**COMMENTS RECEIVED BY NCOP (PUBLIC SUBMISSIONS)**

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| **ORGANISATION/INSTITUTION** | **SECTIONS OF THE BILL** | **COMMENT** | **DEPARTMENT’S RESPONSE** |
| **1. R Ekanayake****2. G Stroebel****3. D Wall Smith (Core Properties)** **4.Homann(Weldgedacht Properties)****5. J Lee Sonnekus****6. R van der Merwe****7. J Morkel (Rodel Bridging Finance)****8. P Snyman****10. IEASA (Institute of Estate Agents of South Africa)****11. W Rabie****12. U Spennato (GPR Properties)****13. REBOSA SUBMISSION****15. Banking Association of South Africa (BASA)** | Chapter 8, section 50Trust Account, section 53Chapter 8, section 50SMMECost of compliance with the provisions of the ActNational online register to be considered in the BillHe endorse and support REBOSA’s comments and submissionSection 54, 53Section 48Sections 54(1)Section 54(1)(b)Section 48Trust AccountsExemptions, section 2, section 49, section 7, section 48, sections 52,53,54 and 66Are dealt with accordingly in line with same issues and comments as contained in REBOSA’s submissionChapter 2Section 4( Ombuds Establishment)**Section 23****Section 25** **Section 32****Section 47****Section 50****Section 54** | Requirement for BEE Certificate may be too expensive and difficult to small companies to comply therewith. It is too expensive to hold trust account and the expenses thereto.Requirement of compliance with the for BEE Certificate in the BillIt will be difficult for the SMME to comply with the entire legal and compliance requirement in the Bill due to cost thereof.It will be difficult for the SMME both black and white to comply with the legal and compliance requirement as set out in the Bill.Agreements of sale, lease agreements, education and training, to be utilized accordingly to advance transformation in the sectorTrust account, Accounting Records, Regulations and the period of issuing of FFCTrust account, Accounting Records, Regulations and the period of issuing of FFCTrust account, holding of the Trust account, alignment of the Bill with CPA, FIC and Rental Housing ActIssuing of FFC’s by the AuthoritySection does not contain requirements relating to the interest received on money in Trust account. IEASA submits that Trust accounting is not always clear. Requirements for the Trust Account should be set out. These sections do not contain requirement relating to the interest received on money in trust or invested in a separate savings or other interest-bearing account. The extent the Bill requires interest to be paid over the Fidelity Fund. Proposed that similar requirement be included in the Bill or alternatively in the subsequent regulationsIEASA Support the Bill. However they submit that trust account especially section 54(5) should outline or describe in details in the regulations as how such accounts should kept. They further submit that refinements relating to trust account should be done.Refers to an auditor being appointed as prescribed. There is no prescribed method to appoint auditor in the Bill or invested in a separate savings or other interest-bearing account. The current Act requires interest to be paid over to the Fidelity Fund. IEASA recommend that a similar requirement be included in the regulationsRequirement of all directors, partners, members and trustees having FFCsHuge cost of holding trust account and its expensesTypes of exemptions, Trust Accounts , Accounting Records and Code of ConductDefinitions of the “Business Property Practitioner”Definition of the “candidate practitioner”Attorneys and Developers are excluded.Claims against the Fund prior to the commencement of the legislationIssue vs possession of FFCSection 48(2) Trust accounts and Accounting Records Supervision of candidate property practitionerSection 47, Fidelity Fund Certificates (FFC)Cost of BEE Certificate ComplianceAlign the legislation with the Property Sector Transformation Charter‘ Board Accountability” should be definedProperty Practitioners Ombuds must be established in the Bill **Exemption from appointing an auditor**This section permits the appointment of an accountant as opposed both an accountant an auditor for property practitioners with turnover of less than R2.5 million. Whilst the Bill specifics the criteria for an “auditor”, there are no criteria or definition for an “accountant”. While we recognize that the intent of this clause is to cater for small new entrants into the sector (reduce the cost burden of having their affairs audited), this poses a risk to consumers who entrust monies to property practitioners in the form of deposits. This may adversely affect consumers whose lives the Bill seeks to support due to fraud or malpractice. Further, this does not support the principle of “public interest”.**Adjudication**While we welcome an adjudication process, as this may reduce the burden on our courts, the Bill does not stipulate a maximum timeline during which an adjudication process, as a dispute can be held up indefinitely, due to an order being withheld.**Funds of Authority**Section 32 lists all the funds of the Authority, however, fines and interest are not listed.**Fidelity fund Certificates**Section 47 proposes that a property practitioner must apply for a fidelity find certificate and pay the prescribed fees every three years. The possession of a Fidelity Fund Certificate will be a mandatory requirement for acting as a property practitioner.In instances where a juristic person participates as a property intermediary, every director of the company will be required to be in possession of a certificate. The same applies to:1. “All members of a close coperation;
2. All trustees of a trust; and
3. All partners of a partnership”

