies with the requirements contemplated in section 7(d); or

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(b) at the expiry of the five-year period referred to in subsection (3).

(6) A voluntary association must apply in the prescribed manner to the Council for the renewal of its recognition at least 90 days prior to the expiry of its recognition.

(7) A voluntary association whose recognition has lapsed and has not been renewed must, within 30 days from the date on which it is so directed in writing by the Council, return its certificate of recognition.

Identification of work

23. (1) The Council must consult with -

- (a) all voluntary associations;
- (b) any person;
- (c) any body; or
- (d) any industry,

that, in the opinion of the Council, may be affected by any law regulating the built environment professions regarding the identification of the type of property valuation work which may be performed by persons registered in any of the categories referred to in section 16.

Prohibition of unregistered persons from performing work reserved for registered persons and from doing certain things

24. (1) A person who is not registered in terms of this Act may not -

- (a) perform any kind of work identified for any category of registered persons;
- (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
- (c) use the name of any registered person or any name or title referred to in section 16 or 19; or
- (d) perform any act indicating, or calculated to lead persons to believe that the person is registered in terms of this Act.

(2) Subsection (1)(a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed.

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PART IV
CODE OF CONDUCT AND DISCIPLINARY PROVISIONS

Code of conduct

25. (1) The Council, after consultation with voluntary associations, registered persons and the Minister, must draw up a code of conduct for registered persons.

(2) The Council is responsible for administering the code of conduct and must ensure that the code is available to members of the public at all reasonable times.

(3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

Investigation of improper conduct

26. (1) The Council must refer any matter brought against a registered person to an investigating committee if -

(a) the Council has reasonable grounds to suspect that a registered person has committed an act which constitutes improper conduct; or

(b) a complaint, charge or allegation of improper conduct has been made against a registered person by any person in the prescribed form.

(2) At the request of the Council the investigating committee must -

(a) investigate the matter; and

(b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the Council the charge or charges that may be brought against the registered person.

(3) An investigating committee may only question the registered person concerned if the committee has in writing informed the registered person that he or she -

(a) has the right to be assisted or represented by another person; and

(b) is not obliged to make any statement, and that any statement so made may be used in evidence against the registered person.

(4) An investigating committee must submit, after the conclusion of the investigation, but within 60 days from the date on which the investigation has commenced, a report containing its recommendations to the Council regarding any matter referred to it in terms of this section.

(5) An investigating committee may in writing apply to the Council for extension of the period referred to in subclause (4), and the Council may in writing extend, on good cause shown, that period as determined by the Council.

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(6) An investigating committee must submit in respect of every investigation conducted by it, but which has not been concluded, to the Council a progress report to serve at the next Council meeting.

Charge of improper conduct

27. (1) Any recommendation by an investigating committee contemplated in section 26(2)(b) or any report of the investigating committee contemplated in section 26(4) must be considered by the Council at the next Council meeting after the date on which it has been received by the Council.

(2) If the Council, after it has considered any recommendation contemplated in section 26(2)(b) or the report of the investigating committee contemplated in section 26(4), is of the opinion that sufficient grounds exist that a registered person may be charged for improper conduct, charge that person within 30 days from the date on which the Council has so considered the recommendation or the report, with improper conduct by furnishing a charge sheet to him or her by hand or registered mail.

(3) The charge sheet must inform the registered person charged -

(a) of the details and nature of the charge;

(b) that the person -

(i) must, in writing, admit or deny the charge;

(ii) may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and

(c) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the Council.

(4) If a registered person charged admits that he or she is guilty of the charge, the person is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct to the Council.

(5) After the registered person who has admitted guilt as contemplated in subsection (4) has been afforded the opportunity to -

(a) address the Council in mitigation of sentence; and

(b) call witnesses to give evidence on his or her behalf in mitigation of the sentence,

the Council may impose a penalty contemplated in section 30(3) on that person.

