

CORPORATE & COMMERCIAL AND REAL ESTATE LAW ALERT

20 JULY 2022



INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

Part 2 | Property Practitioners Act unpacked: Prescribed minimum information on letterheads and written communication

The Property Practitioners Act 22 of 2019 (Act) came into effect on 1 February 2022. The Act has repealed the Estate Agency Affairs Act 112 of 1976 (Estate Agency Affairs Act) in its entirety.



FOR MORE
INSIGHT INTO
OUR EXPERTISE
AND SERVICES

Part 2 | Property Practitioners Act unpacked: Prescribed minimum information on letterheads and written communication

The Property Practitioners Act 22 of 2019 (Act) came into effect on 1 February 2022. The Act has repealed the Estate Agency Affairs Act 112 of 1976 (Estate Agency Affairs Act) in its entirety.

The Act places a number of new obligations on property practitioners in respect of letterheads and written communication, as well as marketing and property related agreements, not all of which were previously contained in the Estate Agency Affairs Act.

LETTERHEADS, WRITTEN COMMUNICATION AND MARKETING MATERIAL

The Act prescribes certain minimum information that must be contained on all letterheads, written communication and marketing material, including physical and electronic marketing brochures, website adverts and social media adverts. The most important provisions are:

- A holder of a fidelity fund certificate must ensure that the following prescribed sentence is reproduced on all letterheads and marketing material: *"Registered with the PPRA"*.

- A property practitioner must, if they conduct their business under a trade name, clearly disclose the full name in all correspondence and other written documentation.
- Where a property practitioner who is a natural person acts on behalf of any business property practitioner, that natural person must reflect the following information in respect of the business property practitioner, on all letters, emails and similar forms of communication, as well as all business cards and marketing material: (i) full name; (ii) email address; and (iii) telephone number.
- All emails, letters and marketing material must reflect, in respect of each property practitioner (i) that is a sole proprietor or business property practitioner that they hold a fidelity fund certificate; (ii) whether or not that business property practitioner operates a trust account; (iii) in respect

of each natural person that is associated with that business property practitioner, state the name of such natural person together with a statement that such natural person holds a fidelity fund certificate and the capacity in which the person acts as a property practitioner, being a principal, a full status property practitioner or a candidate. This information must also be reflected on all property related agreements, in addition to the minimum information set out below.

- Certain additional obligations apply in respect of franchisees. A franchisee must disclose clearly in all written communication, advertising and marketing materials that they operate in terms of a franchise agreement, as well as the name of the franchisor.

Part 2 | Property Practitioners Act unpacked: Prescribed minimum information on letterheads and written communication

CONTINUED

AGREEMENTS IN RESPECT OF PROPERTY TRANSACTIONS

The Act also prescribes certain minimum information that must be contained in all agreements in respect of property transactions. This includes mandates, offers to purchase, and all addenda. The most important provisions are the following:

- In particular, any agreement to which the property practitioner is a party must contain the following clause: *"[Name of property practitioner] hereby warrants the validity of his/her/its fidelity fund certificate as at the date of signature of this agreement."*
- The Act obliges property practitioners to deliver a disclosure form to a seller or lessor for completion before concluding a mandate, and to a purchaser or lessee before making an offer.

The disclosure form is a standard template document prescribed by the Act. If no disclosure form is signed and attached, the Act provides that the agreement must be interpreted as if no defects or deficiencies of the property were disclosed to the purchaser. A property practitioner who fails to comply with the requirement of the mandatory disclosure form may be held liable by an affected consumer.

- As is the position with written communication and marketing material, where a property practitioner who is a natural person acts on behalf of any business property practitioner, that natural person must reflect the following information in respect of the business property practitioner, on all contracts: (i) full name; (ii) email address; and (iii) telephone number.

NON-COMPLIANCE WITH THE ACT

Any property practitioner in contravention of the Act will be required to repay any fees received for a property transaction and may be issued with a fine. Furthermore, any person convicted of an offence in terms of the Act is liable to pay a fine, or to imprisonment for up to 10 years. Even if property practitioners do not hold monies in trust, they will need to comply with the remaining obligations in terms of the Act.

