

**MBL REP – P 2008**

**Research Report: MBL3**

**This Research Report is submitted in terms of the requirements for the Master's Degree in Business Leadership, UNISA School of Business Leadership, University of South Africa**

**Research topic:**

The effectiveness of the South African Estate Agency Affairs Board Code of Conduct on the ethical behaviour of real estate agents

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## **ABSTRACT**

The EAAB (Estate Agency Affairs Board), a statutory body for the South African real estate industry, introduced an extensive Code of Conduct in 1992. The research conducted will serve to determine whether this Code of Conduct is effective in ensuring ethical behaviour by real estate agents.

Both qualitative and quantitative research was undertaken, whereby it was determined that there is indeed a level of unethical behaviour amongst real estate agents, that a majority of such agents were unable to interpret specific clauses in the Code of Conduct, and that there was no clear correlation between support for the Code of Conduct and moral intent. Qualitative interviews highlighted the various roles that stakeholders do and should play in training and enforcement of the Code of Conduct, and their insights helped provide the basis for recommendations to the Estate Agency Affairs Board on improving the effectiveness of the EAAB Code of Conduct. Key recommendations to the EAAB were that a revision of the Code of Conduct was needed, entry requirements into the industry should be more stringent, a professional image for the industry should be promoted, and improved communication between the EAAB and stakeholders, improved enforcement and higher penalties, and an extensive training and education programme on Ethics and the Code of Conduct were needed.

A Ten Element Model for an Effective Code of Conduct was proposed that detailed ten key themes arising from the research which could also be applicable in other industries. The forces and importance of communication, debate and consultation between society and industry, through regulatory bodies and/or professional associations provided the foundation for the development and revision of the Code of Conduct. To ensure effectiveness, the Code of Conduct needed to be supported by an ethical culture, professionalisation of the industry, support and understanding of the Code of Conduct by stakeholders, exposure, education and training on the Code of Conduct and Ethics, enforcement, penalties and consumer education.

Keywords: Code of Conduct, Code of Ethics, Real Estate, Ethics, Culture, Professional Associations, Regulatory Bodies, Training, Education, South Africa.

## ACKNOWLEDGEMENTS

Many individuals, companies and organisations contributed to this research report, and the enthusiasm and support received were instrumental in making this research a success. I cannot publicly acknowledge and thank all of the contributors in view of confidentiality issues, but I would like to mention some whose input added substance to the research.

My study leader, Ms Lea Dippenaar was inspirational in her Business Ethics (MBL926S) lectures, and planted the seed for this research report. During the past year her enthusiasm for the topic and for my progress was both motivational and instructive.

Kate Goldstone assisted with editing the research report.

A key interview was with Clive Ashpol of the EAAB. His insight into the real estate industry, the perceived role of the EAAB and the Code of Conduct ensured the research was well rounded with necessary input from the regulatory body. Ken Ralph of IEASA provided the industry perspective needed.

I was privileged to have had the opportunity to interview Professor Piet Naude and Professor Marius Vermaak. Professor Naude raised the issue that a holistic approach was needed that explored the professionalisation of the industry, echoed by Professor Vermaak whose philosophical insights gave direction in an area where I lacked academic knowledge.

On a personal note, I would like to acknowledge my parents who never cease to amaze me with their confidence in my capabilities and my partner, Johan, who has quietly supported my studies and research efforts, and endured many hours of debate.

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# CHAPTER 1: ORIENTATION

## 1. Introduction

One simply needs to ask the question - 'what was your experience when last buying or selling your property?' – to determine just how negatively real estate agents are perceived by the public at large. This within a highly regulated industry governed by the Estate Agency Affairs Act 112 of 1976, as well as an industry Code of Conduct gazetted on 24 December 1992.

While the research will not attempt to determine the level or accuracy of that negative perception, it will rather seek to determine whether the Code of Conduct is effectively communicated to real estate agents, whether it is understood by real estate agents, whether it is effectively enforced by stakeholders, and whether the existence of the Code of Conduct is correlated to ethical behaviour by real estate agents in their business practices. It will further seek to provide recommendations to the Estate Agency Affairs Board on improving the effectiveness of their Code of Conduct, and will aim to develop a model for effective Codes of Conduct that could be broadly applied to all industries.

## 2. Research objectives

The core aim of this research is to determine whether the Code of Conduct is effective in ensuring ethical behaviour by real estate agents. Should it be found that the Code of Conduct has limited impact on this behaviour, the root cause will be explored – is the Code of Conduct effectively communicated to real estate agents, is it understood by real estate agents, is it effectively enforced by stakeholders, and is the Code of Conduct correlated to ethical behaviour by real estate agents in their business practices?

A model will also be developed on the basis of the qualitative research undertaken, detailing requirements for an effective statutory Code of Conduct.

### **3. Statement of the problem and guiding questions**

#### **3.1 *Problem Statement***

##### **3.1.1. How effective is the South African EAAB Code of Conduct in ensuring ethical behaviour by real estate agents in their profession?**

#### **3.2. *Guiding questions***

The guiding questions unpack the possible reasons for lack of effectiveness of the Code of Conduct in ensuring the ethical behaviour of real estate agents.

##### **3.2.1. Is there a lack of ethical behaviour in the South African real estate industry?**

The first question will determine whether there is in actual fact a lack of ethical behaviour within the real estate industry.

##### **3.2.1. Is the Code of Conduct effectively communicated to real estate agents?**

This question will determine whether the EAAB, various industry representatives such as IEASA, and real estate principals communicate and train real estate agents on the Code of Conduct. It will further explore how effective this communication and training is.

##### **3.2.2. Is the Code of Conduct understood by real estate agents?**

Is the Code of Conduct clearly understood by real estate agents? Are such agents able to use the Code of Conduct as a practical guideline when facing ethical decisions?

##### **3.2.3. Is the Code of Conduct effectively enforced by stakeholders?**

The necessity of policing the implementation of the Code of Conduct will be explored and an analysis made of current policing conducted by the EAAB. The level of self-regulation within the industry will be explored and the influence of disciplinary action for non-compliance will be evaluated.

### **3.2.4. Is the existence of the Code of Conduct correlated to ethical behaviour by real estate agents?**

At the heart of the research report will be the question of whether the Code of Conduct has any bearing on the ethical behaviour of real estate agents.

## **4. Definitions**

Carroll and Buchholtz (2006) provide the following definitions:

Ethics (2006: 173): 'Ethics is the discipline that deals with what is good and bad and with moral duty and obligation. Ethics can also be regarded as a set of moral principles or values'.

Ethical responsibilities (2006: 37): 'Ethical responsibilities embody the full scope of norms, standards, and expectations that reflect what consumers, employees, shareholders, and the community regard as fair, just, and in keeping with the respect for or protection of stakeholders moral rights'.

Business Ethics (2006: 174): 'Business ethics is concerned with good and bad or right and wrong behaviour and practices that take place within a business context'.

Code of Conduct (2006: 242): a tool to detail and communicate standards of behaviour

## **5. Delimitations of the study**

The focus of the research will be on the effectiveness of the Code of Conduct in the South African real estate industry, and will not investigate effectiveness in other professions and industries. It will make no attempt to investigate legal precedents set in other industries.

The comparison between the EAAB Code of Conduct and other real estate Codes will be preliminary.

## **6. Limitations of the study**

### ***6.1 Geographical influences***

The quantitative research will be geographically limited to one province of the Republic of South Africa and could be influenced by different levels of exposure to the EAAB Code of Conduct.

## ***6.2 Influence of training***

The quantitative research populations will be participants in regular training sessions. The training covers certain ethical issues in real estate.

## ***6.3 Influence of IEASA activity***

The IEASA is active in the geographical area of the quantitative research and principal interviews.

## ***6.4 Fear of principal action***

The quantitative research results could be influenced by unwillingness of real estate agents in responding or providing correct information. This could occur due to the fact that principals were possibly in close proximity to the real estate agent when completing the questionnaire.

## ***6.4 Fear of regulatory action***

The quantitative research results could be influenced by the unwillingness of respondents to participate and their possibly falsifying EAAB registration information to ensure no negative regulatory action, in the situation when a real estate agent or principal does not hold a Fidelity Certificate.

## ***6.4 Researcher interpretation***

The researcher has interpreted some clauses of the Code of Conduct for the purpose of the quantitative research. This interpretation is subjective, and interpretation may vary from individual to individual.

## **7. Ethical considerations**

The research will take place in an ethical manner. The following considerations will be taken into account:

### ***7.1 Informed consent***

The participants will be advised, both verbally and in writing, of the purpose of the research, allowing them to make an informed decision as to whether they wish to take part in the research or not.

### ***7.2 Voluntary participation***

The participants will be advised that participation is voluntary and that they have the option to take part or not.

### ***7.3 Withdrawal***

All participants will be afforded the opportunity to withdraw from the research at any time for any reason.

### ***7.4 Anonymity***

Anonymity will not be able to be guaranteed due to the nature of the interview process in the qualitative research. The research questionnaire in the quantitative questionnaire will not ask for participants' names or any other form of identification, thereby ensuring anonymity.

### ***7.5 Confidentiality***

In view of the potentially negative impact of the research on the reputation of real estate agents in the particular province where the quantitative research will be taking place, the cities and province where the research will be taking place, will not be disclosed in the research report.

Franchise CEOs and principals interviewed will be assured of confidentiality, and their names or company details will not be disclosed.

Interview participants from the Estate Agency Affairs Board, IEASA and experts will be advised that confidentiality cannot be provided.

### ***7.6 Respect for intellectual property***

The researcher will endeavour to respect the intellectual property of others through clearly crediting sources of information and obtaining consent to use information if so required.

## **8. Importance of the research**

The real estate industry plays a significant role in the South African economy (Ashpol, 2008) as may be seen from the following:

- 92 000 real estate agents were registered in 2007 (no figures are available for unregistered estate agents, although the researcher is aware that many practising real estate agents are unregistered);
- there are 19 500 registered real estate companies;
- R596 billion in property sales transactions were handled by real estate agents;
- that figure equates to 12.5% of the South African GDP.