(6) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against the person under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which the person was acquitted or convicted or any other offence of which the person might have been acquitted or convicted at his or her trial on the criminal charge.

Act No. 7, 2012**PROPERTY VALUERS PROFESSION ACT, 2012****Appointment of disciplinary tribunal**

- 28.** (1) If a person charged -
- (a) denies the charge; or
 - (b) fails to comply with section 27(2)(b),

the Council must appoint -

- (i) a disciplinary tribunal to conduct a disciplinary hearing against the person; and
 - (ii) a chairperson of the disciplinary tribunal.
- (2) The disciplinary tribunal must consist of -
- (a) a registered professional valuer who specialises in the field concerning the charge;
 - (b) a registered professional valuer who has appropriate experience in property matters; and
 - (c) a person qualified in law and who has appropriate experience,

but no member of the Council may be appointed as a member of a disciplinary tribunal.

(3) A disciplinary hearing contemplated in subsection (1) must be finalised within 4 months from the date on which the disciplinary tribunal has been appointed.

(4) A disciplinary tribunal may in writing apply to the Council for extension of the period referred to in subclause (3), and the Council may, on good cause shown, in writing extend the period as determined by the Council.

Disciplinary hearing

29. (1) For the purposes of this section, the disciplinary tribunal may appoint a person to assist the tribunal in the performance of its functions as referred to in subsection (8).

- (2) For the purposes of a disciplinary hearing, the disciplinary tribunal -
- (a) must subpoena the registered person in respect of whom the disciplinary hearing is to be conducted to appear before the tribunal; and
 - (b) may subpoena any person -
 - (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
 - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,

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to appear before the disciplinary tribunal at the date, time and place specified in the subpoena, to be questioned or to produce a book, document or object.

(3) A subpoena issued in terms of subsection (2) must -

- (a) be in the prescribed form;
- (b) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and
- (c) be served on the registered person or other person concerned personally or by sending it by registered mail.

(4) The disciplinary tribunal may retain for the duration of the hearing any book, document or object produced in terms of subsection (2).

(5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing.

(6) At a hearing the registered person charged -

- (a) may personally be present at the hearing of the proceedings;
- (b) may be assisted or represented by another person in conducting the proceedings;
- (c) has the right to be heard;
- (d) may call witnesses;
- (e) may cross-examine any person called as a witness in support of the charge;
- (f) may have access to documents produced in evidence;
- (g) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 27(2)(b);
- (h) may, in the case where he or she makes an admission in terms of paragraph (g), be found guilty of improper conduct as charged.

(7) If the registered person subpoenaed in terms of subsection (2) is not present at the commencement of the hearing concerned, the chairperson of the disciplinary tribunal, if he or she is of the opinion that the registered person has received the subpoena, may have the inquiry conducted at his or her in the absence of the registered person.

(8) The person referred to in subsection (1) may during a hearing -

- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;

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- (b) question any person who was subpoenaed in terms of subsection (2); or
 - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (1) suspects or believes to have a bearing on the subject of the hearing.
- (9) A witness who has been subpoenaed may not -
- (a) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (b) refuse to be sworn in or to be affirmed as a witness;
 - (c) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her; or
 - (d) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (10) A witness who has been subpoenaed -
- (a) must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance;
 - (b) may request that the names of the members of the disciplinary tribunal be made available to him or her.
- (11) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal in respect of any person called in terms of this section as a witness.
- (12) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.
- (13) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (14) The record of evidence which has a bearing on the charge before the disciplinary tribunal and which was presented before any committee which investigated an event or conduct is admissible without further evidence being led if the record is accompanied by a certificate from the chairperson of the disciplinary tribunal which certifies that the investigation was lawful, reasonable and procedurally fair.
- (15) If the improper conduct with which the registered person is charged, amounts to an offence of which the person has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the

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identification of the registered person as the person referred to in the record, sufficient proof of the commission by the person of that offence, unless the conviction has been set aside by a superior court.