**JUSTINE KRIGE AND
MUHAMMAD GATTOO**

OUR TEAM

For more information about our Corporate & Commercial practice and services in South Africa and Kenya, please contact:



Willem Jacobs

Practice Head & Director:
Corporate & Commercial
T +27 (0)11 562 1555
M +27 (0)83 326 8971
E willem.jacobs@cdhlegal.com



David Thompson

Deputy Practice Head & Director:
Corporate & Commercial
T +27 (0)21 481 6335
M +27 (0)82 882 5655
E david.thompson@cdhlegal.com



Sammy Ndolo

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com

Roelof Bonnet

Director:
Corporate & Commercial
T +27 (0)11 562 1226
M +27 (0)83 325 2185
E roelof.bonnet@cdhlegal.com

Tessa Brewis

Director:
Corporate & Commercial
T +27 (0)21 481 6324
M +27 (0)83 717 9360
E tessa.brewis@cdhlegal.com

Etta Chang

Director:
Corporate & Commercial
T +27 (0)11 562 1432
M +27 (0)72 879 1281
E etta.chang@cdhlegal.com

Vivien Chaplin

Director:
Corporate & Commercial
T +27 (0)11 562 1556
M +27 (0)82 411 1305
E vivien.chaplin@cdhlegal.com

Clem Daniel

Director:
Corporate & Commercial
T +27 (0)11 562 1073
M +27 (0)82 418 5924
E clem.daniel@cdhlegal.com

Jenni Darling

Director:
Corporate & Commercial
T +27 (0)11 562 1878
M +27 (0)82 826 9055
E jenni.darling@cdhlegal.com

André de Lange

Sector Head: Agriculture, Aquaculture
& Fishing Sector
Director: Corporate & Commercial
T +27 (0)21 405 6165
M +27 (0)82 781 5858
E andre.delange@cdhlegal.com

Andrew Giliam

Director:
Corporate & Commercial
T +27 (0)21 481 6363
M +27 (0)83 359 7069
E andrew.giliam@cdhlegal.com

John Gillmer

Joint Sector Head: Private Equity
Director: Corporate & Commercial
T +27 (0)21 405 6004
M +27 (0)82 330 4902
E john.gillmer@cdhlegal.com

Ian Hayes

Director:
Corporate & Commercial
T +27 (0)11 562 1593
M +27 (0)83 326 4826
E ian.hayes@cdhlegal.com

Peter Hesselning

Director:
Corporate & Commercial
T +27 (0)21 405 6009
M +27 (0)82 883 3131
E peter.hesselning@cdhlegal.com

Quintin Honey

Director:
Corporate & Commercial
T +27 (0)11 562 1166
M +27 (0)83 652 0151
E quintin.honey@cdhlegal.com

Brian Jennings

Director:
Corporate & Commercial
T +27 (0)11 562 1866
M +27 (0)82 787 9497
E brian.jennings@cdhlegal.com

Rachel Kelly

Director:
Corporate & Commercial
T +27 (0)11 562 1165
M +27 (0)82 788 0367
E rachel.kelly@cdhlegal.com

Yaniv Kleitman

Director:
Corporate & Commercial
T +27 (0)11 562 1219
M +27 (0)72 279 1260
E yaniv.kleitman@cdhlegal.com

Justine Krige

Director:
Corporate & Commercial
T +27 (0)21 481 6379
M +27 (0)82 479 8552
E justine.krige@cdhlegal.com

Johan Latsky

Executive Consultant:
Corporate & Commercial
T +27 (0)11 562 1149
M +27 (0)82 554 1003
E johan.latsky@cdhlegal.com

Nkcubeko Mbambisa

Director:
Corporate & Commercial
T +27 (0)21 481 6352
M +27 (0)82 058 4268
E nkcubeko.mbambisa@cdhlegal.com

OUR TEAM

For more information about our Corporate & Commercial practice and services in South Africa and Kenya, please contact:

William Midgley

Sector Head: Commercial Real Estate
Director: Corporate & Commercial
T +27 (0)11 562 1390
M +27 (0)82 904 1772
E william.midgley@cdhlegal.com

Tessmerica Moodley

Director:
Corporate & Commercial
T +27 (0)21 481 6397
M +27 (0)73 401 2488
E tessmerica.moodley@cdhlegal.com

Anita Moolman

Director:
Corporate & Commercial
T +27 (0)11 562 1376
M +27 (0)72 252 1079
E anita.moolman@cdhlegal.com

Wayne Murray

Director:
Corporate & Commercial
T +27 (0)21 405 6018
M +27 (0)79 691 0137
E wayne.murray@cdhlegal.com

Francis Newham

Executive Consultant:
Corporate & Commercial
T +27 (0)21 481 6326
M +27 (0)82 458 7728
E francis.newham@cdhlegal.com

Verushca Pillay

Director:
Corporate & Commercial
T +27 (0)11 562 1800
M +27 (0)82 579 5678
E verushca.pillay@cdhlegal.com