However, the industry is severely criticised for lack of professionalism and ethical behaviour. News articles with headings such as 'Market awash with inexperience' (Muller, 2005: 38) abound. This happens in an industry which has had a statutory Code of Conduct for the past fifteen years.

The EAAB has recently changed its training requirements. Previously a real estate agent could obtain full status level by either passing the EAAB exam or having been in possession of a Fidelity Fund certificate for a year. The new training requirements for employee real estate agents are at an NQF4 level, and real estate agents are required to complete the FET Certificate in Real Estate as well as a Professional Designation Exam to achieve full status recognition. Principal estate agents require the National Certificate in Real Estate NQF5 before operating as principal estate agents. Real estate agents are also required to participate in a Continuous Professional Development (CPD) programme. The new training requirements became effective on 15 July 2008.

Mrs Mapetla, CEO of the EAAB, acknowledges that the previous training requirements were problematic 'As there was no prescribed method for the monitoring or assessing of the performance of the candidate over the candidature period the system was subject to abuse' (Mapetla, 2008).

The research being embarked upon could be of great value to the Estate Agency Affairs Board and the Services Seta which are tasked with the training and accreditation process. The results of the research could highlight the current level of effectiveness of the Code of Conduct in the real estate industry, and provide pointers regarding training and development of real estate agents from an ethical perspective. The results of the research could also guide the EAAB on methods to improve the effectiveness of the Code of Conduct.

## **9. Contribution to existing body of knowledge**

The research conducted by Peslak (2007) is similar to the research the present researcher is undertaking. Peslak explored the impact of a Code of Ethics in the computing machinery industry and moral intent.

The researcher will be using similar methodology to determine whether similar conclusions can be reached in the South African real estate industry under a statutory code of conduct. Callan's (1992) research contradicted Peslak's findings, and found little correlation between a Code of Conduct and ethical behaviour.

The qualitative research, which will use grounded theory as its research methodology, will explore industry perceptions of ethical behaviour and the EAAB Code of Conduct, communication and training, levels of self-regulation and the effect of internal and regulatory

disciplinary action. On the basis of this process, the researcher intends proposing a model for the drafting and implementation of a statutory Code of Conduct for optimum effectiveness.

## **10. Outline of the research report**

The research report will be structured in the following manner:

### ***10.1 Preliminary***

The research report will include an introductory cover that highlights the research topic and researcher's information. This will be followed by an abstract of the research report, acknowledgements, table of contents, list of tables and list of figures.

### ***10.2 Chapter 1 - Orientation***

Chapter 1 will introduce the research topic to the reader, detailing the objectives of the research and it will state the problem and guiding questions that will be investigated. Definitions, delimitations, limitations and ethical considerations will be explained.

The importance of the research report and the contribution it will make to the existing body of knowledge will be highlighted.

### ***10.3 Chapter 2 – Literature review***

The literature review will take a broad approach in order to promote understanding of the multifaceted research problem.

The literature review will begin by exploring theoretical concepts of ethics and models of business ethics and agency theory, with particular reference to the sales environment. Codes of Ethics and Conduct will be explored and prior research on the effectiveness of such codes will be detailed and alternatives to a Code of conduct or ethics will be reviewed. The question of how leadership, training, enforcement and communication impact on ethical behaviour will be detailed. Various Codes of Ethics and Conduct will be compared with the EAAB Code of Conduct. The new EAAB training requirements will be explored. South African court cases on the issue will be studied. The relevance of professionalising the industry will be highlighted.

### ***10.3 Chapter 3 – Research methodology***

The research makes use of both qualitative and quantitative methodology.

A quantitative approach is used to determine whether there is unethical behaviour in the real estate industry, whether there is a correlation between passing the EAAB Exam and participant's knowledge and understanding of the Code of Conduct. It will also explore whether the Code of Conduct contents are understood by participants, and whether support of the Code of Conduct influences moral intent.

The qualitative research will consist of personal interviews with the EAAB, IEASA, ethics experts, franchise CEOs, real estate trainers, and principals of various sized real estate companies. The purpose will be to gain a better insight into how the EAAB Code of Conduct is perceived by different role-players and to develop recommendations on improving the ethical behaviour of real estate agents.

#### ***10.4 Chapter 4 – Research results***

The research results will be detailed.

#### ***10.5 Chapter 5 – Discussion, conclusion and model***

The research results will be evaluated, recommendations will be made to the EAAB, and a model will be proposed for improving the effectiveness of the EAAB Code of Conduct.

#### ***10.6 Conclusion***

The research report will conclude with references, court cases references and various appendixes including transcripts of the qualitative interviews.

# CHAPTER 2: LITERATURE REVIEW

## 1. Moral Reasoning

An aspect of the qualitative research is to determine whether the Code of Conduct impacts on the moral intent of real estate agents. Cohen (2004) provides valuable guidelines of moral reasoning concepts.

He begins by exploring the concepts of descriptive and prescriptive ethics. Descriptive ethics simply describes ethical behaviour (an example would be the description of someone's ethical beliefs), while prescriptive ethics specifies how the individual or group should behave ethically. Prescriptive ethics can take the form of normative principles which are general principles of how the individual or group should behave; normative issues are internalised principles that determine the position adopted on an ethical issue, while casuistry or moralising concerns an actual situation where judgement of the behaviour should fit the ethical principles ascribed to.

Cohen proposes that there is little distinction between the meanings of 'ethical' and 'moral'. A moral opinion, he believes, should satisfy the following six conditions:

1. Impartiality: Unbiased and above self-interest
2. Universability: Can be applied to everyone when the circumstances are similar
3. Justifiability: Moral opinions should be supported with reasons for the opinion
4. Overridingness: The moral opinion overrides other opinions
5. Non-negotiability: It is a binding moral opinion that should not be compromised
6. Action-Guidance: Moral opinions should not just be theoretical, but should be practical in application

When discussing normative ethical issues, acting on principles is based on the consequences of acting on those principles. 'Consequentialism' refers to 'a moral outlook that evaluates actions or behaviour according to the consequences of that behaviour' (36). Consequences could be in the form of egotism (for oneself), nationalism (for the nation), utilitarianism (maximising pleasure) and epistemism (advances in knowledge). Non-consequentialism is when action is based on the past or present, and does not refer to consequences of actions. An example could be a promise in the past that determines the

action and does not necessarily refer to consequences of the action. Non-consequentialism could take the form of deontology, where duties are seen as providing consistency and rationality, and morality is about doing one's duty irrespective of the consequences. Contractarianism is influenced by obligations between the parties. Virtue ethics revolves around the theme of 'what kind of person should I be' (49). An action will be seen as correct if it was the action that a 'virtuous' person would take.

Moral reasoning can be 'top-down' when the principles determine the judgement, while 'bottom-up reasoning' is when the initial evaluation of the situation or judgement drives the moral reasoning. Both types are an attempt to find a fit between principle and judgement. Reflective equilibrium is the outcome of these reasoning processes, and constitutes the equilibrium between principle and judgement. Moral reasoning is neither top-down nor bottom up, but rather the result of both, with both principles and judgement subject to change. Cohen makes reference to 'storytelling' and 'thought experiments' as techniques to understand and develop moral reasoning.

He further provides a process for dealing with ethical issues (122):

1. 'Determine what the issue is
2. Write it down
3. Listen – understand the other person's position and rationale
4. Write down the various concerns and possible mechanisms for dealing with the issue
5. Consider them, and deal with the issue.'

Systematically dealing with ethical issues is an attempt to avoid moral negligence (a failure to consider a particular aspect) and moral recklessness (failure to give adequate recognition to a particular aspect). Cohen reflects on a number of ethical decision-making models, which are summarised as follows:

Laura Nash Model (Cohen: 134):

1. 'Have you defined the problem accurately?
2. How would you define the problem if you stood on the other side of the fence?
3. How did this situation occur in the first place?
4. To whom and what do you give your loyalties as a person and as a member of the corporation?

5. What is your intention in making this decision?
6. How does this intention compare with the likely results?
7. Whom could your decision or action injure?
8. Can you engage the affected parties in a discussion of the problem before you make your decision?
9. Are you confident that your position will be valid over a long period of time as it seems now?
10. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, or society as a whole?
11. What is the symbolic potential of your action if it's understood? If it's misunderstood?
12. Under what circumstances would you allow exceptions to your stand?'

Mary Guy (Cohen: 136) details ten core values to uphold in a decision-making model: Caring, honesty, accountability, promise-keeping, pursuit of excellence, loyalty, fairness, integrity, respect for others and responsible citizenship. Guy further suggests five rules to integrate with the values proposed, namely to consider the well being of others, thinking as a member of the community, obeying but not depending solely on the law, asking what type of person would do such a thing, and respecting the custom of others without compromising personal ethics. Guy's model suggests the following decision making steps:

1. 'Define the problem
2. Identify the goal to be achieved
3. List all possible solutions to the problem
4. Evaluate each alternative to determine which one best meets the requirements of the situation
5. Identify the one course of action that is most likely to produce the desired consequences within the constraints of the situation
6. Make a commitment to the choice and implement it.'

## 2. Business Ethics

Svensson and Wood (2008) proposed a dynamic Model of Business Ethics. Figure 1 is a visual representation of the model. The model is continuous and evolves over time.

Society expectations determine whether organisations are allowed to exist based on the perception that their existence is for the betterment of society – a social contract between them. These expectations are met through internal and external influences. Organisational culture (incorporating its values, norms and beliefs) influences the environment in which leadership, employee, shareholder, customers and competitor relationships operate and are perceived. Outcomes of these relationships are economic, legal adherence, tax payments, good corporate citizenship and employee retention. These outcomes are evaluated by society and expectations are again created.

