



## CODE OF CONDUCT FOR NAMA MEMBERS

(1 NOVEMBER 2008)

### 1. Definitions

In this Code of Conduct, unless the context indicates otherwise, –

- (a) **“managing agent”** means an estate agent referred to in paragraph (a) of the definition of “estate agent” in section 1 of the Estate Agency Act (Act 112 of 1976) who renders or offers to render any management service to a management body in his or her capacity as such;
- (b) **“management agreement”** a mandate or agreement whereby a managing agent undertakes to render any management service to a management body;
- (c) **“management body”** means a body corporate, share block company, management association or home owners association;
- (d) **“management service”** means any service specified in Government Notice R 1485 of 17 July 1981.

### 2. Application

- 2.1 This Code of Conduct applies only to Managing Agents.
- 2.2 Managing Agents must comply with this Code of Conduct as well as the Code of the Conduct of the Estate Agency Affairs Board insofar as any provision of the Code of Conduct of the EAAB applies to managing agents.
- 2.3 The duties imposed on Managing Agents by this Code of Conduct are imposed in favour of the management body with whom the managing agent has concluded, or is about to conclude, a management agreement. No duties are imposed on Managing Agents by this part of the Code of Conduct in favour of any individual member of any management body.

### **3. Disclosure by Managing Agents**

- 3.1 Before entering into a management agreement with a management body a managing agent must in writing disclose the following information to such management body:
- 3.1.1 the managing agent's trade name and, in the case of a company, close corporation or trading trust, its registered name and registration number;
  - 3.1.2 the managing agent's postal and business street address, telephone number, fax number and e-mail address (if applicable);
  - 3.1.3 the date when the managing agent was established and the date it commenced trading as a managing agent;
  - 3.1.4 if the managing agent is a -
    - 3.1.4.1 sole proprietor, his or her name and identity number, and nationality if not South African;
    - 3.1.4.2 company, the name, business address, identity number, occupation and term of office of each director, and his or her nationality if not South African;
    - 3.1.4.3 close corporation, the name, business address, identity number and occupation of each member, and his or her nationality if not South African;
    - 3.1.4.4 partnership, the name, business address, identity number and occupation of each partner, and his or her nationality if not South African;
    - 3.1.4.5 a trading trust, the name, business address, identity number and occupation of each trustee, and his or her nationality if not South African;
  - 3.1.5 whether or not the managing agent (and/or its partners, members, shareholders, directors or trustees, as the case may be) directly or indirectly has or is about to acquire any proprietary or other personal interest in the management body concerned or the immovable property managed, controlled or administered by such management body, and, if applicable, details of any such interest;
  - 3.1.6 details of any business activities, other than as a managing agent, in which the managing agent is materially engaged from the same premises where it renders relevant services as a managing agent , using staff also employed by it in its capacity as a managing agent;
  - 3.1.7 the managing agent's office hours and days of the week during which it conducts business as a managing agent;

- 3.1.8 the number of employees currently employed by the managing agent to attend to management services for management bodies
  - 3.1.9 whether or not the managing agent is covered by insurance in terms of a professional indemnity policy in respect of its activities as a managing agent and, if so, the extent of the cover.
- 3.2 Before entering into a management agreement with a management body a managing agent must furnish the following documents to such management body:
- 3.2.1 a copy of the fidelity fund certificate for the current year issued to such managing agent
  - 3.2.2 a copy of the standard management agreement (if any) normally used by the managing agent in respect of management agreements concluded with management bodies;
  - 3.2.3 a copy of the managing agent's standard letterhead as used for business purposes in its capacity as a managing agent; and
- 3.3 Before entering into a management agreement with a management body a managing agent must –
- 3.3.1 allow such management body a reasonable opportunity to-
    - 3.3.1.1 study the information and documents furnished under clauses 3.1 and 3.2; and
    - 3.3.1.2 contact other management bodies for whom the managing agent has rendered, or is currently rendering, management services in order to obtain independent information about the nature and history of the services rendered by such managing agent;
  - 3.3.2 enable the management body to exercise the opportunity referred to in clause 3.3.1.2 by -
    - 3.3.2.1 giving such management body access to a list of all management bodies, situated in the same municipal area as the management body in question, for whom the managing agent is currently rendering management services and for whom management services have been rendered at any time during the immediately preceding three years; and
    - 3.3.2.2 allowing the management body to choose from the list referred to in clause 3.3.2.1 the names and contact details of up to five management bodies.

