



# **The Institute of Estate Agents of South Africa**

## **An Overview**

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## Introduction

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**IN NOVEMBER 2005**, two dozen senior estate agents met in Johannesburg to discuss the future of the estate agency industry and its professional body. Some proposed replacing the existing professional body, the Institute of Estate Agents of South Africa, with a new organisation.

The IEASA believes that its current role in the industry may not be fully appreciated and that it has a role to play in the future. It has therefore compiled this report to highlight its position and its contribution, as a means of furthering the debate on the question of creating a strong industry body.



## 1

## Highlights 2001-2005

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**THE INSTITUTE OF Estate Agents of South Africa** was founded in 1937 by several provincial estate agency associations, the oldest of which was founded in the Transvaal in 1905. Since 1994, it has consisted of eight semi-autonomous regional institutes, co-ordinated by a national board which is supported by a single part-time co-ordinator. Each regional institute is a Section 21 not-for-profit company, with its own board, and is free to operate as it sees fit within the overall ambit of the IEASA.

Although education and training are the cornerstone of all regional institutes' activities, IEASA is also active in other spheres of the property industry. Its track record includes successfully opposing legislation which threatened the industry (in the 1930s); lobbying successive governments for the creation of an industry regulator (in the 1930s, 1940s, 1950s, and 1970s) which ultimately led to the formation of the Estate Agency Affairs Board; publishing a commission tariff; establishing a fidelity fund (in the 1960s); introducing the first professional qualifications for the industry (in the 1970s); co-founding the SA Property Education Trust (in the 1980s); serving on the Steyn Commission committee to establish a Black property industry (in the 1980s); and playing a prominent role in squashing the proposed Property Transactions Bill (in the 1990s).

In the present decade, IEASA's national achievements to date have been:

#### **2001**

- ▽ represented on the Standards Generating Body appointed to develop unit standards for real estate qualifications.
- ▽ began to work with the SA Institute of Valuers and the Council for Valuers to produce a special qualification to enable estate agents to qualify as property valuers (which was launched in 2004).

#### **2002**

- ▽ launched its own website.
- ▽ formally objected to draft new Electrical Installation Regulations which proposed to make estate agents responsible for policing electrical compliance certificates.

#### **2003**

- ▽ dissolved the Real Estate Co-ordinating Council, set up in 1995 to fight the proposed "Property Transactions Bill".
- ▽ took part in the preparation of the Estate Agency Affairs Board guidelines on implementation of the Financial Intelligence Centre Act.
- ▽ launched a successful mentorship programme for previously disadvantaged estate agents in the Western Cape.
- ▽ obtained EAAB advice, and Prof Delport's legal opinion, for the industry on the Council for Debt Collectors' decision that letting agents and managing agents must register as debt collectors:
- ▽ participated in the public consultations on the Property Rates Bill.

#### **2004**

- ▽ abolished commission tariff guidelines, and paid a R522400 fine for having published them after they had (allegedly) become illegal in 1999.
- ▽ joined the steering committee appointed to draft the Property Sector Transformation Charter.

#### **2005**

- ▽ expanded the mentorship programme nationally.

- ∇ participated in the Department of Land Affairs investigation into foreign ownership of property.
- ∇ participated in the Western Cape Provincial Land Summit, in support of the "willing seller/willing buyer" principle.
- ∇ helped member firms to comply with the deadline for submitting Promotion of Access to Information Act manuals by providing a template of a model manual.

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## 2 Legislation

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A FEATURE OF the property industry in recent years has been a constant flow of legislation. The IEASA holds seminars and workshops for its members, to bring them up to date and to equip them to implement and, where necessary, to advise their clients about, the new laws.

The following legislative changes have been introduced since 2001. IEASA has been involved in training and assisting the property industry to implement them:

### 2001

- ∇ Capital Gains Tax.

### 2002

- ∇ PIE Act - extended to protect defaulting tenants and bondholders.
- ∇ Labour laws - changed the definition of "employee" in a way which made many estate agents employees rather than "independent contractors".
- ∇ Transfer duty on sales of company-owned residential property - since 2005, estate agents have been required to report such sales to the SA Revenue Service.

