



ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA

**OVERVIEW OF THE STATUTORY LEGALITIES
TO PRACTICE AS AN ESTATE AGENT
AND THE
ACCOUNTING AND AUDITING ASPECTS OF THE
BUSINESS OF AN ESTATE AGENT**

March 2018

Warning to Readers

This document has been drafted in accordance with the current Estate Agency Affairs Act. The Property Practitioners Bill has been issued for comment and this document will be updated once the Bill has been enacted. This document is not a substitute for any laws and regulations that are relevant to the business of an estate agent, or any pronouncements and standards that apply to the accounting and auditing aspects of the business of an estate agent. The relevant laws and regulations, pronouncements and standards alone are authoritative and contain the authoritative text that should be applied and adhered to.

Note: *This overview includes endnotes to provide definitions and additional information regarding the terms or concepts that have been used.*

OVERVIEW OF THE STATUTORY LEGALITIES TO PRACTICE AS AN ESTATE AGENT AND THE ACCOUNTING AND AUDITING ASPECTS OF THE BUSINESS OF AN ESTATE AGENT

Purpose

The main purpose of this overview and summary is to assist estate agents and their accountants and auditors with an understanding of the key elements of the legislative framework applicable to estate agents with a particular focus on the accounting and auditing aspects of the business of an estate agent.

Introduction

The primary pieces of legislation that are relevant to the accounting and auditing aspects of the business of an estate agent are: the Estate Agency Affairs Act Number 112 of 1976; the Financial Intelligence Centre Act Number 38 of 2001; the Debt Collectors Act Number 114 of 1998; and the Auditing Profession Act Number 26 of 2005.

The Estate Agency Affairs Act (the EAAA)

The EAAA has a wide definition of an estate agentⁱ. An estate agent can be broadly described as any natural or juristic person, who, for the acquisition of gain and on behalf of another person, buys, sells, lets and/or hires immovable property. Canvassing of sellers and buyers (or lessors and lessees) of immovable property is further included in the definition of an estate agent. Managing agents of sectional title schemes and homeowners associations are also estate agents as defined.

All natural persons operating as estate agents are required to have been issued with a Fidelity Fund Certificate (FFC) by the Estate Agency Affairs Board (the EAAB) under any one of the four categories of estate agents: principal; non-principal; intern; or non-executive principalⁱⁱ. The FFCs are valid from the date of issue to 31 December of the year of issue and are renewable on an annual basis.

Principal estate agents can operate their estate agency business in the form of a company, a close corporation, a partnership or as a sole proprietor. The estate agency business is also required to be issued with a FFC valid for a calendar year, renewable on an annual basis. If the estate agency business is registered as a company, each director is required to have been issued with a FFC¹. For a Close Corporation only those members that are involved in the estate agency business are required to have been issued with a FFC.

Every estate agent to whom a FFC or a Registration Certificate² has already been issued shall by no later than 31 October of that year, apply to the EAAB for the issue of a FFC or a Registration Certificate for the following calendar year, irrespective of whether or not a Renewal Notice has been received.³

Auditors and accountants should be cognisant of the following requirements in the EAAA that apply to all estate agency businesses, irrespective of the estate agency business form:

¹ Frequently asked question Estate Agents handbook, page 13

² Refer to end note ii) Categories of estate agents. Attorney employees performing estate agency functions will be issued with a Registration Certificate instead of a FFC.

³ Frequently asked question Estate Agents handbook, page 12

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- a. Every estate agency business is required to open and keep open at least one trust account with a bank registered under the Banks Act, which should be designated as opened in terms of section 32(1) of the EAAA, and all trust monies received should be deposited without delay in this trust account⁴;
- b. An estate agency business may also invest in a separate savings or other interest-bearing account opened with a bank registered under the Banks Act or a mutual bank registered under the Mutual Banks Act and designated in terms of section 32(2) of the EAAA any moneys deposited in the trust account which are not immediately required. Half of the interest earned on trust monies deposited in a trust account opened in terms of section 32(2), which is not payable to the trust creditors in terms of express terms of mandates, should be paid to the Estate Agents Fidelity Fund and the other half should be retained by the estate agent⁵.
- c. The EAAB is to be notified of the existence of all accounts in writing and when the estate agency business opens additional trust or other interest-bearing accounts or changes the account, the EAAB is to be notified in writing within 14 days and bank letters, detailing the proper account designations of all relevant accounts are to be submitted to the EAAB⁶.
- d. Trust moneys should be retained in the trust accounts opened in terms of section 32(1) and/or 32(2) until the estate agent is lawfully entitled or lawfully instructed to release such trust money⁷.
- e. Every estate agency business is required to keep separate accounting records of trust moneys and balance these trust accounting records on a monthly basis. In addition, every estate agency business is also required to keep accounting records relating to the assets and liabilities and the financial transactions of the business⁸.
- f. Every estate agency business is required to have the trust accounting records and the financial statements of the business audited annually and to have the prescribed audit report relating to the trust accounting records submitted by the auditor to the EAAB on the MyEAAB Auditors Portal available on the EAAB website within four months after the financial year end of the business⁹.
- g. The financial statements of the business are subject to an audit even if the estate agent trust account was dormant throughout the financial year.
- h. The audit of the trust accounting records and the financial statements of the business must be performed by a registered auditor¹⁰.
- i. As part of the prescribed audit report to be submitted to the EAAB, the auditor is required to confirm that:
 - i. The estate agency business complied with sections 32(1), 32(2) and 32(3) of the EAAA in relation to the way the trust accounts were designated and administered as well as the manner in which trust accounting records were maintained; and
 - ii. The estate agency business is registered with the EAAB and issued with a valid FFC.

