



Van Deventer & Van Deventer

— Incorporated —

Attorneys • Notaries • Conveyancers



Frequently Asked  
Questions


ESTATE AGENTS HANDBOOK



# CONTENTS

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<b>Registration</b>	1
<b>Disciplinary and Inspection</b>	9
<b>Claims</b>	15
<b>Audit Compliance</b>	18
<b>Finance and Administration</b>	25



# Registrations

Q

## How to register as a new Intern estate agent?

A

To become a newly registered Intern estate agent, a person must first be employed by a registered firm which is in possession of a valid Fidelity Fund Certificate. The estate agent is then therefore required to serve a period of 12 month internship as an intern, and complete the Further Education and Training Certificate: Real Estate, a qualification that is intended to enhance the provision of entry-level service within the property and real estate professions. A mentor-protégé relationship will, thus, be created. The intern estate agent must also 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.

Q

## Which documents are required to register as an Intern estate agent?

A

- A fully completed and signed application forms
- Certified copy of a valid I.D book
- Certified copy of a valid passport if not a South African
- Valid work permit if not a South African
- Required payment, or proof of payment of R529.80
- Letter of employment signed by the Principal of the firm confirming employment of the applicant as an estate agency.

**Please Note:** It is a requirement that New Intern Estate Agents must register with one of the accredited RPL colleges for NQF Level 4 qualification and ensure that they serve a full 12 months internship period. No registration will be done without any of the required document.

Q

## How to register as a Non-Principal estate agent?

A

The following conditions should be met by any Intern Estate Agent before registering as a new Full Status Estate Agent:

- A person must serve as an Intern Estate Agent, for a continuous and unbroken compulsory 12months internship period under active supervision of a principal estate age or of a full status estate agent who have at least three years practical experience.
- Must keep a logbook (Portfolio of Evidence) reflecting the various estate agency functions and activities undertaken during internship period.
- Must have completed the Further Education and Training Certificate: Real Estate or be in possession of an appropriate NQF level 4 qualification
- Only on submission of the competence certificates will the status on the FFC be amended from Intern to Full Status.
- Must ensure that renewal to be issued with the Fidelity Fund Certificate is done on time

**Please Note:** It is a requirement that the agents renew their FFCs for the following year for the status amendments to take effect.

**Q****Which documents are required to register as a Full Status agent?****A**

- A fully completed and signed application forms.
- Certified copy of valid South African I.D book.
- Certified copy of valid passport if non South African.
- Valid work permit if not a South African.
- Required payment, or proof of payment.
- Letter of employment signed by the Principal of the firm confirming employment of the applicant a full status agent.
- Proof of status change: (A properly dated and signed letter of internship by the principal and NQF Level 4 certificate).

**Please Note:**

- Estate Agent must have served as an Intern Estate Agent, a continuous 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 log-book (Portfolio of Evidence) reflecting the various estate agency functions and activities undertaken during internship period;
- Be in possession of a relevant NQF level 4 certificate or completed Further Education and Training Certificate in Real Estate.

**Q****How to register as a Non-Principal estate agent?****A**

New entrants wishing to act as principal estate agents must be certificated against the National Certificate: Real Estate. This qualification not only adds value to the understanding of the property and real estate sector by principal estate agency practitioners but also enhances their appreciation of the practical functionalities occurring within the workplace. The qualification is also intended to build on the skills that have been gained in the Level 4 qualification and will, essentially, consolidate the broad knowledge, skills and values required in the property and real estate profession. The new entrant may, similarly, be certificated against the qualification after undergoing training through an accredited education provider or by way of the Recognition of Prior Learning route.

The completion of the Further Education and Training Certificate: Real Estate or the National Certificate: Real Estate, as the case may be, constitutes a precondition for admission by the professional estate agent to the Professional Designation Examination ("PDE") which is a practical and integrated test of knowledge for estate agents that will be conducted by the Estate Agency Affairs Board. The PDE is the final test of the estate agent's ability practically to implement and apply the learning that has been achieved and successful candidates will be awarded a certificate of professional recognition by the EAAB.

**Q****Which documents are required to register as a Principal estate?****A**

- A fully completed and signed application forms
- Certified copy of I.D book
- Certified copy of passport if not a South African
- Valid work permit if not a South African
- Internship letter or log book (if new entrants)
- NQF level 5 qualification
- Required payment, or proof of payment
- Letter of employment signed by the Principal of the firm confirming employment of the applicant if joining another firm

**Q****How to register a firm?****A**

In order to register a firm, a person must be a duly registered Principal Estate Agent, as prescribed by the Estate Agency Affairs Act; In order to avoid conflict of interest in the registration of agency names and taking into account the provision of the new company act, Companies Act 71 of 2008, Estate agents are advised that, before incurring any expenditure with registering their estate agency firms or companies with the Companies and Intellectual Property Commission (CIPC), to first contact the Board and ascertain whether a proposed company name is acceptable on initial or subsequent registrations, however, it should be made clear that the EAAB is under no obligation to reserve any firm names for any specific estate agent.

**Please Note:** An Estate Agency as a company may not use a name which is identical or sound, read and look confusingly similar to the name of an estate agency which has already been issued with a fidelity fund certificate or whose fidelity fund certificate has been suspended, has lapsed or has been withdrawn, however, a similar name can be used if the name has been in use previously, but that company has been de-registered with the Estate Agency Affairs Board for a period of minimum three years.

