

RULES FOR QUALIFYING AS AN ESTATE AGENT

There is so much confusion and misinformation about how to legally qualify as an estate agent in South Africa that we felt compelled to draft this document as a service to the industry. The information contained herein is drawn from legislation, regulations, policies and rules pertaining to the real estate industry. Where applicable, these sources have been referenced so that the reader can verify what is being stated.

WHO NEEDS TO QUALIFY?

Anyone who is defined as an “estate agent” in Section 1 of the Estate Agency Affairs Act 112 of 1976 must qualify as set out hereunder. An estate agent is any person (natural or juristic) that markets for sale or hire any immovable property or business undertaking, collects any rentals payable in terms of a lease or provides any other service specified by the Minister from time to time.

There are currently four categories of estate agent:-

1. Real estate firms (sole proprietorships, partnerships, close corporations or companies);
2. Any sole proprietor, director or member of a real estate firm (principal estate agents) and certain managers of close corporations that are real estate firms;
3. Any person employed as a non-principal estate agent (including intern estate agents); and
4. Any person employed by an attorney firm whose duties consist wholly or primarily of the provision of estate agency services as described above, other than an attorney or candidate attorney.

The position of employees of attorney firms who render estate agency services was clarified by EAAB notice dated 30 June 2017 (available at www.eaab.org.za). Such persons must comply with all the qualification requirements of non-principal estate agents as set out below.

WHAT ARE THE QUALIFICATION REQUIREMENTS?

Regulation 633 to the Estate Agency Affairs Act (“the education regulations”) was published in the Government Gazette on 4 June 2008 and came into effect on 15 July 2008. This regulation provides that:

- Intern estate agents entering the industry for the first time after 15 July 2008 must
 - Complete a minimum internship period of 12 months (maximum 24 months);
 - Obtain the FETC Real Estate (NQF4) qualification via full training;
 - Complete and submit an intern logbook to the EAAB (from 1 January 2013); and
 - Write and pass the Professional Designation Exam, Level 4 (“PDE4”).

- Full status estate agents who were registered as such on 15 July 2008 must
 - Obtain the FETC Real Estate (NQF4) via Recognition of Prior Learning (“RPL”);
 - Write and pass the PDE4 examination (unless exempted by the EAAB); and
 - Complete Continuing Professional Development (“CPD”) as specified by the EAAB.
- Principal estate agents who were registered as such on 15 July 2008 must
 - Obtain the NC Real Estate (NQF5) via RPL;
 - Write and pass the PDE5 examination (unless exempted by the EAAB); and
 - Complete Continuing Professional Development (“CPD”) as specified by the EAAB.
- Qualified full status estate agents wishing to become principal estate agents must
 - Obtain the NC Real Estate (NQF5) by full training;
 - Apply to the EAAB to be registered as a principal estate agent;
 - Write and pass the PDE5 examination within 24 months of being registered as a principal; and
 - Complete Continuing Professional Development (“CPD”) as specified by the EAAB.

WHAT ORDER MUST THE REQUIREMENTS FOLLOW?

There are no rigid rules with regard to order of requirements, other than as detailed below.

- **Intern agents** – Must be registered with the EAAB and obtain a Fidelity Fund Certificate (“FFC”) before they may offer estate agency services. They must work under a mentor for the duration of the internship period and complete the logbook which is signed off by the mentor. Because the internship period is a maximum of 24 months, the qualification (NQF4) should be started as soon as possible because it takes at least 12 months to complete and receive the certificate. There is a belief that the qualification cannot be undertaken before the logbook is completed. This is entirely false. It is recommended that the logbook and qualification be completed simultaneously to save time and avoid duplication of effort. The PDE4 may only be undertaken once the logbook and qualification have been completed.
- **Full status agents** – The deadline for those registered as full status agents on 15 July 2008, and thus able to do RPL in order to obtain the FETC Real Estate (NQF4) qualification, has expired. Such agents who have not yet qualified are advised to register immediately for the qualification to avoid being disqualified from holding an FFC.
- **Principal estate agents** – The situation for those registered as principals on 15 July 2008 is the same as above, but in respect of the NC Real Estate (NQF5) qualification. Aspirant principals who hold the

FETC Real Estate (NQF4) should register for the NC Real Estate (NQF5) by full training as soon as possible, in order to fast-track development as a real estate business owner or manager.

