



**ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA**

24 March 2015

**FREQUENTLY ASKED QUESTIONS FOR AUDITORS OF ESTATE
AGENTS - ISSUED IN MARCH 2015**

1. Which estate agents must have their accounting records audited?

The Estate Agency Affairs Act, No. 112 of 1976 (the Act), section 29(1)(b), states that every estate agent shall, in respect of his/her activities as an estate agent, cause his / her accounting records to be audited.

Estate agent activities can be performed under different legal forms of business, such as a sole proprietorship, a company, a close corporation or a partnership.

The accounting records to be audited are, therefore, those of the relevant legal form of business through which the estate agent conducts the estate agent activities.

2. Which accounting records must be audited?

The Act, section 29(1)(b), shall cause every estate agent's accounting records in terms of paragraph 29(1)(a) to be audited. Section 29(1)(a) refers to accounting records as those that are necessary to fairly reflect and explain the state of affairs -

- i. of all moneys received or expended by the estate agent, including moneys deposited to a trust account referred to in section 32(1) or invested in a savings or other interest-bearing account referred to in section 32(2)(a);
- ii. of all the estate agent's assets and liabilities; and
- iii. of all the estate agent's financial transactions and the financial position of the business.

The auditor is therefore required to audit the trust accounting records as well as the business accounting records.

The annual financial statements (business accounting records) of the estate agent, as they relate to any legal form of business under which estate agent activities are performed, should be audited annually.

3. Is the EAAB imposing new requirements in respect of the auditing of business accounting records?

No. The audit of the business accounting records is not a new requirement. Section 29 of the Act has been in effect since the promulgation of the Act in 1976.

4. Can the auditor perform an independent review instead of an audit when the estate agent is a private company and its financial statements are not required to be audited in terms of the new Companies Act, 2008?

No. The legal requirement to have the business accounting records of an estate agent audited is in terms of Estate Agency Affairs Act.

Accordingly, the exemption from requiring a mandatory audit and having an independent review performed instead as per the Companies Act, 2008 requirements does not apply to a company registered as an estate agent.

5. Can the estate agent whose legal form of business is a close corporation or private company be exempt from the audit of the business accounting records because this is not a mandatory requirement in terms of the Close Corporations Act or the Companies Act, 2008?

No. The legal requirement to have the business accounting records of an estate agent audited is in terms of Estate Agency Affairs Act.

Accordingly, the exemption from having a mandatory audit as per the Close Corporations Act or the Companies Act, 2008 requirements does not apply to a close corporation or company registered as an estate agent.

6. Can the EAAB grant an exemption from having the business accounting records and the trust accounting records audited if the estate agent did not have or closed a trust account during the financial year?

No. The legal requirement of having the business accounting records and the trust accounting records audited remains as long as the estate agent is registered with the EAAB.

However, if the trust account is closed at any time during the year and the estate agent no longer has any active trust account, the estate agent is required to be deregistered with the EAAB as no estate agent can operate without a trust account. In this respect, the audit of the business accounting records and the trust accounting records should cover the period up to the date of the closure of the trust account, on which date the estate agent will be deregistered by the EAAB.

7. Can the EAAB grant an exemption from having the business accounting records audited if the estate agent cannot afford the audit fees or the trust account was dormant throughout the financial year?

No. The Estate Agency Affairs Act does not give the EAAB any discretion to grant exemptions from the audit requirements set out in Section 29 of the Estate Agency Affairs Act, irrespective of the level of activity or inactivity in the trust accounts. The audit requirement remains for as long as the estate agent is registered as an estate agent.

Accordingly, no such requests for exemptions will be entertained.

8. Do the requirements to have business accounting records audited apply to an estate agent operating as a sole proprietor?

Yes. The audit requirements for the trust and business accounting records apply to all legal forms of business under which an estate agent performs estate agent activities, and a sole proprietorship is no exception.

9. Who must perform the audit of an estate agent?

The audit of estate agents business accounting records and trust accounting records must be performed by a Registered Auditor who is registered with the Independent Regulatory Board for Auditors.

10. When must the audit be performed and audit report submitted to the EAAB?

According to section 29(1)(b), 32(3)(b) and 32(4) of the Estate Agency Affairs Act, the audit of the business accounting records and the trust accounting records shall be performed and finalised and the auditor's report on the trust accounting records submitted to the EAAB within a period of four months after the financial year end of the estate agent.

11. Who must submit the auditor's report to the EAAB?

According to section 32(4) of the Estate Agency Affairs Act, the auditor shall submit the auditor's report on the trust accounting records to the EAAB after completing such audits.

12. How must the auditor's report be submitted to the EAAB?

According to section 32(4) of the Estate Agency Affairs Act, the auditor's report on the trust accounting records is to be submitted to the EAAB by the auditor of the estate agent in the form from time to time determined by the EAAB.

The form of submission currently determined by the EAAB is for the auditor's report to be submitted online through the **MyEAAB Auditors Portal** accessible via the EAAB's website at <http://www.eaab.org.za/myaudit>.

The auditor is required to first register on the **MyEAAB Auditors Portal** on the EAAB's website in order to be able to log in, complete and submit the auditor's report on the trust accounting records.

The EAAB no longer accepts auditor's reports that are emailed, hand-delivered or posted.

13. Should the audited financial statements of the business accounting records also be submitted when submitting the auditor's report on the trust accounting records to the EAAB?

No. Only the auditor's report on the trust accounting records in the format determined by the EAAB should be submitted by the auditor.

However, in terms of section 32(5) of the Estate Agency Affairs Act, the EAAB may request the audited financial statements of the business accounting records directly from an estate agent. In this respect, auditors must ensure that they submit to the estate agent their auditor's report for inclusion in the audited financial statements after completing their audit.

