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CAN AN ESTATE AGENT OPERATE WITHOUT A VALID FFC?

During the course of property transactions, whether it be the sale or rental of immovable property, it may become necessary for attorneys and estate agents alike to keep money on behalf of a party in a trust account.

Although the funds are under the attorney/agent's control, it belongs to the client and must be returned to them or paid to a third party on their instruction during the course or at the conclusion of the transaction.

To safeguard the client against theft by the agent or attorney, the Estate Agencies Affairs Act and the Legal Practice Act respectively established Fidelity Funds.

All agents and agencies must be issued with a Fidelity Fund Certificate by the Estate Agencies Affairs Board (EAAB), which must be renewed each year for the following calendar year.

An agent/agency operating without this certificate is operating illegally and will not be entitled to commission and furthermore, the client will not have recourse to claim from the fund.

Any party to a property transaction is entitled and encouraged to request proof of a valid FFC from the agent/agency.

It is the responsibility of the agent/agency to ensure that they qualify for and obtain the FFC timeously to ensure a valid FFC at all times, but what happens if they do their part, but the EAAB neglects their responsibility in issuing this certificate?

This issue has ended up in our courts numerous times, but in the latest matter of Signature Real Estate (Pty) Ltd v Charles Edwards Properties, the Supreme Court of Appeal found that the administrative shortcomings of a governing body should not stop an agent from engaging in their occupation if they have complied with the requirements to hold an FFC.

The way forward

There seems to be a light at the end of the tunnel. The Property Practitioners Act, in Section 49 makes provision for mandatory time periods for issuing of certificates. When the Act comes into operation, the following time periods will have to be adhered to by the Board Authority (Currently the EAAB):
1. Within 30 days of receipt of the application, consider and issue a certificate/query the application (may be extended with proper, written reasons – 20 days).

2. Should the Authority return queries to the applicant, the matter must be finalised

within 30 days from receiving a response.

3. Should the Authority not meet the deadline as set, the certificate will be deemed to be issued and MUST be supplied to the agent within a further 10 days.

As applications for FFC's already open in the first half of the previous year, no agent or agency should (in theory) be without a valid FFC if they apply in time and respond to possible queries from the EAAB in time. We will have to, however, wait for the Act to come into operation to see whether this is practically executable.