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Pietermaritzburg and Interior Region

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IEASA

## 1. THE ESTATE AGENCY INDUSTRY

The estate agency industry has flourished in South Africa for more than two hundred years, and is currently experiencing the most dynamic period in its history. The number of practicing estate agents has more than doubled over the past years, and there are now more than 70 000 registered estate agents, operating through more than 14 000 firms.

### Definition of “estate agent”

The definition of “estate agent” is quite broad. According to the Estate Agency Affairs Act (Act 112 of 1976, as amended), any person or firm who (a) renders any of the following services on behalf of another person, and for gain, and (b) directly or indirectly advertises that he does so, is an estate agent:

- selling or buying immovable property, or publicly exhibiting immovable property<sup>1</sup> for sale, or canvassing (or offering or undertaking to canvass) a seller or buyer for it,
- selling or buying business undertakings, or canvassing (or offering or undertaking to canvass) sellers or buyers for them,
- letting or hiring immovable property, or publicly exhibiting immovable property for hire, or canvassing (or offering or undertaking to canvass) a landlord or tenant for it,
- collecting or receiving monies payable in terms of leases,
- other services prescribed by the Minister of Trade & Industry, i.e.
- collecting or receiving sectional title or share-block levies or other monies,
- selling information about immovable properties or businesses which are for sale or to let.

However, someone who sells his own property, or a spouse’s, relative’s or friend’s property is not regarded as an agent, unless he does it for gain. Someone who sells his employer’s property (e.g. a property developer’s salesperson), or negotiates building contracts, or arranges finance or loans, is also not considered an estate agent.

The majority of South Africa’s estate agents specialise in the sale or letting of residential properties, i.e. houses, townhouses, flats, duplexes, and vacant land zoned for residential use.

### Regulation of the industry

The estate agency industry is regulated by law. The Estate Agency Affairs Act is the current legislation, and all estate agents in South Africa are subject to the Act, and to regulations which have been issued under it. Several other laws are also applicable to estate agents, e.g. the Debt Collectors Act, the Financial Intelligence Centre Act, the Rental Housing Act, and sections of the Transfer Duties Act.



### Estate Agency Affairs Board

The industry is regulated by the Estate Agency Affairs Board (EAAB), which was established in 1977. It consists of fifteen members appointed by the Minister of Trade & Industry, and is run by a Chief Executive Officer and a full-time staff in Johannesburg. The EAAB’s role is to “maintain and promote the standard of conduct of estate agents” and to regulate their activities, in the public interest, which it does by:

- licensing estate agents and estate agency firms,
- encouraging and promoting standards of training and offering an exam qualification,



- operating a fidelity fund,
- enforcing a Code of Conduct, and
- ensuring that estate agencies trust accounts' are audited annually.

<sup>1</sup> "Immovable property" includes sectional title units, shares in share-block schemes, interests in immovable property, time-share interests, membership of CCs which own properties, and interests in housing schemes for retired persons.

The Estate Agents Fidelity Fund, which was established by the Institute of Estate Agents of South Africa in 1966 and transferred to the EAAB in 1977, exists to pay compensation to members of the public who have suffered financial loss as a result of dealings with estate agents. Every estate agent is required to contribute to the fund and, if the fund pays compensation to someone, the estate agent concerned has to reimburse the fund.

### **Institute of Estate Agents of South Africa**

The Institute of Estate Agent of South Africa (IEASA) is a private organisation, established in 1937 to promote the interests of the estate agency industry. It consists of eight semi-autonomous regional institutes, co-ordinated by a national board.

The Pietermaritzburg and Interior Region, based in Pietermaritzburg, serves the KwaZulu-Natal Interior areas. Its most important activity is providing training courses and workshops, but it also provides members with empowerment opportunities, networking and social events, an on-line showcase, a code of ethics, dispute resolution, and advice and guidance.

Membership of the IEASA is voluntary. In the Pietermaritzburg and Interior Region, estate agents can join directly as individual members or, if their firms join as firm members, they automatically become members for as long as they work for those firms.

### **Payment of estate agents**

Estate agents are usually - but not always - paid on commission. The client pays the firm, which then pays the agent a portion of the commission. Methods of payment are flexible, and can vary from firm to firm.

Contrary to popular belief, there has never been any fixed scale of commissions for estate agents and, in fact, it is a punishable offence for an estate agent to make out that his commission is prescribed or regulated. Each firm is free to set its own prices, and each client is free to shop around for the best price. For many years, the IEASA published commission guidelines, which were used, but they were abolished in 2004, following changes in South Africa competition laws.

