

Questions and Responses: Estate Agent Feedback Session - 12 April 2018



Question		Response
1	Is the EAAB applicable only to property businesses?	Yes, the EAAB is the statutory regulator of the estate agency business and estate agents deal with immovable property.
2	I would just like to confirm. You do not have to register with the EAAB if you are the landlord of properties, in your contract with the tenant you state moneys will be kept in trust. This is because its a direct transaction and not a 3rd party involved. Only 3rd parties are seen as estate agents. In case these monies are now "lost" by the landlord, its a case between the landlord and tenant.	Yes.
3	When a managing agent does not collect money into their own account are they still deemed to fall into the definition of an estate agent?	Yes.
4	Do estate agents have to register as debt collectors?	Only those estate agents, like managing agents, who also perform debt collection as defined in the Debt Collectors Act.
5	Should a debt collector register with the EAAB?	No, unless the debt collector also performs estate agent activities as defined in section1(vi) of the Estate Agency Affairs Act.
6	Debt Collectors: If a debt collector is not an estate agent do we need to submit their audited financials to the EAAB as well?	No.
7	Can an attorney buy 100% of the shares in an Estate Agent and then carry on the business of the Estate agent as usual?	If the attorney is only a shareholder of the estate agent business through the shares bought, then the attorney does not need to apply and obtain a Fidelity Fund Certificate (FFC) from the Estate Agency Affairs Board (EAAB.) However, if the attorney, in addition to buying the shares, also becomes a director or an employee (performing estate agent activities as defined) of the estate agent business in which he bought shares, then the attorney need to apply and obtain an FFC from the EAAB.
8	If our client is a registered and practicing attorney, and the principle of the Estate Agency is the practicing attorney - are they allowed in terms of the EAAB to perform this function. According to discussion held with the Paddocks Club it was stated that a practicing attorney may not be a managing agent. Could you kindly elaborate on this?	Yes, nothing in the Estate Agency Affairs Act prohibits a practicing attorney from being a principal of an Estate Agency business or a managing agent, but the attorney will need to be in possession of an FFC issued by the EAAB unless if they are performing the estate agent activities in the name of, in the course of and on the premises of the attorneys practice.

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9 Do all firms need an FFC or is it based on a turnover per annum?	Yes. All estate agency firms need an FFC, irrespective of the turnover.
10 Is a consultant, i.e. an individual who only brings in a sale when one occurs, supposed to register and get a FFC. Is it mandatory to get FFC?	Yes. Any person who performs estate agent activities as defined is required to be in possession of an FFC, irrespective of the frequency of performing the estate agent activities.
11 Is FFC certificates issued per calendar year or financial year? The audit is required by 30 June 2018 but when is the FFC certificate issued? In Jan 2018 or only after the submission of the audit report?	The FFCs are issued per calendar year.
12 Is there any section in the act that prescribes procedures the estate agent can follow if the EAAB is unable to assist with FFCs?	The estate agent can follow section 27(b), in terms of which a Section 27 application will have to be made to the EAAB, detailing reasons why it should be considered in the interest of justice to issue an FFC to an estate agent who may be disqualified from being issued with an FFC.
13 What proof can we as auditors require as proof that the agent is registered with the FIC?	An email sent by the Financial Intelligence Centre (FIC) to the Compliance Officer of the Estate Agency business, confirming the activation of the issued FIC number.
14 Is the email confirmation issued annually from the FIC? Or is it just once off and the same email for initial confirmation is sufficient evidence for each year the audit it being performed?	It is a once off confirmation issued when the FIC number is activated and validated.
15 Can you not check the FIC No. on FIC's website?	Only the Compliance Officer can log in and check the number on the goAML system on the FIC website at this stage.
16 Is it a Reportable Irregularity if the client is not registered for FIC and must we report it or is it sufficient if we declare it on section B?	You are advised to apply the criteria in the Auditing Profession Act and the <i>Revised Guide for Registered Auditors: Reportable Irregularities in terms of the Auditing Profession Act</i> to the circumstances in order to make a decision on whether it is a Reportable Irregularity and document your considerations against the said criteria.
17 Could you please confirm whether an independent estate agent, working mostly out of their home office, needs to register independently with FIC or do they fall under the companies registration?	If the independent estate agent is an employee estate agent (i.e. full status or intern estate agent), then the FIC registration by their employer estate agent (i.e. principal) will suffice. Only the estate agency businesses, and not individual estate agents, are required to register as accountable institutions with FIC.
18 If the client is a sole proprietor do they still need to appoint a separate compliance officer?	There is nothing in the Financial Intelligence Centre Act (FICA) that prohibits the Sole Proprietor to also be the Compliance Officer. In addition, there is nothing in the FICA that forces the Sole Proprietor to appoint a separate person as a Compliance Officer. This is a decision of the Sole Proprietor.