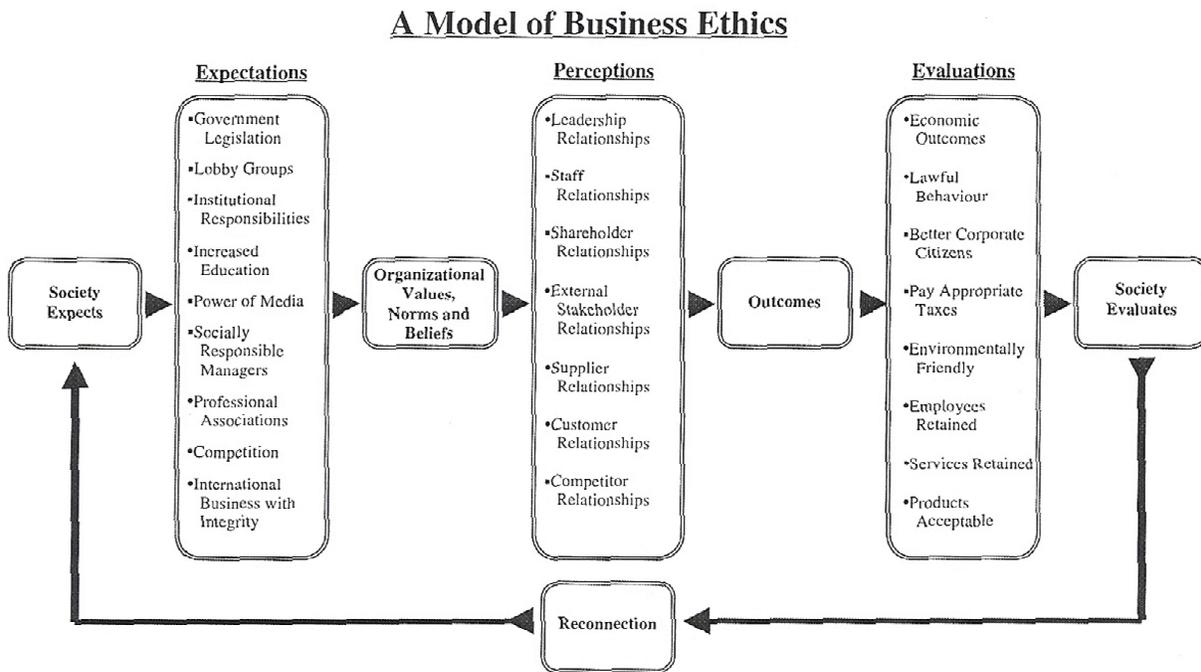


Figure 1: A Model of Business Ethics (Svensson and Wood, 2008: 304)

Ethical decision making in modern society was explored by Cotter and Greif (2007). These researchers concluded that ethical decisions are made by individuals based on what ethical behaviour was expected of them while growing up by family and persons of influence. Experiences while growing up formed the basis of ethical decisions in adulthood - termed personal ethical instinct - while a concern for others was clearly exhibited by participants. In the organisational context, certain participants emphasized the fact that ethical behaviour was a result of leader's activities and examples. Leaders also influenced ethical beliefs, and

participants believed consistency in ethical behaviour by leaders helped them anticipate the reaction by leaders, which in turn engendered trust. Honesty was specified as the most prevalent ethical trait by participants, with consistency and integrity highlighted as well. Participants found that teaching by example was the most effective method of teaching ethical behaviour.

Van de Poel and Royakkers (2007) propose an Ethical Cycle Model in an attempt to improve moral decision making – Figure 2.

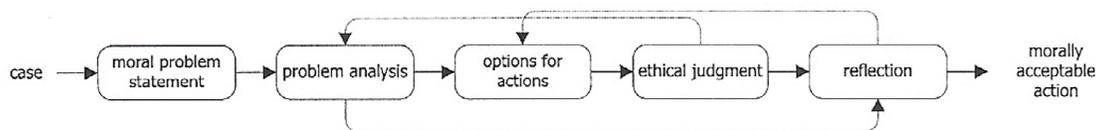


Figure 2: Ethical Cycle Model (Van de Poel and Royakkers, 2007)

The first step of the Ethical Cycle Model is the definition of the moral statement, which is inevitably an ethical dilemma between alternatives. The problem analysis stage details the stakeholders to the problem, the relevant moral values and facts. Possible solutions are developed and an ethical judgement is made. The results of the judgement are reflected upon, and possibly it will be necessary to revert to the problem analysis stage. The cycle result is a morally acceptable action.

### 3. Ethics and Agency Theory – An inherent conflict of interest

One of the most critical aspects for a real estate agent is the ethical dilemma faced on a daily basis when trying to balance ethical responsibilities between two opposing parties – namely the seller and purchaser, or lessor and lessee, while furthering the agent’s own personal interests. This conflict of interest is well put in an editorial on Leadership Excellence (Malhortra and Bazerman, 2007:16): ‘Conflicts of interest: They affect judgement and breed ethical breaches’.

#### 3.1 Agency Theory

Agency theory defines the roles of the principal and the agent who is contracted on his behalf to act in his favour. Agency theory applies between the business as employer (principal) and employee (agent), or as a seller (principal) who mandates a real estate agent (agent) to sell his property. This is termed a role obligation towards the principal.

A personal conflict of interest is relatively easy to define. Should the agent act in his own favour (for his own benefit), there is an automatic conflict of interest as he is not acting in the principal's favour. The very fact that the agent acted in his own interest creates a conflict of interest even if this action did not harm the interests of the principal.

Referring to the real estate agent, a personal conflict of interest arises when a real estate agent, mandated by a seller, buys the property himself. The agent is acting in his own favour. This may or may not be to the detriment of the principal – the seller may receive a prime price for the property – but this does not negate the fact that there is a personal conflict of interest.

Role obligations exist not only between the principal and agent, but may extend further towards others who have nothing to do with this relationship. This obligation is to promote the benefit of the external party, although there is no obligation to act in his favour.

A common ethical dilemma a real estate agent faces on a daily basis is this inherent potential conflict of interest to which a real estate agent may be exposed. A real estate agent (agent) mandated by the seller must act in favour of the seller (principal). That same real estate agent also has a role obligation to work for the benefit of the purchaser (external obligation).

Boatright (Bowie & Freeman, 1992) explores this conflict from an agency theory perspective. Using the example of lawyers, a situation is described where a lawyer is an agent of the client as well as an agent of the courts, but this is not deemed to be a conflict of interest, but rather an 'unavoidable systematic feature of that situation (193)'. Reflecting on this statement, the implication is that a real estate agent should not be an agent for both a buyer and a seller, as it would be impossible to act in favour of both parties.

It is noted that outside of the South African environment, for example in the United States of America, both the seller and the purchaser appoint their own agents.

### ***3.2 Research on the sales environment***

While agency theory provides a conceptual background for the ethical dilemma that is often faced by real estate agents, this subsection explores past research on the sales environment itself.

Ingram et al (2007) highlight the problem of ethical misconduct by salespeople, citing the one example of prior research conducted by Strout in 2002, where 50% of sales and marketing executives suspected their sales personnel of lying on sales calls, and 75% believed that the pressure to achieve sales targets led to sales personnel losing their focus on customer

needs. They suggest that ethical behaviour by sales personnel can become a competitive edge in the purchasing decision of customers. While many sales organisations have a Code of Conduct / Ethics, with communication and enforcement mechanisms, the research suggests that this should be supported by an ethical organisational culture and salesperson Cognitive Moral Development – improved moral reasoning allowing salespeople to make better moral judgements in the complex sales environment.

A study by Deeter-Schmelz et al (2007) found that different age groups of consumers had different ethical ideologies. Senior citizens were found to be '*situationists*' (2007: 200) which implies that they are more likely to deal with every moral dilemma on its merits, and not subscribe to the view that moral rules should or can be applied to all situations. This generation would possibly condone unethical sales techniques should they maximise the benefit to all parties while minimising the negative impact. They tend to deliberate more than other age groups when purchasing.

Deception in negotiations was studied from the viewpoint that the likelihood of deception in a negotiating environment will depend on the characteristics of the other person (target) such as benevolence, integrity, power and trust, the situation and the interaction between the two. Deception was found to be higher when the target was perceived to have integrity and was trustworthy, which the researchers referred to as an opportunistic betrayal model of deception.

The issue of Gray-marketing is raised by Tsang and Zhuang (2007) in their research into selling methods in China. Gray marketing is a term used to describe ethically questionable techniques in the business environment, such as offering gifts and kickbacks. It was found that there were different viewpoints on grey marketing techniques by participants, and that activity in grey marketing was significantly influenced by potential punishment.

Pettijohn et al (2007) explore the premise that ethical behaviour is good business. The research results conclude that ethical behaviour of management positively influences employee's job satisfaction and reduces the potential of their resigning from their companies.

#### **4. Organisational Code of Ethics / Conduct**

An organisational Code of Conduct gives an organisation strategic legitimacy, as it garners support for the organisation that is perceived to balance societal values and self-interest (Driscoll and Long, 2007).

Forshey et al (2007:17) emphasized the importance of a '*Living Code of Ethics*' that is intrinsically the organisation's identity. This type of ethical organisation has an ethical culture which stresses that the ethically correct option is the only option to take. The Living Code of

Ethics is underpinned by authentic leadership, formal and informal organisational processes, and finally by an ethical organisational culture.

Carroll (Carroll & Schwartz, 2003) visualised Corporate Social Responsibility as a pyramid structure with lower levels starting at the economic (be profitable), progressing to legal (obey the law) and ethical (an expectation of ethical behaviour) to philanthropic (a desire by the organisation to be a good corporate citizen). Carroll and Schwartz felt the pyramid structure to be limited, and proposed 'The Three-Domain Model of CSR'. The three domains were legal, ethical and economic which overlap one another, and which may have different levels of influence within the organisation. This model allowed for different categories of an organisation from a corporate social responsibility context. Seven classifications were determined: Purely ethical; purely economic; purely legal; economic / ethical; legal / ethical; economic / legal / ethical.

## **5. Effectiveness of a Code of Conduct**

A key question in this research report is whether the existence of the EAAB Code of Conduct has a positive impact on the ethical behaviour of real estate agents.

Helin and Sandström (2007) highlight the knowledge gap regarding the effectiveness of a Corporate Code of Conduct in influencing the ethical culture of an organisation. Kaptein and Schwartz (2007:113) evaluated research into the effectiveness of Business Codes, finding that results differed substantially. Of 79 studies, 35% found that Codes were effective, 16% found a weak relationship, 33% found no significant relationship and 14% had mixed results. They were of the opinion that these conflicting findings were due to differences in research methodologies and differences in the standards of business codes.