## **2. ENTERING THE INDUSTRY**

It's quite easy to enter the estate agency industry: simply join an estate agency firm, and register with the Estate Agency Affairs Board (EAAB) (and with the Council for Debt Collectors (CDC), if you're going to collect rents or levies). There are currently no required qualifications, but be aware that there are some circumstances which would disqualify you from entering the industry.

### **Registration with the EAAB**

To register with the EAAB, you must take out a Fidelity Fund Certificate (FFC) which is, in effect, a licence to practice. You register through the firm with which you are going to work.

There are three levels of registration:

- principal, who is the owner or co-owner or director of an estate agency firm,
- non-principal, who works in someone else's firm, and



- candidate, who also works in someone else's firm but is not yet qualified or experienced enough to register as a non-principal.

If you have already passed the Certificate in Estate Agency (CEA) exam, or hold one of the accepted alternative qualifications 1, then you can register directly as a non-principal. Otherwise, you must register as a candidate, and after you have been registered for 12 months you will automatically be upgraded to non-principal. You can upgrade from candidate to non-principal in less than 12 months by passing the CEA exam, or obtaining one of the accepted alternatives, during that period. A non-principal can upgrade to principal without further qualification or experience.

Although candidates and non-principals do the same work and, in many firms, are paid the same, as a candidate you would be subject to the following restrictions:

- you will have to be supervised by the principal of the firm, or by some other qualified person appointed by him, and
- you will have to state on your business cards, advertisements, and other documents that you are a candidate<sup>2</sup>, and
- a qualified person will have to be present whenever you complete any mandates or contracts, to check the documents and certify that they were completed in his presence if this is not done, then you will not be entitled to be paid for those sales or leases.

To register, simply complete the appropriate application form, and have your firm send it to the EAAB together with a copy of your ID document and your payment. The application form and the current schedule of fees are available on the EAAB website ([www.eaab.org.za](http://www.eaab.org.za)).

FFCs are valid only for a calendar year, and must therefore be renewed annually, on payment of a renewal fee. If you change firm during the course of a year, you must have your FFC re-issued in the name of the new firm, and pay a small fee for it. If you practice as an estate agent without having been issued with a FFC, you will be breaking the law, and neither you nor the firm will be entitled to receive any payment for any work that you have done while unregistered.

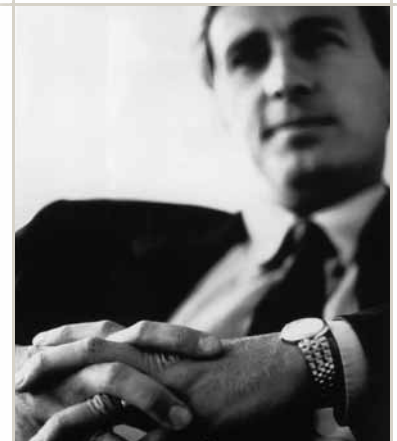
1 They include various degrees and diplomas. Contact the EAAB for a current list.

2 Although this has been a legal requirement since 1991, one seldom sees the word "candidate" on candidate estate agents' business cards or advertisement.

Be aware that, if any of the following circumstances apply to you, then you are disqualified from entering the industry:

- you have ever been dismissed from a position of trust because of improper conduct, or
- you have ever been convicted of an offence involving an element of dishonesty, or
- you are an unrehabilitated insolvent, or
- you are of unsound mind, or
- you have been registered with the EAAB in the past and the EAAB withdrew your FFC, e.g. for a serious offence.

If you are disqualified, you should contact the EAAB, which has the power to set aside a disqualification, depending on the merits of each case. Expect some delay while your case is being considered. If you become disqualified after your FFC has been issued or renewed, it will immediately lapse and you will have to return it to the EAAB and stop practicing. You can, however, ask the EAAB to reinstate you, based on the merits of your case.



## Registration with the CDC

If your work involves collecting (as distinct from merely receiving) rents or levies or other monies due to your clients, then you are legally a debt collector as well as an estate agent, and must register with the Council for Debt Collectors as well as with the EAAB. You register through your firm (which must also be registered with the CDC). However, if your role is purely administrative or clerical, e.g. bookkeeping, then you do not need to register.

According to an authority on property law, the distinction between "receiving" and "collecting" is that "collecting" involves taking active steps, e.g. sending letters of demand to late payers and defaulters, whereas "receiving" is merely accepting monies which are paid in. This is still something of a grey area, which the EAAB and CDC must clear up<sup>1</sup>.