- 3.4 If a management agreement has been concluded with a management body, a managing agent must during the period of such management agreement -
- 3.4.1 forthwith notify the management body if any material change occurs in any of the information furnished to such management body under clauses 3.1 and 3.5; and
  - 3.4.2 when the fidelity fund certificate for the current year is received from the Estate Agency Affairs Board, send out a letter with the monthly levy statements confirming that the new fidelity fund certificate is available to be viewed in the offices of the Managing Agent.
- 3.5 A managing agent must forthwith after the conclusion of a management agreement furnish the management body in question with -
- 3.5.1 the name of the auditor appointed by the managing agent in terms of section 29(b) of the Act; and
  - 3.5.2 the name, postal and business street address, telephone number, fax number and e-mail address (if applicable) of the person at the managing agent's offices with whom the management body is to liaise with during the period of the management agreement.

#### **4. Management agreement and prohibited arrangements**

- 4.1 A management agreement, and any renewal or extension of a management agreement, must
- 4.1.1 be in writing;
  - 4.1.2 be signed by or on behalf of the managing agent and the management body;
  - 4.1.3 state the date on which the managing agent will commence with the rendering of management services to the management body in question;
  - 4.1.4 state the date on which the agreement will terminate and/or the notice period required by either party to terminate the agreement;
  - 4.1.5 contain all the material terms of the agreement, extension or renewal as the case may be, including all stipulations and disclosures prescribed by law;
  - 4.1.6 contain a full and precise description of –
    - 4.1.6.1 the management service or services that the managing agent undertakes to render over and above those referred to in clause 4.2;
    - 4.1.6.2 the extent to which the managing agent is empowered by the management body to perform any management service on behalf of and/or in the name of the management body;

- 4.1.6.3 the managing agent's duty (if any) to invest trust money as contemplated in section 32(2)(a) of EAA Act (112 of 1976);
- 4.1.6.4 the person entitled to any interest earned on monies collected or received by the managing agent on the management body's behalf, while such monies are kept in trust in terms of section 32(1) or 32(2)(a) of EAA Act (112 of 1976);
- 4.1.6.5 the remuneration to be paid to the managing agent in respect of the management services, when such remuneration becomes payable and the manner in which it must be paid; and
- 4.1.6.6 any charges that the managing agent may levy on the management body (or costs that it may recover from the management body) in respect of management services rendered to the management body, over and above the agreed remuneration.

4.2 Notwithstanding that the trustees are solely responsible in terms of the Sectional Title Act a management agreement must specifically state and describe what services, if any, are to be rendered by the managing agent in assisting the management body to –

- 4.2.1 identify the risks to be insured against and to insure (and/or keep insured) against such risks any movable and/or immovable property under the control, management or administration of the management body;
- 4.2.2 handle any insurance claims in respect of any movable or immovable property under the control, management or administration of the management body;
- 4.2.3 maintain and keep in a state of proper repair any immovable property under the control, management and administration of the management body;
- 4.2.4 comply with any notices or orders of any competent authority requiring work or repairs to be done in respect of any immovable property under the control, management and administration of the management body;
- 4.2.5 maintain and keep in a state of proper and serviceable repair any plant, machinery, recreational facilities, fixtures and fittings, equipment and/or elevators used in connection with any immovable property under the control, management and administration of the management body;
- 4.2.6 collect or receive levies or other contributions or monies payable to the management body by its members;