⁴ EAAA S32(1)

⁵ EAAA S32(2)(a)-(d)

⁶ EAAA S32(1) and Frequently asked question Estate Agents handbook, pages 41 and 42

⁷ EAAA S32(2)(e)

⁸ EAAA S29(1)(a) and S32(3)

⁹ EAAA S29(1)(b) and S32(4)

¹⁰ EAAA S29(1)(b) and S32(3)(b)

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- j. When the auditor's report on the trust accounting records indicates contraventions of the EAAA such contraventions will be considered by the EAAB and may result in disciplinary action against the estate agent. If the estate agent is found guilty, sanctions may be imposed by the Disciplinary Committee on each charge where the estate agent is found guilty, in terms of section 30(3) of the EAAA.
- k. In terms of section 27(1)(aA)(i) of the EAAA, any estate agent who does not ensure that his/ her auditor submits the auditor's report on the trust accounting records to the EAAB within the prescribed timeframe will be disqualified from being issued with a FFC and if the estate agent is in possession of a valid FFC at the time of disqualification, that FFC will be withdrawn and will no longer be of any force and effect¹¹.
- l. The audited financial statements of the business are not required to be submitted when submitting the auditor's report on the trust accounting records to the EAAB. However, in terms of section 32(5) of the EAAA, the EAAB may request the audited financial statements of the business directly from an estate agency business. In this respect, auditors must ensure that they submit to the estate agency business, their auditor's report for inclusion in the audited financial statements after completing their audit¹².
- m. The IT3(b) certificates for the trust accounts are required when submitting the auditor's report on the trust accounting records.
- n. In case of changes in appointment of a Registered Auditor, the EAAB is to be notified in writing within 14 days and the newly appointed auditor must submit a letter, confirming their appointment for the relevant estate agency business.
- o. If the trust account is closed at any time during the year and the estate agency business no longer has an active trust account, the estate agency business is required to be deregistered with the EAAB as no estate agent can operate without a trust account. In this respect, the audit of the trust accounting records and the financial statements of the business should cover the period up to the date of the closure of the trust account, on which date the estate agent will be deregistered by the EAAB.
- p. In closing down an estate agency business the following are required to be submitted: a winding-up audit report; a letter from the bank confirming the closure of the trust account; and that all trust monies have been properly dealt with, a signed letter from the principal instructing the EAAB to de-register the business. In the case of a partnership, a letter signed by all partners in the partnership and the return of all current year original FFCs.

The Financial Intelligence Centre Act (the FICA)

Estate agency businesses are listed in Schedule I of the FICA as accountable institutions. The EAAB is listed in Schedule II of the FICA as a supervisory body with the responsibility to supervise compliance with the provisions of FICA by estate agency businesses.

The duties of estate agency businesses under the FICA that the accountants and auditors of estate agents should be acquainted with include the following:

- a. All estate agency businesses should register with the Financial Intelligence Centre (FIC) as accountable institutions. It is important to note that the head office, the branches and the franchise holders are regarded as separate accountable institutions and consequently, are required to register separately with the FIC. The FIC introduced a

¹¹ EAAB Frequently asked questions

¹² EAAB Frequently asked questions

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new registration and reporting web-based platform called goAML in 2016¹³. The FIC has issued PCC05B¹⁴ which deals with registration with the FIC.