**Q****Which documents are required to register a Firm?****A**

- Firm and Individual application forms;
- Certified copy of a valid I.D book;
- Copy of passport and work permit if non South African;
- CK document if it's a CC (only if the CC has been previously registered with the former CIPRO);
- CM document if it's a company;
- Letter of agreement (if partnership);
- Bank letter confirming that the trust account has been opened, and held in terms of section 32(1) of Act 112 of 1976;
- Auditor's Letter (auditor must be registered with the Independent Regulatory Board of Auditors (IRBA) confirming acceptance of appointment to audit firm's accounts;
- Letter of franchise if applicable;
- Relevant payment;

**Q**

**In registering a PTY (LTD) firm, should all directors of a firm register with EAAB to be issued with Fidelity Fund Certificate?**

**A**

It is a regulatory requirement that every director within a PTY (LTD) must be issued with a valid Fidelity Fund Certificate as stipulated in section 26 of the Estate Agency Affairs Act 112 of 1976. However, a letter indicating active and non-active directors and who should be issued with valid Fidelity Fund Certificate within the company must be submitted to the Board when making application.

**Q**

**How to register to be issued with valid Fidelity Fund Certificate as an Attorney?**

**A**

If an attorney firm wishes to perform the services of an estate agent, as defined in the Act, in the course of and in the name of and from the premises of such attorney's firm, such attorney firm is not required to register with the EAAB or to be issued with a valid Fidelity Fund Certificate. However, if such attorney firm wishes to use a different name other than that of the attorney firm, and also wishes to employ the services of registered estate agents such an attorney firm will be required to register with EAAB under the Estate Agency Affairs act like any other firm.

However, any person, employed by an attorney to perform the duties of estate agents other than articulated clerks or an attorney, will be considered as an estate agent under the attorney firm. Such a person will be obliged to comply with all the requirements of the act, but will not be issued with a normal Fidelity Fund Certificate but "Registration Certificate", the purpose of which is to provide in effect that such a person will have been registered by the board but covered by the "Attorney Fidelity Fund" and not the "Estate Agents Fidelity Fund".

**Q**

**How much must be paid to register as an Intern, Full Status, Principal agent or a firm?**

**A**

- Fidelity Fund Certificate: New registration application (Firm and Principal) R1 270.00
- Fidelity Fund Certificate: Renewals – (Firm and Principal R855.00
- Fidelity Fund Certificate: New registration application Intern/Non-Principal R529.80
- Fidelity Fund Certificate Renewals: Intern/Non-Principal R364.80
- Status Upgrade from Non-Principal to Principal R740.20
- New Attorney employee and renewals R210.90

**NB:** For status upgrades all required education requirements as stated in the Education Regulations must be met.

**Q**

**When do I need to renew my Fidelity Fund Certificate?**

**A**

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

Q

**How much is required to renew a Fidelity Fund Certificate?**

A

- Fidelity Fund Certificate renewal for Principals is R 855.00
- Fidelity Fund Certificate renewal for Non-Principals (New Interns and Full Status) is R 364.80.

Q

**Which bank details to use when making renewal payment?**

A

ABSA  
A/C No: 405 203 3310  
Branch: Protea Park  
Branch Code: 535105  
A/C Name: Estate Agency Affairs Board

**Important:** When making payment, please ensure that your correct EAAB 7 digit reference number is clearly indicated.

Q

**What is the validity period of a Fidelity Fund Certificate?**

A

The Fidelity Fund Certificate is valid from the date of issue to 31 December of that year. This therefore means that every Fidelity Fund Certificate issued for any particular year will automatically expire on the 31 December of the year it was issued.

Q

**What happens if the renewal fee is paid after the renewal due date?**

A

Failure of the estate agent to renew his/her Fidelity Fund Certificate on time will attract late renewal penalty fees. Failure of the Principal to renew on time will hamper the EAAB to issue such certificates to the employees (estate agents) of the firm. Late renewal penalty fee for the Principal is R250, and for Non-Principals is R150.

Q

**How are renewal statements sent to agents?**

A

Renewal statements for each agent are sent to the postal address of the firm by registered mail. However, it remains the responsibility of each agent to ensure that their Fidelity Fund Certificates are renewed on time before the due date of 31 October of each year.

Q

**How to join another agency as a Non-Principal estate agent?**

A

If an agent is employed at the other firm and wishes to join another firm as a non-principal, a letter of employment signed by the principal of the new firm and an amendment fee of R150 are required.

**Q Can an agent work for more than one firm?**

**A** Only principal estate agents can join more than one firm. However, intern and full status agents can only join one firm.

**Q What is required to close down an existing firm/agency?**

**A** In closing down an existing agency firm the following are required:

- Submit 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 firm,
- If it's a partnership, a letter signed by all partners in a partnership the return of all current
- Year original Fidelity Fund Certificates

**Please Note:** No de-registration will be done without any of the required documents.

**Q With which Board do the auditors need to be registered with?**

**A** The auditor's needs must be registered with the Independent Regulatory Board of Auditors (IRBA).

**Q How long does a new fidelity fund certificate application take to be processed?**

**A** The turnaround time for new application takes 21-30 working days.

**Q If a person only does administrative duties for and estate agency do they need to hold a valid Fidelity Fund Certificate?**

**A** In terms of the act, any person who performs any act as an estate agent, as defined in the act is required to be issued with a valid Fidelity Fund Certificate.

**Q If an agency opens a new branch and everything remains the same do they still need to register that branch?**

**A** Each branch must be in possession of a valid Fidelity Fund Certificate and therefore must be registered



**Q****How do I secure a name for my company?****A**

- Ascertain from the EAAB whether a proposed trade name is acceptable on initial or subsequent registrations before incurring any expenditure,
- If the name is not acceptable because it's similar or confusingly similar to an already registered name, the name cannot be used;
- Estate agents are advised, before incurring any expenditure, to first ascertain from the EAAB whether a proposed name/trade name is acceptable on initial or subsequent registrations.
- However, it is important to note that the EAAB cannot reserve firm names in any way for any specific firm or person.