To register, simply complete the appropriate application form, and have your firm send it to the CDC together with a copy of your ID document and your payment. The form and the current schedule of fees are available on the CDC website ([www.debtcol-council.co.za](http://www.debtcol-council.co.za)).

Registration certificates are valid only for a year, and must therefore be renewed annually. If you practice as a debt collector without being registered, you will be breaking the law.

Be aware that, if any of the following circumstances apply to you, then you are disqualified from registering as a debt collector:

- you have been convicted, during the past 10 years, of an offence involving violence, dishonesty, extortion, or intimidation, or
- the CDC has found you guilty of improper conduct, or
- you have been certified as being of unsound mind, or
- you are an unrehabilitated insolvent, or
- you are under 18 years of age.

If you are disqualified, you should contact the Ministry of Justice, which has the power to set aside a disqualified, depending on the merits of each case. Expect some delay while your case is being considered.

## Joining the IEASA

If you are at all serious about your chosen career, you will want to be a member of its professional association, the Institute of Estate Agents of South Africa. Over and above the benefits listed in Chapter 1, you will be able to place the letters MIEA behind your name, and display the IEASA logo, on your stationery, business cards, adverts etc, as a credential. If the firm you join is a firm member of the IEASA, then you will automatically be a member for as long as you work with that firm. Alternatively, you can join the IEASA directly, independently of the firm where you are currently working.

## Services to members

The Institute provides its members with a range of services, of which the most important is training. There are also networking and social functions. We publish the monthly the RPPI ( Residential Property Price Indicator ) book which is also available online 24/7 at [www.rppi.za.net](http://www.rppi.za.net). The Institute represents its members - and, by extension, the estate agency industry - in dealings with government, the Estate Agency Affairs Board, the Services SETA, and with associated organisations such as the National Association of Realtors. The IEA has its own website: [www.ieasa.org.za](http://www.ieasa.org.za) which incorporates all regional offices. Information available includes the history of the IEASA, Standards of practice, Codes of Ethics, Useful Links, Current National and Regional News as well as Training and Events available.



## Benefits of membership

- Mediation in the case of disputes between members
- Regular networking events - sports day, golf days, breakfast seminars.
- Standard contracts available
- Ethical obligations
- Real estate training courses
- Advice from experienced board of directors
- Newsletter
- Legal updates
- Residential property price indicator (RPPI)
- Public recognition of professionalism
- Public recognition of ethical standards

## 3. EDUCATION AND TRAINING

Although estate agency is a complex business, demanding increasingly high levels of skill and knowledge, the authorities do not currently require any compulsory formal training or qualification. Nevertheless, if you are at all serious about being successful as an estate agent, then you will need to acquire those skills and knowledge, and keep them to date.

IEASA courses and workshops

The Institute of Estate Agents of South Africa takes training and education very seriously, and we run courses, workshops, and seminars throughout the year. Our courses include:

- real estate sales (basic skills and knowledge for residential estate agents),
- Certificate in Estate Agency (CEA) exam preparation course,
- "super sellers" (advanced property selling skills),
- commercial property broking,
- auctioneering,
- business broking,
- property development,
- starting your own business, and
- showhouse sitting.



To help our members to keep up to date, we provide regular workshops and seminars on topics such as sectional title, legal update, tax, sole mandates, canvassing, rentals, and property management. All courses and workshops are presented by highly experienced trainers, backed up by specialist consultants.

For further details, contact our offices **(tel: 033 394 2205)**

## Certificate in Estate Agency

The CEA, popularly known as "the Board exam", was introduced in 1984 as a compulsory entrance qualification, but was made voluntary in 1993. It consists of a single 40-question paper, with multiple-choice answers, and can be written in March, June, August or November, in Pietermaritzburg and centres in other provinces.

We strongly recommended that you write this exam as soon as possible.

## 4. PROFESSIONAL CONDUCT

Because the estate agency industry is regulated, you will have to comply with the requirements of the Estate Agency Affairs Act and the Estate Agents Code of Conduct, both of which are administered and enforced by the Estate Agency Affairs



Board. If you are a rent and/or levy collector, then you will also have to comply with the Debt Collectors Act and the Debt Collectors Code of Conduct, which are administered and enforced by the Council for Debt Collectors.

### **Estate Agency Affairs Act and Code of Conduct**

This Act requires individual estate agents to take out Fidelity Fund Certificates, and to meet various other requirements. The Code of Conduct lays down the basics of professional and ethical conduct.

A member of the public, e.g. a client, who is dissatisfied with your conduct, can lodge a complaint with the EAAB. If it considers the matter serious enough, the EAAB may lay formal charges against you and summon you to appear before a Committee of Enquiry. If the committee finds you guilty, it can reprimand you, or fine you up to R25 000 or, for a really serious offence, withdraw your FFC and expel you from the industry.