They suggested that effectiveness of Codes be analysed on the basis of expectations of stakeholders, environmental circumstances, organisational objectives, how the code was developed (involvement by those for whom it applies), content of the code, implementation of the code, characteristics of the people to whom it applies and consequences of non-compliance. Enron had an extensive Code of Ethics, yet it faced one of the greatest business scandals of all time, highlighting the fact that a Code of Conduct / Ethics effectiveness is determined by not only the content of the Code, but by numerous variables.

Peslak (2007) explored the impact of the ACM (Association for Computing Machinery) Code of Ethics. Although the ACM Code of Ethics was not statutory in nature, certain important findings are of relevance to this research document. Peslak first sought to explore whether the Code of Ethics was supported by respondents. It was found that there was general acceptance of the Code of Ethics provisions, although different provisions were viewed

differently, for example danger and quality were viewed more similarly by participants than others.

Peslak further found that past reading of the Code of Ethics garnered support for the Code, although no significant impact on ethical behaviour was found. He found a positive relationship between Code of Ethics agreement and moral intent. Finally he explored how management influenced ethical decisions, finding that they certainly do have an influence. Callan's (1992) research did not support Peslak, but instead found knowledge and awareness of a Code of Conduct to be a weak determinant of ethical behaviour, and that social, demographic, values and job circumstances played a stronger role as a predictor of ethical behaviour.

The implication for this research report is whether the EAAB Code of Conduct is similarly accepted by participant real estate agents, as well as to determine the level of acceptance of the various provisions of the Code of Conduct. Research suggests that in the South African context, professionals in the legal, engineering and accounting field are supportive of their professional code of ethics and aware of its contents (Higgs-Kleyn and Kapelianis, 1999) The researcher will explore whether there is a correlation between knowledge of the EAAB Code of Conduct and acceptance, as well as whether there is any impact on ethical levels, thus concurring with or rejecting Peslak's findings in the South African real estate industry. Furthermore the researcher will determine whether there is a correlation between acceptance and ethical application in the work environment.

Homann (1999) explored the importance of having a Code of Conduct in Germany. Using the Prisoners Dilemma paradigm, the inherent market deficiencies in the real estate industry were highlighted, advocating the need for an industry wide Code of Conduct. Research into the impact of the AICPA (American Institute of Certified Public Accounts) Code of Conduct (Green and Weber, 1997) on ethical development is also significant for the proposed research. The researchers found that exposure to the AICPA Code of Conduct during their studies positively stimulated moral reasoning in accounting students. It subsequently 'enabled more students to select the ethical course of action based upon their higher level of moral reasoning' (Green and Weber, 1997: 787).

The previous EAAB training material and exam emphasized the Code of Conduct. As a real estate agent did not necessarily have to write and pass the exam to obtain full status, it is of interest whether real estate agents having passed the EAAB Board exam have a similarly higher level of moral reasoning than their counterparts who have not passed the exam.

Cohen and Pant (1991) found that public accountants believed that self-regulating activities were more effective in raising ethical standards than statutory mechanisms, while Higgs-

Kleyn and Kapelianis (1999) determined that contravention of professional codes in South Africa took place due to a perception of limited potential of detection. Bienert and Schnebel (2004) discuss how ethics are a necessity in business, and highlight the importance of communicating these values within the business environment.

Research in Australia on the impact of a self-regulating Code of Ethics on auditors' ethical behaviour (Chen et al, 2007) determined that ethical behaviour differed between auditing students and experienced auditors. The conclusion reached by the researchers was that both a Code of Conduct and experience have an impact on ethical behaviour of auditors. Experienced auditors demonstrated a higher level of ethical behaviour, with the researchers suggesting that this was the result of more exposure to the Code of Ethics over time.

Self-regulation in the South African real estate context is minimal. The membership based IEASA has some guiding ethical principles, and certain of the franchise groups have ethical principles as values. During the qualitative research study the researcher will explore the existence and influence of self-regulating activities. The research will also explore how the Code of Conduct and ethical values are communicated within the real estate industry.

## **6. Elements of effectiveness: Training and Communication**

The previous section determined that effectiveness and level of effectiveness of a Code of Conduct were determined not only by the existence of a Code of Conduct, but by many other issues.

While the EAAB Code of Conduct has existed for 15 years, we ask how the Code of Conduct has been communicated throughout the industry, and whether this has been done effectively? We have touched on the fact that the Code of Conduct is in the prescribed EAAB exam training material and that real estate agents writing the exam would have been exposed to the Code of Conduct.

This does not, necessarily, mean that the contents of the Code of Conduct are known by all real estate agents, nor does it mean that real estate agents understand the Code and are able to apply the Code to practical work life experiences. Adam and Avshalom (2004) found that both formal and informal controls influence the behaviour of participants with a Code of Conduct. The effectiveness of various methods was also investigated, and here it was found that informal methods, such as a manager setting an ethical precedent, were more effective than formal training. This was reiterated by Wulfson (1998: 10) who felt that having a Code of Conduct was not enough, but that management also needed to set an example – 'It is the responsibility of top management to develop clear concise and coherent policies and

procedures that reflect the corporation's commitment to ethical business practices and communicate them to all employees'.

A survey on Canadian companies (Irvine, Lindsay & Lindsay, 1996) provided some benchmarks on what organisations do to further ethical behaviour: provision of the Code of Conduct to employees, formal programmes to train employees regarding the provisions of the Code of Conduct, on-going review and revision of the Code of Conduct and finally disciplinary measures. The survey found that few companies had ethics reward systems, yet felt such systems could motivate employees to act ethically.

Dean (1992) advocates the need for a Code of Conduct as well as employee training. Dean emphasizes the practical application of the Critical Incident Technique, where groups would apply each principle to the work environment on a scale of highly unethical and highly ethical behaviour – in such a way the employee would be better able to assess behaviour as ethical or unethical.

Dechant and Golden (2006) provide a practical method of introducing participants to ethical dilemmas. Twelve case scenarios are presented where participants are exposed to ethical dilemmas of 'real life' scenarios conflicting with organisational codes. Falkenberg and Woiceshyn (2008) support the view that exposure to ethics cases can teach and develop moral reasoning. The introduction by the Journal of Business Ethics of a case section was seen by the writers as a positive step in training on business ethics.

The following example of an ethics training workshop for sales employees was suggested by Weber (2007):

1. *'Warmup exercise and before-after measures'*: Create interest through an ethics quiz
2. *'Description – Integrating Learning Principles into the Selling Ethics Training Initiative'*: Participants are divided into discussion groups on case studies, reporting back on their experiences and various further case discussions

Learning principles that are applied in this sales training include integrating variety to counter lack of motivation and sense of failure, leveraging of existing Codes of Conduct and the emphasis of group discussion. The training also has a focus on real life situations and stakeholder analysis; it involves participants in deeper reflection and reporting, encourages inductive learning, transparency of before-after results, and finally utilizes wrapping up techniques.

A Rational Interaction for Moral Sensitivity (RIMS) strategy is also a valuable tool that can be utilised in teaching and assisting individuals in resolving ethical dilemmas (Rossouw, 2006).

The first stage of the RIMS strategy is to generate and evaluate all points of view in the ethical debate, followed by identifying the implications of each alternative action, and lastly to determine the best option – this would be based on what will have the most benefit with the least detrimental impact.

Ethics audits by means of employee surveys are a valuable technique in determining the effectiveness of business codes on the ethics of employees (Castellano et al, 2007) and are important in promoting ethical corporate governance (Fleming and McNamee, 2006). While Castellano et al explore experiences by employees of ethical behaviour, Fleming and McNamee develop a framework for an ethics audit based on individual respect, social equity and political responsibility

The implication for the researcher is to determine how the South African real estate participants have, at grassroots level, implemented formal and informal methods to further ethical behaviour in their businesses. The Castellano et al survey will be of use in the development of the quantitative questionnaire in researching the prevalence of unethical behaviour in the real estate industry.

### ***6.1 FET Certificate Real Estate***

On 15 July 2008, the new training requirements of the EAAB were promulgated. The FET Certificate Real Estate is aligned to the National Qualifications Framework (NQF) of South Africa and is South African Qualifications Authority (SAQA) regulated. The FET Certificate in Real Estate NQF 4 is outcomes-based in nature, and will be implemented through a combination of RPL (Recognition of Prior Learning), facilitation and assessment of estate agents, and learnerships. There is also an envisaged Professionals Designates Exam that will be required for all estate agents, although not much information was available at the time of compilation of this research report. Principal estate agents will be required to obtain the National Certificate Real Estate NQF5. All estate agents will be required to participate in the Continuous Professional Development (CPD) Programme.

The FET Certificate in Real Estate includes a Unit Standard dedicated (SAQA Unit Standard 246737, 2008 – Appendix 22) to ethics and the Code of Conduct. The title of the Unit Standard is 'Demonstrate knowledge of and apply the Real Estate Code of Conduct and ethics'. Five specific outcomes (the competency of the estate agent is measured against each Specific Outcome) are specified in the Unit Standard:

- Specific Outcome 1: Describe the factors that influence the development of a code of ethics
  
- Specific Outcome 2: Explain the contents of the Real Estate Code of Conduct

- Specific Outcome 3: Explain the implications of the Real Estate Code of Conduct for a Real Estate organisation
- Specific Outcome 4: Relate Real Estate Code of Conduct to ethical values and standards within own organisation and discuss ethical best practices
- Specific Outcome 5: Apply the Real Estate Code of Conduct and ethics in own work context.

The Unit Standard further specifies 'Essential Embedded Knowledge' which the real estate agent needs to display to be found competent, namely:

- The Real Estate Code of Conduct
- Ethical standards and requirements in the Real Estate Environment
- Problem-solving skills for handling ethical dilemmas within the Real Estate environment.