### 2003

- ∇ Immigration Act - caused a stir in the industry, but IEASA took the view that the industry should steer clear of trying to give advice on such a complex matter.
- ∇ Financial Intelligence Centre Act - places several responsibilities on estate agencies; they were extended in 2005 to include terrorist financing.
- ∇ Transfer duty penalty for nominee purchasers.
- ∇ Local Government Property Rates Act - passed after several years of discussion and public discussion in which IEASA participated.
- ∇ Debt Collectors Act - the Council for Debt Collectors decided that letting agents and sectional title managers must register as debt collectors and be subject to this Act, though the EAAB advised IEASA to the contrary. IEASA also obtained legal opinion from Prof Delpert.

**2004**

- ▽ Transfer duty penalty on tripartite sales.
- ▽ Sectional Titles Amendment Act - made sellers of sectional title units liable pay levies for the full financial year, unless their bodies corporate have agreed otherwise.

**2005**

- ▽ Stamp duty on leases doubled and extended to include additional duty on other payments which tenants may have to make to landlords in terms of their leases.
- ▽ Property Charter - although not legislation as such, this BEE transformation charter was finalised, and it is due to come into operation in 2006.

For the record, the following legislative changes are in the offing:

- ▽ a new set of Electrical Installation Regulations has been drafted and published for comment by the Department of Labour.
- ▽ from a date still to be announced, purchasers of property owned by non-resident sellers will have to ensure that a portion of the proceeds is paid directly to SARS to cover the seller's CGT. It will be the estate agent's and the conveyancer's responsibility to inform the purchaser of this, failing which they will become liable for payment of the tax themselves.
- ▽ a draft Legal Practice Bill to reorganise the advocates' and attorneys' professions has been in preparation for several years, and several versions have been produced - one version would prevent estate agents from drawing up agreements of sale for property sales, which would have serious implications for our industry. IEASA is therefore watching for the publication of the final version of the Bill and will, if necessary, oppose it.

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## 3

# Commission tariff

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**FOR SEVERAL DECADES**, the IEASA published a tariff of commissions and professional fees. It was abolished in 2004, amid glaring government-initiated publicity which put the IEASA, and the estate agency industry, in a poor light. Some of the published information was inaccurate and so, to set the record straight, here are the facts:

- ▽ the tariff was originally devised for IEASA members, who were obliged to follow it. It gave the industry - and therefore the property market - a standard to refer to, which had not previously existed.
- ▽ in 1985, the then Competition Board objected to the compulsory nature of the tariff, and IEASA therefore made its use optional, as a guideline only.

- ∇ in 1993, the Minister of Trade & Industry published a new Code of Conduct for estate agents, which *inter alia* prohibited estate agents from making out that their commissions were prescribed by any authority or organisation.
- ∇ the tariff guideline was revised from time to time, most recently in 2001, when 7.5% was recommended as the commission on residential property sales throughout the country. The tariff was last published in 2002.
- ∇ in 2003, IEASA became aware through media reports that the Competition Commission, successor to the old Competition Board, was investigating and fining organisations which published commission tariffs, such as an attorneys' association and some professional bodies in the medical field.
- ∇ IEASA therefore took legal advice and was advised that, in view of changes in competition law, its tariff might well have become illegal. IEASA therefore abolished the tariff guidelines in April 2004.
- ∇ in June 2004, the Competition Commission launched an investigation into the IEASA tariff. IEASA complied with the investigation, and its national executive submitted itself to interrogation by Competition Commission investigators in Pretoria. The Commission held that commission tariffs were a form of "price-fixing" and had been illegal since 1999.
- ∇ under pressure from the Competition Commission, which threatened to act against individual IEASA members if the organisation did not collectively admit guilt and pay the penalty, IEASA's national board reluctantly agreed to the Commission's terms.
- ∇ IEASA therefore paid an admission-of-guilt fine of R522 400, destroyed all remaining copies of the tariff books, and agreed to assist in the implementation of a new cost-based fee system which the Commission proposed to introduce in 2005 (but of which nothing further has been heard).
- ∇ the Competition Commission then issued a media release declaring that it had "put a stop" to "indirect price-fixing" by estate agents, even though IEASA had announced the abolition of the tariff book several months earlier.

The result is that, since April 2004, South Africa has had no up-to-date guidelines as to professional fees and commissions for the estate agency industry. No doubt many people are still referring to old pre-2002 copies of the tariff, but the IEASA cannot back it up or advise on whether or not it is still current.

