



DYKES VAN HEERDEN GROUP OF COMPANIES
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EDUCATIONAL EXEMPTIONS TO NON-EXECUTIVE DIRECTORS OF ESTATE AGENCY COMPANIES

On the 20 June 2016 the Estate Agency Affairs Board (“EAAB”) announced that it will effective immediately allow for persons interested in becoming non-executive directors of “affected estate agency companies” to apply to the EAAB for the granting of an educational exemption against the education requirements for principal estate agents. Non-executive directors may also apply to be exempted from participation in the EAAB’s mandatory Continuing Professional Development (CPD) programme. This announcement may be accessed on the EAAB website at www.eaab.org.za “*Announcement on the Implementation by the Estate Agency Affairs Board of a Policy for the Granting of Educational Exemptions to Non-Executive Directors of Estate Agency Companies*”.

Currently, in terms of the Standard of Training of Estate Agents Regulations, 2008 read with section 26 of the Estate Agency Affairs Act 112 of 1976 (the “Act”) all principals and directors of an estate agency company must be certificated against the NQF Level 5 real estate qualification (National Certificate: Real Estate) and must have passed the Professional Designation Examination for principal estate agents (PDE5) to enable such directors to be issued with a valid fidelity fund certificate.

The EAAB has stated that this latitude has been granted to estate agency companies to enable their non-executive directors fully to comply with the provisions of the Act and, as such, legally to act as estate agents which will facilitate their operations as estate agents and remove a cause of ongoing concern that has been expressed to the EAAB over the years.

A non-executive director, for the purposes of the implementation of the exemption, has been defined as “being a member of the board of directors, duly registered as a director of the company concerned by the Companies and Intellectual Property Commission, of an estate agency company who is not strictly engaged in the day-to-day estate agency activities, as defined in section 1(vi) of the Estate Agency Affairs Act, of the company but who may, nevertheless, be involved in the policy-making and planning functions of the organisation so as to ensure compliance with the provisions of the Companies Act and who may, moreover, have been appointed due to, inter alia, knowledge, experience, competency, caliber and other relevant personal qualities”.

The EAAB has in its publication emphasised, that any educational exemption thus granted to a non-executive director is non-transferable and that the non-executive concerned shall be obliged immediately to notify the EAAB in writing should there be any change in the circumstances of that director which may have the effect of rendering the person concerned no longer a non-executive director of the estate agency company.

Non-executive directors seeking to apply for the grant of the relevant educational exemption will be required to follow an established procedure in order to be issued with a valid principal fidelity fund certificate by the

EAAB. Such applicants will, in addition, be obliged to pay an assessment fee in a total amount of R2 500 to the EAAB in respect of the consideration of their educational exemption applications. Further information in this respect may be obtained by all interested parties by emailing exemptions@eaab.org.za

It is noted that the Act does not define “affected estate agency companies” (nor is the term “affected” defined) and it is unclear at this stage if there are any additional qualification criteria that real estate agencies may be required to meet in order for the applying non-executive director’s application to be successful or other limitations which may be applicable. This concept and the exemption may perhaps be clarified or further regulated in the Property Practitioners Bill.

Notwithstanding the uncertainty surrounding this exemption and how readily it will be granted by the EAAB, we think that this is an exciting development within the property sector and will if implemented successfully by the EAAB lead to more dynamic investment, growth and expansion within the real estate fraternity.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

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