**Q****What do I do, when I have registered a company name with the Companies and Intellectual Property Commission (CIPC), and the EAAB advises that I cannot use that name because of its similarity with other firm names?****A**

Regrettably you will need to register a new name. Alternatively you can contact the other estate agency firms and ask for a written consent register a similar name.

**Q****What is the current position regarding Close Corporations when registering an estate agency firm?****A**

With effect from 1 May 2011, it is no longer possible either to register new close corporations or to convert companies to close corporations. An existing close corporation can, however, fairly easily be converted to a company. It should be noted that the new Companies Act has neither repealed the Close Corporations Act, 69 of 1984, nor abolished the institution of Close Corporations so that both the Companies Act and the Close Corporations Act will presently continue to exist concurrently. Close Corporations will, however, be required to comply with the provisions of the Companies Act insofar as the Close Corporations Act has been amended by the provisions of Schedule 3 of the Companies Act.

**Q****How do I de-register employees of my firm?****A**

Provide the EAAB with a letter of instruction on a company letterhead signed by the Principal of the estate agency firm that the employees are no longer working for that particular firm and to remove them from the company's records.

**Q****How do I obtain a copy or reprint of my fidelity fund certificate?****A**

You can contact the EAAB on 011 71 5600 or e-mail [eab@eaab.org.za](mailto:eab@eaab.org.za), and request the reissue of the FFC. The EAAB is not able to backdate fidelity fund certificates and print originals. The fee for a copy is R150.00. Upon proof of payment, the copy can be issued.

**Q Do auctioneers need to register for a fidelity fund certificate with the EAAB?**

**A** Yes, they do.

**Q I was registered in previous years but did not renew my Fidelity Fund Certificate for the current year. What are the cost implications?**

**A** Regardless of when the application for either a new application or a renewal is received and processed, the full fee is applicable. If renewal for the current year FFC is made in that particular current year, such renewal will carry in addition a penalty fee. If the renewal for the next year is done prior to 31 October of the current year only renewal fee applies.

**Q Why have I not received my fidelity fund certificate – I renewed in time, I am a Non-principal estate agent?**

**A** Contact the EAAB Call Centre to check when the payment was received? Was the amount paid correct? Was it paid into the correct bank account for renewals? If everything is correct, then the call center agent will check to ensure that the principal of the firm has renewed for the current year and also whether the EAAB has received the previous year's auditor's report. Depending on their findings this could be the reason as to why you may not have received your fidelity fund certificate.

**Q Why am I showing as invalid on your website?**

**A** This could be as a result of not having renewed your fidelity fund certificate for the current year. If that is not the case, please call our call centre 087 285 3222 for verification.

**Q How do I apply for an affidavit for a missing Fidelity Fund Certificate?**

**A**

- Contact the EAAB on 087 285 3222 or email to [eab@eaab.org.za](mailto:eab@eaab.org.za) to make the request for an affidavit and for further details;
- A payment of R100.00 is required for each affidavit requested and for each firm or individual/employee.

# Disciplinary and Inspection

Q

**If an agent is not registered with the Board is he/she entitled to trade as an agent?**

A

No, he/she is not entitled to trade. In terms of section 26(a) of the Act no estate agent shall perform work as an agent unless he/she has been issued with a valid fidelity fund certificate. The valid fidelity fund certificate should be for the current year, as each year an estate agent must apply and be in possession of a valid fidelity fund certificate.

Q

**If an estate agent is not registered. Is he/she entitled to commission?**

A

No, in terms of section 34(a) (1) of the Act, no estate agent shall be entitled to any remuneration or other payment unless at the time of the performance of the act he/she was in possession of a valid fidelity fund certificate.

Q

**How much commission can an estate agent charge for renting my property or for selling my property?**

A

The Act does not specify the percentage to be charged by an estate agent, when selling or leasing property, the percentage is therefore agreed upon between the parties, it is a contractual arrangement between parties, however the percentage commission should be specified in the agreement to avoid any confusion or disagreement at a later stage. Note that if the agent is a VAT vendor he/she will charge commission, plus VAT.

Q

**The agent has invested my monies/ deposit in a trust account how much interest am I entitled to receive?**

A

The interest to be paid back by the agent will depend on the interest rate applicable or paid by the bank for that particular investment.

If an estate agent is found guilty of contravening the Act or the Code of conduct what can happen to the estate agent?

**In terms of the act if an estate agent is found guilty:**

- He can be fined an amount to the maximum of R25 000.00;
- He can have his fidelity fund certificate withdrawn; and
- He can be given a reprimand.

**Q****The agent has failed to pay my rent received from the tenant?****A**

Firstly, inquiries must be made whether or not the tenant has made payment. If payment has been made the tenant should be requested to provide a copy of proof of payment. If proof of payment has been obtained and the estate agent continues to refuse to pay over the rental, a complaint can be lodged with the Board against the agent, by completing a complaint initiation form and enclosing a copy of the lease agreement, the proof of payment and any other relevant supporting documents that relate to the complaint. If the tenant has failed to pay, the landlord may give instructions to the agent, to give the tenant a notice to vacate the property or to institute legal proceedings against the tenant to recover the outstanding rental, please note that the legal fees incurred during this process are for the landlord's account and not the agent, unless otherwise agreed.

