



ESTATE AGENCY AFFAIRS BOARD  
OF SOUTH AFRICA

## DISQUALIFICATION DUE TO THE FAILURE TO COMPLY WITH AUDIT REQUIREMENTS

Kindly be advised that the EAAB considers and processes compliant audit reports and, should an audit report be found not to comply with the requirements set out in the Estate Agency Affairs Act, 112 of 1976 (“the Act”), the relevant audit report cannot be accepted and, as per the provisions of Section 27 (aA)(i) of the Act, an estate agent who has failed in respect of his financial year which has expired before the date on which application for a fidelity fund certificate is made, to comply with any provision of section 29(b) or section 32(3)(b), as read with section 32(7)(c) of the Act will be disqualified from being issued with a Fidelity Fund Certificate.

**NOTE:**

***BEFORE SUBMITTING ANY QUERIES IN RESPECT OF A DISQUALIFICATION, ESTATE AGENTS ARE TO VERIFY THAT THEIR AUDIT REPORTS FOR THE 2012 AND 2013 PERIODS WERE SUBMITTED TO THE EAAB IN THE REVISED FORMAT AND CONFIRMED THE FOLLOWING:***

1. Conclusion of the full audit, inclusive of the annual financial statements for the relevant period/s
2. Conclusion of the full audit within the prescribed period, being:

**In respect of the 2012 audit:**

The prescribed 4 months in terms of legislation (together with the non-recurring 3 month extension for the 2012 period), required the audit requirements to have been complied with **within 7 months from the end of the firm’s financial year end.**

**In respect of the 2013 audit:**

The prescribed 4 months in terms of legislation (no extension for the 2013 period or thereafter), required the audit requirements to have been complied with **within 4 months from the end of the firm’s financial year end.**

**The most pertinent legislative requirements in respect of the audit reports are as follows:**

1. Section 32(1) of the Estate Agency Affairs Act requires an estate agent to open and keep one or more separate trust accounts, to be properly designated as trust accounts, with a bank. This requirement remains whether the account is used or not and, should the trust account be closed, the estate agent is not allowed to trade;
2. 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;
3. Accounting records, for purposes of the audit are those records as are necessary to reflect:
  - **all moneys 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

**NOTE:**

***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 board (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.

Where the EAAB is unable to confirm the compliance in respect of the audit of the accounting records or where the complete audit had been concluded outside of the prescribed period, the disqualification in terms of Section 27 (aA)(i) applies automatically and the EAAB has no discretion to consider the circumstances, which may have led to the failure to comply with the requirements timeously and in full.

In instances where the disqualification applies, these matters are referred to the Enforcement Department for investigation and consideration of formal disciplinary action as contraventions relating to audit reports, including but not limited to the failure to comply with the requirements of Section 29(b) and 32(3)(b) of the Act, are dealt with in the same manner as other legislative contraventions and are considered by the Enforcement Department with the view of instituting formal disciplinary proceedings.

## SECTION 27 SPECIAL APPLICATION REQUIREMENTS AND PROCESS FLOW

The Special Application required as a result of a disqualification in terms of Section 27 (aA)(i) is in fact a process and not merely an application for the re-issuing of a FFC.

Estate agents affected by the disqualification are required to submit their completed Special Application to the designated e-mail address: [section27applications@eaab.org.za](mailto:section27applications@eaab.org.za)

**For a Special Application to be prepared for consideration, the following is to be included:**

1. Affidavit by the principal/s
    - a. detailing the history and experience within the estate agency industry;
    - b. reasons for non-compliance with the provisions of the Act;
    - c. reasons why it is considered to be in the interest of justice for the estate agent to be issued with a fidelity fund certificate.
  2. Complete Audit Report/s for the period in question
  3. Audited financial statements of the estate agency for the period of the Audit Report/s
  4. Tax clearance certificate
- A copy of the disciplinary order granted, will be included with the Special Application documentation submitted, following the finalization of the disciplinary hearing relating to the contravention of the legislative provisions.

**NOTE:**

***The submission of the Special Application initiates the process, however the Disciplinary proceedings are to be finalized prior to the consideration of the Special Application by the members of the board, as the order granted by the Committee of Inquiry is to accompany the documentation submitted for consideration.***

**Upon receipt of a complete Special Application, the process is as follows:**

1. **Initiation and conclusion of the Disciplinary process**
  - A charge letter will be issued to the estate agent / agency relating, but not limited to the contravention of S32(3)(b) - failure to have their accounting records audited within the prescribed period
  - Appearance before a disciplinary committee, as and when required in terms of the Regulations and, if found guilty, the following sanctions may be imposed by the Committee of Inquiry:

- A fine of up to R25 000 per charge;
  - A formal reprimand;
  - Suspension or withdrawal of the fidelity fund certificate
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- An order reflecting the outcome of the Disciplinary proceedings is provided by the Committee of Inquiry.
  - Once the disciplinary proceedings have been finalized, it remains for the members of the board to consider the Special Application.

**2. Consideration of Section 27 Special Application:**

- Special Application documentation and the order reflecting the outcome of the Disciplinary proceedings is submitted to the members of the board for consideration.
- The decision on the Special Application is made and a signed resolution is provided on the outcome of the consideration.
- The outcome of the consideration can be:
  - The rejection of the Special Application; alternatively
  - The approval of the Special Application in terms of which the EAAB may issue a FFC on such conditions as the board may determine.

**All Special Applications, containing the required documentation, is to be submitted electronically to the designated e-mail address: [section27applications@eaab.org.za](mailto:section27applications@eaab.org.za)**

**All queries relating to the disciplinary proceedings, as a result of the failure to comply with the requirements of Section 29(b) and 32(3)(b), can be referred to the Legal Manager:**

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