The as yet unpublished training material on the unit standard (EAAB training material, 2008) is an extensive document containing the following chapters:

- Factors influencing a code of ethics
- The EAAB Code of Conduct
- What the EAAB Code means to the Real Estate organisation
- Real Estate Practices
- Comparison of EAAB Code and own workplace

Instrumental in developing the EAAB Code of Conduct and training material (Delpont, 2002), Delpont has played a significant role in the South African real estate industry. Delpont was not supportive of the previous training requirements stating that there was 'a major flaw: in terms of the regulations a person could obtain full status as an estate agent by simply being in possession of a fidelity fund certificate for 12 months' and as a result could feasibly become a principal estate agent without ever having to practise as an estate agent.

Delpont (2007) questioned the draft training regulations published in the Government Gazette 30160 of 13 August 2007. He raised questions concerning the draft regulations that apply to learner estate agents (previously termed candidate estate agents) which are summarised below:

- The wording of regulation 2 specifies that it applies only to persons intending to become estate agents, and does not deal with existing candidate estate agents / illegal estate agents
- The authority of the EAAB in issuing 'learner' or 'full status' fidelity certificates is questioned, Delpont maintaining that the EAAB is only authorised to issue Fidelity Fund Certificates.
- The regulations do not specify what 'serve' and 'supervision' mean in the context of a learner been supervised by a principal estate agent
- The learnership implies that the learner only needs to be present for one day a month for a year, which is, in his view, insufficient
- Delpont questions the prohibition of a person entering into real estate from a constitutional perspective
- The concept of absence is challenged, and with the reality of estate agents and agencies working from home premises, this would be difficult to implement
- The new regulations provide for 'life-long learnerships', where a learner simply never qualifies. Learners will also have the right to apply for exemptions
- The competitive nature of the real estate industry, coupled to more stringent learnership criteria, could result in unwillingness by estate agencies to provide year-long learnerships to individuals who could leave and become competitors.

In terms of the Standard of Training regulations, Delpont also lists numerous concerns, including registration and the process / logistics of RPL and assessment, concluding regulation 4 to be unconstitutional. 'Scores of estate agents may be found to have insufficient prior learning to meet the educational requirements. However, they may have been extremely successful estate agents, providing jobs to hundreds (perhaps thousands) of persons (581)'. In his view, a possible result could be the increased prevalence of illegal estate agents who will continue acting as estate agents even without complying with the new training requirements.

## **7. Research into an alternative**

Levin in his research in partial fulfilment of his requirements in obtaining his Master of Business Leadership at the University of South Africa explored the relationship between Business Ethics and Codes of Conduct. His primary concern was that they (Codes of Conduct) 'tend to be left in a corner gathering dust' (Levin, 1982: 65), without the necessary

communication and enforcement. Therefore, the existence of a Code of Conduct was felt to not necessary lead to adherence to the Code.

Levin further summarises arguments in favour and against a Code of Conduct / Ethics (111-115). In favour of such a Code:

1. Responsible businessmen agree on the need for a '*visible standard of ethical behaviour*'
2. Self-regulation, according to most doctrines, is best encapsulated through a Code of Conduct / Ethics

The arguments against a Code of Conduct / Ethics are listed as follows:

1. A universal Code is impossible due to wider application in diversified industries and differing ethical standards
2. Necessity for Codes to be modified would lead to uncertainty and instability
3. Codes are normally motivated more to avoid government restrictions than from true philanthropy
4. Codes tend to be left in cupboards and are not read
5. Those that do read Codes generally are ethically conscious
6. Codes have limited application
7. Codes are difficult to enforce
8. Codes may be easier to enforce in professions when transgressors could lose their right to practise
9. Corporate and social responsibility is not ensured through the existence of a Code.

Levin's research amongst middle and top management was to determine whether an alternative to a Code of Conduct / Ethics could be the solution in view of the limitations mentioned above.

Through providing various case studies, his respondents were asked to make certain ethical decisions while furthering business interests. The conclusion reached was that ethics is related to long term business goals, although this relationship is vague (159). The problem that management has is determining what ethical behaviour should be promoted – that is,

what is the definition of ethical behaviour. If the manager can define ethical behaviour and put this into practice, Levin concludes that it will be good for business. Once establishing what is good for business 'and accepted in all its sincerity by the executive, it does away with the necessity of codes and all their co-existent problems. It would obviate the necessity for further legislation. It would still allow for acceptance of the profit motive and would not impair or deny free enterprise' (160).

## **8. Influence of Leadership on Ethical Culture**

Bernal et al (2007) discuss the concept of ethical stewardship in a business environment where business leaders are distrusted after the wave of corporate fraud, proposing that ethical leadership, as a governance model, creates organisational wealth due to increased employee loyalty and higher levels of trust.

Ethical leadership culture is influenced by organisational structure. Sama and Shoaf (2007) maintain that transformational leadership is inherently more supportive of ethical leadership as it relies on elements of trust and furtherance of a common vision. Traditional bureaucratic organisations, however, tend to engender transactional leadership. In their view, this creates an isolationist culture.

Figure 3 depicts their Professional Ethical Leadership Model.

## PROFESSIONAL ETHICAL LEADERSHIP MODEL

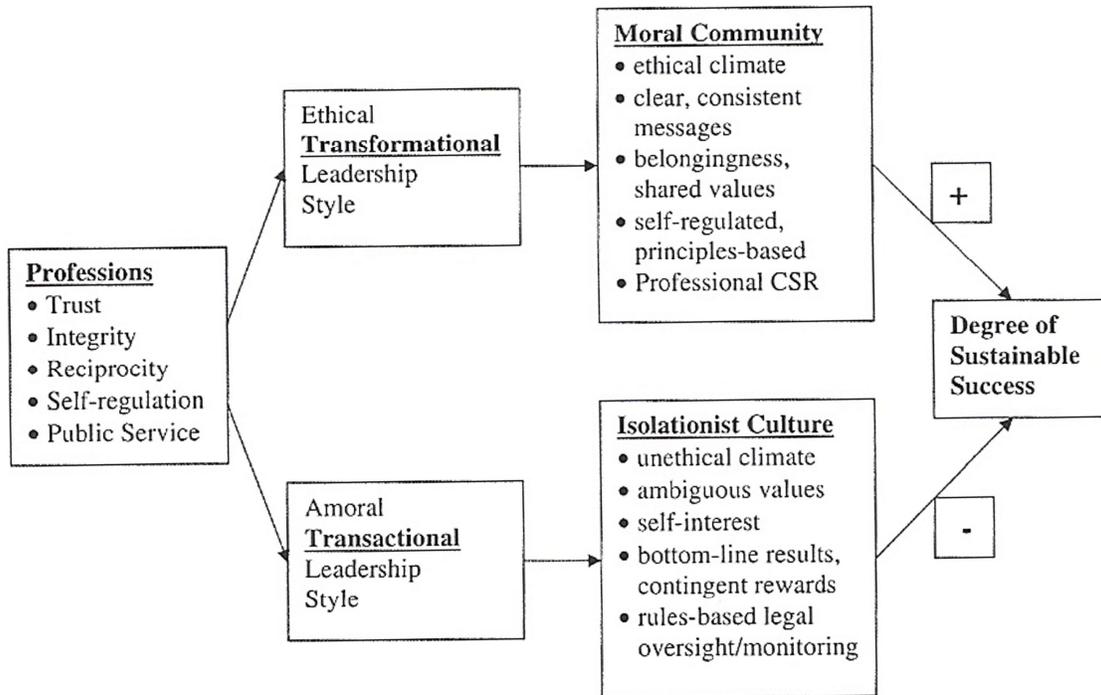


Figure 3. Professional Ethical Leadership Model (Sama and Shoaf, 2007: 44)

Stevens (2007:607) developed a 5-step plan that leaders could implement to ensure a Code of Ethics becomes a strategic document within an organisation:

1. *'Engage in a collaborative process to create the code and incorporate revisions*
2. *Discuss the topics in the code frequently with everyone and debate the organisation's trouble spots*
3. *Use the code to resolve ethical issues*
4. *Communicate ethical decisions to all members of the organisation by explaining the rationale and how the code was used to arrive at a decision*
5. *Reward people who behave consistently with the code'*

## **9. EAAB Code of Conduct: Content and comparison**

The EAAB Code of Conduct was compared with other local and international Codes of Conduct, Auditing Codes of Conduct and the Public Service Commission Code of Conduct.

## **9.1 Real estate industry Codes of Conduct outside of South Africa**

An analysis of various international real estate Codes of Conduct was undertaken. Please refer to Appendix 23 where the EAAB Code of Conduct was unpacked into various content categories, and compared against the following real estate industry Codes of Conduct:

- Code of Ethics and Standards of Practice of the National Association of Realtors (NAR) (Code of Ethics and Standards of Practice of the National Association of Realtors, 2008) applicable to the American real estate industry
- Real Estate and Business Agents Supervisory Board (REBA) Code of Conduct for Board Members and Officers 2007 (Real Estate and Business Agents Supervisory Board Code of Conduct for Board Members and Officers, 2008) – A Western Australia statutory code for the Board members themselves
- Code of Conduct of the Real Estate Institute of Australia (REIA) (Code of Conduct of the Real Estate Institute of Australia, 2008)
- Accreditation of International Real Estate Professionals (AIREP) Code of Conduct (Accreditation of International Real Estate Professionals Code of Conduct, 2008)
- Association of International Property Professionals (AIPP) Code of Conduct (Association of International Property Professional Code of Conduct, 2008)
- Code of Ethics for the Institute of Estate Agents South Africa (IEASA) (Code of Ethics for the Institute of Estate Agents South Africa, 2008)
- ING Real Estate Code of Conduct – An Australian Real Estate Agency internal Code of Conduct (ING Real Estate Code of Conduct)

While the comparison yielded certain similarities, it highlighted the fact that even within the real estate sector, the Code of Conducts varied significantly. It was also found that some Codes contained provisions not catered for in the EAAB Code of Conduct, namely Codes dealing with internet advertising (NAR), Codes dealing with interactions between estate agencies, including obligations to work with other agencies for the benefit of clients (NAR), duty to verify information (REIA), letting and managing agents' duties, for example a duty to advise owner regarding breach by tenants (REIA), confidentiality covered in more detail (AIREP), and training and dispute resolution (AIPP).

According to Miller (1999: 251) the NAR Code of Ethics and Standards has the following benefits: 'an improved public image', 'avoidance of government regulation', 'protection of members from lawsuits' and 'protection of the general public'.