We believe that this requirement will place an undue burden on all directors/members/trustees/partners if they are to possess a fidelity certificate as such entities employ specialists to fulfill roles without their having any knowledge or involvement as a property practitioner e.g financial accountant. In addition, this will also place an undue burden on such entities and these costs will in turn be on passes onto the consumer by such entities, which will hamper transformation.**Disqualification from issuing a Fidelity Fund Certificate**The Draft Bill proposes a long list of mandatory reasons why the Property Practitioners Board should withhold a Fidelity certificate, thereby preventing intermediaries from practising and therefore earning an income.A number of those grounds may, depending on the circumstances, be contrary to the principle that the punishment must fit the crime. We note that these same grounds are not reflected in the grounds for disqualification from the Board or Authority itself?**Trusts**In terms of Regulations in support the Banks Act No.94 of 1990, a bank may not open a trust account for a property practitioner unless they are registered with the Property Practitioners Board. Clause 54(1)(c) is therefore correct that as it should require a property practitioner to register with the Property Practitioners Board and only to approach a bank thereafter for a trust account to be opened.We assume that the Property Practitioners Board would, when approving the registration of a Property Practitioner ensure that the name used for the trust account is appropriate and that the descriptor name clearly identifies that the trust account is for a property practitioners (currently some of the name descriptors used by Estate Agents/Estate Agencies make it impossible for banks when undertaking a search of their computer database to determine that he account s in fact a trust account, or the purpose for what the account is to be used).   | It is a constitutional requirement to comply with all the BEE empowerment legislations and employment equity Acts and in particular if a property practitioner wishes or intends to do business with the State.Section 54 of the Bill makes provisions for exemption from keeping Trust accounts and section 55 further makes provisions relating to keeping of accounting records It is a constitutional requirement to comply with all the empowerment and employment equity Acts and in particular if a property practitioner wish or intend to do business with the State.Section 4 of the legislation makes provisions for various exemptions from some of the compliance requirements in the legislation including SMMESection 4 of the legislation makes provisions for various exemptions from the compliance requirements and in particular targeting the small and medium enterprises(SMME) The real intention of the Bill is to advance transformation within the sector as provided for in chapter 4 of the BillSection 54 makes provisions for Trust account and its interest and Bill makes provision for exemption of holding a Trust account and the Regulations will provide process thereof.Section 4 of the legislation makes provisions for various exemptions from the legislation and the legislation is aligned to CPA and all other related legislationThe legislation make a provision for a deemed provision for issuing of FFCSSection 54 makes provisions for Trust account and the Bill makes further provision for exemption from holding a trust account and d further provisions thereto will provided by the RegulationsThe Regulations will provide for this circumstances as per the submissionThe regulations under this Act will prescribe the manner in which an auditor will be appointed as per the submission.The intention of this section is to regulate the activities and conduct of directors, members, partners and trustees in their individual capacity not as an entity Section 54 of the Bill makes provisions for exemption from keeping Trust accounts and section 55 makes provisions relating to keeping of accounting records. All these matters are dealt with in the Bill in accordance with the sections as set out herein and further to be prescribed by Regulations under the ActThe different of property practitioners will be clarified and defined by Regulations through the provisioning of different occupational level.The definition of the candidate practitioner is included in the Bill as per the initial submission by REBOSAAttorneys and Developers are covered in the Bill to the extent that their employees are engaged in property transaction (you can’t include the a general application of this legislation to attorneys in general)Claims are covered under the provision dealing with claim and in the transitional arrangement of the legislationThe matter is dealt with in terms of section 35 of the legislation to advance efficiency on the part of the AuthorityThe intention of this section is to regulate the activities and conduct of directors, members, partners and trustees in their individual capacity not as an entity Section 54 of the Bill makes provisions for exemption from keeping Trust accounts and section 55 makes provisions relating to keeping of accounting records The common law and statute hold principals vicariously liable for the actions of their candidates who are performing their activities within the scope and course of their employmentThe application period for FFC to the period of three years was included in the Bill as per the initial submission by REBOSAIt is a constitutional requirement to comply with all the empowerment and employment equity Acts and in particular if a property practitioner wish or intend to do business with the State.The real intention of the Bill is to advance transformation within the sector and the Bill is fully aligned with the provisions of the CharterThe provision will be dealt with by shareholders compact and their declaration of interest to be submitted to the Minister. The proposal will be dealt with by the establishment of the Human Settlements Ombuds for the entire sector to dealt will all the compliant relating to human settlements, currently there is an Ombuds dealing with Human Settlements related issues The issue of exemption will be dealt with in accordance with the merits of the submission by the property practitioner and the Minister will then decide to grant or reject the application.The procedure and processes will be clearly set out in the draft regulations under the ActThe fund of the Authority will be inclusive of all the other related monies and funds as may be accrued to the Authority. The compliance requirements as set out in section 47 will apply to individual directors to the extent that they engage\involved in the property and business transaction.The purpose of this section is basically to advance the consumer protection and ensure that the all property practitioners conform and abide with the Code of Conduct as may be set out . The section further provide for various circumstances wherein the disqualification may be applicable. The process and the manner of application will be set out in the draft regulation and in practice it is a requirement that the property practitioner must obtain the FFC first and then proceed to open a trust account thereafter.  |