**Q****If I submit a complaint how long will it take to investigate?****A**

Investigations can take up to 6 months and beyond depending on the nature of the complaint, and other delays such as agent being untraceable and obtaining a hearing date.

**Q****The agent is failing to evict the tenant from the property?****A**

Unfortunately the agent cannot evict the tenant without an eviction order, the agent can however give the tenant a notice to vacate, if the tenant fails or refuses to vacate then there is nothing more the agent can do, this is because the laws relating to evictions in South Africa are governed by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE), No 19 of 1998 and only the courts have jurisdiction to issue an eviction order. It will therefore be necessary for the owner to apply through the courts for an eviction order. It should be noted that only the registered owner of the property will be able to apply for an eviction order, is also liable for the costs of the application and not the agent unless otherwise agreed upon.

**Q****Under what circumstances can an estate agent be obliged to cease practicing as an estate agent?****A**

- When a fidelity fund certificate has lapsed or has been suspended;
- When a fidelity fund certificate has been withdrawn by the EAAB or a court;
- When the estate agency firm no longer holds a valid fidelity fund certificate;
- In the case of principal estate agents one or more of the estate agents in the service of the enterprise has not been issued with a valid fidelity fund certificate.

**Q****How do I verify if an estate agent is registered with the EAAB?****A**

You can visit our website on [www.eaab.org.za](http://www.eaab.org.za) and search for the agent using the agents, name, and firm name or, alternatively call the EAAB's Call Centre on 087 285 3222 to verify the registration status of the estate agent.

**Q****What is the difference between the EAAB and IEASA?****A**

- The EAAB is the official statutory regulating authority for the estate agency industry, and every estate agent must, by law, be registered with it. The EAAB currently has only one office, situated in Johannesburg.
- IEASA is a professional organisation which supports its members, and membership is voluntary.

**Q****What is the difference between the EAAB and REBOSA?****A**

- The EAAB is the official statutory regulating authority for the estate agency industry, and every estate agent must, by law, be registered with it. The EAAB currently has only one office, situated in Johannesburg.
- REBOSA is a professional organisation which supports its members, and membership is voluntary.

**Q****What is the difference between the EAAB and the NPF?****A**

- The EAAB is the official statutory regulating authority for the estate agency industry, and every estate agent must, by law, be registered with it. The EAAB currently has only one office, situated in Johannesburg.
- The NPF is a professional organisation which supports its members, and membership is voluntary.

**Q****Do I have to be a member of IEASA, REBOSA, NPF?****A**

There is nothing in the Estate Agency Affairs Act compelling an agent to be a member of any of these organisations. Membership to these organisations is voluntary however, the EAAB would recommend that you consider joining one of your choice as they do provide value-add services to estate agents.

**Q****How do I lodge a complaint and report an unregistered estate agent?****A**

The EAAB has a complaint initiation form available on the website under Industry Members. This form should be submitted to our legal department via the email or fax details provided on the said form. Once received by the department the complaint form will be allocated to a Legal Officer for investigation. You can also contact the EAAB Whistle Blowers Hotline on 0800 223 225 to report any fraud by an agent.

**Q****Commission disputes?****A**

The EAAB does not offer legal advice or represent parties regarding to commission disputes. However, an estate agency or any person wishing to challenge payment of commission based on the fact that the estate agent was not registered with the Board can request the EAAB to confirm by way of an affidavit whether or not the agent was in possession of a valid fidelity fund certificate. A fee is charged for any affidavit requested. If the agent is not registered and the Board is in possession of sufficient documentation it can investigate the agent for contravening section 26 of the Estate Agency Affairs Act.

**Q****Under what circumstances are agents not entitled to remuneration?****A**

Section 34 a of our Act states, that no estate agent shall be entitled to remuneration or payment in respect of or arising from the performance of any act performed by estate agent, unless a valid fidelity fund certificate has been issued.

- To such estate agent and;
- If the estate agent is a company to every director of the company;
- Where a non-principal estate agent has not been issued with fidelity fund certificate neither that estate agent nor the principal of the estate agency enterprise is entitled to receive commission for the services rendered by the non-compliant non-principal estate agent;

**Q****How does Section 55 of the Consumer Protection Act regarding the 'Voetstoots' clause affect estate agents and property transactions?****A**

- The legal view remains rather diverse – certain opinions aver that estate agents are acting in the ordinary course of their business once they become involved in a property transaction. If so ... the 'voetstoots' clause is prohibited.
- Estate agents should urgently review all sale documents, promotional and advertising literature to ensure compliance with the CPA. A contravention of the Act can lead to a fine of up to R1 million or 10% of the estate agency's turnover, whichever amount is the greater.

**Q****How does Section 14 of the Consumer Protection Act affect estate agents?****A**

- While the CPA poses many benefits to the South African public, the Act itself enforces legislation that could potentially have a negative impact on landlords and property managers and which sometimes has unintended consequences which require the urgent intervention of the property sector;
- Section 14 of the Act, in particular, gives tenants the right to terminate fixed term agreements on 20 business days' notice. The landlord or managing agent can hold the tenant liable for rent due until the cancellation date and a reasonable cancellation fee is levied. The determination of that reasonable cancellation fee is problematic, and may not include any future unpaid rent until a new suitable tenant is found for the property.

Q

**How does Section 55 regarding the Cooling-off right apply to property transactions?**

A

- Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the above mentioned requirements and standards.
- Delivery of immovable property, of course, takes place when the property is transferred into the name of the purchaser – possibly many months after the sale agreement was concluded and will probably have unintended consequences where all parties – seller, buyer, mortgagee and estate agent - are concerned.