Proceedings after disciplinary hearing

30. (1) After the conclusion of a disciplinary hearing, the disciplinary tribunal must within 30 days -

- (a) decide whether or not the registered person charged is guilty of improper conduct;
- (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances;
- (c) inform the registered person charged and the council of the finding; and
- (d) inform the registered person of his or her right of appeal in terms of section 31.

(2) A registered person found guilty of improper conduct in terms of this section may -

- (a) address the disciplinary tribunal in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.

(3) Every registered person who is found guilty of improper conduct or who admits that he or she is guilty of the charge concerned is liable to any one or more of the penalties consisting of -

- (a) a reprimand or a caution;
- (b) payment of a fine not exceeding N\$4 000, which amount may be increased by the Council, with the consent of the Minister, by notice in the *Gazette*;
- (c) suspension of the registration of the person for a period not exceeding one year; or
- (d) cancellation of the registration of the person and removal of the name of the person from the register referred to in section 4(c).

(4) At the conclusion of the hearing the disciplinary tribunal must notify the Council of its finding.

(5) The Council must -

- (a) publish the finding and the penalty imposed in terms of subsection (3) by notice in the *Gazette*; and

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(b) give effect to the decision of the disciplinary tribunal.

(6) The Council may recover any fine imposed in terms of subsection (3) (b) by means of proceedings in a competent court.

Appeal against decision of disciplinary tribunal

31. (1) A registered person found guilty of improper conduct may appeal in writing to the Council against a finding of the disciplinary tribunal or against the sentence, or both, and the appeal must -

(a) set out the grounds of the appeal; and .

(b) be lodged within 30 days after the disciplinary tribunal has informed the person concerned of its decision.

(2) The Council may -

(a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or

(b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or amend the finding or sentence or both.

(3) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1), the decision of the disciplinary tribunal under section 30(3) or the publication by the council in terms of section 30(5)(a) may not be put into effect before the Council has decided on the appeal.

Appeal against certain decisions of Council

32. (1) Any member of the public whose interests or rights are affected by a decision made by the Council may -

(a) within 30 days from the member becoming aware of the decision, request the Council in writing to furnish him or her in writing with its reasons for the decision;

(b) within 30 days from the date the member received the reasons for the decision from the Council, and after giving notice of appeal to the Council, appeal in writing to the Minister against the decision, setting out the grounds of appeal.

(2) The Council must furnish its reasons for its decision as contemplated in subsection (1)(a) within 30 days of receipt of the request of the member.

(3) The Minister may -

(a) dismiss the appeal and confirm the decision; or

(b) uphold the appeal wholly or in part and set aside or amend the decision.

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PART V
GENERAL PROVISIONS**Professional fees**

- 33.** (1) The Council -
- (a) must determine, after consultation with the Minister, voluntary associations, representatives of service providers and clients in the public and private sector, the tariff of professional fees according to which a registered person may calculate the amount chargeable by him or her in respect of the rendering by him or her of professional services, and which fees may include fixed, minimum or maximum fees;
 - (b) must publish those fees in the *Gazette*; and
 - (c) may review those fees annually or when necessary.
- (2) The Council may determine different professional fees in respect of different categories of registered persons.
- (3) A person who strongly feels that the professional fees published in terms of subsection (2) are unreasonably high or low may appeal to the Minister within 30 days from the date of the publication.
- (4) The Minister, after consultation with the Council, may confirm or amend the professional fees wholly or in part.

Regulations

- 34.** (1) Subject to subsection (2), the Minister, after consultation with the Council, may make regulations with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act.
- (2) Before the Minister makes any regulation under this section, the Minister must publish a draft of the proposed regulation in the *Gazette*, together with a notice calling on interested persons to comment in writing on the regulation within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.
- (3) If the Minister amends the draft regulations as a result of any comment received in terms of subsection (2), the Minister does not need to publish the amendments concerned for comment before making the regulations.
- (4) If circumstances necessitate the immediate publication of a regulation, the Minister, after consultation with the Council, may make a regulation without having to publish a draft thereof for comment as contemplated in subsection (2).