WHO MONITORS AND ENSURES COMPLIANCE?

There are two statutory bodies that are involved in the qualification process of estate agents, the Estate Agency Affairs Board (“EAAB”) and the Services Sector Education and Training Authority (“SSETA”). Their responsibilities are as follows:-

- EAAB
 - Management and monitoring of the internship period;
 - Receipt and verification of the intern logbook;
 - Administration of the PDE and issue of professional designations; and
 - Provision and monitoring of CPD requirements.
- SSETA
 - Management and issuing of the FETC Real Estate (NQF4) qualification; and
 - Management and issuing of the NC Real Estate (NQF5) qualification.

The above statutory bodies operate independently but do collaborate to facilitate the qualification of estate agents.

POWERS OF STATUTORY BODIES

The EAAB has the power to issue an FFC or disqualify persons from holding an FFC, for any contravention of the education regulations. This power is bestowed on the EAAB by Section 27 of the Estate Agency Affairs Act. A person who is disqualified is prevented from practising as an estate agent.

In practice, a person may be disqualified by the EAAB on education grounds in any of the following cases:-

- Failure to complete internship within a maximum period of 24 months;
- Failure to obtain the necessary qualification (FETC or NC Real Estate);
- Failure to pass the PDE exam after three attempts; and
- Failure to complete CPD as specified.

The SSETA has the power to award or refuse to award the qualifications FETC Real Estate (NQF4) and NC Real Estate (NQF5). In practice, the SSETA may refuse to award the qualification on any of the following grounds:-

- Non-compliance of a training provider with accreditation requirements;
- Irregularities in the assessment or moderation process; or
- Use of RPL by an intern estate agent to obtain the qualification, instead of full training.

Interns and their principals, in particular, are cautioned against enrolling for “logbook training”, followed by RPL against the FETC Real Estate (NQF4), which is passed off as “intern training”. SSETA is aware of this practice and is adamant that they will not issue the qualification if this is the process employed.

It is clear from the education regulations that interns must complete FULL TRAINING presented by an accredited training provider and which consists of full days in the classroom covering the entire curriculum. Training that is exclusively presented online is not permitted and is most likely an RPL process.

CAN ANY PERSON BE EXEMPT FROM THE EDUCATION REQUIREMENTS?

The EAAB has, over the years, provided for various exemptions from the education requirements embodied in the education regulations. These fall into various categories:-

- **Persons in possession of certain tertiary qualifications** – The EAAB has published exemption matrices for the NQF4 and NQF5 qualifications which provide that persons holding certain degrees and diplomas at NQF6 may be exempt from obtaining the FETC Real Estate (NQF4) and/or the NC Real Estate (NQF5) respectively. This exemption cannot be assumed and must be formally applied for to the EAAB at exemptions@eaab.org.za against the payment of a prescribed fee. Successful applicants will not be exempt from the PDE or the internship period and logbook (if an intern).
- **Persons registered as full status or principal agents for five years prior to 15 July 2008** – Such persons may apply the EAAB for exemption from the PDE4 and/or the PDE5 exam. Successful applicants will not be exempt from the qualification (NQF4 and/or NQF5) unless they also hold an acceptable tertiary qualification and the necessary application is submitted.
- **Persons 60 years or older** – In terms of a policy dated 30 June 2011, the EAAB will consider exemption of persons 60 years or older who have held a valid FFC for five years, against payment of a fee of R2,130.00. The successful applicant is granted exemption from the qualification and PDE.

- **Non-executive directors of estate agency companies** – The EAAB introduced a policy to exempt non-executive directors of estate agency companies from the education qualifications, so that the company is legally able to operate. Such exempted non-executive directors will be issued with a valid FFC according to a notice published by the EAAB in September 2017 and available at www.eaab.org.za.
- **Non-participating members of a close corporation** – The Close Corporations Act provides that the members may conclude an “association agreement” whereby certain of them may be excluded from managing the affairs of that corporation. Where a member of an estate agency close corporation does not play an active role in the business, he/she may be excluded in this way and be exempt from registering with the EAAB, having to comply with the education requirements and having to hold a valid FFC, according to a notice published by the EAAB in September 2017 and available at www.eaab.org.za. This is a total exemption from all requirements.

If you require any further information or desire a face-to-face or telephonic consultation,

- please call 031 502 2518, or
- email kevin@sarea.co.za.