

NEW ETHICAL COMPLAINT'S DISPUTE PROCEDURE

As a professional voluntary body, the Institute's Ethical Standards Committee has jurisdiction only in matters concerning members of the Institute. The following new Ethical Complaint Procedure has been formulated with a view to reducing the time frame for a case to be heard.

BEFORE THE INSTITUTE CAN BECOME INVOLVED IN A DISPUTE

1. The parties must be members of the Institute and must agree to abide by the findings of the Institute's Ethical Panel appointed to hear the case.
2. The relevant complaint is to be completed by someone who has the capacity to bind the Company or Individual to the finding of the Institute's Panel.
3. Proof of an attempt to resolve the matter on a Principal to Principal level must be submitted.
4. **The Complainant must:**
Obtain the relevant Complaint Form from the Institute;
Complete it and send it to the Institute by prepaid registered post/hand delivered to
Include:
 - ◆ all relevant material in affidavit form (certified);
 - ◆ a R1 000-00 refundable deposit;
 - ◆ copy of material and relevant complaint form must simultaneously be sent by the complainant directly to the Respondent by prepaid registered post or hand delivered.
5. **The Respondent must:**
 - ⊗ respond to the complaint within ten (10) days;
 - ⊗ complete the Relevant Form and send it to the Institute and include the Reply Affidavit Form;
 - ⊗ copies of these documents to be sent by the Respondent directly to the Complainant by prepaid registered post or hand delivered.
 - ⊗ plus pay the R1 000-00 refundable deposit to the Institute.
6. **The Complainant has a right of Reply and must:**
 - ★ respond to the Respondent's affidavit within ten (10) days;
 - ★ reply to be in affidavit form to the Institute by prepaid registered post/hand delivered;
 - ★ a request for a hearing date;
 - ★ copy of these documents to be sent by the Complainant directly to the Respondent by prepaid registered post or hand delivered.

INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA COMPLAINT AND DISPUTE PROCEDURE

1. INITIATING ARBITRATION

Any party to a dispute (**CLAIMANT**) shall initiate arbitration proceedings by contacting the other party (**THE DEFENDANT**) in writing, briefly declaring the nature of the dispute, and lodging a copy thereof with the Institute of Estate Agents.

2. EARLY SETTLEMENT PROCEDURE

- 2.1 The Institute shall only become involved in any matter referred to it in terms of Clause 1, if the Institute is satisfied that the participants to the dispute (“the parties”) have attempted to resolve the dispute themselves. Should the Institute be satisfied, in its sole discretion, that the parties have attempted to resolve the dispute themselves, the dispute shall be decided in the manner set out below.
- 2.2 No party shall be entitled to legal representation at any attempt to resolve the initial dispute or at the arbitration held in accordance with Clause 3.
- 2.3 The parties shall meet within five (5) days of the **CLAIMANT** initiating proceedings under Rule 1.
- 2.4 If the parties have not reached settlement in terms of Clause 2.3, then the parties will refer the dispute to Mediation by a Mediator chosen by them who shall be any member in good standing.
- 2.5 Unless the parties otherwise agree, the mediation shall be completed within ten (10) days of the matter being referred to mediation, failing which, the provisions of Rule 3.1 shall be applied.

3. SELECTING THE ARBITRATORS

- 3.1 In the event of the matter not being settled under Rule 2, or the time provided in Rule 2.5 expire then, and in such event, a panel of three **ARBITRATORS** shall be agreed upon within ten (10) days after the failed mediation in Rule 2.5, whichever applies, such panel shall be appointed on the following basis:-
- The **Claimant** and the **Defendant** shall each appoint one member in good standing and the Institute shall appoint a member from its own panel.
- 3.2 Before the matter is taken any further, the Claimant and Respondent shall both pay to the Institute its minimum prescribed administration fee of R1 000-00.
- 3.3 If any of the **ARBITRATORS** appointed as per Clause 3 above, are unable or unwilling so to act, then the affected party as provided for in 3.1 above, shall within three (3) days of being requested to do so, appoint a replacement **ARBITRATOR**.
- 3.4 Except with the prior written consent of the parties, no person shall act as **ARBITRATOR** in any dispute in which that person has financial or personal interest.
- 3.5 Each **ARBITRATOR** shall be obliged to disclose to the parties any prior professional, business, personal or other relationship that he/she may have or

may have had with either of them.