Procedure and evidence for evidential purposes

- 35.** (1) The register referred to in section 4(c) serves as evidence of all matters which in terms of this Act are required or permitted to be noted therein.

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- (2) A certificate purporting to be signed by the Registrar to the effect that –
- (a) an entry has or has not been made in the register; or
 - (b) any function authorised by this Act to be performed has or has not been performed,

is evidence of the matters specified in that certificate.

- (3) A copy of -
- (a) an entry in the register;
 - (b) a document in the custody of the Registrar; or
 - (c) an extract from the register or from any document,

purporting to be certified by the Registrar is admissible in evidence in all courts without further proof or production of the original.

Exemptions

36. (1) The Minister, after consultation with the Council, voluntary associations and any other person the Minister considers necessary, may exempt any person from any provision of this Act for a period not exceeding two years.

(2) The Minister, after consultation with the Council, voluntary associations and any other person he or she considers necessary, must make regulations regarding exemptions from the provisions of this Act.

(3) An exemption referred to in subsection (1) must comply with the regulations contemplated in subsection (2).

Liability

37. (1) No person, including the State, is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a function conferred or imposed by or under this Act, unless the exercise or performance of the power or function is attributable to gross negligence by such person.

(2) A person who was registered in terms of this Act and whose registration was cancelled is liable for any action taken by him or her while he or she was registered.

Delegation of powers and assignment of functions

38. (1) The Council may delegate or assign, in writing and subject to such conditions as it may impose, any power or function conferred or imposed upon it by or under this Act, excluding the power to appoint the Registrar and to consider applications for registration, to a committee, an employee or a member of the Council.

(2) The Registrar may delegate or assign, in writing and subject to such conditions as he or she may impose, any power or duty conferred or imposed upon the registrar by or under this Act to any employee of the Council.

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(3) A delegation under subsection (1) or (2) does not prevent the exercise of the power or the performance of the duty or function in question by the Council or the Registrar.

Offences and penalties

39. (1) A person who contravenes section 16(2), 21, 22(7), or 29(9), (10)(a), (12) or (13) commits an offence.

(2) A person convicted of an offence in terms of -

- (a) section 16(2) is liable to a fine equal to or double the remuneration received by him or her for work done in contravention of section 16(2) or to the payment of a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years on failure to pay the fine, whichever is the highest;
- (b) section 21 or 22(7) is liable to a fine not exceeding N\$400 or to imprisonment for a period not exceeding one month, or to both such fine and such imprisonment;
- (c) section 29(9), (10)(a), (12) or (13) is liable to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

Appointment of persons to determine valuation of property under or in terms of other laws

40. If any other law confers upon a functionary the power to appoint any person to determine the value of property, the functionary -

- (a) may still appoint any person not registered in terms of this Act until 12 months from the date of commencement of this Act;
- (b) after the 12 months referred to in paragraph (a), may only appoint a person registered in terms of this Act.

Transitional provisions

41. A person who at the date of commencement of this Act practices in the property valuation profession –

- (a) may apply to the Council, within 12 months from that date, to be registered in the appropriate category contemplated in section 16;
- (b) who has applied for registration in terms of paragraph (a) and whose application has been refused may lawfully practice for a period of 30 days after the date on which he or she has been notified that his or her application has been refused;
- (c) who failed to apply for registration in terms of paragraph (a) must discontinue to practice the profession 12 months after the commencement of this Act.

Act No. 7, 2012**PROPERTY VALUERS PROFESSION ACT, 2012****Act binds State**

42. This Act binds the State.

Short title and commencement

43. (1) This Act is called the Property Valuers Profession Act, 2012, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