Q

**“Cooling off period” in terms of the Land Alienation Act?**

A

The cooling off period in terms of the above act relates to properties whose purchase price is R250 000.00 or below, any property purchase above the said amount will be bound by the cooling off period enclosed in the offer to purchase.

Q

**What is FAIS and how does it affect agents regarding property transactions?**

A

FAIS was passed in 2002 and became effective in October 2004; and

- Requires that persons rendering financial services be properly licensed;
- It professionalise the financial services industry;
- It protects client's against improper conduct by financial service providers;
- It aims to prevent fraudulent and misleading advertising;
- It ensures adequate disclosure of relevant material information to clients.

Q

**Who is a Financial Services Provider in terms of the FAIS Act and do I need to be registered with the Financial Services Board?**

A

- An FSP is defined in the FAIS Act as:
- “any person, other than a representative, who as a regular feature of the business of such person who:
  - furnishes advice; or
  - furnishes advice and renders an intermediary service; or
  - renders an intermediary service;

Q**What is considered to be Intermediary Services?**A

Intermediary services include the following activities performed on behalf of the client or product supplier:

- Managing, maintaining or servicing a financial product [e.g. deposit product] in which the client has invested; or
- Collection or account for premiums or other moneys payable to product suppliers; or
- Receiving, submitting or processing a client's claim against a product supplier.

Q**What are the reporting obligations of a Financial Services Provider?**A

- Compliance Report to be submitted annually (as per the FSP category and date published by the Financial Services Board;
- Submit the FSP business financial statements (within four months of the FSP's financial year-end).
- Submit separate audited report (applicable for FSPs handling client's funds).

Q**What are the activities of estate agencies that fall within the definition of financial services?**A

- Giving advice, sourcing and obtain insurance quotes on insurance products on behalf of clients.
- Paying over insurance premium to insurance companies on behalf of clients.
- Opening deposit or interest bearing accounts in client's name.
- Managing deposits or interest bearing accounts on behalf of clients.
- Giving advice on Shares (Property Syndication).
- Investing client's monies in a separate savings or other interest-bearing account/s as per Section 32 (2) (a) of the EAAB Act. This activity is viewed as rendering intermediary services on behalf the client.

Q**Where can I find more information about FAIS?**A

For more information we would advise that you contact the Financial Services Board directly or log onto their website.



# Claims

Q

## How do I lodge a claim?

A

By way of completing a complaint initiation form and clearly setting out the nature of the claim and the amount claimed and how it is calculated. In addition, the Board must be provided with:  
In addition, the EAAB must be provided with:

- Proof that the monies claimed were indeed paid to the estate agent concerned;
- Copies of contracts;
- Criminal case number;
- Civil court judgment obtained.

Q

## Is there a prescribed period within which to submit a claim?

A

Section 18(3) which reads "No person shall have any claim against the EAAB in respect of a theft or failure referred to in subsection 1 unless:

- a. The claimant has within three months after he became aware of such theft or failure or by exercise of reasonable care should have become aware of such theft or failure, given notice in writing to the EAAB of such claim;
- b. The claimant has, within six months after a written demand was sent to him by the EAAB, furnish to the EAAB such proof as the EAAB may reasonably require. Therefore the claimant is required to notify the EAAB, within three (3) months of becoming aware of the theft of trust funds by an estate agent or failure of the estate agent to pay the money into a trust account, that is submit a written notice of the claim to the EAAB, furthermore the claimant has six (6) months after written demand was sent by the EAAB, to furnish the EAAB with additional information for investigation, failure to comply with the above provision may result in your claim been rejected.

Q

## What claims may be brought against the fidelity fund?

A

The claims can be in respect of:

- Monies collected/received by an estate agent.
- Monies received in respect of estate agency services or activities as defined by the Act.
- Monies received in respect of lease/sale of immovable property. The fidelity fund does not cover consequential loss or losses due to damage to property.

Q

## What civil and criminal action must claimant institute against the estate agent?

A

**Civil:** The Act provides that the Board may require that a claimant first exhaust all other relevant right of action and other legal remedies available against the estate agent and all other persons who may be liable for the loss suffered.

**Criminal:** As the fidelity fund is liable to reimburse persons who suffer loss by reason of theft of trust monies, the EAAB requires that the claimant bring a charge of theft against the estate agent concerned.

**Q What do I do if the landlord/agent refuses to refund my deposit after the lease has expired?**

**A** The Act requires that the estate agent must open and keep a trust account and deposit therein all the monies received by him/her in a trust account until he/she is instructed to withdraw it or is lawfully entitled to it (as the case may be).

**Q How long does it take to process a claim?**

**A** Upon receipt of a claim, it is firstly investigated by our disciplinary department as regards improper conduct/contravention of the code of conduct and the Act. The case will then be forwarded to the claims department for processing, investigation and presentation to the EAAB. Provided that there are no undue delays and the matter is fairly straightforward, it takes approximately 4 months to finalise the claim.

**Q The estate agency firm that I transacted with has closed office and is now placed under liquidation. How do I protect my deposit?**

**A** The claimant is required to submit the claim with the EAAB as per normal procedure and also, submit a claim with the liquidator appointed to administer the liquidated company. Upon finalisation of the liquidation process and if the claim had not been settled, the claimant must furnish the EAAB with a copy of final liquidation and distribution account from the liquidator.

**Q What recourse do I have against an estate agent who was mandated to rent out my property but failed to collect rent from the tenant, and who has now absconded without paying rental?**

**A** The fidelity fund can only be held liable in respect of actual monies received by an estate agent; any other losses suffered by claimant are not covered by the fidelity fund. In this instance, the EAAB recommends that claimant seek legal route.