## ***9.2 Code of Professional Conduct – Fundamental principles of Accounting and Auditing professions***

Rossouw et al (2006: 195) explore both South African and International Codes of Conduct relating to the accounting and auditing profession, elements of which can be summarised as follows:

- Professionals should act with integrity and objectivity
- Professionals should act competently and with due care
- Professionals should respect the confidentiality of their clients
- Professionals should act in a professional manner based on the reputation of the industry
- Professionals should ensure independence – threats to them acting professionally are listed as the threat of self-interest, familiarity, intimidation and self-review
- Joint and vicarious liability
- Professionals should ensure that their actions are free of conflicts of interest

The Codes give further guidelines on fees for professional services, publicity, advertising and soliciting business, recruiting, responsibility to colleagues, responsibility to other professionals in the accounting and auditing industry, signing of reports, stationery specification and handling of clients' money.

## ***9.3 Public Service Commission Code of Conduct for public servants***

The Public Service Commission Code of Conduct for Public Servants (2008) provides Codes based on the relationship with stakeholders, performance, and personal conduct. The Code is in point form and written in non-legal terminology. The Codes are not overly specific, but rather provide ethical guidelines to apply to the very wide ambit of public service activities. These Codes are unpacked in detail in the Public Service Commission Explanatory Manual on the Code of Conduct for the Public Service (2008). The Manual provides practical examples that can help public servants to evaluate their behaviour or intended behaviour against the Code.

Stakeholder relationships include the relationship with the state, the public and fellow employees. The relationship with the public includes amongst others the following points:

- 'Will serve the public in an unbiased and impartial manner in order to create confidence in the Public Service'
- 'Does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language.'
- 'Respects and protects every person's dignity and his or her rights as contained in the constitution'

Performance issues again highlight the importance of furthering the public's interest, in a professional and competent manner. It also advises against improper personal gain, and encourages honest dealings with public funds. It places an onus on the employee to report inappropriate behaviour such as fraud, corruption and nepotism.

Codes governing personal conduct address disclosure of information for personal gain, and the responsibility to avoid receiving gifts that could be described as bribes.

The combination of a simple, easy to understand point form Code with a more detailed manual allows for the following:

- Better understanding of the elementary provisions of the code
- Ability to refer to a more detailed manual to obtain guidelines on interpretation of the Code when necessary

## **10. Code of Conduct: Enforcement**

Delpont (2007: 582), in commenting on the draft EAAB training requirements, states that the training requirements will only be effective if properly monitored and enforced. He goes further by stating that 'The Board simply does not have the resources to effectively implement, and monitor compliance with, the training requirements envisaged by the draft regulations.' We now explore the issue of enforcement.

### ***10.1 Theoretical foundation for enforcement***

Snell (2007) explored the relationship between ethics programmes and compliance, proposing that an environment ripe for ethical behaviour is created through education, ethics audits, monitoring, policy making and discipline. He further suggests that ethical behaviour may not occur without investigation, corrective measures and discipline of unethical activities. Beggs and Dean (2007) suggest that unethical corporate acts cannot be eliminated by legislation or ethics education alone, and that a broader approach is needed.

Issacharoff (Moore et al, 2005: 191-197) questioned whether market mechanisms could adequately deal with conflict of interest situations and explored the following legal responses in dealing with inherent conflicts of interest:

- 'Substantive regulation of legal conflict' – Professional Codes of Conduct that limit conflict of interest options, for example, the necessity of depositing trust money into an estate agency's trust account
- 'Liability regulation' – Enforcement of regulation to deter possible negative agent behaviour
- 'Process regulation' – Procedures to limit conflict of interest situations

Di Lorenzo (2007) examined whether organisational conduct was based on legal compliance, and whether differing legal regimes encouraged different levels of legal compliance. The research found that the existence of a legal framework did not necessarily ensure compliance with conduct standards. Vague common law was found to have little influence on legal compliance by organisations. Regulatory enforcement had more of a positive impact on compliance. The most effective legal mechanism for improving organisational conduct was a legal mandate that clearly specified conduct requirements. Christensen (2008) advocates that law can play a larger role in ethical decision making, and ultimately can help achieve an organisational culture that encourages ethical behaviour.

We review some case law to determine how South African courts have viewed contraventions of the Code of Conduct.

## **10.2 Case law**

It is important to understand how the contraventions of the Estate Agency Affairs Act and the Code of Conduct in particular have been viewed by the South African Courts. The following court cases have dealt with misconduct, contravention of the Code of Conduct and issues relevant to the industry:

### *Pace Real Estate (Pty) Ltd v Wilson*

The plaintiff, a real estate agent, facilitated a sale of a townhouse. A clause in the deed of sale prevented the purchaser re-selling the property until all amounts had been paid to the seller, unless the sale was transacted through the plaintiff. The defendant sold the property prior to all the amounts having been paid, and the estate agent claimed from the purchaser damages for loss of commission. The defendant used section 7 (1) (a) in the Sale of Land on Instalments Act in defence. This section

prohibits a clause in an instalment sale agreement appointing the estate agent as an agent for the purchaser. The court held that the contract was an ordinary deed of sale and not affected by this section, hence the defendant was not successful in applying this defence.

Section 3.6 of the EAAB Code of Conduct states that '*No estate agent may include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract*'. While this clause was not used in this case, it would seem that the plaintiff was in contravention of the Code of Conduct.

#### *Administrator, Natal v Bijo and Another*

In this case the court held that an agent acting on behalf of his client, who conveys information provided by the client, is not required to verify such information.

Section 2.3 of the Code of Conduct stipulates that an agent must not wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent. The question that could be raised is whether verification of relevant information would be reasonably expected of an estate agent.

#### *Strydom v Protea Eiendomsagente*

The case dealt with the claim that an estate agent may have against a purchaser due to default by the purchaser, supported by a clause in the deed of sale to such effect. It was found that an estate agent would be able to claim commission from a purchaser in this case. The judgement was subsequently overturned on appeal due to the fact that the purchaser and seller were one and the same.

#### *Mendes v Ermelo Eiendomme en Verhuringsagente*

The rental agreement in this case contained a clause awarding the estate agent a sole mandate with the lessor should the lessor sell during the period of the lease agreement. The court held that the agent had no claim to commission as the owner himself personally had the right to sell. Whilst the case dealt with the concept of sole mandate versus sole and exclusive mandate, the question arises whether the Code of Conduct would allow the inclusion of such a clause.

#### *Low v Shedden*

This case dealt with the agent's duty to disclose material information. The purchaser claimed that the estate agent acting on behalf of the seller misrepresented the zoning of the property, and therefore the purchaser cancelled the deed of sale. The seller claimed damages. The court found in favour of the seller as the contract contained a clause stating that the parties were not bound by any representations not contained in the contract. In order for the purchaser to avoid a damages claim the purchaser must prove that there was deliberate misrepresentation made with the knowledge that it was false.

Section 4.1.1 of the Code of Conduct states that an estate agent must disclose all facts regarding the property that should reasonably be within the agent's personal knowledge or which could be material to the prospective purchaser. One may assume that an estate agent should have knowledge of a property's zoning, and that this should be conveyed in the normal course of business to a purchaser.

*Nel v Grobbelaar & Viljoen Agentskappe (EDMS) BPK*

The seller had given the agency a sole mandate, but not a sole and exclusive mandate, and as such the seller could sell the property privately and not pay the agent commission.

*Eileen Louvet Real Estate (Pty) Ltd v AFC Property Development Co (Pty) Ltd*

The court held that a seller is not entitled to unilaterally cancel a mandate without reasonable notice. An agent would have a right to claim commission or damages in this case.

*Steyn v Estate Agents Board*

The Estate Agents Board was disallowed from refusing an estate agent a fidelity certificate. The reason for refusal had been the fact that the agent had been found guilty of fraud. The courts found that the Board did not provide full and proper reasons for refusing.

*Estate Agency Affairs Board v McLaggan and Another*

The Estate Agency Affairs Board is entitled to withdraw a fidelity certificate should an individual be convicted of an offence involving dishonesty. McLaggan had failed to pay PAYE and VAT and had been convicted accordingly. The Appeals Court held that the circumstances involved an element of dishonesty, and upheld the Board's decision to withdraw his Fidelity Certificate. Delport (2006) explored the concept of estate agents being disqualified from being issued with Fidelity Certificates due to

their having been convicted of an offence involving an element of dishonesty, and concluded that while all offences can be construed as wrongful, their basis is not always dishonesty. Cheating and deceiving, in Delport's view, are aspects of dishonesty.

*Muller v Pam Snyman Eiendomskonsultante (Edms) Bpk*

A sole mandate, in terms of the Code of Conduct, must always be in writing. However, an open mandate can be verbal. This case dealt with a situation where the seller disputed giving an agent a mandate. The real estate agent had introduced a purchaser to the property who subsequently purchased the property. The court held that there was strong evidence to support the inference of a tacit mandate contract – even though this was not verbalised. The seller was therefore instructed to pay commission at the customary rate of 7% plus tax.

*De Coning v Monror Estate and Investment Co (Pty) Ltd*

The sole mandate in question granted the estate agency 18 months in which to sell the property. The property was sold through another agent during this period. The court held that the estate agent could not prove that it would have sold the property at the mandated price; therefore, it could not claim damages of the full commission price, but only of a lower value.

In terms of section 3.3.2 of the Code of Conduct, the expiry of a mandate must be stipulated, which was done. Section 2 of the Code reflects a general duty to protect the public's interest, and subsection 2 states that an estate agent shall protect the interests of his client at all times to the best of his ability. Although this case does not deal with the issue, this very long mandate period could possibly be construed as contrary to his client's best interest.

*Torry v Estate Agent's Council*

The court found the estate agent guilty of disgraceful conduct and imposed a fine. The agent had conducted illegal property transactions.

*J F Venter Estates (Pty) Ltd v Schoombie*

The seller signed a sole mandate and a multilisting 'authority' agreement with the estate agency. It was held that the claim for estate agent's commission in terms of the sole mandate be dismissed.

