



ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA

INSPECTIONS AND INVESTIGATIONS POLICY

Definitions

For the purposes of the implementation of the Inspections and Investigations Policy the meaning ascribed to the following words shall be as follows:

“EAAB” means the Estate Agency Affairs Board established by section 2 of the Act.

“Estate agent” means any natural person or partnership or company or close corporation or trust that performs any acts as an estate agent as defined in section 1(vi) of the Act and/or regulation 2 of the Specification of Services notice published under Government Notice R1485 of 17 July 1981.

“The Act” means the Estate Agency Affairs Act, 112 of 1976 and all regulations promulgated thereunder.

“The Board” means the Accounting Authority of the EAAB.

“The FIC Act” means the Financial Intelligence Centre Act, 38 of 2001, as amended.

“Unlawful activity” means an unlawful activity as defined in the Prevention of Organised Crime Act, 121 of 1998.

1. Purpose and scope of the policy

The purpose of this Inspections and Investigations Policy is to clarify and enhance the inspection and supervision functions of the EAAB and to ensure transparency in the administration of inspections and investigations. Strict adherence to, and compliance with, the provisions of the Estate Agency Affairs Act, 112 of 1976 (“the Act”) as well as all other applicable legislation and regulations, in respect of the operations of estate agency enterprises is essential to ensure the sound and appropriate operations of estate agency enterprises, fairness and equality in their

dealings and the protection of consumers. It is essential, furthermore, that estate agency enterprises should fully understand, appreciate and manage their affairs in compliance with the Act since they, by so doing, will ensure that they conduct their estate agency operations in a sound and appropriate manner.

The EAAB is, in this respect, obliged by the provisions of the Act to maintain and promote the standard of conduct of estate agents and to regulate the activities of estate agents having due regard to the public interest. The EAAB is also responsible for the supervision and enforcement of compliance by estate agents with the provisions of the Financial Intelligence Centre Act (“the FIC Act”) or any order, determination, or directive made in terms of the FIC Act. The EAAB has the authority to impose administrative sanctions on estate agents if it is satisfied that, on the basis of all available facts and information, any estate agency enterprise or estate agent has failed and/or neglected to comply with the provisions of the FIC Act or any order, determination or directive made in terms of the FIC Act.

2. Appointment of inspectors

The appointment from time to time of inspectors to conduct inspections in terms of the provisions of section 32A of the Act, to determine whether the provisions of the Act and of the FIC Act are being, or have been, complied with, shall vest solely in the EAAB. The EAAB shall appoint such inspectors on such terms and conditions and at such remuneration as it may in its sole discretion determine. All work in respect of, and incidental to, the carrying out of the inspection function including the undertaking of inspections shall be undertaken by the duly appointed inspectors acting under the supervision, direction and control of the EAAB.

3. Qualifications of inspectors

The EAAB shall ensure that all inspectors who may be appointed from time to time shall be competent in all aspects of the law and accounting procedures so as to be able to understand and accurately interpret estate agents’ books of account, financial records and legal documents. Inspectors shall, in addition, be required to possess appropriate administration, communication, writing and inter-personal skills.

4. Inspection authority

Inspectors who are duly appointed by the EAAB for the undertaking of any inspection shall be furnished with a written inspection authority by the EAAB prior to such inspectors undertaking their inspection functions and duties. Inspectors who exercise any inspection power or authority in terms of the Act shall be obliged, at the request of any person affected by the exercise of that power or authority, to produce to such person the written inspection authority

furnished to that inspector by the EAAB. Inspectors may, after having duly obtained the consent of the EAAB so to do, also appoint any person or persons to assist them in the carrying out of an inspection provided only that any such person or persons has/have similarly been issued with a written inspection authority by the EAAB.

5. Reporting by inspectors

Duly appointed inspectors shall be required to report objectively and impartially to the EAAB on the affairs of all of the estate agents who have been inspected, whether those estate agents are natural persons, partnerships, companies, close corporations or trusts. Such comprehensive inspection reports shall be in writing and shall be communicated to the EAAB as soon as possible but, in any event, by no later than fourteen days, after the conclusion of the relevant inspection.

The required reports shall clearly indicate the outcome of the inspections that have been undertaken and shall include any such further information and/or recommendations as the inspectors may deem to be necessary or required in the circumstances to facilitate the undertaking by the Board and/or the EAAB of any such further follow-up steps or actions as may be required. Any such necessary follow-up steps or actions to be implemented upon receipt of the inspectors' reports shall be in the sole discretion of the Board and/or the EAAB and shall be dependent upon the nature and seriousness of the contraventions of either the Act or the FIC Act, or any other applicable legislation, that have been underscored in those reports by the inspectors.