**Q SECTION 27 APPLICATIONS - DISQUALIFIED AGENTS IN TERMS OF SECTION 27A**

**A** The special application arises as a result of the following circumstances:-

1. Dismissal from the position of trust;
2. Offence involving an element of dishonesty (criminal record against estate agent);
3. Where the estate agent has been sequestered and not rehabilitated and/or a liquidated
4. Fidelity fund certificate has been withdrawn.
5. Company, (voluntarily or compulsory liquidation);

**Q****Applicant is dismissed from a position of trust by reason of improper conduct?****A**

Requirements for application:

- Affidavit regarding your dismissal as well as supporting documents;
- Letter from principal of estate agency firm confirming that he is aware of your dismissal and has no objection in you being employed;
- Three to four letters of reference or testimonials.

**Q****Applicant convicted of an offence involving an element of dishonesty?****A**

Requirements for application:

- Affidavit regarding your conviction and to motivate your application as to why it is in the interest of justice that a fidelity fund certificate be issued to you as well as a copy of the charge sheet and the sentence imposed;
- Letter from principal of estate agency firm confirming that he is aware of your conviction and has no objection having you employed;
- Three to four letters of reference or testimonials.

**Q****Insolvent or sequestrated applicants who have not been rehabilitated / a liquidated company?****A**

Requirements for application:

- Affidavit regarding your sequestration;
- Court application for sequestration / liquidation of company;
- Trustee's report to creditors, liquidation and distribution account;
- Letter of certification from trustee stating that he has no objection to the granting of
- A fidelity fund certificate to you and that you are a fit and proper person to assume a position of trust (Fit & proper principles must be confirmed);
- Letter from your proposed employer (estate agency firm) confirming that he/she is aware of your sequestration and has no objection of you being employed;
- Three to four letters of reference or testimonials.

**Q****Withdrawal of a Fidelity Fund Certificate in terms of the Act?****A**

Requirements for application:

- Affidavit regarding the withdrawal of fidelity fund certificate;
- Letter from principal of estate agency firm confirming that he is aware of the withdrawal of a fidelity fund certificate and has no objection having you employed;
- Three to four letters of reference or testimonials.

# Audit Compliance

**Q Who must have their accounting records audited and when must the audit report be submitted?**

**A** Every estate agent is to keep accounting records and have these audited within 4 months after the final date of the estate agent's financial year. Estate agent, in terms of the audit requirements, refers to the business and employee estate agents therefore need not open a separate trust account.

**Q Which accounting records are to be audited?**

**A** Those records as are necessary to reflect:

- All monies received or expended, including moneys deposited to trust account or invested in a savings or other interest-bearing account (Section 32(2)(a))
- All assets and liabilities
- All financial transactions and the financial position of the business.

It is important to note that the audit report submitted by the estate agency's auditor, is submitted in respect of the estate agency's annual financial statements, together with the relevant trust and, where applicable, other interest-bearing account records and any other documentation, which may be needed to comply with the requirements, as set out in terms of Sections 29(a) & (b) and 32(3) & (4) of the Estate Agency Affairs Act.

**Q Is the EAAB imposing new requirements in respect of the auditing of business records?**

**A** No, the audit of the business records (annual financial statements) does not relate to new requirements, as Section 29 of the Estate Agency Affairs Act has always stated the accounting records which are to be audited, to not be limited to the trust account records.

**Q Should the auditor attach the audited financial statements to the audit report when submitting to the EAAB?**

**A** No, the auditor should only submit the completed audit report; bearing in mind the EAAB may request full audited financial statements in terms of Section 32(5) of the Estate Agency Affairs Act.

**Q Is an estate agent required to conduct the full audit even if they do not use their trust account?**

**A** Yes, the audit requirements remain, irrespective of the amount of activity on the trust account.

**Q Why must a sole proprietor / partnership / CC complete a business audit, when the Companies Act only requires this from certain entities?**

**A** The Estate Agency Affairs Act, which regulates certain aspects of the estate agency industry, draws no distinction between the types of businesses and, as long as the business is acting as an estate agent, the audit requirements are to be adhered to in full.

**Q I am a sole proprietor and only have a trust account to audit?**

**A** Trading as a sole proprietor means not trading through a separate entity or vehicle and the sole proprietor (individual) is therefore the estate agent (business) and the accounting records of the estate agent (sole proprietor) are therefore to be audited.

**Q If I only submit my trust account audit report, will this be accepted?**

**A** No, refer no. 2 above.

**Q Which auditing standards are to be used when completing the audit report?**

**A** Auditors are to use the International Financial Reporting Standards (IFRS) or IFRS for SME's in respect of the audit reports for a close corporation or company. In respect of the audit reports of sole proprietors and partnerships, the appointed auditor is required to specify the accounting framework utilized on the audit report.

**Q What is the International Financial Reporting Standards (IFRS) for SMEs on the auditor's report?**

**A** IFRS is a set of international accounting standards stating how particular types of transactions and other events should be reported by publicly accountable enterprises (PAE's) in financial statements. IFRS are issued by the International Accounting Standards Board.

**Q Can my bookkeeper or accountant complete the audit report?**

**A** No, it is a legislative requirement for the audit report to be signed off by an auditor, registered as an accountant and auditor in terms of Section 23 of the Public Accountants' and Auditors' Act, 1951 and engaged in public practice as such. The EAAB requires the appointed auditor is to be registered with the Independent Regulatory Board for Auditors (IRBA).