*Baird v Pretorius*

The seller had given the estate agent a Multilisting Sole mandate. However, the agent did not list the property with the Multilisting network. The seller sent a defamatory letter to the director of the Multilisting network. The Agent instituted an action for damages against the seller. It was held that the letter was privileged, and as such, the agent had no claim to damages.

Multilisting of a property is often misunderstood, and the multilisting arrangements vary depending on the multilisting association. Sometimes sellers view multilisting as an open mandate, but it is in actual fact a sole mandate with the multilisting entity. Some multilisting mandates give the agent the option to multilist.

Section 3.10 of the Code of Conduct stipulates that a sole mandate must detail, in writing, the implications of a seller selling without the assistance of the sole mandate. Section 6.1.2.1 provides for the estate agent explaining to parties the meaning and consequences of the material provisions of an offer.

*Blom v Thomson-Moore and Another* also dealt with similar multilisting issues.

### **10.3 Disciplinary hearings**

The researcher did not conduct research on the nature of disciplinary hearings heard by the EAAB, and this will be offered as a suggested topic for future research.

## **11. Real estate agencies and franchises – internal codes**

An investigation was also undertaken of some larger South African and international companies operating in South Africa, to determine whether they had internal Codes of Conduct / Ethics.

While this investigation was not extensive, and was exclusively web-based, it indicated limited implementation of internal codes within these companies.

Seeff (2008), Lew Geffen (2008), and Accutts (2008), all of which are large South African franchise groups, have no formal Codes. Pam Golding (2008) and Chas Everitt (2008), through their respective mission and values statements, highlighted commitment to honesty, integrity, service and professionalism.

International franchise companies with a footprint in South Africa also lacked a formalised Code of Conduct or Code of Ethics. Remax (2008), with the largest number of estate agents in South Africa, had none, while Century 21 (2008), regarded as the largest international real estate group, had only a 'buyer and sellers' pledge to their credit.

## 12. Professional industry

The new NQF FET Certificate Real Estate is heralded as a step to professionalise the real estate industry and the proposed introduction of a Professional Designates Exam is an effort to align the real estate industry with other professions that have a compulsory entrance exam.

SAQA, in 2006, recommended the inclusion of professional qualifications on the NQF (SAQA The inclusion of professional qualifications on the South African National Qualifications Framework, 2008). This implies that 'only those qualifications that are registered on the NQF will be quality assured by the relevant ETQA (Education and Training Quality Assurers of SAQA) and will enjoy national recognition, including articulation with other nationally registered qualifications'.

Rossouw et al (2006: 167) explore five requisites for a professional industry:

1. Extended period of training and education prior to entrance into the profession:

The training required for a profession is of an intellectual nature. The training should be grounded in theory obtained through formal education - usually in the form of a bachelor's degree and an additional professionals' examination

2. Professional skill and knowledge is required to further the well-being of wider society:

Society is dependent on skilled professionals in a particular industry to provide services that contribute to a higher standard of living.

3. Professions have the monopoly on the provision of professional services:

The profession has a monopoly due to entrance requirements as well as providing a licensing function for professionals. Individuals will not be able to conduct a professional service without these two requirements.

4. Professions have a high degree of autonomy in the workplace:

Professionals have the ability to choose their clients and to determine how they perform their services, the understanding being that they have the requisite skill to make the best decision on how the service is to be conducted to the benefit of the client.

5. Professionals claim to be regulated by ethical standards:

To limit abuse of the professional status accorded to members, most professions regulate themselves through a code of ethics / conduct. Professional bodies will also discipline members who contravene the code of ethics / conduct.

Rossouw et al (2006: 170) go further in evaluating the functions of a Code of Conduct in a profession:

1. Guidance on proper conduct for professionals

The Code of Conduct provides guidance to the professional when faced with an ethical dilemma. All professionals within the industry will be governed by the same Code, thus creating a fair, but competitive, environment.

2. Adherence to the Code of Conduct furthers protection of the public interest

The Code of Conduct can be equated with an agreement between members of the profession internally and between members of the profession and the general public. The profession ensures that members have the ability and exhibit ethical behaviour that promotes the interest of the general public.

3. The terms of the Code of Conduct should be adhered to by its members

Rossouw et al make reference to the Code of Professional Conduct of the accounting profession, noting that the Code attempts to address four needs of the general public: the need for credibility; the need for professionalism; the need for quality services; and the need for confidence in the services received by professionals.

4. The Code of Conduct should be a point of debate

The Code should constantly be debated to ensure that changes take place that reflect the nature and needs of the profession in furthering the needs of the general public.

5. The Code of Conduct should support a professional's argument when dealing with pressure to violate a particular Code

When a situation arises where a professional is requested to act unethically, the professional should be able to use the Code to justify a refusal to comply.

Roussouw et al (2006: 173) detail further how a professional body should govern the profession, with the following key duties:

1. Regulating entrance into the profession by means of training and education minimum requirements

2. Implementing a registration regimen
3. Regulating the technical standards with which members must comply
4. Regulating the ethical standards with which members must comply – normally adherence to a Code of Conduct which is enforced by disciplinary committees

Delpont (2007), commenting on the draft training regulations, states that the new training requirements will not in themselves necessarily result in a more professional industry. In actual fact, he argues, such regulations could increase barriers to entry for incumbent estate agents and agency, resulting in lower levels of competition.

## **CHAPTER 3: RESEARCH METHODOLOGY**

Please refer to the following visual representation of the research methodology that will be undertaken. The researcher intends using a dual qualitative and quantitative approach. A quantitative approach will be used to determine the effectiveness of the EAAB Code of Conduct on real estate agents.

Qualitative research methodology will be used to determine how the EAAB Code of Conduct is communicated, encouraged and enforced by the EAAB and industry stakeholders. Through a grounded theory approach, the researcher intends developing a suitable model for the effective drafting and implementation of a statutory Code of Conduct to achieve optimum effectiveness.

## Research methodology: A visual perspective

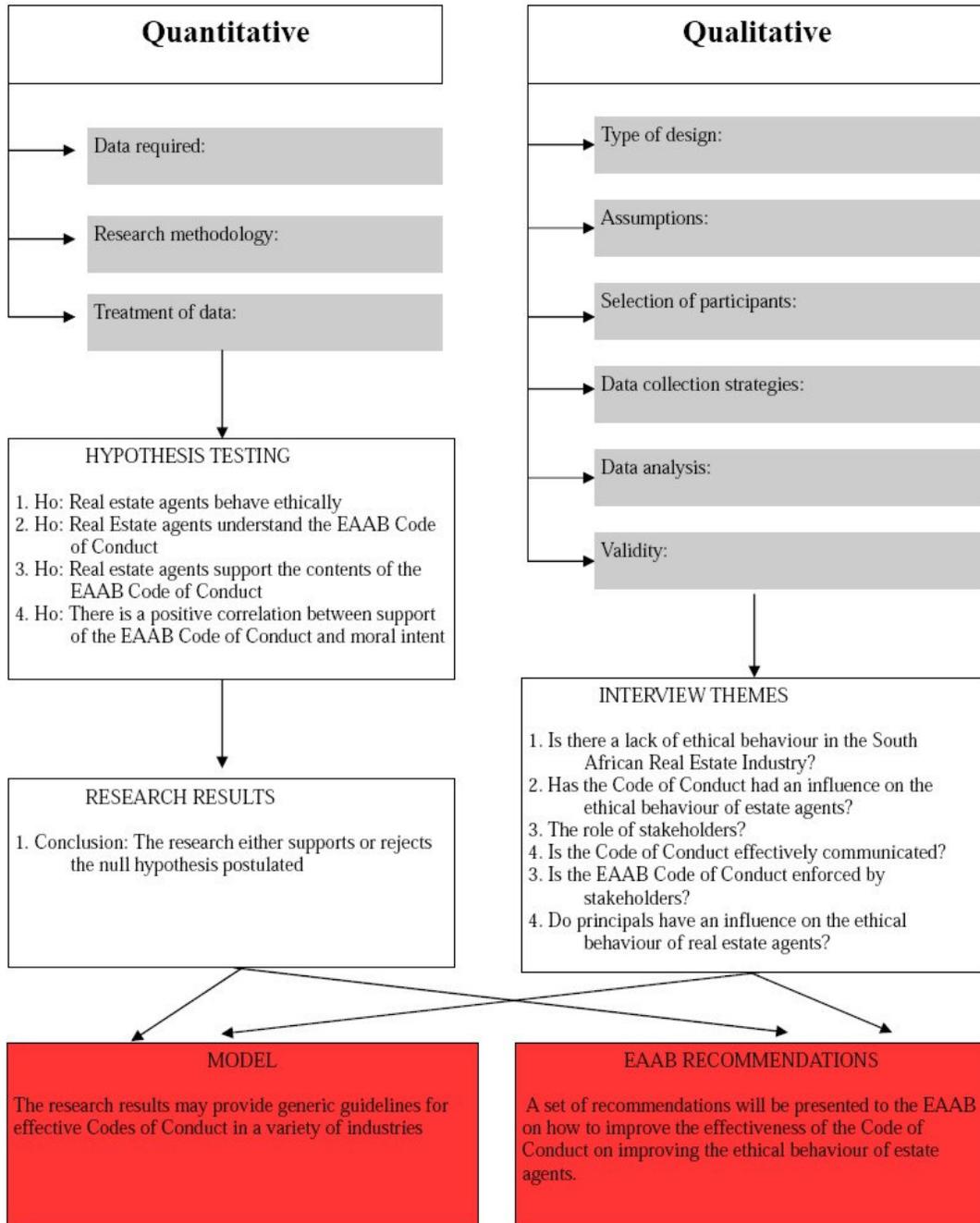


Figure 4: Research methodology: A visual perspective

## **7.1 Qualitative**

### **7.1.1 Theoretical framework**

Grounded theory is an ideal research method to develop a theory or model. As there seems to be no current model detailing methods to achieve an effective statutory Code of Conduct, the researcher feels that this exploratory approach could lead to the development of such a model based on real estate stakeholders' input.

