

To BEE or not: No longer a question

The Amended Property Sector Code for Broad-Based Black Economic Empowerment (B-BBEE or BEE as it is more commonly referred to) was gazetted on 9 June 2017. The Property Sector Code applies to various entities operating in the greater property sector, including real estate agents. Adrian Frewen, associate with the Phatsoane Henney Group of attorneys, explains why achieving B-BBEE compliance is critical in the property sector.

Whilst the Property Sector Codes constitutes the framework and establishes the principles upon which B-BBEE will be implemented in the property sector, the question of how it will be enforced arises.

Firstly, it is not a legal requirement for any entity, such as a real estate agency, to comply therewith. It is however becoming increasingly difficult to conduct business in South Africa without B-BBEE compliance and many estate agents have already felt the pressure for some time now from big clients, especially longer-term clients such as banks, property developers, and government institutions and parastatals, who all require B-BBEE certificates from estate agents in order to utilise their services.

For a bank or a property developer to obtain and maintain a compliant B-BBEE level, the bank or developer must report on the applicable B-BBEE scorecard and one of the elements they need to comply with, is preferential procurement. Preferential procurement measures whether an entity procures from B-BBEE compliant suppliers. Any commission paid to an estate agent therefore forms part of the procurement calculation. In developments, especially multi-unit sectional title schemes, the commission payable by the property developer to the estate agent can easily form a large percentage of the developer's total procurement spend. As such, many estate agents are pressured to produce B-BBEE certificates in order to ensure continued business with property developers. The same pressure is often felt by rental agents who manage a large portfolio for a single client.

Further to enforcement through procurement, included in the Property Practitioners Bill, which was published last year, are conditions that a Fidelity Fund certificate may not be issued to a practitioner who is not in possession of a B-BBEE certificate. Whilst the Bill does not contain any further guidelines in this regard, we are assuming that a valid B-BBEE certificate with the minimum level of compliance will suffice.

Once the Property Practitioners Bill becomes final, the Property Sector Code for B-BBEE will be enforced through the provisions relating to Fidelity Fund certificates. As a Fidelity Fund certificate is vital for any real estate agent to earn commission, the Property Sector Code for B-BBEE can no longer be ignored.

This is the first in a series of 9 articles that Adrian Frewen wrote for Property Professional on B-BBEE compliance according to the Amended Property Sector Code. Next week he explains more about what a real estate agency have to do to become B-BBEE compliant? You are welcome to email questions or suggestions to editor@propertyprofessional.co.za.