**Q Can an auditor whom owns and operates an estate agent business, audit his/her own accounting records?**

**A** No, an auditor needs to be independent of the entity he/she is auditing and would therefore not be able to audit the entity if he/she is in charge of the entity and is the Risk, Compliance and Internal Audit manager for the entity.

**Q Who must submit the audit report to the EAAB?**

**A** The Estate Agency Affairs Act requires the appointed auditor of the estate agency, registered as such with the EAAB, to submit the audit report. It does however remain the responsibility of the estate agent to ensure the audit report is submitted and accepted as having complied with all relevant requirements.

**Q How do I / my auditor submit the audit report?**

**A** Audit reports are to be submitted to the EAAB in the form determined by the board. The current requirement is for the revised audit report form (as with effect from 01 September 2011) to be submitted by the auditor online via My EAAB Auditors Portal on [www.eaab.org.za](http://www.eaab.org.za).

**Q My audit report has been submitted, yet I have received no confirmation of receipt?**

**A** A confirmation of submission will be sent to the auditor's email address and principal's email address for all audit reports submitted on My EAAB Auditors Portal on our website.

**Q I have not received the new audit report from the EAAB and cannot complete the audit?**

**A** The EAAB is under no obligation to notify an estate agent or auditor of amendments to the audit report form and it is the responsibility of the estate agent and auditor to confirm which form is in use by the EAAB. The current audit report form is available for download on the EAAB website.

**Q Does the EAAB still accept the old audit report form?**

**A** The revised auditor report replaces all prior forms and, with effect from 01 September 2011, only the revised form will be accepted.

**Q Can I request an extension for submitting the audit report?**

**A** No, the Estate Agency Affairs Act prescribes the manner and time frame within which the required audit reports are to be submitted to the EAAB and no requests for extension of the submission date of any audit report required in terms of the Estate Agency Affairs Act, will be entertained.

**Q What is my firm pin number?**

**A** The firm pin number is the number created on the EAAB system, when an estate agency registers with the Board. It is usually also the reference number, starting with the letter "f", the agency would use for purposes of payments. Should the estate agent not be in possession of their firm pin number, they can contact our Call Centre, provide the firm details and request the relevant firm pin number.

**Q What amount of interest is payable to the Fund?**

**A** All interest earned on monies held in trust (Section 32(1)-accounts) or savings or other interest-bearing accounts (Section 32(2)(a)-accounts), which have not been specifically nominated for the benefit of a contracting party (in respect of a lease or sale agreement) or stipulated in a mandate, is payable to the Estate Agents Fidelity Fund.

When receiving trust monies in respect of a contract of sale or lease, estate agents must disclose to the parties that unless they agree, in writing (in a separate document or provision in the agreement), to whom the interest earned on the trust money is to be paid, the interest so earned will accrue in favour of the Estate Agents Fidelity Fund.

Estate agents may deduct and retain 50% of interest earned on trust monies (where there is no mandate in respect of such interest) when payment is made to the EAAB.

An estate agent cannot charge the EAAB a fee for the administration of its trust account or deduct such fee, when paying over the interest earned on the trust account to the Estate Agents Fidelity Fund.

**Q When and how is the interest payable?**

**A** Interest payments are to be made when submitting the audit report. The relevant account details are:

NEDBANK

Account no. 193 303 0216

Branch Code: 193305

Branch: Sandown

Account name: Estate Agency Affairs Board

Reference: The unique firm pin number is to be used as reference

**Q What is required when I change my registered auditor?**

**A** 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 agent.

**Q What is required when I open additional trust or other interest-bearing accounts or my account details change?**

**A** 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 EAAB.

**Q What will happen if my auditor qualifies my audit report or notes any contraventions with the provisions of the Act?**

**A** The audit report will be noted as having been received however, subject to consideration, the audit report may not be accepted and/or may be referred for formal disciplinary investigation.

**Q What happens if I fail to submit my audit report or it is submitted outside the prescribed time period?**

**A** Failure to submit an audit report timeously will result in the relevant estate agent being noted as non-compliant and considered for formal disciplinary investigation, where after charges may be instituted and the agent called to appear before a disciplinary committee.

The estate agent will furthermore not be able to renew their Fidelity fund Certificate or, where such Fidelity Fund Certificate has already been renewed, this may be withdrawn, as the provisions of the Estate Agency Affairs Act prescribe disqualification where an estate agent has failed to comply with any provision of Section 29(b) or Section 32(3)(b).



**Q**

**Why does the audit report request confirmation of my FIC number and why must I register with FIC?**

**A**

All estate agents are required to register as an accountable institution with the FIC, in terms of section 43B of the Financial Intelligence Centre Act No. 38 of 2001, as amended.

**Q**

**How do I register with FIC?**

**A**

Visit the FIC's website: [www.fic.gov.za](http://www.fic.gov.za), for a detailed process description on how to register with the FIC.

**Q**

**If my FIC registration is not confirmed, will my audit report be accepted?**

**A**

No, the EAAB is a Supervisory Body in terms of the FIC Act and is to assist in ensuring that all estate agents comply with the registration requirements.