### **Debt Collectors Act and Code of Conduct**

This Act requires individual debt collectors to register with the CDC, and prohibits various practices, e.g. intimidating people into paying their debts. The Code of Conduct defines fair and honest conduct and practises.

If you are charged with contravening the Act or the Code, you can be summoned to appear before an official enquiry and, if you are found guilty, you can be reprimanded, fined up to R100 000, suspended for a specified period or, for a really serious offence, have your registration cancelled.

## **5. OPENING YOUR OWN ESTATE AGENCY**

Opening an estate agency, as a sole proprietor, a partnership, a close corporation, or a company, is much like opening any other kind of business. However, there are some specific requirements for an estate agency:

- every owner, co-owner, member or director must be qualified to be a principal estate agent, and
- the firm must open a trust account (which means that each principal needs a clean credit record), and
- the firm must appoint an auditor to audit the trust account, and
- the firm and each principal must register with the Estate Agency Affairs board, and
- if the firm is going to collect rent or levies, then it and each principal must also register with the Council for Debt Collectors, and
- the firm can become a firm member of the Institute of Estate Agents of South Africa.

Be aware that it can take several weeks, perhaps even a few months, to set up your firm and get it registered before it can legally begin to trade.

### **Principals**

Every principal of the firm must either have passed the Certificate in Estate Agency exam (or hold one of the accepted alternative qualifications), or else have been registered as a candidate estate agent for 12 months. He/she must also not be subject to any of the disqualifications described in Chapter 2. If any owner, co-owner, member or director is not qualified to be a principal, then the firm will be unable to register with the EAAB, and will therefore be unable to trade legally.

It's a good idea to make sure that each principal has a clean credit record, and is not "blacklisted" by any financial institution. If any of them has such a problem, you may find that your firm is unable to open a trust account, in which case it won't be able to register with the EAAB.

If you're going to trade as a close corporation or company, you'd be well advised to clear up these matters before you register the CC or company with the Companies & Intellectual Property Regulatory Office (CIPRO), so that you don't have



to waste time (and money) having to remove a member or director from the register later because he/she is unqualified or has a credit history problem.

### **Trust account**

Your firm must open a trust account with a registered financial institution, even if you don't intend to use the account. The account name must be: "[Firm's name] Trust Account i.to Section 32(1) of Act 112 of 1976" (no, we're not joking that's the requirement). Ask the financial institution for a letter stating that the account has been opened and that it complies with Section 32 (1) of Act 112 of 1976.

### **Auditor**

Your firm must appoint an auditor, to audit the trust account at the end of each financial year and send a report to the EAAB. Ask him for a letter confirming that he has accepted the appointment. Note that every estate agency firm must have an auditor, whether it is a company, a CC, a partnership, or a sole proprietorship.

### **Registration with the EAAB**

Your firm must register with the EAAB, i.e. take out a Fidelity Fund Certificate in its own name. FFCs are valid only for a calendar year, and must therefore be renewed annually.

To register, complete the appropriate application forms for the firm and for each principal, and send them to the EAAB together with the letters from the financial institution and the auditor, copies of the principal's ID documents, and payment for their FFCs. The application forms and the current schedule of fees are available on the EAAB website ([www.eaab.org.za](http://www.eaab.org.za)).

If your firm trades as an estate agent without having been issued with a FFC, it will be breaking the law, and neither the firm nor any of its agents will be entitled to receive any payment for any work that they have done while unregistered. None of the agents will be able to register with the EAAB before the firm is registered.

### **Registration with the CDC**

If your firm is going to collect monies, e.g. rent or levies, then it must register with the CDC as well as with the EAAB. Registration certificates are valid only for a year, and must therefore be renewed annually. To register, complete the appropriate application forms and each principal and send them to the CDC together with copies of ID documents and a cheque for payment. The forms and the current schedule of fees are available on the CDC website ([www.debtcol-council.co.za](http://www.debtcol-council.co.za)).

If your firm practises as a debt collector without being registered, it will be breaking the law.

### **Firm membership of the IEASA**

We hope that you will enrol your agency as a firm member of the IEASA Pietermaritzburg and Interior. As a firm member, your agency will be able to advertise that it is a member of a professional body, and display the IEASA logo on its stationery, business cards, etc. Every registered estate agent working for your agency will automatically qualify for IEASA membership and membership benefits, at a reduced fee.

Contact our offices (**tel 033 - 394 2205**) for further details.



