



SOUTH AFRICAN COUNCIL for the ARCHITECTURAL PROFESSION

SACAP GUIDE TO DISCIPLINARY PROCEEDINGS

1. Introduction

The South African Council for the Architectural Profession (SACAP) is a Statutory body established in terms of the Architectural Professions Act, (Act No. 44 of 2000) (“The Act”). SACAP is responsible for providing registration for Professionals, Candidates and specified categories in the architectural profession. Furthermore, SACAP regulates the architectural profession by prescribing standards of conduct through the Code of Professional Conduct, which all registered professionals are required to adhere to. Failure to adhere to the standards as prescribed in the Code of Professional Conduct constitutes improper conduct and various sanctions may be imposed on registered persons for such contravention.

This guidance note serves to provide registered persons and complainants with a simplistic overview of the disciplinary processes of SACAP. This document should not be looked at in isolation, it is complimented by the Rules for Disciplinary Proceedings Board Notice 127 of 2005, the Act, as well as the Code of Professional Conduct Board Notice 154 of 2009.

2. Registered persons

A registered person is a person who is registered in any of the following categories as prescribed by SACAP Council in terms of Section 18 (1) of the Act:

- a) Professional Architect;
- b) Professional Senior Architectural Technologist;
- c) Professional Architectural Technologist; or
- d) Professional Architectural Draughtsperson.

Candidate which is divided into:

- a) Candidate Architect;
- b) Candidate Senior Architectural Technologist;
- c) Candidate Architectural Technologist; or
- d) Candidate Architectural Draughtsperson.

SACAP only has jurisdiction to investigate complaints of improper conduct brought against persons registered under any of the above prescribed categories of registration. Any person who is not registered in any of the listed categories is referred to as a non-registered person and is prohibited from providing services of an architectural nature. Complaints received against non-registered persons are referred to the South African Police Services for investigation.

3. Lodging of a complaint

A complaint should be in a prescribed Affidavit Form which is available on the following website: www.sacapsa.com. A complaint should be under oath or affirmation and should specify the act or omission relating to the alleged improper conduct by the registered person. In addition, it should include all supporting evidence relating to the complaint.

The complaint affidavit and supporting documents may be sent to SACAP in one of the following ways:

- a) Email to the following email addresses: Legal@sacapsa.com or info@sacapsa.com;
- b) Fax: +27 479 5000;
- c) Post: PO Box 408, Bruma, 2026; or
- d) Hand Delivery: 1st Floor, Lakeside place, Cnr Ernest Oppenheimer and Queen Street, Bruma Johannesburg.

4. Grounds for submitting a complaint

Any person who feels aggrieved by an act or omission of a registered person or who reasonably believes that a registered person is guilty of misconduct may lodge a complaint with SACAP. The alleged act, omission or misconduct must be informed by the Code of Professional Conduct which sets the standards through which the conduct of registered professionals is assessed.

The submission and/or subsequent investigation of a complaint of improper conduct does not replace any civil or criminal proceedings against a registered person. SACAP Disciplinary processes can run concurrently with such proceedings and consequently, nothing prevents a complainant from instituting any civil proceedings against a registered person after submitting a complaint with SACAP.

5. Proceedings after a complaint has been received

Once a complaint has been received, SACAP Council refers the complaint to the Investigation Committee for investigation. The Investigation Committee may not commence with investigation until it has received the approval from SACAP Council. The Investigation Committee thereafter commences with the investigation by firstly informing the registered person of the allegations made against him/her and affording him/her an opportunity to respond to the allegations. It is not mandatory for registered persons to respond to the complaint, however should they elect not to respond, the Investigation Committee may continue with investigations without their response.

The Investigation Committee thereafter assess the evidence provided by the Complainant and, if needed, may request additional information or documentation to determine whether or not a registered person breached the Code of Professional Conduct. At the conclusion of

its investigation, the Investigation Committee makes a recommendation to SACAP Council on whether there is a *prima facie* case against a registered person or whether the complaint should be dismissed.

The investigation of improper conduct and whichever recommendations made to SACAP Council are strictly confined to the evaluation of improper conduct relating to the provision of professional services. The process is punitive in nature and not restorative, it therefore cannot compel a registered person to perform to give effect to any obligation.

6. Recommendations of the investigation committee

At the conclusion of the investigation, the Investigation Committee will make a recommendation for SACAP Council to either charge the registered person with improper conduct for contravention of the Code of Professional Conduct or dismiss the allegations of improper conduct. The recommendation made by the Investigation Committee is informed by the evidence provided by the Complainant and which was obtained during the investigation.

If a recommendation is made to charge a registered person with improper conduct, a charge detailing the contraventions of the Code of Professional Conduct will be sent to the registered person to which they are required to respond.

7. Plea to charges

Once a registered person has received the charges informing them of their rights, they may either plead guilty to the charges or plead not guilty, it is mandatory for all charged registered persons to respond to the charges. Where a registered person pleads guilty to the charges, a settlement agreement is entered into with a registered person wherein any of the sanctions in Section 32 (3) (a) of the Act may be imposed on them. Where a registered person pleads not guilty or fails to submit a plea, a Disciplinary Tribunal will be convened.

8. The disciplinary tribunal

A Disciplinary Tribunal is convened in terms of Section 30 of the Act where a registered person pleads not guilty to the charges or fails to respond thereto. The Complainant and any witnesses relevant to the matter may be invited to testify or provide documents at the Disciplinary Tribunal. Any witness or Complainant who refuses to attend a Disciplinary Tribunal may be subpoenaed.

At the conclusion of the Disciplinary Hearing, the tribunal will make a decision which should be provided to SACAP Council within 30 Days of the hearing. The decision of a Disciplinary Tribunal may impose any or most of the sanctions listed in terms of Section 32 (3) (a) of the Act. The decision of a Disciplinary Tribunal operates as full and final resolution of the matter.

9. Sanctions

The sanctions that a Disciplinary Tribunal may impose on a registered person who either pleads guilty or is found guilty of contravention of the Code of Professional Conduct comprise of:

- a) a caution or reprimand;
- b) a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).;
- c) a suspension of the registration of the registered person for a period not exceeding one year; or
- d) cancelation of the registration of the registered person concerned and removal his or her name from the register.

10. Publication of findings and sanction

SACAP Council must publish the findings and sanction imposed by the Disciplinary Tribunal in the *gazette* and on the SACAP website.

11. Appeal

SACAP Council will receive the findings of the Disciplinary Tribunal within 30 days of the hearing. A registered person will thereafter receive the findings once they have been received by SACAP Council. The registered person shall have 30 days to appeal the decision of the Disciplinary Tribunal by delivering a written notice of appeal to SACAP Council which should at least contain the following information:

- a) the name, postal, email addresses and telephone numbers of the appellant and their representatives;
- b) whether the whole or part of the finding and/or sentence is appealed against and if in part, which part; and
- c) the grounds on which the appeal is lodged specifying the findings of fact and/or rulings of law appealed against.

Once a registered person has filed the notice of intention to appeal, SACAP Council will consider the application and make a decision to either dismiss the appeal or uphold the appeal wholly or in part; and to set aside or vary the finding, sentence or both. A registered person whose appeal was dismissed by SACAP Council may appeal to the Council for the Built Environment (CBE); and if dismissed by the CBE; may appeal to the High Court.