4. GROUND RULES

- 4.1 Within seven (7) days of the appointment of the panel, the parties shall submit to the **ARBITRATORS** their sworn affidavits of the issues in dispute.
- 4.2 The **ARBITRATORS** shall determine the dispute after considering submissions submitted to them.
- 4.3 No time limits shall be extended except by leave of the **ARBITRATORS**.
- 4.4 The arbitration shall take place at a time and place determined by the **ARBITRATORS**.
- 4.5 Documents may be delivered by hand, by telefax or sent by post. In the latter event, receipt of the document shall be deemed to have occurred five (5) days after posting.
- 4.6 No formal record of the proceedings shall be kept unless unanimously decided upon by the **ARBITRATORS** and the parties.
- 4.7 The parties shall co-operate fully with the **ARBITRATORS**.
- 4.8 The **ARBITRATORS** shall be entitled when making an AWARD to rely on their own knowledge and/or experience of the property industry.
- 4.9 Wherever under the Rules the **ARBITRATORS** are given powers, such powers shall be exercised in the sole and absolute discretion of the **ARBITRATORS**.
- 4.10 The administration of the proceedings shall be undertaken by the Institute unless the parties otherwise agree.

5. EXPEDITION

- 5.1 The arbitration shall be conducted expeditiously in order to minimise delay and with a view to minimising costs.
- 5.2 The **ARBITRATORS** shall in their discretion not necessarily be bound to the application of the normal rules of evidence in respect of the proceedings.
- 5.3 The **ARBITRATORS** may call for additional evidence and/or submissions in regard to issues in dispute.
- 5.4 The **ARBITRATORS** may proceed inquisitorially to ascertain the relevant facts and to this end may question any party or witness at any stage of the

proceedings.

- 5.5 The Code of Conduct prescribed by the Estate Agency Affairs Board and the Ethical Obligations as set down by the Institute, shall apply to all members of the Institute and, in the event of a dispute arising out of a breach by any party involved in a dispute, then the Arbitrators shall wherever possible, apply the said code in reaching a verdict.
- 5.6 In any dispute between members concerning the selling component of the commission, the Agent must have:-
 - 5.6.1 physically inspected the property with the Purchaser (or the Purchaser's spouse);
 - 5.6.2 acted in accordance with the Code of Conduct of the Estate Agency Affairs Board and the Ethical Obligations of the Institute.
 - 5.6.3 Been actively negotiating with the Purchaser.

6. **SECURITY OF COSTS**

- 6.1 The **ARBITRATORS** may on the application of the defendant order the Claimant to furnish security for costs as prescribed by the Institute in circumstances where the Court may order security in a similar matter before the Court and may stay the arbitration proceedings pending compliance with such order.
- 6.2 The **ARBITRATORS** shall, before commencing the arbitration, be entitled to order the parties to pay in advance or furnish security for their costs for acting as **ARBITRATORS**. Payments thus made shall be taken into account with regard to any order for costs made by the **ARBITRATORS**.

7. **CONFIDENTIALITY**

The proceedings shall be confidential. Neither the parties nor the **ARBITRATORS** shall disclose to third parties any information regarding the proceedings, the award or settlement terms unless the parties otherwise agree in writing.

8. **PENALTIES**

- 8.1 In the event that the **ARBITRATORS** are of the opinion that any party to the arbitration has not co-operated fully and/or has caused unnecessary and/or willful delay or whose conduct merits same, the **ARBITRATORS** shall be entitled to make any award of costs they deem fit.
- 8.2 The **ARBITRATORS** shall be entitled to make a default award.

