

What must estate agencies do to be BEE compliant (Part 2)

Whether the Property Practitioners Bill comes to pass this year or the next, one clause that property practitioners must take notice of is the one that sets B-BBEE compliance as a requirement for the issuing of a Fidelity Fund certificate. What does a real estate agency have to do to become B-BBEE compliant? And what about white sole proprietors? Adrian Frewen, associate with the Phatshoane Henney Group of attorneys, shares some insight in the 2nd article in his series on the Property Charter and B-BBEE compliance.

Firstly, it is important to note that the compliance requirements for real estate agencies differ based on the size of the business. The Property Sector Code differentiates between three groups of entities, namely an Exempt Micro Enterprise (EME), Qualifying Small Enterprise (QSE), and Generic entities.

EME's are those entities with an annual turnover of less than R2,5 million*, QSE's are entities with an annual turnover of between R2,5 million and R35 million, and generic entities are those entities with an annual turnover of R35 million and above. (**The Amended Codes of Good Practice for Broad-Based Black Economic Empowerment sets the threshold for EME's at R10 million annual turnover, however, for real estate agents, the Amended Property Sector Code (gazetted on 9 June 2017, Gazette No 40910) will apply, which specifically sets the EME threshold at R2.5 million for estate agencies and broker/valuation companies.*)

EME's are regarded as automatic Level 4 contributors to B-BBEE. Any real estate practice which qualifies as an EME therefore already qualifies as a B-BBEE compliant entity. It need be noted that an EME need not undergo a formal verification audit to obtain a B-BBEE certificate. The Property Sector Code simply requires such an entity to complete a sworn affidavit on an annual basis, which confirms that the turnover is below the R2,5 million threshold. This affidavit is then regarded as confirmation of the entity's Level 4 contributor status and is valid for 12 months from date of signature.

This means that most sole proprietors will qualify as EME's, therefore providing them with automatic recognition status. Should a sole proprietor have a turnover of more than R2,5 million, he/she would not score any points on the scorecard elements Ownership or Management Control. It is however possible to reach a compliant BEE level if the full target is reached on the following elements: Skills-, Enterprise and Supplier-, and Socio-Economic Development.

The Property Sector Code contains a total of six scorecard elements where points can be scored towards BEE compliance. Each element contains certain targets, and points are allocated for compliance with each of these targets. The total number of points then relate back to a certain level of compliance. The minimum level of compliance is a Level 8, for which at least 40 points must be obtained on the scorecard. The scorecard elements will be discussed in more detail in upcoming articles.

EME and QSE entities which are at least 51% black owned, qualify as Level 2 contributors to B-BBEE, and EME and QSE entities which are 100% black owned qualify as Level 1 contributors. *(Take note that black here is meant in the broader sense to include South African born African, coloured and Indian people.)*

All other QSE and generic entities however do not qualify automatically as B-BBEE compliant entities and must undergo a formal verification audit.

In conclusion, complying with the scorecard elements requires proper initiatives that would have to be implemented to ensure compliance, and therefore it is advisable to seek assistance in this regard timeously. This is the second 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 expands more on the most important provisions of the Property Sector Code. You are welcome to email questions about the articles to editor@propertyprofessional.co.za.

More on sworn affidavits for EME's

Rebosa in their latest newsletter advises that the Companies and Intellectual Property Commission (CIPC) does not issue affidavits or certificates to EME's despite it being stated so in Section 8.6 of the Property Sector Code. They have been in touch with Portia Tau-Sekati of the Property Sector Charter Council who confirmed that despite what the code says, EME's only need to obtain an **affidavit** (link to <http://www.rebosa.co.za/b-bbee-exempted-micro-enterprise-sworn-affidavit/>) (find a form you can use on Rebosa's website).

The completed affidavit must be certified by a Commissioner of Oaths and then kept on file. You will only need to present it should you be requested to provide your BEE Certificate. In other words, this affidavit suffices as a BEE certificate in the absence thereof, obviously only if your turnover is below R2,5 million. Like a BEE Certificate, the affidavit is valid for one year from the date it was certified irrespective of change of turnover.