



ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA

THE FINANCIAL INTELLIGENCE CENTRE ACT, 38 OF 2001

INTERNAL RULES FOR ESTATE AGENCY FIRMS

SPECIMEN INTERNAL RULES FORM

Firm name:

Definitions:

In this document the expressions referred to below shall have the following meaning:

“Client” means: the person from whom the firm has obtained a mandate to render an estate agency service;

“Compliance officer” means:
the person appointed as compliance officer by the firm, namely, Mr./Mrs./Ms. _____

“EAAB” means: the Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 112 of 1976;

“Estate agency service” means:
any service or act referred to in paragraph (a) of the definition of ‘estate agent’ contained in section 1 of the Estate Agency Affairs Act, 112 of 1976;

“Estate agent” means:
any estate agent in the service of the firm who renders an estate agency service or services;

“FICA” means: the Financial Intelligence Centre Act, 38 of 2001, as read with the regulations promulgated in terms thereof;

“Mandate” means: an instruction or authority granted to render an estate agency service or services whether oral or in writing;

“The firm” means: the estate agency undertaking referred to in the heading to these Internal Rules;

“Verification documents” means:

the documents prescribed by FICA for the verification of the identity of a client.

A. Establishment and verification of identities

1. An estate agent accepting a mandate on the firm’s behalf shall, before so accepting the mandate, duly explain to the client that the firm is obliged by the provisions of FICA to:

- 1.1 establish the identity of the client and, in this respect, to obtain certain details concerning the identity of the client; and
- 1.2 that certain documents must be obtained by the firm from the client to enable the firm to verify the particulars of the client.

If the client is represented by any representative it will be necessary for the estate agent, in addition, to establish and verify the identity of such representative(s).

2. An estate agent must, before accepting a mandate from a client, obtain all the particulars of the client required by FICA. This shall be done by using the forms specifically designated for this purpose by the compliance officer. The required forms shall be obtained from the compliance officer while both the compliance officer and the estate agent shall exercise due care and diligence in ensuring that the correct form is used in respect of the client concerned.

The following rules shall apply in respect of these forms:

- 2.1 the forms shall be completed using a pen with black ink;
- 2.2 all the particularity required by the form shall be correctly completed;
- 2.3 should an estate agent be uncertain as to the correct manner for the completion of the form, that estate agent shall discuss the matter with the compliance officer prior to accepting the mandate;
- 2.4 should a client refuse to furnish the requested particulars to the estate agent this fact shall immediately be reported to the compliance officer and a note to this effect made on the form in question;
- 2.5 should certain of the required particulars not be available at the time when the mandate is obtained this fact shall be brought to the attention of the compliance

- officer prior to an estate agent commencing to render any further estate agency service(s);
- 2.6 the duly completed forms shall be handed to the compliance officer immediately after they have been filled in; and
- 2.7 a client shall, on written request, be supplied with a copy of the form in question.
3. An estate agent who accepts a mandate on behalf of the firm shall, immediately on acceptance of such mandate, request the client to furnish the firm with all relevant and required verification documents. The verification documents to be requested by the estate agent are those listed in the forms to be used to obtain the required information regarding the identity of the client. The estate agent shall, in addition, explain to the client that, pursuant to the provisions of FICA, the firm is prohibited from performing the mandate unless and until the required verification documents have been obtained so as to enable the identity of the client to be properly verified.
4. Every estate agent shall, once having obtained the required verification documents from the client:
- 4.1 compare the relevant particulars contained in the documents with the details of the identity of the client as recorded on the form in question;
- 4.2 make a copy of the document(s) in question;
- 4.3 immediately report to the compliance officer should any details obtained concerning the identity of the client differ from the particulars contained in the verification documents; and
- 4.4 retain all verification documents in respect of a particular transaction in an identified folder and hand such folder to the compliance officer immediately the terms of the mandate have been duly performed.
5. Should a client fail and/or neglect and/or refuse to make any verification document available to an estate agent, that estate agent shall forthwith:
- 5.1 make a note on the form in question to this effect;
- 5.2 indicate on the form in question which particular document has not been received from the client; and
- 5.3 report the matter to the compliance officer.
6. The compliance officer shall be responsible for:
- 6.1 keeping and maintaining adequate stocks of the forms required to be used by estate agents when establishing and verifying the identity of clients;

