



ESTATE AGENCY AFFAIRS BOARD OF SOUTH AFRICA

Redressing the Past, Building the Future, and Guiding the Real Estate Industry towards Professionalism.

THE GRANT OF AN EDUCATIONAL EXEMPTION IN RESPECT OF THE NON EXECUTIVE DIRECTORS OF AN ESTATE AGENCY COMPANY DOES NOT APPLY TO THE MEMBERS OF AN ESTATE AGENCY CLOSE CORPORATION

Members of an estate agency close corporation who are both competent and entitled to take part in the running of the estate agency business of the close corporation must be registered with the EAAB

For the purposes of compliance with the requirements of the Estate Agency Affairs Act all members of an estate agency close corporation who are both competent and entitled to take part in the running of the estate agency business of the close corporation as well as the management of the close corporation are regarded as estate agents and, as such, must apply for, and be issued with, a valid fidelity fund certificate by the EAAB.

Not all the members of a close corporation may be entitled to manage the affairs of that close corporation

In terms of the Close Corporations Act, however, not all members of a close corporation who are competent to manage the affairs of the close corporation may, in fact, be entitled to do so. The Close Corporations Act provides for the conclusion of an 'Association Agreement' pursuant to which the members of the close corporation can decide among themselves who will be entitled to manage the affairs of the close corporation.

Excluded members of a close corporation do not need to register with the EAAB

If, therefore, such an Association Agreement provides that a certain member of the close corporation is not entitled to manage the affairs of the close corporation, the excluded member is not required either to register with the EAAB or to be issued with a valid fidelity fund certificate for the close corporation legally to perform estate agency functions and activities.

No similar excluding provision contained in the Companies Act

Since the Companies Act does not provide for a similar exclusion for the directors of a company, the EAAB introduced a policy to exempt the non-executive directors of an estate agency company from the prescribed educational qualifications. Doing so enables such nonexecutive directors to be issued with a valid fidelity fund certificate so that the estate agency company is legally able to operate as such.

A 'non-executive' member of a close corporation must be excluded by way of an appropriate Association Agreement

It is not necessary, however, for the EAAB to grant an educational exemption to a member of a close corporation who, by reason of a concluded association agreement of the members of the close corporation, is not entitled to take part in the management of the affairs of the close corporation.

Giving effect to the exclusion of a member by way of an Association Agreement

To give effect to the terms of such an association agreement excluding a particular member from managing the affairs of the close corporation, that close corporation must pass a resolution to the effect that the member concerned will not be entitled to take part in the management of the affairs of the close corporation. The close corporation must provide the EAAB with a copy of that resolution, duly signed by all the members of the close corporation. The excluded member of the close corporation remains fully responsible for the activities of the close corporation but is not required to be issued with a fidelity fund certificate by the EAAB to enable the close corporation legally to perform the functions and activities of an estate agent.

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