

23 June 2013

The South African Property Owners Association hereby submits its comments to the Property Valuation Bill.

PROPERTY VALUATION BILL COMMENTS

The Office of the Valuer -General is one that has been greatly emphasised in the Property Valuation Bill (“Bill”). The Valuer -General is given great responsibility in fact in accordance with the Bill he is ultimately responsible for the valuation of the department and is accountable directly to the Minister. According to Section 4(1) (a) the Office of the Valuer-General is the only institution responsible for the valuation of property where a department, a municipality or an organ of state is a party or has an interest, including cases of expropriation or acquisition of property for the purposes of land reform.” This role is clearly one that needs a great amount of competence and cannot be taken lightly.

The Valuer -General has extensive duties under the Act which require him/her to value property identified for purposes of land reform or expropriation which must reflect an equitable balance between the public interest and those affected by the acquisition.

The Valuer-General further may in accordance with Section 10(1) of the Bill authorise one or more persons to conduct or to assist in the performance of a valuation in section 12. The aforementioned people include a Professional Valuer or Professional Associated Valuer in terms of the Property Valuers Profession Act with extensive experience in the valuation of property; a Candidate Valuer in terms of the Property Valuers Profession Act; a Private Practitioner who is registered as a professional Valuer in terms of the Property Valuers Profession Act; to assist in the conduct of the valuation be a person with non-valuation qualifications, experience and competence.

Section 8(2) states that the Deputy Valuer-General must be registered in terms of the Property Valuers Profession Act.

The Bill does not state that the Valuer-General must be registered in terms of the Property Valuers Profession Act but states that his Deputy and staff must be registered. Given the fact act that the Bill does not exclude the Deputy Valuer-General from stepping into the shoes of the Valuer –General in the case of absenteeism or when the Valuer-General is unable to perform his duties should mean something. Surely there must be a set standard with regards to professional formal recognition by a regulating authority. There must be no doubt in South African citizens minds with regards to the “recognition” of the Valuer-General as this could then lead to administrative chaos with people objecting to Valuation reports due to a lack of faith in the Valuer-General and lack of uniformity in his office.

The preamble states that “Whereas it is necessary to establish uniform norms and standards for the valuation of property where a department, organ of state or municipality has an interest and where property has been identified for land reform.”

The Bill needs to also clarify the extent of assistance of a person who will be assisting the Valuer-General as it is stated that such person must be one with non-valuation qualifications.

We suggest that the Valuer-General be registered as a “Professional Valuer-General” in accordance with the Property Valuers Act in order for him to be in “right standing” so to speak.

It is concerning that the Bill does not mention any consequences attached with the misconduct of a Valuer-General. We suggest that conditions which would lead to the Valuer-Generals dismissal be mentioned so as to not suggest that he is above the law.

According to Section 18(1) of the Bill “Any person who has a direct interest in a particular valuation conducted by an authorised Valuer, may lodge an objection with the Office of the Valuer-General. Section 18(4) further states that the Valuer -General must promptly consider the objection. The word promptly needs to be narrowed in other words a time period must be placed in order for there to be certainty in terms of procedures implemented.

Section 19(1) states that “An objector contemplated in section 18 who is not satisfied with the decision of the Valuer, may in writing lodge an application for the review of such decision. The Bill is specific in terms of when such application for review must be lodged but only states that the Registrar must ‘promptly’ forward such application to the review committee. The word promptly is used again and we suggest that time frames need to be put in place.

Section 4(1) (b) defines the Office of the Valuer-General as being “a juristic person with full legal capacity is autonomous and is subject to this Act. It further states in Section 4(1) (c) that it must be impartial and must exercise without fear, favour, or prejudice.”

The Valuer-General is accountable to the Minister which then makes his role questionable in terms of him/her being “impartial”. It would be difficult for him/her to achieve this objective. It is questionable whether a public official is suitable for this job and that an independent professional should rather be employed for this purpose, as they will be able to exercise the duties in a way that is not directly influenced by the Minister and therefore would have no inhibitions but will carry out their tasks without being influenced in any manner. There is a definite conflict of interests that emanates. South Africans would be prejudiced from receiving what the bill states a Valuer –General who is impartial and exercised his/her duties without fear, favour or prejudice”, should a public official be appointed.

According to Section 41(b) and (c) of the South African Constitution “All spheres of government and all organs of state within each sphere must provide effective, transparent, accountable and coherent government for the republic as a whole and ”secure the well-being of the people of the Republic.” Our democracy allows for people to participate in decision making regarding legislation. This is in accordance with Promotion of Administrative Justice Act 3 of 2000. It states that:

33. Just administrative action.-(1) everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has; the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights and must-
 (a) provide for the review of administrative action by a court or, where appropriate,
 (6) impose a duty on the state to give effect to the rights in subsections (1) and (2);
 an independent and impartial tribunal;
 and
 (c) promote an efficient administration.

Hereunder are some of the comments for consideration:

Section	Comment
Definition-market value	Delete from <i>“Provided that in determining market value for purposes of this Act, prices paid by the State for any acquisition of property must be excluded”</i> . It is not only a standard practice, but it is also fair and reasonable that when determining a market value of a property, a valuer must look at various aspects including most importantly the price paid for property of similar type, size location, etc. at a certain period of time.
Definition-Property	I have not been able to find the Expropriation Act, only found the Bill.
4(1)a	Please provide a clear definition of <i>“an interest”</i> as is referred to in line 4 of this provision.
4(2)	Does this mean that the State will not pay for any outstanding rates as at date of expropriation, acquisition or disposal?
5(2)a	What is the guideline for the criteria in this section? Is it going to be based on anything specific?
5(2)b	Who will be responsible for the determining the method of valuation for the valuation of properties?
5(4)	If there is a dispute how can the restitution or expropriation continue? This provision incapacitates the dispute resolution process.
6(b)	Qualify by adding <i>“ a suitably qualified person”</i>
7(2)	Insert <i>“relevant”</i> before qualification.
10(b)	This clause does not make sense.
10(3)	Define <i>“authorized valuer”</i> .
13(2)a	Typo on entry.
16(2)	Why would a party pay for the costs of a valuer general.
17(1)	Remove full stop after department.
17(1)	Define special investigation.
17(3)	Define special report.
18(1)	Define a direct interest.
18(4) and 18(5)	Stipulate a period e.g.: 30 days to revert to the objecting party.
19(2)	Add a category (d) the valuer’s written reasons for the decision in terms of clause 18(5).
27(2)	Is the cross reference to section 21 correct?
31(1)	Define majority.
42(1)(b)	Rectify typo <i>“ant”</i> to correctly read <i>“any”</i> on the second line hereof.

We look forward to further engagement in respect of the Bill.



Yours faithfully

Advocate Portia Matsane
Manager: Legal Services

(011) 883 0679

legal@sapoa.org.za