- 4.2.7 collect or receive monies owing to the management body by any person other than a member of the management body;
- 4.2.8 take any steps to collect from any member of the management body or other person any arrear levies, contributions or monies owing to the management body;
- 4.2.9 recruit and/or appoint employees and/or service providers to perform routine maintenance and cleaning work pertaining to any immovable property (and/or any plant, machinery, recreational facilities, fixtures and fittings or equipment used in connection with any immovable property) under the control, management and administration of the management body;
- 4.2.10 train, supervise, remunerate and discipline any of the persons employed by the management body to perform any work referred to in clause 4.2.9;
- 4.2.11 comply with any applicable taxation and labour laws pertaining to any of the persons employed by the management body to perform any work referred to in clause 4.2.9;
- 4.2.12 pay any accounts which the management body is legally obliged to pay;
- 4.2.13 purchase or hire equipment to maintain any immovable property (and/or any plant, machinery, recreational facilities, fixtures and fittings or equipment used in connection with any immovable property) under the control, management and administration of the management body;
- 4.2.14 ensure compliance with any law relating to any immovable property (and/or any plant, machinery, recreational facilities, fixtures and fittings, equipment and/or elevators used in connection with any immovable property) under the control, management and administration of the management body;
- 4.2.15 make available to any person legally entitled thereto-
  - 4.2.15.1 the rules (if any) to be complied with by the members of the management body;
  - 4.2.15.2 the financial statements of the management body;
  - 4.2.15.3 a transfer clearance certificate or similar document to be issued by the management body to enable a unit owner to transfer a unit;
  - 4.2.15.4 any other information or document which the management body is obliged to make available,

and, if any duty in this regard is imposed on the managing agent, the charges to be levied by the managing agent on the person to whom

the rules, financial statements, information or document is or are made available, together with a statement whether such charge is levied for the account of the managing agent or the management body; ensure compliance with any internal conduct, management or similar rules;

- 4.2.16 prepare an annual budget to cover expected expenditure in respect of any immovable property (and/or any plant, machinery, recreational facilities, fixtures and fittings, equipment and/or elevators used in connection with any immovable property) under the control, management and administration of the management body;
- 4.2.17 attend to the preparation of the management association's annual financial statements;
- 4.2.18 convene any meetings of the members of the management body;
- 4.2.19 render secretarial or any other services at any meetings of the members of the management body and to circulate the minutes;
- 4.2.20 convene any meetings of the management body's trustees, executive committee, board of directors or similar governing structure; to render secretarial or any other services at any such meetings and/or to circulate the minutes of any such meeting;
- 4.2.21 keep and store financial and administrative records of the management body;
- 4.2.22 supervise work of a capital nature in respect of improvements, additions or alterations to any immovable property under the control, management and administration of the management body;
- 4.2.23 order and/or supply materials and supplies to employees who perform routine maintenance and cleaning work pertaining to any immovable property (and/or any plant, machinery, recreational facilities, fixtures and fittings or equipment used in connection with any immovable property) under the control, management and administration of the management body; and
- 4.2.24 perform any function or duty not mentioned in clauses 4.2.1 to 4.2.24 and which is imposed on the management body by law.

4.3 A managing agent may not be a party to any agreement with a management body or accept any stipulation in its favour whereby -

- 4.3.1 the managing agent's legal liability to the management body for damages or losses arising from breach of contract or any negligent conduct on the part of the managing agent, is excluded, limited or restricted in any manner;
- 4.3.2 the management body's right to cancel the management agreement by reason of the managing agent's breach of contract is wholly excluded;

- 4.3.3 the management body waives any of its rights conferred by law or any protection afforded by the Code of Conduct;
  - 4.3.4 the management body is obliged to pay a fee or penalty when lawfully terminating the agreement;
  - 4.3.5 the management body may only amend, terminate or cancel the management agreement by a resolution requiring any majority or procedure other than what is prescribed by law or the management body's constitution for the passing of an ordinary resolution;
  - 4.3.6 a managing agent is given an option or other right to renew the management agreement which, if exercised, will deprive the management body of the right it would otherwise have had not to renew the agreement at the expiry thereof;
  - 4.3.7 the managing agent may in its discretion –
    - 4.3.7.1 deviate from any duty imposed on it by the management agreement; or
    - 4.3.7.2 assume any powers or functions not stated in the management agreement;
  - 4.3.8 the managing agent may charge the management body a fee in an unspecified amount for any service rendered to the management body; or
  - 4.3.9 the managing agent may without the management body's consent delegate any of the duties imposed on it in terms of the management agreement to any person other than an employee employed by the managing agent in the normal course of its business.
- 4.4 No managing agent –
- 4.4.1 may render or purport to render any managing service to a management body unless it has entered into a management agreement with such management body, complying with the provisions of this Code of Conduct;
- 4.5 A managing agent must without undue delay, free of charge, furnish the management body concerned with a copy of the signed management agreement, or any extension or renewal thereof as the case may be.
- 5. Duty to account and report**
- 5.1 A managing agent must –
- 5.1.1 keep full records in respect of the performance of the duties imposed on it in terms of a management agreement;