## 6. MANAGING YOUR ESTATE AGENCY

In many respects, managing an estate agency is like managing any other business. The management must deal with day-to-day business operations, marketing, accounting, labour relations, and pay the rent and other overheads. However, there are some aspects which apply specifically to estate agencies.

### Your trust account

You must manage your firm's trust account very carefully. All trust monies, e.g. buyers' down payments, tenants' key-and-damages deposits, and unit owners' levies must go directly into the trust account. At no time may any trust money be paid into your firm's business account, or into anyone's personal account that is a sure path to a disciplinary hearing and possible expulsion from the industry!

Although your firm is obliged to have a trust account, it is not obliged to use it. Like many smaller firms, you may prefer to pay trust monies into your attorneys' trust account instead.

Unfortunately, there are conflicting requirements between the Estate Agency Affairs Act and the Debt Collectors Act as far as trust accounts are concerned. According to the Estate Agency Affairs Board<sup>1</sup> until this is sorted out, your estate agency must comply with the Estate Agency Affairs Act.

### Annual audit

After the end of each financial year, your auditor must audit the trust account, and submit a report to the EAAB within four months (and to the Council for Debt Collectors within 90 days, if the firm is registered with the CDC). Even if your firm doesn't use the trust account, the auditor must still submit a report.

### FICA compliance

Every estate agency has to comply with the Financial Intelligence Centre Act (Act 38 of 2001) and the Money Laundering & Terrorist Financing Control Regulations 2002. To do so, your firm will need:

- to adopt a manual of compliance procedures (you can draft your own, or obtain one from the EAAB),
- to train staff and agents in the procedures,
- to appoint a compliance officer to make sure that everyone follows the procedures,
- to keep compliance records, e.g. documents to verify clients' IDs, for the prescribed period,
- to report any "suspicious or unusual" transactions to the FIC.

**The penalties for noncompliance include fines of R1 000 000 or more, and/or imprisonment.**

<sup>1</sup> See the article "Overlap between the Debt Collectors Act 1998 and the Estate Agency Affairs Act 1976" in Agent Issue 90 (December 2004/January 2005), pages 12-13.

### External Relations

The Institute maintains relations with other organisations connected with the property industry, both in South Africa and abroad. They include:

- Estate Agency Affairs Board - the regulating authority for the South African property industry
- SA Property Owner's Association
- National Association of Realtors - the American counterpart of the institute
- Property 24
- Property Association
- Property Sector Transformation Charter Steering Committee
- Services SETA Property Chamber
- SA Property Education Trust



## 7. USEFUL CONTACT DETAILS

### **Institute of Estate Agents of South Africa (Pietermaritzburg and Interior)**

Tel: 033 394 2205

Fax: 033 394 7010

E-mail: [ieasapmb@lantic.net](mailto:ieasapmb@lantic.net)

Website: [www.ieasa.org.za](http://www.ieasa.org.za)

Address: Suite 4, 80 Commercial Rd ( *Chief Albert Luthuli Rd*), Pietermaritzburg 3201

Postal: PO Box 11446, Dorpspruit, 3206

### **Estate Agency Affairs Board**

Tel: 011 731 5600

Fax: 011 880 9954

E-mail: [eab@eaab.org.za](mailto:eab@eaab.org.za)

Website: [www.eaab.org.za](http://www.eaab.org.za)

Address: EAAB House, cnr Albury Rd and Jan Smuts Ave, Hyde Park, Johannesburg 2196

Postal: Private Bag X10, Benmore 2010

### **Council for Debt Collectors**

Tel: 012 804 9808

Fax: 012 804 0744

E-mail: [info@debtcol-council.co.za](mailto:info@debtcol-council.co.za)

Website: [www.debtcol-council.co.za](http://www.debtcol-council.co.za)

Address: West Wing, Ground Floor, Rentmeester Park, 74 Watermeyer Street, Val de Grace, Pretoria 0184

Postal: PO Box 836 Silverton 0127



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The Institute is the only national association representing our industry.

We provide:

- top quality training
- professional development,
- networking opportunities, and
- social and sports functions

We represent our industry in dealings with the government, municipalities, and other organisations, to look after the interests of estate agents.

As an Institute member, you will be entitled to place the letters MIEA behind your name, and to display the Institute logo on your business cards and stationery. You will qualify for discounted prices for courses and seminars.

If you're not already a member, contact us **today** on

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**Pietermaritzburg**

Office Tel No:  
(033) 345-5353

E-Mail:

[pmb@betterbond.co.za](mailto:pmb@betterbond.co.za)