David Pinnock

Joint Sector Head: Private Equity
Director: Corporate & Commercial
T +27 (0)11 562 1400
M +27 (0)83 675 2110
E david.pinnock@cdhlegal.com

Allan Reid

Joint Sector Head: Mining & Minerals
Director: Corporate & Commercial
T +27 (0)11 562 1222
M +27 (0)82 854 9687
E allan.reid@cdhlegal.com

Jess Reid

Director:
Corporate & Commercial
T +27 (0)11 562 1128
M +27 (0)83 571 6987
E jess.reid@cdhlegal.com

Megan Rodgers

Sector Head: Oil & Gas
Director: Corporate & Commercial
T +27 (0)21 481 6429
M +27 (0)79 877 8870
E megan.rodgers@cdhlegal.com

Ludwig Smith

Director:
Corporate & Commercial
T +27 (0)11 562 1500
M +27 (0)79 877 2891
E ludwig.smith@cdhlegal.com

Tamarin Tosen

Director:
Corporate & Commercial
T +27 (0)11 562 1310
M +27 (0)72 026 3806
E tamarin.tosen@cdhlegal.com

Roxanna Valayathum

Director:
Corporate & Commercial
T +27 (0)11 562 1122
M +27 (0)72 464 0515
E roxanna.valayathum@cdhlegal.com

Roux van der Merwe

Director:
Corporate & Commercial
T +27 (0)11 562 1199
M +27 (0)82 559 6406
E roux.vandermerwe@cdhlegal.com

Andrew van Niekerk

Head: Projects & Infrastructure
Director: Corporate & Commercial
T +27 (0)21 481 6491
M +27 (0)76 371 3462
E andrew.vanniekerk@cdhlegal.com

Charl Williams

Director:
Corporate & Commercial
T +27 (0)21 405 6037
M +27 (0)82 829 4175
E charl.williams@cdhlegal.com

Njeri Wagacha

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com

Christelle Wood

Director:
Corporate & Commercial
T +27 (0)11 562 1372
M +27 (0)83 498 2850
E christelle.wood@cdhlegal.com

Emma Hewitt

Practice Development Director:
Corporate & Commercial
T +27 (0)11 562 1635
E emma.hewitt@cdhlegal.com

OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:

**Muhammad Gattoo**

Practice Head & Director:
Real Estate Law
T +27 (0)11 562 1174
E muhammad.gattoo@cdhlegal.com

**Sammy Ndolo**

Managing Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E sammy.ndolo@cdhlegal.com

**Bronwyn Brown**

Director:
Real Estate Law
T +27 (0)11 562 1235
E bronwyn.brown@cdhlegal.com

**Mike Collins**

Director:
Real Estate Law
T +27 (0)21 481 6401
E mike.collins@cdhlegal.com

**Lucia Erasmus**

Director:
Real Estate Law
T +27 (0)11 562 1082
E lucia.erasmus@cdhlegal.com

**Simone Franks**

Director:
Real Estate Law
T +27 (0)21 670 7462
E simone.franks@cdhlegal.com

**Fatima Gattoo**

Director:
Real Estate Law
T +27 (0)11 562 1236
E fatima.gattoo@cdhlegal.com

**Simone Immelman**

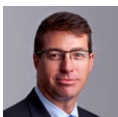
Director:
Real Estate Law
T +27 (0)21 405 6078
E simone.immelman@cdhlegal.com

**William Midgley**

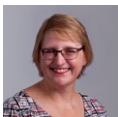
Sector Head: Commercial Real Estate
Director: Real Estate Law
T +27 (0)11 562 1390
E william.midgley@cdhlegal.com

**Muriel Serfontein**

Director:
Real Estate Law
T +27 (0)11 562 1237
E muriel.serfontein@cdhlegal.com

**John Webber**

Director:
Real Estate Law
T +27 (0)11 562 1444
E john.webber@cdhlegal.com

**Natasha Fletcher**

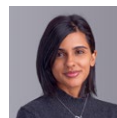
Senior Associate:
Real Estate Law
T +27 (0)11 562 1263
E natasha.fletcher@cdhlegal.com

**Marlene Heppes**

Senior Associate:
Real Estate Law
T +27 (0)11 562 1580
E marlene.heppes@cdhlegal.com

**Robert Kaniu Gitonga**

Senior Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E robert.gitonga@cdhlegal.com

**Lutfiyya Kara**

Senior Associate:
Real Estate Law
T +27 (0)11 562 1859
E lutfiyya.kara@cdhlegal.com

**Samantha Kelly**

Senior Associate:
Real Estate Law
T +27 (0)11 562 1160
E samantha.kelly@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2022 11319/JUL