**Q**

**What are the implications of being referred for formal disciplinary investigation, based on the audit report?**

**A**

Contraventions relating to audit reports (apart from the effect of not being issued with a renewed Fidelity Fund Certificate or, where such Fidelity Fund Certificate has already been renewed prior to the submission date, withdrawal of such) are dealt with in the same manner as other disciplinary charges and, if found guilty, the committee may impose any of the following sanctions for every charge:

1. A fine of up to R25 000-00;
2. A formal reprimand;
3. Suspension or withdrawal of the Fidelity Fund Certificate

**Q**

**What is a winding up audit report and when is this required?**

**A**

A winding up report is the final closing report that is submitted by the estate agency's appointed auditor and is meant to cover the period between the audit report submitted to the EAAB for the financial year-end prior to the closure of the trust account and the date of closure of the trust account. This is always required when closing an estate agency firm (i.e. when deregistration from the EAAB is requested) or where a trust account has been closed and, the winding up audit report is to be accompanied by a bank letter confirming the date of closure of the trust account.

Q**How do I open a trust account?**A

Obtain an example of the letter from the EAAB that outlines what needs to be incorporated on the letter from the estate agency firm's bank, confirming the relevant account details and confirming the designation of such account in terms of relevant provision of the Estate Agency Affairs Act.

Q**The bank has closed my trust account?**A

It is imperative and the responsibility of the Principal of an estate agency firm to ensure that the account does not become dormant. Where a trust account has been closed, a winding up audit report is to be submitted, together with a bank letter confirming the date of closure of the trust account, as well as a bank letter confirming the opening and designation of the new trust account.

Q**Can I have more than one trust account?**A

Yes, an estate agency firm can open more than one trust account, bearing in mind the EAAB is to be advised of the existence of all such accounts in writing, as all relevant accounts are to be registered with the EAAB and to form part of the annual audit.

Q**How must a trust account be managed?**A

- Section 32(1) of the Estate Agency Affairs Act requires all estate agency undertakings to open and keep one or more separate trust accounts, to be properly designated as trust accounts, with a bank;
- All trust monies held or received by an estate agency enterprise must forthwith be deposited into the trust account;
- Trust monies must be retained in the trust account until the estate agency enterprise is lawfully entitled to that money or has been instructed to make payment therefrom to any person;

## AUDIT COMPLIANCE **Audit Report Submission**

The full audit requirements remain, irrespective of the type of entity or the amount of activity on the account/s. Section 32(4) of the Act, requires the auditor to transmit a report forthwith after completion to the EAAB, in the format determined by the EAAB (refer to revised audit report form, as introduced in September 2011) and it is important to ensure that the auditor does in fact confirm the conclusion of the audit of the accounting records, including the annual financial statements, as is required in the revised audit report form. It therefore remains the responsibility of the estate agent to ensure compliance in this regard, as they are to receive a copy of the relevant audit report from the auditor, upon completion.

INFORMATION THAT IS REQUIRED WHEN SUBMITTING AUDIT REPORTS	
<ul style="list-style-type: none"><li>• Audit report type</li><li>• Financial year</li><li>• Agency type</li><li>• Agency pin number</li><li>• Firm Fidelity Fund Certificate number</li><li>• Financial Intelligence Centre (FIC) Number</li><li>• Contact details and address</li><li>• Audit year</li><li>• Audit signed date</li></ul>	<ul style="list-style-type: none"><li>• Audit completion date</li><li>• Accounting framework</li><li>• Audit opinion</li><li>• Reportable irregularity reported or not</li><li>• Financial year end</li><li>• Contraventions</li><li>• Interest calculation</li><li>• Comments</li><li>• Trust account details</li></ul>

### **Can I have more than one trust account?**

In respect of the 2016 audit - The prescribed 4 months in terms of legislation no extension for the 2016 period or thereafter, requires the audit requirements to have been complied with, within 4 months from the end of the firm's financial year end.

In respect of the 2017 audit - The prescribed 4 months in terms of legislation no extension for the 2017 period or thereafter, requires the audit requirements to be complied with, within 4 months from the end of the firm's financial year end.

# Audit Compliance

**Q** Where can we find EAAB's banking details for various fees payable including interest on trust funds?

**A** The schedule of fees can be found on the EAAB website, on the left menu navigation bar.

**Q** How much is payable for registration, renewal and fees for administrative charges?

**A** Refer to the schedule of fees on the EAAB website, on the left menu navigation bar.

**Q** What is the due date for the renewal of the Fidelity Fund Certificate (FFC)?

**A** All Fidelity Fund Certificate renewals are due by 31st October each year to renew for the following calendar year.

**Q** What method of payment does EAAB accept?

**A** The EAAB accepts only the following method of payment:

- Cash payments made directly at the EAAB offices cashier's desk
- Point of Sale (POS) payments using debit or credit cards made at the EAAB offices cashier's desk
- EFT payments made directly into the relevant EAAB' bank account
- Direct deposits made into the relevant EAAB's bank account
- EFT Payments made from the EAAB's website into the relevant EAAB's bank account.

**Q** What reference number do I use when making payments?

**A** The EAAB accepts only your allocated unique seven digit reference number as beneficiary reference when making payments. You may request the reference number from our Call Centre. Failure to use the correct seven digit reference number may delay allocation of the payment to the correct Estate Agent/Agency account. Contact 087 285 3222.

**Q** How long does it take for payment to reflect in the EAAB's bank account?

**A** For payments made via EFT and deposits made at the bank, please allow a maximum of three working days for the payment to reflect in the EAAB's bank account

Q**Where can I send the proof of payment?**A

Please ensure that you use a seven digit reference number at all times when making payments to EAAB. Proof of payment can be emailed to [finance@eaab.org.za](mailto:finance@eaab.org.za) or faxed to 011 880 9831.

Q**Can I make bulk payments for renewals or registrations for different agents?**A

No, to ensure easy and prompt allocation of payments to the correct estate agents/agency account, it is recommended that payments are only made for each agent/agency using the correct seven digit reference number.



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