- 6.2 assisting estate agents in completing the required forms whenever such assistance is either sought or required;
 - 6.3 taking delivery of all forms and supporting verification documents on the fulfillment of an estate agency mandate from estate agents;
 - 6.4 taking the appropriate action under circumstances where a client has failed and/or neglected and/or refused to furnish any required verification information or document to the firm;
 - 6.5 monitoring all mandates accepted by estate agents on behalf of the firm to ensure that all peremptory FICA requirements have been duly met and complied with.
7. The principal(s) of the firm shall accept full responsibility for:
 - 7.1 appointing a compliance officer; and
 - 7.2 conscientiously and continuously monitoring the performance by such compliance officer of the compliance duties established by FICA.

Should a temporary vacancy in the position of compliance officer arise for whatever reason, the principal(s) of the firm shall forthwith take all steps necessary and/or required to ensure that a temporary compliance officer is appointed to carry out the functions and duties of the compliance officer.

B. The Keeping of Records

1. The compliance officer shall retain and keep the following documents for a period of at least five years, namely:
 - 1.1 the properly completed form(s) relating to the establishment and verification of all clients and persons required by FICA;
 - 1.2 a copy of the relevant mandate document, if the mandate was in writing;
 - 1.3 a copy of the relevant sale or lease agreement, if any, concluded in fulfillment of the terms of the mandate; and
 - 1.4 the verification documents obtained in respect of each mandate performed.
2. The aforesaid documents and records shall, if kept at the premises of the firm, be retained in a secure and fireproof safe, office or other environment. Access to such secure and fireproof safe, office or other environment shall be restricted to the principal(s) of the firm and to the compliance officer. Should the keeping of the aforesaid documents and records have been outsourced the documents and records shall, similarly, be retained by the outsourced provider in a secure and fireproof safe, office or other

environment while access to the documents in question shall be restricted to the principal(s) of the firm and to the compliance officer. The firm shall, moreover, obtain a written undertaking from the outsourced provider confirming that the documents and records in question shall immediately be made available to the firm as and when they are required.

3. The compliance officer may elect to keep the records and documents, or any part thereof, as well as the inventory contemplated in paragraph 4 below, in an electronic format. The compliance officer shall, in such case, ensure that backup copies of all records and documents that are stored in an electronic format are made immediately a record has been electronically captured. Backup copies of the record shall be stored at the firm in a safe and secure environment accessible only to the principal(s) of the firm and to the compliance officer and shall also, if possible, be kept and maintained offsite for security and risk mitigation reasons.
4. The compliance officer shall maintain a continually updated written inventory of all records kept, whether by the firm or by the outsourced provider envisaged in paragraph 2 above, for the purposes of FICA compliance.
5. In the case of ongoing mandates the compliance officer shall forthwith update the FICA required record of any client should the particulars concerning that client have in any way changed since the last update to the record was made.
6. The compliance officer shall implement all steps necessary to ensure that the records and documents remain inaccessible to any person(s) who is/are not authorised in law to have access thereto.

C. The Reporting of Suspicious Transactions

1. All principals, estate agents and other employees of the firm shall forthwith report any completed, aborted or failed transaction which gives rise to a suspicion as contemplated in section 29 of FICA to the compliance officer.
2. The compliance officer shall carefully and diligently consider and evaluate any such reports as may be received and take a decision as to whether, in the circumstances, the matter in question warrants being reported to the Financial Intelligence Centre. If it is

decided that a report should be made to the Financial Intelligence Centre this shall be done by the compliance officer within the time frame and in the format and manner required by FICA.