14. Should an auditor report a reportable irregularity to the IRBA when performing an audit of the business accounting records and / or the trust accounting records of an estate agent?

A registered auditor has an obligation to report reportable irregularities in respect of an audit client. A client of a registered auditor is classified as an audit client if the auditor provides professional services to that client that meet the definition of an "audit" in terms of section 1 of the Auditing Profession Act, 2005 (the APA).

The obligation to report a reportable irregularity then arises when the individual registered auditor (or individual registered auditors in the case of joint audits) responsible and accountable for an audit of an entity is satisfied or has reason to believe that an unlawful act or omission committed by any person responsible for the management of that entity, and which meets the requirements of the definition of a reportable irregularity, has taken place or is taking place in respect of that entity, based on the evidence (information) which comes to the knowledge of the registered auditor from any source.

Since section 29(1)(b) of the Estate Agency Affairs Act requires an estate agent to cause the accounting records to be audited, a registered auditor who has been engaged to be the auditor of an estate agent (an audit client) has a duty to report a reportable irregularity should one exist in terms of the APA.

Further guidance on reporting a reportable irregularity can be found in "*Reportable Irregularities: A Guide for Registered Auditors*" which can be found on the IRBA website.

15. Can the EAAB grant extensions on the prescribed timeframe for submitting auditor's report on the trust accounting records?

No. The Estate Agency Affairs Act does not give the EAAB any discretion to grant extensions on the prescribed timeframe for submitting an auditor's report on the trust accounting records, irrespective of reasons.

Accordingly, no such requests for extensions will be entertained.

16. What are the consequences of submitting the auditor's report outside the prescribed timeframe?

According to section 27(1)(aA)(i) of the Estate Agency Affairs Act, any estate agent who does not ensure that his / her auditor submits the auditor's report on the trust accounting records to the EAAB within the prescribed timeframe will be disqualified from being issued with a Fidelity Fund Certificate (FFC) and if the estate agent is in possession of a valid FFC at the time of disqualification, that FFC will be withdrawn and will no longer be of any force and effect.

This disqualification applies not only to the estate agency entity, but also to all principal and non-principal estate agents working under that entity.

Disqualifications may result in charges being instituted against the estate agent and the estate agent may be called to appear before a Disciplinary Committee.

17. What are the consequences of submitting the auditor's report on the trust accounting records via email, post or hand-delivery instead of online via the MyEAAB Auditors Portal?

The auditor's report will not be accepted as having been received in terms of the Estate Agency Affairs Act as the EAAB has determined, in terms of section 32(4) of the Estate Agency Affairs Act, the sole manner of submission of an auditor's report to be online through the **MyEAAB Auditors Portal**.

If the estate agent does not ensure that his / her auditor submits the auditor's report on the trust accounting records online within the prescribed timeframe of four months after the financial year end of the estate agent, the estate agent concerned will be disqualified in terms of section 27(aA)(i) of the Estate Agency Affairs Act.

Disqualifications may result in charges being instituted against the estate agent and the estate agent may be called to appear before a Disciplinary Committee.

18. What are the consequences for the estate agent if the form and content of the auditor's report on the trust accounting records includes contraventions of the Estate Agency Affairs Act?

The contraventions will be considered by the EAAB and may result in disciplinary action against the estate agent. If the estate agent is found guilty, the following sanctions may be imposed by the Disciplinary Committee on each charge where the estate agent is found guilty, in terms of section 30(3) of the Estate Agency Affairs Act:

- i. Withdrawal of the Fidelity Fund Certificate;
- ii. Impose a fine not exceeding R25,000 or such higher amount as may be prescribed;
- iii. Reprimand such estate agent.

The EAAB may alert the Independent Regulatory Board for Auditors (the IRBA) of any contraventions in terms of the Auditing Profession Act, No. 26 of 2005 and the IRBA may decide to investigate that auditor.

19. What are the consequences for an estate agent when a qualified or adverse opinion or disclaimer of opinion is expressed in the auditor's report on the trust accounting records submitted to the EAAB?

The audited financial statements of the business accounting records will be requested by the EAAB in terms of section 32(5) of the Estate Agency Affairs Act and the basis for the qualified or adverse opinion or disclaimer of opinion will be analysed by the EAAB to determine if there are instances of non-

compliance with any provision of the Estate Agency Affairs Act and the Financial Intelligence Centre Act (FICA).

Any identified non-compliance issues relating to the Estate Agency Affairs Act will be considered by the EAAB and may result in disciplinary action against the estate agent. If found guilty, the following sanctions may be imposed by the Disciplinary Committee on each charge where the estate agent is found guilty, in terms of section 30(3) of the Estate Agency Affairs Act:

- i. Withdrawal of the Fidelity Fund Certificate;
- ii. Impose a fine not exceeding R25,000 or such higher amount as may be prescribed;
- iii. Reprimand such estate agent.

As EAAB is a Supervisory Body of estate agents in terms of the FICA, any identified non-compliance issues relating to the FICA will be considered, investigated and/or shared with the Financial Intelligence Centre, South African Revenue Service, other supervisory body or any other relevant authority, as required by section 36(1) of the FICA.

20. Is an IT3b certificate mandatory when submitting the auditor's report on the trust accounting records?

Yes. According to Government Notice R1415 of 3 July 1981 issued in terms of Estate Agency Affairs Act, the EAAB is entitled to a portion of the interest earned from the moneys in the trust accounts.

The IT3b certificate(s) for the trust account(s) is / (are) therefore required when submitting the auditor's report on the trust accounting records. Auditors are therefore required to ensure that the relevant IT3b certificates are obtained in time for submission of the auditor's report on the trust accounting records.