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19 The interest should agree to the bank IT3b. Usually the banks have not issued the IT3b certificates yet or banks do not issue certificates if the interest is very low. What will then be acceptable?	If the interest is not agreed to an IT3b certificate, the answer should be "No" to the relevant question on the online audit report that you submit to the EAAB. A letter on the audit firm letterhead explaining why the IT3b certificate could not be obtained, and signed by the individual registered auditor, should be attached in place of the IT3b certificate when the online audit report is submitted to the EAAB.
20 Please clarify when 50% of interest need to be paid over to the EAAB? E.g. If no interest is earned by the Estate Agency on the Trust account balance, so all interest is paid to the trust creditor. My understanding is no interest is paid to the EAAB. Please confirm if this is correct?	The 50% of interest earned on the trust account is only payable to the Estate Agents Fidelity Fund if the written mandate between the estate agent and the client does not expressly specify the party to whom interest is payable or in cases where a written mandate does not exist at all.
21 Please comment on the correct completion of the interest table in the audit report.	On the interest table in the audit report, the auditor should indicate all the interest earned on all trust accounts in the first row of the table. In the second row of the table, the auditor should indicate the interest earned which is covered by written mandates between the estate agent and the client, which expressly indicate the party to whom interest is payable. The difference between the interest entered in the first row and the second row becomes interest that should be split 50:50 between the estate agent and the Estate Agent Fidelity Fund.
22 On leases, if interest is paid to tenants...then does the Estate Agent retain the interest to be paid to the tenants when they move out?	Yes, if the written mandate or lease agreement between the estate agent and the tenant clearly states that the interest is due to the tenant. If its not expressly indicated in the written mandate or lease agreement or if there is no written mandate, the interest so earned will be split 50:50 between the estate agent and the Estate Agent Fidelity Fund.
23 Is there any difference between an agent that acts in negotiations in leasing of an industrial property vs housing, especially in terms of the interest on deposit.	No, there is no difference. The same rules on the interest earned on trust monies apply.
24 Please clarify the accounting for the bank charges and if it can be deducted from the interest payable to the client in terms of a mandate being entered into with the Estate Agent and the client?	Bank charges cannot be deducted from the 50% interest portion payable to the Estate Agents Fidelity Fund, and any mandate that seeks to allow the deduction of bank charges from this interest portion is null and void. However, nothing in the Estate Agency Affairs Act prohibits an estate agent from charging his/her client any fees or recovering any costs (including bank charges) incurred, as long as this is included in the mandate between the estate agent and the client.
25 Step 4 - Bank accounts: In previous years submissions, the auditor indicated and Estate Agent confirmed that either certain bank accounts were closed or that neither firm nor Estate Agent is aware of the bank account. However the records per the EAAB do not seem to be updated as these accounts appear again in the next annual submission?	The reason the trust accounts are not removed from the database is because the estate agent will not have provided EAAB with the requested bank letter to confirm that indeed the trust accounts were closed or do not exist. Auditors are encouraged to advise their clients to send the required bank letter to the EAAB Audit Compliance Department at audit@eaab.org.za to enable EAAB to remove these trust accounts from the database.