- 5.1.2 allow access to the records referred to in clause 5.1.1 to any person entitled thereto by law or otherwise authorized by the management body concerned;
- 5.1.3 forthwith in writing report to the management body concerned all aspects pertaining to a management service undertaken by the managing agent, requiring the management body's special and urgent attention;
- 5.1.4 on a monthly basis submit to the management body concerned a written report which
  - 5.1.4.1 sets out all actual income received and actual expenditure incurred during the month in question relating to the management body's affairs;
  - 5.1.4.2 includes an analysis of variances, if specially requested, in the budget relating to the management body's affairs;
  - 5.1.4.3 contains copies of all municipal and insurance accounts paid and not paid on the management body's behalf, if specially requested ;
  - 5.1.4.4 states the credit/debit balance on hand in every bank account administered by the managing agent on the management body's behalf; and
  - 5.1.4.5 discloses to the management body concerned all information, in particular details relating to the inability to pay the insurance premiums or municipal accounts, as well as any facts acquired by the managing agent during the month in question which, reasonably viewed, may be relevant to the management body in respect of its functions and duties or its relationship with the managing agent.

5.2 A managing agent may not conceal or withhold from a management body any information, document or facts within its possession or knowledge which are or could reasonably be material to the management body relating to its management responsibilities or the property development scheme under its control.

**6. Performance of management services**

- 6.1 A managing agent must perform the duties imposed on it in terms of the management agreement -
  - 6.1.1 with due care and skill;
  - 6.1.2 diligently; and
  - 6.1.3 on time.

- 6.2 A managing agent may not render, or purport to render, or enter into a management agreement whereby it undertakes to render, any management service to a management body if the rendering of such management service falls outside its field of competence, unless it will in the rendering of the service be assisted by a person having the required degree of skill and knowledge, and this fact is disclosed to the management body in question.
- 6.3 A managing agent must in the performance of any management service rendered to or on behalf of a management body comply with all applicable statutory provisions, rules, regulations and by-laws, in particular all applicable provisions contained in, and rules and regulations made under, the -
- 6.3.1 Sectional Titles Act 95 of 1986;
  - 6.3.2 Share Blocks Control Act 59 of 1980;
  - 6.3.3 Property Time-sharing Control Act 75 of 1983;
  - 6.3.4 Housing Development Schemes for Retired Persons Act 65 of 1988;
  - 6.3.5 Companies Act 61 of 1973; or
  - 6.3.6 constitution of the management body,
- as the case may be.
- 6.4 A managing agent rendering management services to more than one management body –
- 6.4.1 must properly keep separate accounting records in respect of the affairs of each management body for whom management services are rendered; and
  - 6.4.2 may not transfer funds from the account of one management body to the other, whether by way of a loan or otherwise.
- 6.5 If a management agreement imposes a duty on a managing agent to –
- 6.5.1 make available any document referred to in clause 4.2.15, a managing agent must furnish to the party concerned a legible photocopy of the document in question within 14 days from receipt of a written request to do so; or
  - 6.5.2 keep the minutes of any meeting relating to the management body's affairs, drafts minutes of the meeting are to be made available to the chairperson of that meeting in typed and properly worded format not later than thirty days after the meeting.

## **7. Conflict of interest and disclosure of benefits**

A managing agent who has concluded a management agreement with a management body must –

- 7.1 avoid any material conflict between its own interests and those of the management body concerned;
- 7.2 before entering into any contract with a third party on the management body's behalf, notify the management body in writing of any personal interest which the managing agent (or any of its employees, directors, members, trustees or partners) directly or indirectly has in respect of the contract or such third party; and
- 7.3 forthwith disclose to the management body material gifts or benefits directly or indirectly received by or accruing to the managing agent from third parties on account of the services rendered by the managing agent to the management body.