- b. All estate agency businesses have a duty to establish and verify the identity of clients¹⁵. This is commonly referred to “Know your client” or “KYC” requirements. Customer due diligence should be applied in line with the estate agency’s risk based approach. In accordance with a risk based approach accountable institutions are required to understand their exposure to money laundering and terrorist financing risk in relation to their clients, products etc. The FIC issued Guidance Note 7¹⁶ which provides guidance on the risk based approach.
- c. All estate agency businesses have a duty to report the following to the FIC:
 - i. Cash transactions over the prescribed limit (currently set at R24 999.99)¹⁷. Cash for purposes of Cash Threshold Reporting refers to domestic and foreign notes and coins as well as travellers cheques.
 - ii. Suspicious and unusual activities and transactions¹⁸. There are no clear cut, established rules as to when a transaction or receipt of money will give rise to suspicion and each estate agency business must evaluate its transactions, taking into account normal practices. The FIC has issued Guidance Note 04A¹⁹ which provides guidance on suspicious and unusual activities and transaction reports. The FIC has also issued user guides in relation to such reports.
 - iii. Terrorist activities involving property in the form of Terrorist Property Reports in terms of section 28A of the FICA. The FIC has issued Guidance Note 6²⁰ which provides guidance on terrorist property reporting to the FIC.
- d. All estate agency businesses should keep record of clients and transactions²¹.
- e. All estate agency businesses must develop, document, maintain and implement a Risk Management and Compliance Programme²².
- f. All estate agency businesses must train staff to enable them to comply with the FICA.
- g. All estate agency businesses must have a compliance function (if a legal person (entity)) or appoint a person (if not a legal person (entity)) responsible for ensuring compliance with FICA and the Risk Management and Compliance Programme.
- h. As part of the prescribed audit report to be annually submitted to the EAAB, the auditor is required to confirm that:
 - i. The estate agency business is registered with the FIC as an accountable institution; and
 - ii. The estate agency business reported cash transactions above the prescribed limit to the FIC.

¹³ https://goweb.fic.gov.za/goAMLWeb_PRD/Home

¹⁴ Revised Public Compliance Communication 05B has been issued on 31 March 2017 and can be accessed via <https://www.fic.gov.za/Compliance/Pages/Compliance%20Guidance.aspx?p=7>

¹⁵ FICA S21

¹⁶ <https://www.fic.gov.za/Compliance/Pages/Guidance-Notes.aspx>

¹⁷ FICA S28 and Regulation 22B

¹⁸ FICA S29

¹⁹ <https://www.fic.gov.za/Compliance/Pages/Guidance-Notes.aspx>

²⁰ <https://www.fic.gov.za/Compliance/Pages/Guidance-Notes.aspx>

²¹ FICA S22

²² FIC Guidance Note 7 which can be accessed via <https://www.fic.gov.za/Compliance/Pages/Guidance-Notes.aspx>

The Debt Collectors Act (the DCA)

The DCA was enacted to regulate the debt collection industry and prescribes maximum fees or recoveries which may be demanded by a registered debt collector. The definition of a debt collector is wide and could include the functions of an estate agency businessⁱⁱⁱ. Property managers who collect arrear rent or levies are debt collectors²³.

The Council for Debt Collectors (the Council) has formally confirmed the following in a letter to the National Association of Managing Agents.

- a. The estate agency business will be allowed to use their trust bank accounts opened in terms of the EAAA to register with the Council.
- b. The Council will accept the auditor's report that is submitted to the EAAB as compliance with section 20 of the DCA.
- c. The DCA requirement to pay over the interest earned on the trust bank account to the Council will not be enforced.

The Auditing Profession Act (the APA)

The APA places a duty on the auditor to report reportable irregularities^{iv} to the IRBA²⁴. In this regard, the auditors of estate agency trust accounting records and the financial statements and estate agency businesses should evaluate the various potential contraventions of relevant legislation, and if they are satisfied or have reason to believe that a reportable irregularity has taken place or is taking place, report such to the IRBA without delay. As part of the prescribed audit report to be annually submitted to the EAAB, the auditor is required to confirm whether there were any reportable irregularities reported to the IRBA.

Tax Legislation

Estate agency businesses should be registered in terms of the Income Tax Act and ensure that their employees are registered for PAYE, UIF and SDL, if so required. The estate agency business should also register for VAT, if so required by the VAT Act or if the estate agency business decides to do so on a voluntary basis.

Accountants and auditors of estate agency businesses should be aware of the above legislative requirements, in addition to the other secondary legislation that estate agency businesses should comply with.