3. All reports made to the compliance officer, and all reports made by the compliance officer to the Financial Intelligence Centre, shall be dealt with on a strictly confidential basis. No person associated with the firm shall in any manner or form divulge details of any such reports to any person unless obliged by law to do so.
4. All principals, estate agents and other employees of the firm shall ensure that they are fully acquainted with the guidelines established by the EAAB concerning what may constitute a suspicious transaction within the estate agency sector. (A copy of the guidelines issued by the EAAB is attached hereto as Schedule 1.)

D. Training

The firm shall provide all principals, estate agents and other employees with comprehensive training so as to ensure that such principals, estate agents and other employees are fully aware of the requirements both of FICA and of the internal rules contained in this document and strictly comply therewith. Attendance at all training modules scheduled for this purpose shall be compulsory for all staff members.

E. Disciplinary Measures

It is recorded that the firm is totally committed to full and proper compliance with the requirements of FICA and that it considers any non-compliance with such requirements in a most serious light. Any principals, estate agents and other employees of the firm who fail to comply with the duties and obligations imposed upon them by FICA and/or the internal rules contained in this document shall, therefore, expose themselves to the institution of disciplinary steps against them by the firm. The disciplinary procedure to be instituted shall, subject to the provisions of the Labour Relations Act of 1995, where applicable, be as follows:

- (i) the compliance officer and/or a non-involved principal of the firm shall be required to launch an investigation into the alleged failure by any principal(s), estate agent(s) and/or other employee(s) of the firm to comply with FICA and/or with the provisions of these internal rules;

- (ii) if found guilty of non-compliance with FICA and/or with the provisions of these internal rules a first offender shall, provided that the transgression is not of a serious nature, be warned; and
- (iii) in cases of repeated transgressions or where a transgression is considered to be of a serious nature the guilty party shall be summarily dismissed.

The firm, in addition, reserves the right to refer any alleged failure by an estate agent in its service to comply with the provisions of FICA to the EAAB to be dealt with by the EAAB in accordance with its disciplinary powers in terms of the Estate Agency Affairs Act, 112 of 1976.

SCHEDULE 1

GUIDELINES ISSUED BY THE EAAB IN RESPECT OF SUSPICIOUS TRANSACTIONS IN THE ESTATE AGENCY SECTOR

Each estate agency firm is in the best position to evaluate its transactions and money dealings with members of the public taking into account normal practices, systems and methods of doing business in the estate agency and property professions. No hard and fast rules can be laid down as to when a transaction or money dealing will give rise to suspicion.

The following guidelines may, however, be of assistance in this respect:

- Suspicion must be based on facts and not on gossip, rumour or loose talk. Merely wondering about the authenticity of a transaction does not in itself give rise to suspicion.
- As a general rule events and behaviour are suspicious, not people. No suspicion should arise merely by reason of a person's race, creed, nationality, sexual orientation, gender or beliefs.
- A transaction can be suspicious regardless of the amount involved.
- A suspicious transaction may involve a number of factors that may seem to be innocent if viewed in isolation but raise suspicion when taken together. All relevant factors must, therefore, be considered.
- An estate agent is not expected to launch a full scale investigation to determine whether his/her suspicion about a transaction or money dealing is well founded. All that is required is a reasonable evaluation of all relevant facts and circumstances.
- The majority of property transactions are ordinary commercial transactions entered into between law abiding persons. An estate agent is not expected to view every client and customer suspiciously anticipating that he or she is engaged in money laundering or other unlawful activity. There is, furthermore, no duty on members of the public to establish good faith on their part when dealing with an estate agent. An ordinary estate agency transaction can, therefore, be assumed to be in order unless of course there are circumstances reasonably warranting an estate agent to believe otherwise.
- Receipt of cash on the form of bank notes may or may not be suspicious depending on the amount, the type of transaction involved, whether sale or lease, and the surrounding circumstances. Entrusting a large amount of cash to an estate agent will generally require some valid explanation. What constitutes a large amount will generally depend upon the market in which the estate agent operates and the amount normally received by that firm in the ordinary course of business. Suspicion will readily arise if a large sum, in bank notes, is entrusted to an estate agent by means of a once-off payment and/or a series of irregular

payments over time, particularly if the estate agent was initially led to believe that only a small portion of the purchase price was to be paid in cash.

