

# LODGING A CLAIM AGAINST AN ESTATE AGENT AND THE DISCIPLINARY PROCESS

## ABOUT THE ESTATE AGENTS FIDELITY FUND

The Estate Agency Affairs Act, Section 12(1) provides for the establishment and control of the Estate Agents Fidelity Fund. The fund is intended to reimburse persons who in certain circumstances have suffered pecuniary (actual) loss due to theft of trust monies by estate agents.

## REQUIREMENTS FOR LODGING A CLAIM

The following requirements are set out in section 18(3) of the Estate Agency Affairs Act No 112 of 1976 for lodging a claim against the fidelity fund:

The claim must be submitted within 3 months from the date the claimant become aware of the theft of his money by the estate agent, or failure by the estate agent to pay money into his trust account;

The claimant must within 6 months after written demand was sent to him by the EAAB, furnish the EAAB with whatever proof the EAAB may require;

The claimant must have dealt with an Estate Agent/ Estate Agency Firm., Section 1 of the Estate Agency Affairs Act defines an estate agent as any person who for the acquisition of gain, on his own account or in partnership, in any manner holds himself out as a person who, directly or indirectly advertises that he, on instruction of or on behalf of any other person, sells or purchases or publicly exhibits for sale of immovable property, or any business undertaking; or if a company is selling or leasing its own properties cannot in terms of the Estate Agency Affairs Act be classified as an estate agent, or to be acting in the capacity as an estate agency;

The claimant must prove his claim against the Fidelity Fund to the reasonable satisfaction of the EAAB by submitting the under-mentioned documents:

- Affidavit (complaint initiation form) detailing particulars of the claim;
- Copies of proof of payment for example receipts, paid-out cheques, bank statements, Audited statements;
- Copy of contract (sale/ lease agreement);
- Details of criminal case opened at the South African Police Service of the Commercial Branch Unit.

The claimant must have exhausted all available legal remedies against the Estate Agent involved, and against other persons responsible for the loss by attaching proof of such, as copy of the summons, judgment obtained, writ of execution etcetera.

## DISCIPLINARY PROCESS

### Lodging of a Complaint against an Estate Agent

Lodging of a Complaint against an Estate Agent must be by way of completion and submission of the Complaint Initiation Form which, can be downloaded from the EAAB website [www.eaab.org.za](http://www.eaab.org.za)

### Consideration of Complaint and Investigation, the EAAB will:

- Acknowledge receipt of complaint;
- Respondent will be notified of the complaint and provided with a written response within 30 days;
- After investigation, the matter shall be considered by the EAAB;
- The EAAB may decide to investigate further/ withdraw/ mediate/ charge.

### Charge against an Estate Agent

- It must be in writing;
- Must contain an exposition of the conduct;
- Must be delivered by hand/by registered post.

### Disciplinary Committee of Inquiry

- Summonses and subpoenas sent to relevant parties to appear;
- Chairperson and two committee members conduct the proceedings;
- Case presenter/prosecutor present the cases;
- Proceedings are mainly inquisitorial;
- Legal representation is permitted.
- Decisions of the Disciplinary Committee
- Respondent found guilty or not guilty;
- If guilty – reprimand/fine to a maximum of R25 000 per contravention;
- A compensatory award of up to 80% of the fine imposed may be awarded to a claimant who suffered pecuniary loss;
- Withdraw a Fidelity Fund Certificate.
- Appeals Procedure
- Must be in writing and submitted within 30 days;
- Deposit of R1 000 for the transcript;
- Disciplinary committee provide written reasons for judgment.

### The Board may

- Confirm, amend or reverse the decision;
- Remit the matter for further hearing;
- Confirm or suspend penalty imposed;
- Set aside penalty and impose new penalty;
- If successful, the deposit paid shall be refunded in full.

**Persons seeking further information are invited to contact the ESTATE AGENCY AFFAIRS BOARD AT 011 731 5600 or email to [dineo@eaab.org.za](mailto:dineo@eaab.org.za)**



ESTATE AGENCY AFFAIRS BOARD  
OF SOUTH AFRICA