As matters stand, the Minister of Trade & Industry is authorised under the Estate Agency Affairs Act to prescribe a commission tariff, but to date no minister has done so. However, the question of commission tariffs is one of the aspects to be covered in the current Department of Trade & Industry investigation into the regulation of the industry, so this situation may well change in 2006 or 2007.

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# IEASA/EAAB relations

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**RELATIONS** between IEASA and the Estate Agency Affairs Board have deteriorated in recent years.

The Board's attitude towards the industry became rather hostile in the late 1990s, and in the early 2000s, under new management, it even publicly accused the industry of being racist and sometimes dishonest. The new management's attitude towards IEASA was cool, and it appears to have regarded IEASA as being unrepresentative because of its proportionally low membership and a perception that, like the industry, membership was predominantly White.

In 2002, the IEASA president addressed the Board, took it to task for its attitude, and proposed that the two bodies work together in the interests of the industry. The Board's response was lukewarm.

New management took over at the end of 2004, and 2005 proved to be a dramatic year, with revelations of high-level corruption, the resignation of nearly half the Board members, and even a brief strike by Board staff. Board administration, already inefficient, became worse with the unprecedented influx of hopefuls into the industry, and the issuing of renewal notices for 2006 fidelity fund certificates was delayed by a month. When IEASA, on behalf of its members, asked for assurances that FFCs would be issued in time for 2006, it received a rather dismissive reply.

In October 2005, the Department of Trade & Industry launched an in-depth investigation into the Board's effectiveness (or lack thereof) as a regulator, into models for good industry regulation, and into property-related legislation. Evidently the reform - or perhaps even the replacement - of the Board is now under consideration. IEASA intends to contribute to the investigation and has commissioned an economist and an attorney to help it to prepare a detailed submission, including proposals on how industry regulation can be improved. This is discussed in more detail in section 5 of this report.

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# DTI investigation

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**IN OCTOBER 2005**, the Department of Trade & Industry called for tenders to conduct an in-depth investigation into the estate agency industry. It comprises three projects:

- ▽ assessing the effectiveness of the estate agents regulatory framework,
- ▽ benchmarking estate agency regulation by deriving models from foreign regulators,
- ▽ an audit of property-related legislation.

IEASA intends to contribute to the investigation, and has commissioned an attorney (who worked in the Estate Agency Affairs Board's legal department for a number of years) and an economist to help it prepare a detailed submission to the DTI investigators.

IEASA sees the investigation as a prelude to a shake-up of the industry, and an opportunity to help to shape its future. Clearly the Board is long overdue for an overhaul, or perhaps the time has come to replace it with a new and more effective body. There are also a number of legislative anomalies which can be straightened out after they have been highlighted through the audit.

The IEASA report is scheduled to be completed early in 2006, for submission to the DTI investigators.

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# IEASA and the future

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**ON THE IEASA's agenda for 2006 and beyond:**

### **DTI investigation**

- ▽ IEASA's proposals will be completed early in 2006, for submission to the DTI
- ▽ IEASA will be involved in the investigation to the greatest degree possible, and will keep the industry informed
- ▽ IEASA will exercise as much influence as it can on the re-shaping of the industry and its regulator
- ▽ *inter alia*, IEASA will urge the introduction of compulsory qualifications, i.e. the national certificates and diploma approved by the SA Qualifications Authority in 2003.

### **Property Charter**

- ▽ IEASA will implement the Charter in its own organisation - this will include reconstituting regional and national boards to include Black directors
- ▽ IEASA will provide training to assist member firms to implement the Charter.

### **Certificate of the IEA**

- ▽ as an interim measure, IEASA intends reinstating the old Certificate of the IEA course and examination which were discontinued in 1983 - the CIEA is still listed as an accepted alternative to the Board exam, and IEASA can provide it to the industry more efficiently than the Board provides its exam.

### **General Manager**

- ▽ IEASA proposes to appoint a national general manager to support the national board, co-ordinate the separate regional institutes, and establish greater uniformity among the regions.



**Legislation watchdog**

- ∇ IEASA will continue its role of monitoring legislation which will affect the industry, informing the industry about it, commenting on or opposing it when necessary, and helping IEASA members to implement it
- ∇ in particular, IEASA will watch out for the proposed Legal Practice Bill referred to in section 2 of this report, as it may pose a significant threat to the industry.