- The payment of a monthly rental by a lessee to a lessor in bank notes will not necessarily be suspicious in itself. The payment of a deposit to a seller of a property in cash may, however, well be suspicious depending on the amount of the payment as well as the reasons furnished as to why a cash payment is required or is being made.
- No suspicion should necessarily arise merely on the ground that a purchaser or a lessee has electronically transferred the purchase price of a property, or a portion thereof, or the rental due into the trust account of an estate agent. The electronic transfer of an exceptionally large amount into the trust account of an estate agent may, however, well be suspicious when taken with other important factors such as, for instance, the fact that the funds are transferred into the trust account over a period of time and, apparently, originate from a different source on each occasion.
- A large number of purchase and sale transactions concluded by the same person over a relatively short period of time may give rise to suspicion particularly where no discernable investment pattern is apparent and relatively large monetary amounts are involved.
- The fact that the stated occupation of the purchaser of a property does not appear to match the type of property that has been purchased such as, for instance, where a lowly-paid secretary buys a mansion on an exclusive golf estate, may give rise to suspicion. It should not be overlooked, however, that people can, and sometimes do, benefit from unexpected financial windfalls such as, say, winning the lottery. Suspicion will, obviously, arise if the same secretary buys more than one luxury property in a short space of time particularly when no mortgage finance is required for the purchases.
- Suspicion will, however, readily arise in the following circumstances:
 - An estate agent receives a large amount in trust from a third party on the pretense that the money is to be used for property investment purposes and the prospective buyer shortly thereafter asks for the money to be released on the grounds that he/she has had a change of heart about investing in property;
 - A lessee or buyer deposits a series of large cheques in the name of a third party but endorsed over to the buyer or lessee;
 - A large deposit on a sales transaction is paid by an unidentified third party on account of the buyer and the parties are neither related nor connected in some way;
 - A buyer buys a property without first inspecting it, particularly commercial premises that appear to be in need of major repair;
 - The true purchase price of a sales transaction is not disclosed in the sales agreement because money changes hand 'under the table';

- A party to a transaction does not wish to record his/her own name in the agreement but uses the name of a business associate or of a distant relative;
- The buyer pays a deposit on a sales transaction with a series of cheques, each of which is drawn by a different person;
- The name of the buyer is changed just before the transaction is closed;
- The buyer insists that the property be registered in the name of a third party other than a spouse even if this means the payment of double transfer duty;
- An estate agent is offered a fee or a commission to accept an electronic transfer of money from abroad in trust for safekeeping on the pretence that the money will be used to invest in property at some time in the future;
- An estate agent is asked to deposit money, whether in the form of cheques or cash, into his/her trust account and to issue a trust cheque in return for the payment of a commission or a fee;
- In the case of a lease of commercial premises the tenant's turnover or trading stock is patently insufficient to back the rental that is being paid;
- The purchase price of a property is unrealistically split between the property and the movable assets included in the sale in order to avoid the payment of transfer duty on the true value of the sale;
- The seller of a business informs the estate agent that the true financial position of the business is not accurately reflected in its financial statements; or
- An estate agent is requested to structure a transaction with a foreign buyer on the basis that the purchase price is to be paid directly into an overseas bank account.

It should, finally, be remembered that reporting someone to the Financial Intelligence Centre is a very serious matter that should not be lightly undertaken or based on ulterior motives. The disappointment of a failed estate agency transaction or a desire to seek retribution from someone should never underlie a decision to report a person to the Financial Intelligence Centre. While estate agents must fully comply with the provisions of FICA they must do so responsibly and sensibly.