6. The undertaking of inspections

Should the EAAB have any reason at any time to believe and/or to suspect that any estate agent, whether that estate agent is a natural person, partnership, company, close corporation or trust, is in any way operating in contravention of the provisions of the Act and/or the regulations promulgated in terms of the Act and/or operating in contravention of the provisions of the FIC Act, the EAAB may forthwith instruct an inspector, or inspectors, to inspect the affairs, or any part of the affairs, of such person, partnership, company, close corporation or trust, to determine whether the provisions of the Act and/or of the FIC Act are being, or have been, complied with. It shall not be necessary or required for any inspector, or inspectors, to give prior written notice to any estate agent of the intention to conduct an inspection. The appointed inspector, or inspectors may, however, should this be felt to be in the interest of justice, provide reasonable written notice to the estate agent concerned of the intention to conduct an inspection.

8. Routine inspections

In addition to the inspections referred to in paragraph 6 above the EAAB shall cause routine inspections of all estate agents to be undertaken to satisfy itself that such estate agents are complying fully with the provisions of the Act as well as the provisions of the FIC Act. Such inspections shall be undertaken from time to time on a random basis with a view, however, to ensuring that the majority of estate agency undertakings throughout the country are inspected over five-year rolling periods commencing from the date of implementation of this Policy.

8. Time and place of inspections

Inspectors may, in liaison with the EAAB, determine the date, time and place of any inspection to be undertaken in terms of the Inspection and Investigations Policy.

9. Powers of the inspectors

Inspectors, when conducting inspections of estate agents, shall have, and exercise, all the powers and authority vested in them by virtue of the provisions of section 32A of the Act. Inspectors shall be required, furthermore, conscientiously to undertake and perform all such additional authorised functions and/or activities as may be delegated by the Board and/or the EAAB to such inspectors from time to time.

Inspectors shall be empowered, at all reasonable times, to enter any place in respect of which such inspectors have reason to believe that:

- any person there is performing an act as an estate agent; and/or
- the place is connected with an act performed by an estate agent; and/or
- there are books, records or documents to which the provisions of the Act are applicable.

Inspectors may order any estate agent or the manager, employee or agent of any estate agent:

- to produce the fidelity fund certificate of that estate agent;
- to produce any book, record or other document in the possession or under the control of that estate agent, manager, employee or agent;
- to furnish, at such place and in such manner as the inspector(s) may reasonably specify, with such information in respect of that fidelity fund certificate, book, record or other document as the inspector(s) may desire.

Inspectors may examine or make extracts from or copies of any such fidelity fund certificate, book, record or other document.

Inspectors may seize and retain any such fidelity fund certificate, book, record or other document to which any prosecution or charge of conduct deserving of

sanction under the Act or under the FIC Act may relate provided that the person from whose possession or custody any fidelity fund certificate, book, record or other document is taken, is allowed, at that person's request, to make, at that person's own expense and under the supervision of the inspectors concerned, copies thereof or extracts therefrom.

No person shall:

- fail on demand to place at the disposal of any inspectors anything in that person's possession or under that person's control or on that person's premises which may relate to any inspection;
- hinder or obstruct any inspectors in the exercise of their powers under the Act;
- falsely hold himself/herself out as being an inspector.

Inspectors shall be obliged to issue a receipt to the owner or person in control of anything that has been seized and retained under the Act.

10. Confidentiality

Inspectors undertaking inspections pursuant to this Inspections and Investigations Policy shall be required to maintain, or assist in maintaining, strict confidentiality regarding all matters that may come to their knowledge and attention as a result of the performance of their functions and duties as inspectors.

Inspectors may not communicate any such matters to any person or authority except:

- for the Board and/or the EAAB; or
- unless ordered to do so by a court of law; or
- insofar as such communication is necessary and desirable properly to carry out and complete the required inspection.

11. Disclosure to certain affected parties

If the Board and/or the EAAB has valid reason to believe, following receipt of an inspector's report, that any unlawful activity, offence or irregularity has been committed relating to the affairs of an estate agent or an estate agency enterprise, the Board and/or the EAAB may convey any information that has been obtained during an inspection to:

- any department or organ of State; and/or
- any regulatory authority; and/or
- any self-regulating association or organisation; and/or
- any statutory board charged with supervisory or regulatory duties;

provided any of such authorities, persons or entities are affected by, or have an interest in, such information.