END

²³ Council for Debt Collectors FAQs

²⁴ APA S45 and [RI Guide](#)

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Definitions

ⁱ An *Estate Agent* as defined in the EAAA:

- a) means any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instructions of or on behalf of any other person—
 - i) sells or purchases or publicly exhibits for sale immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a seller or purchaser therefor; or
 - ii) lets or hires or publicly exhibits for hire immovable property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor therefor; or
 - iii) collects or receives any moneys payable on account of a lease of immovable property or any business undertaking; or
 - iv) renders any such other service as the Minister on the recommendation of the board may specify from time to time by notice in the Gazette;
- b) for purposes of section 3(2)(a), includes any director of a company or a member who is competent and entitled to take part in the running of the business and the management, or a manager who is an officer, of a close corporation which is an estate agent as defined in paragraph (a);
- c) for purposes of sections 7, 8, 9, 12, 15, 16, 18, 19, 21, 26, 27, 30, 33 and 34B, includes-
 - i) any director of a company, or a member referred to in paragraph (b), of a close corporation which is an estate agent as defined in paragraph (a); and
 - ii) any person who is employed by an estate agent as defined in paragraph (a) and performs on his behalf any act referred to in subparagraph (i) or (ii) of the said paragraph;
- cA) for the purposes of section 7, 9(1)(a), 16, 26, 27, 28 and 33, includes any person who is employed by an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), otherwise than as an attorney or an articled clerk, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraph (i) or (ii) of paragraph (a) on behalf of such attorney or professional company;
- d) does not include an attorney who, on his own account or as partner in a firm of attorneys or as member of a professional company, as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), or an articled clerk as defined in the said section of that Act, who performs any act referred to in paragraph (a), in the course of and in the name of and from the premises of such attorney's or professional company's practice: Provided that such an act is not performed—
 - i) in partnership with any person other than a partner in the practice of that attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); or
 - ii) through the medium of or as a director of a company other than such professional company;
- e) for the purposes of section 30(2), (3), (4), (5), (6), (7) and (8) and of regulations made under section 33(1)(h), includes any person who was an estate agent at the time when he or she was guilty of any act or omission which allegedly constitutes conduct deserving of sanction referred to in section 30.

Provided that, for the purposes of this definition, "advertise" does not include to advertise in compliance with the provisions of any law.

ⁱⁱ Categories of estate agents:

Intern estate agent

To become a newly registered Intern estate agent, a person must be:

- Employed by a registered firm which is in possession of a valid Fidelity Fund Certificate (FFC).
- Serve a period of 12 month internship as an intern, and complete the Further Education and Training Certificate: Real Estate, a qualification
- Keep a logbook (also referred to as a 'Portfolio of Evidence') reflecting the various estate agency functions and activities that have been undertaken and performed during the course of the internship period.

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Attorney employee

This special category of estate agents applies only to persons employed by an attorney or an attorney's professional company except as an attorney or an articulated clerk, and who wholly or primarily carries out estate agency activities on behalf of such attorney or professional company. This special category of estate agents will not be issued with the normal fidelity fund certificates obtained by other estate agents, but with registration certificates instead, the purpose of which is to provide in effect that such person has been registered with EAAB but is covered by the Attorneys Fidelity Fund and not by the Estate Agents Fidelity Fund.

Non-principal estate agent

To become a non-principal estate agent a person must:

- Serve as an Intern Estate Agent, for a continuous and unbroken compulsory 12 months internship period under active supervision of a principal estate agent or of a full status estate agent who have at least three years practical experience.
- Keep a logbook (Portfolio of Evidence) reflecting the various estate agency functions and activities undertaken during internship period.
- Successfully completed Further Education and Training Certificate: Real Estate or be in possession of an appropriate NQF level 4 qualification

Principal estate agent

New entrants wishing to act as principal estate agents must:

- Be certificated against the National Certificate: Real Estate.
- Successfully completed Further Education and Training Certificate: Real Estate or the National Certificate: Real Estate,
- Successfully completed the Professional Designation Examination ("PDE")

Non-executive principal estate agent

- A non-executive principal is a CIPC registered director of an estate agency firm who is not involved in the estate agency business. Examples include a Finance Director, IT Director or HR Director.

ⁱⁱⁱ Debt collector means:

- a) a person, other than an attorney or his or her employee or a party to a factoring arrangement, who for reward collects debts owed to another on the latter's behalf
- b) a person who, other than a party to a factoring arrangement, in the course of his or her regular business, for reward takes over debts referred to in paragraph (a) in order to collect them for his or her own benefit
- c) a person who, as an agent or employee of a person referred to in paragraph (a) or (b) or as an agent of an attorney, collects the debts on behalf of such person or attorney, excluding an employee whose duties are purely administrative, clerical or otherwise subservient to the actual occupation of debt

^{iv} Section 1 of the APA defines a reportable irregularity as follows:

—reportable irregularity means any unlawful act or omission committed by any person responsible for the management of an entity, which —

- a) has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity; or
- b) is fraudulent or amounts to theft; or
- c) represents a material breach of any fiduciary duty owed by such person to the entity or any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or the conduct or management thereof.