**8. Duty to assign skilled staff**

A managing agent must ensure that all employees assigned by it to render management services to a management body are sufficiently trained and skilled to render such services, or if they are not so trained or skilled, that such employees –

- 8.1 undergo the necessary training to acquire the required skills; and
- 8.2 are adequately supported by skilled and trained persons until they acquire the necessary skills and training themselves.

**9. Duties on termination of management agreement**

A managing agent must not later than 14 days after termination of a management agreement to which it is a party hand over to the management body or its nominee –

- 9.1 all books, documents, records, financial statements, bank statements, invoices, statements of account, correspondence and minute books relating to the management body's affairs; and
- 9.2 within 30 (thirty) days a cheque for all funds under the control of the managing agent relating to the management body concerned, unless other mutually agreed arrangements have been made between the managing agent and the management body for the control of such funds to be taken over by the management body or its nominee.

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I, the undersigned

..... (name in print  
please)

received pages 1 to 13 of the Code of Conduct and on behalf of the COMPANY

..... (in print  
please)

[Account number .....] underwrites and accept the Code of Conduct of  
the National Association of Managing Agents.

Signed on this ..... day of ..... 20 .....

SIGNATURE

(E-mail address : .....)

# EXPLANATORY MEMORANDUM ON THE CODE OF CONDUCT FOR MANAGING AGENTS

## 1. FUNDAMENTAL UNDERLYING PRINCIPLES

The code of conduct for managing agents rests on four main underlying principles, namely:

- (a) full and proper disclosure must be made by a managing agent about its set-up and experience to enable a management body to take an informed decision whether or not to appoint the managing agent;
- (b) in order to minimise disputes and conflict, a management body and a managing agent must both have certainty about the nature of their relationship and the management responsibilities to be discharged by each party;
- (c) management bodies are to be protected against unscrupulous practices on the part of managing agents; and
- (d) managing agents are to discharge their management functions professionally and in a responsible manner.

To this end the proposed code:

- provides for certain disclosures to be made by a managing agent to a management body before a management agreement is concluded (clause 3);
- stipulates that a management agreement must be in writing, containing certain specific terms (clause 4.1);
- requires that a management agreement clearly stipulates the management responsibilities to be discharged by the managing agent (clause 4.2);
- prohibits certain unscrupulous practices on the part of managing agents (clause 4.3);
- imposes a duty on a managing agent to account and report to a management body (clause 5);

- obliges a managing agent to perform its management services with due care and skill, diligently, on time and in accordance with the law (clause 6);
- requires of a managing agent to avoid a conflict of interest (clause 7);
- imposes a duty on a managing agent to assign skilled staff to render management services (clause 8); and
- places a duty on a managing agent to hand over all relevant documents on termination of its services (clause 9).

## **2. APPLICATION OF THE PROPOSED CODE OF CONDUCT**

Since all managing agents are by definition also estate agents, they must comply with all applicable provisions of the existing code of conduct, such as the duty not to act contrary to the integrity of estate agents in general; the duty to protect the interests of clients to the best of their ability; the responsibilities to be discharged in respect of the keeping of trust accounts, etc.

In terms of clause 2.3 the duties imposed on managing agents are imposed in favour of the management body with whom the managing agent has concluded a management agreement. The ethical duties under the code of conduct must therefore be discharged in favour of the management body concerned, and not individual unit owners. This means that only management bodies, and not unit owners, would be able to lodge complaints with the Board of the EAAB in respect of alleged contraventions of the Code of Conduct. A managing agent has a management agreement with the management body concerned, not individual unit owners, and it would be asking too much of the Board of the EAAB (and of managing agents) to react to every complaint lodged by individual unit owners. Unit owners who are aggrieved by acts or omissions of the managing agent appointed to manage their complex, must lodge their complaints with the management body concerned. It is the latter's responsibility to take up those complaints with the managing agent and to lodge a complaint with the Board of the EAAB in deserving instances.