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26 May trust money be kept in cash and not banked into the Trust bank account? Must trust monies be deposited within a prescribed period?	No. Section 32(1) of the Estate Agency Affairs Act requires the estate agent to deposit all trust money received immediately into a trust account. Any estate agent who keeps trust monies in cash will be in contravention of section 32(1). The prescribed period for depositing trust monies is immediately upon receipt of the trust money, unless the money is received outside normal banking hours, in which case the money should be deposited during the following business day.
27 Does a direct cash bank deposit from a client also fall into the definition of cash transaction as reportable?	Yes.
28 Where in the act does it state that lease deposits held by the estate agent should be in a separate trust account for each unit?	The Act does not require, neither does it prohibit, the opening of a trust account for each unit. This is a business decision of each estate agent. An estate agent who deposits all lease deposits in one trust account should, however, be able to accurately allocate any interest earned to the tenants whose deposits are in the trust account.
29 When an Estate Agent collects rent on behalf of a lessor on a monthly basis and immediately pays over the rent due to the lessor. Is it fine if these transactions reflects as an in and out on the business account? Or should these transactions go through the trust account?	The rent meets the definition of trust money and should go through the trust account and not the business account. If the rent goes through the business account, this is a contravention of section 32(1) of Estate Agency Affairs Act and should be reported to the EAAB on the online audit report. In addition, the auditor should also consider his/her reporting obligations of a Reportable Irregularity in terms of the Auditing Profession Act.
30 With the situation where the Receptionist give the wrong Account No. to a client and the practitioner only see it when he balances end of the month. What now?	This represents trust money not deposited in a trust account and is a contravention of section 32(1) of Estate Agency Affairs Act and should be reported to the EAAB on the online audit report. In addition, the auditor should also consider his/her reporting obligations of a Reportable Irregularity in terms of the Auditing Profession Act.
31 We have experienced problems with certain banks whose fields are not large enough to accommodate the correct designation on the bank accounts. What do you recommend?	The designation of the trust account should at a minimum indicate that it is a section 32(1) or section 32(2) trust account opened in terms of the Estate Agency Affairs Act. EAAB will continue engaging with the banks to ensure standardisation in the designation of trust accounts.

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32 You mentioned that the Act does not prescribe a specific financial reporting framework?	Yes. However, EAAB encourages the use of IFRS or IFRS for SMEs for the annual financial statements. The cash basis of accounting should be used for the trust accounting records.
33 You mentioned that the Act does not prescribe a specific reporting framework. The accrual basis applies when using IFRS for SME. Under what circumstances will the cash basis apply?	The cash basis of accounting should only be applied to the separate trust accounting records.
34 We have a query relating to agents or agents who are independent contractors of agencies who operate Payprop accounts. Do these Payprop accounts need to be audited and whose responsibility is it to have these accounts audited, i.e. the agency firm or the independent contractor?	The auditor of the estate agent business assumes full responsibility of the trust account audit and the performance of all the necessary audit procedures, irrespective of the service provider who assist in the trust account management and any software used. Please note that the audit requirements apply to the estate agency firms and not to independent contractors who are employees for purposes of the Estate Agency Affairs Act.
35 Who will be the responsible party for the administration in the winding up?	During the winding up of an estate agency business, the estate agent will have to wind up the trust account and pay trust creditors with the written consent of the EAAB and in accordance with section 32(7) of the Estate Agency Affairs Board.
36 What do we have to do when a client has unidentified deposits in their trust account? What is the prescribed period, if any, before an Estate agent can retain the funds that were not claimed by a client?	The deposits should remain in the trust account and only during the winding up of the estate agency business will the process stipulated in section 32(7) of the Estate Agency Affairs Act apply to these unidentified deposits.
37 Regarding the topic of attaching the financials when a report is submitted late. Two years ago we picked up that a client took money from the trust account and we raised a reportable irregularity and also qualified the audit report. We are no longer the auditors of this client and we were contacted by their lawyers etc. However no one from the EAAB ever contacted us to follow up regarding the qualified report, and as far as we are aware nothing was done. Please clarify the process?	The request for the audited financial statements is directed to the estate agent and not the auditors, which may explain why you were not contacted with the EAAB. However, follow-ups on action taken based on stolen trust monies should be directed to the EAAB Audit Compliance Department at audit@eaab.org.za
38 Will IRBA be putting together a guide for auditors like they have for attorney trust audits? Or should we just adapt the attorney trust audit and apply to estate agent audits where applicable?	Once the Property Practitioners Bill has been promulgated into an Act, the EAAB will engage the IRBA to develop a Guide.