9. **AWARD**

- 9.1 The **ARBITRATORS** shall within thirty (30) days of the termination of the proceedings render a written award including interest and costs, which may at their sole discretion include the apportionment of commission, interest and costs, without assigning reasons unless otherwise agreed and the award must be settled within seven (7) days, or in the event of a commission dispute involving a property currently being transferred, within seven (7) days of the commission having been paid to either of the parties.
- 9.2 There shall be no rights to appeal from the **ARBITRATORS'** award, however, either party shall have the right to refer the dispute to another statutory body, e.g. the Estate Agency Affairs Board or Court of Law.
- 9.3 In considering their award, the **ARBITRATORS** may take into account any equitable factors that, in their opinion, are relevant to the making of the award.
- 9.4 The award shall be published either by hand delivery to the parties or by telefax or by post.
- 9.5 Notwithstanding the provisions of this Rule, the **ARBITRATORS** shall be entitled to make such Interim awards as they deem necessary.
- 9.6 Failing the lodgement of a request for a review in terms of paragraph 9.2 above, every party to the Complaint affected thereby shall be obliged to forthwith implement, conform and give effect to any decision given in terms of paragraph 8 or 9 of the Complaints and Disputes Procedures.
- 9.7 In the event of a request for a review being duly lodged in accordance with Paragraph 9.2 above, the provisions of Paragraph 9.3 above shall be suspended until such time as the review has duly been concluded, whereafter such provisions shall apply mutandis to the decision in such review.
- 9.8 Failing compliance by any party to the complaint with the provisions of Paragraphs 9.6 or 9.7 as the case may be, the Board shall be entitled forthwith to impose any one or more of the provisions of Paragraph 8 and 9 of the Complaints and Disputes Procedures as a further penalty, or the Board or any other committee authorised by the Board shall be entitled to take steps at law to enforce such decisions in any court within whose jurisdiction the party concerned has his registered address or, failing a registered address, carries on business.

10. **GENERAL**

A reference in these rules to 'days' means working days, excluding Saturdays, Sundays and Public Holidays.

I/WE, _____

of (Company) _____ Branch _____

wish to respond to a complaint with the Institute of Estate Agents of South Africa, the matter:

Name: _____

of (Company) _____ Branch _____

Address _____

In support of the above allegations, attached hereto are copies of the following documents/correspondence:-

Affidavit (setting out details of above contravention).

- 1.
- 2.
- 3.

I/WE hereby confirm that the Principal/Managers of both companies did endeavour to, but were unable to settle the dispute Principal to Principal.

I/WE herewith enclose a deposit of R1 000-00 (One Thousand Rand) which is payable to the Institute of Estate Agents and will be refunded if the respondent's case is upheld. This deposit excludes the costs associated with the arbitrators.

I/WE (having the contractual capacity to bind my company), by signature hereof, agree to abide by the findings of the Ethical Standards Committee; hereby not waiving my right in terms of Article 9.2.

RESPONDENT

CAPACITY

Signed at _____ on this _____ day of _____ 2002

I/WE, _____

of (Company) _____ Branch _____

wish to lodge a complaint with the Institute of Estate Agents of South Africa, about the conduct of:

Name _____

of (Company) _____ Branch _____

Address _____

I/WE believe that the above-named agent has contravened:

Article(s) _____ of the Ethical Obligations of Members in terms of the Institute's Memorandum and Articles of Association.

In support of the above allegations, attached hereto are copies of the following documents/correspondence:

Affidavit (setting out details of above contravention).

- 1.
- 2.
- 3.

I/WE hereby confirm that the Principal/Managers of both companies did endeavour to, but were unable to settle the dispute Principal to Principal.

I/WE herewith enclose a deposit of R1 000-00 (One Thousand Rand) which is payable to the Institute of Estate Agents and will be refunded if the complainant's case is upheld. This deposit excludes the costs associated with the arbitrators.

I/WE (having the contractual capacity to bind my company), by signature hereof, agree to abide by the findings of the Ethical Standards Committee; hereby not waiving my right in terms of Article 9.2.

COMPLAINANT

CAPACITY

Signed at _____ on this _____ day of _____ 2002