

THE EAAB INTENSIFIES ITS INSPECTORATE MANDATE EFFORTS

One of the primary mandates of the Estate Agency Affairs Board (EAAB) is to regulate, maintain and promote the standard of conduct of estate agents, having due regard for the public interest

The EAAB is also a supervisory body of the estate agents profession, pursuant to the Financial Intelligence Centre Act, and is obliged to take all steps required to prevent, or alternatively identify and report on money laundering and terrorist financing activities.

Inspections therefore ensure compliance with the Estate Agency Affairs Act, Act No 112 of 1976 (the EAA Act), and the Financial Intelligence Act. The inspection process will in future also be used to monitor compliance of education and training with respect to applicable legislation and internal policies of the EAAB.

STRUCTURE AND FUNCTIONALITY OF THE INSPECTORATE

The EAAB inspectorate function has been outsourced to three audit firms: SAB & T, Ernst & Young and G & G Chartered Accountants.

These audit firms have been contracted to perform inspections on behalf of the EAAB (in their respective regions) for a period of one year starting from 1 November 2010.

These audit firms will perform inspections covering the following legislative areas:

- validity of the fidelity fund certificate (Section 26 of the EAA Act);
- duty of the estate agent to keep accounting records (Section 29 of the EAA Act);
- trust account and investment of trust monies by estate agents (Section 32 of the EAA Act);
- entitlement of remuneration by the estate agent (Section 34A of the EAA Act);
- prohibition of completion of documents by certain estate agents (Section 34B of the EAA Act);
- payments made to trust accounts (above R25 000) for Financial

Intelligence Centre Act (FICA) scrutiny. These audit firms have been delegated authority by the EAAB to perform inspections based on Section 32A (1) of the EAA Act. Therefore, their powers entail:

Without giving prior notice, at all reasonable times:

- (a) enter any place in respect of which he has reason to believe that:
 - (i) any person there is performing an act as an estate agent;
 - (ii) it is connected with an act performed by an estate agent; or
 - (iii) there are books, records or documents to which the provisions of this act are applicable;
- (b) order any estate agent or the manager, employee or agent of any estate agent:
 - (i) to produce to him the fidelity fund certificate of that estate agent;
 - (ii) to produce to him any book, record or other document in the possession or under the control of that estate agent, manager, employee or agent; or
 - (iii) to furnish him, at such place and in such manner as he may reasonably specify, with such information in respect of that fidelity fund certificate, book, record or other document as he may desire;
- (c) examine or make extracts from or copies of any such fidelity fund certificate, book, record or other document;
- (d) seize and retain any such fidelity fund certificate, book, record or other document to which any document was taken, and shall, at his request, be allowed to make, at his own expense and under the supervision of the inspector concerned, copies thereof or extracts therefrom.

Section 32A (2) further stipulates that no person shall:

- (i) fail on demand to place at the disposal of any inspector anything in his possession or under his control or on his premises which may relate to any inspection;
- (ii) hinder or obstruct any inspector in the exercise of his powers as described above; or
- (iii) falsely hold himself out as an inspector.

ESTATE AGENT INSPECTION PROCESS

The EAAB will select an estate agent for inspection from internal process and submit the lists to the respective delegated inspectors. The delegated inspectors can, at their discretion, select an additional 10% of samples received from the EAAB for inspection. Delegated inspectorate will send the estate agent a "notice to conduct" inspection letter.

This letter will consist of the following:

- notice to conduct the inspection;
- source of authority for the conducting of inspections;
- the scope of the audit as per the requirement of the respective legislation;
- letterhead and signature of the inspector;
- request for information required on the inspection date.

The estate agent can request an "appointment of inspectorate" letter on receipt of the "notice to conduct" inspection letter. This letter will consist of the following:

- name of the delegated inspector according to Section 32A (1) of the EAA Act;
- powers of inspector according to Section 32A (1) of the EAA Act;
- EAAB letterhead signed off by the Chief Executive Officer.

The notice period for inspection should be approximately between two and five working days (this is a guideline). This notice period is based on the discretion of the delegated inspector and/or agreement with the estate agent. (In accordance with the EAA Act, estate agents should be aware that it is not necessary for the inspector to give prior notice.)

On the day of the inspection, the inspector should produce an "appointment of inspectorate" letter to the estate agent (if not previously requested) and the estate agent should make all the necessary fidelity fund certificates, books, records and other documents available to the inspector.

Estate agents who contravene the requirements of inspections (i.e. fail to produce the necessary documentation on the date of the inspection or refuse access to premises, fidelity fund certificates, books, records and other relevant documents) shall be guilty of an offence and will subsequently be disciplined by the EAAB. This could also lead to a conviction, a fine or imprisonment (Section 34 of the EAA Act).

In conclusion, EAAB inspections are necessary for the following reasons:

- to comply with the legislative requirements of the EAA Act;
- to protect consumers from unscrupulous property transactions performed with estate agents;
- to expose illegal estate agents and therefore impose further disciplinary action;
- to provide transparency and feedback on the state of estate agents' affairs;
- to serve as a source of peer review;
- to improve the accountability of estate agents in the industry. 