### **7.1.2 Type of design**

Grounded theory

### **7.1.3 Selection of participants**

The researcher intends collecting data from a variety of industry stakeholders:

- The EAAB: Manager of education and training
- IEASA: National Vice-President
- Professor Marius Vermaak – Rhodes University, Associate Professor of Philosophy
- Professor Piet Naude – NMMU, Head of NMMU Unit for Business Ethics and President: BEN-Africa
- 1 Franchise group CEO
- 2 Franchise Training Mangers
- Independent Real Estate Trainer
- 3 Macro real estate agency principals – Agencies larger than 20 agents
- 3 Medium real estate agency principals – Agencies with between 5 – 20 agents
- 3 Micro real estate agency principals – Agencies with less than 5 agents

The participants will be selected on a non-random basis.

### **7.1.5 Data collection strategies**

The researcher will mainly make use of structured interviews, as well as other relevant sources that may become available.

### **7.1.6 Data analysis**

Identifying common perceptions, identifying interrelationships, and finally construction of a model in visual form

## **7.2 Quantitative**

### **7.2.1 Data required**

Data that will be required are based on the following four hypotheses:

Ho: Real estate agents behave ethically

Ho: Real estate agents understand the EAAB Code of Conduct

Ho: Real estate agents support the contents of the EAAB Code of Conduct

Ho: There is a positive correlation between support of the EAAB Code of Conduct and moral intent

### **7.2.2 Research methodology**

The researcher will replicate methodology used by Peslak (2007). It will comprise a voluntary questionnaire that participants will complete.

Participants will be chosen on a census basis – those attending training offered by the researcher in two South African cities.

### **7.2.3 Treatment of data**

The data will be analysed mathematically and inferences made.

## **7.3 Researcher qualifications**

The researcher has extensive experience in the real estate industry. Currently he is the principal of a medium-sized real estate company with two franchises. He also runs training sessions of between fifty and one hundred real estate agents on a monthly basis in three cities. He has recently joined the Institute of Performance Technology, a Services SETA accredited institution, in the role of managing the provision of Recognition of Prior Learning and Learnerships for the real estate industry.

## **CHAPTER 4: RESEARCH RESULTS**

As detailed in Chapter 3, the research combined quantitative and qualitative methodologies.

### **4.1 Quantitative research results**

Please refer to Appendix 2 (Agent and Principal Questionnaire) and Appendix 3 (Agent and Principal Questionnaire results table and matrix).

Section 1 of the questionnaire aimed to determine what possible influences could play a role in the ethical behaviour of respondents – had the respondent written the EAAB Board exam; how long had the respondent been operating as an estate agent; what category of estate agent is the respondent; had the respondent received any formal training on the Code of Conduct; had the respondent read the Code of Conduct; was the respondent registered with the EAAB; was the respondent a member of IEASA. The section also sought to determine whether the respondent had been subject to any complaint or disciplinary hearing with the EAAB, and whether the respondent supported the Code of Conduct.

Section 2 explored whether the respondent correctly understood clauses in the actual Code of Conduct.

Section 3 sought to determine whether the respondent supported specific clauses of the Code of Conduct.

Section 4 contained a table that explored the level of ethical behaviour (adapted from the business ethics survey developed by Castellano et al (2007: 54)) experienced by respondents.

Section 5 explored moral intent of estate agents by posing various scenarios which they were required to rate according to strongly agree, agree, disagree and strongly disagree.

The respondents were chosen on a census basis – those attending training seminars offered in two South African cities. Altogether 55 respondents took part in the survey from City A, while 67 respondents took part in the survey from City B.

#### **4.1.1 Respondent analysis**

The following tables analyse the respondents according to section 1 of the quantitative questionnaire.

Category of estate agent	Just Started	Less than 6 months	Between 6 months and a year	1-5 Years	6-10 Years	More than 10 tears	Total
Not an estate agent	0.8%						0.8%
Candidate estate agent	5.7%	7.4%	6.6%	3.3%	0.8%		23.8%
Full status estate agent	0.8%	2.46%	7.4%	28.7%	8.2%	7.4%	54.56%
Principal estate agent				4.1%	7.4%	6.6%	18.1%
Unsure of classification	0.8%						0.8%
Total	8.1%	9.86%	14%	36.1%	16.4%	14%	

Scrapped=2

Table 1: Category of estate agent and period of operating as an estate agent

Category of estate agent	Not registered with EAAB	Tried to register, but no Fidelity Certificate	Possess Fidelity Certificate	Non- Member IEASA	Member IEASA
Not an estate agent	0.8%			0.8%	
Candidate estate agent	3.3%	9%	9.8%	8.2%	12.3%
Full status	0.8%	18.9%	36.9%	9.8%	45.1%

estate agent					
Principal estate agent		6.6%	13.1%	6.6%	13.1%
Unsure of classification	0.8%			0.8%	
Total	5.7%	34.5%	59.8%	26.2%	70.5%

Scrapped = 0 EAAB / Scrapped =4 IEASA

Table 2: Category of estate agent and registration with EAAB and IEASA membership

Exam Status	No training	Training	Total	Less than 6 months	7-11 Months	1-5 years	6-10 Years	11 Years and more
Not written Board Exam	24.6%		24.6%					
Wrote, but failed	3.3%	9%	12.3%	26.7%	40%	33.3%		
Passed	23.8%	35.2%	59%	5.6%	16.7%	38.9%	16.7%	19.4%
Total	51.7%	44.2%						

Scrapped = 5 training/ Scrapped = 6 period

Period percentages calculated with following base: Wrote, but failed = 15 respondents / Passed = 72

Table 3: Exam status, training received, period since exam

Exam Status	COC – Never heard of it	Voluntary ethical	Compulsory ethical rules	Read COC No	Read COC Yes	Read COC Not sure

		guidelines			
Not written Board Exam	2.5%		21.31	5.7%	18.9%
			13.1%	0.8%	12.3%
		1.6%	56.6%	1.6%	56.4%
Total	2.5%	1.6%	91.01%	8.1%	87.6%

Scrapped = 6/ Read COC Scrapped = 4

Table 4: Exam Status understanding what the Code of Conduct is and whether respondents have read the Code of Conduct

Category of estate agent	Visible COC	Visible COC	Support of COC regulating	Support of COC regulating
	Yes	No	Yes	NO
Not an estate agent		0.8%	0.8%	
Candidate estate agent	12.3%	9.8%	18.9%	0.8%
Full status estate agent	25.4%	31.1%	47.5%	7.4%
Principal estate agent	9%	9.8%	17.2%	0.8%
Unsure of classification	0.8%		0.8%	
Total	47.5%	51.5%	85.2%	9%

Scrapped = 1 / Scrapped = 7 support

Table 5: Code of Conduct visibility and support of Code of Conduct regulation per category of estate agent

Category of estate agent	% Respondents reported to the EAAB	% Respondents fined or disciplined by the EAAB
Not an estate agent		
Candidate estate agent		
Full status estate agent	1.6% (2 respondents)	
Principal estate agent	0.8% (1 respondent)	
Unsure of classification		

Table 6: Percentage of respondents reported to the EAAB and fined / disciplined (0 respondents were fined or disciplined)

#### **4.1.2 Interpretation of clauses of the EAAB Code of Conduct**

Section 2 of the questionnaire aimed to answer the following hypothesis:

Ho: Real estate agents understand the EAAB Code of Conduct

Two clauses of the Code of Conduct were posed to estate agents with two possible interpretations and an 'I don't know' option. We now evaluate the answers based on the status of the estate agent, operating period of the estate agent, and whether the estate agent has written and passed the EAAB exam.

Category of Estate Agent	Clause 1 : I don't know	Clause 1: Incorrect	Clause 1: Correct	Clause 2: I don't know	Clause 2: Correct	Clause 2: Incorrect
Not an estate agent		0.8%		0.8%		
Candidate estate agent		11.5%	8.2%		8.2%	10.7%
Full status estate agent	1.6%	27.9%	27%		23.8%	32%
Principal estate agent		9.8%	9%		11.5%	7.4%

Unsure of classification		0.8%			0.8%	
Total %	1.6%	50.8%	44.2%	0.8%	44.3%	50.1%

Scrapped = 4 / Scrapped = 5

Table 7: Correlation between category of estate agent and correct interpretation of the Code of Conduct Clause

Operating period of estate agent / principal	Clause 1: I don't know	Clause 1: Incorrect	Clause 1: Correct	Clause 2: I don't know	Clause 2: Correct	Clause 2: Incorrect
Just started		4.1%	3.3%	0.8%	4.1%	2.5%
Less than 6 months	0.8%	4.9%	4.1%	0.8%	4.9%	4.1%
Between 6 months and a year		6.6%	6.6%		4.1%	9%
1-5 Years	0.8%	17.2%	17.2%		15.6%	18.9%
6-10 Years		9.8%	8.2%		19.8%	8.2%
More than 10 years		8.2%	4.1%		4.9%	6.6%

Scrapped =5/ Scrapped =7

Table 8: Correlation between period of operation and correct interpretation of the Code of Conduct Clause

Board exam status	Clause 1: I don't know	Clause 1: Incorrect	Clause 1: Correct	Clause 2: I don't know	Clause 2: Correct	Clause 2: Incorrect
Haven't written the Board exam	0.8%	13.9%	8.2%	0.8%	13.1%	9.8%
Have written the Board exam but failed	0.8%	6.6%	5.7%		4.9%	7.4%

Have passed the Board exam	30.3%	27%		25.4%	31.1%
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Scrapped = 8/ Scrapped = 9

Table 9: Correlation between passing the Board exam and correct interpretation of the Code of Conduct clauses

#### **4.1.3 Support of clauses within the Code of Conduct**

Section 3 of the questionnaire aimed to determine whether estate agents and principals support clauses within the Code of Conduct.

Ho: Real Estate agents support the contents of the Code of Conduct

Category of estate agent	Code 1: Supportive	Code 1: Non-Supportive	Code 2: Supportive	Code 2: Non-Supportive
Not an estate agent	0.8%		0.8%	
Candidate estate agent	19.7%	1.6%	20.5%	0.8%
Full status estate agent	46.7%	9.8%	50.8%	2.5%
Principal estate agent	16.4%	2.5%	16.4%	2.5%
Unsure of classification	0.8%		0.8%	
Total	84.4%	13.9%	89.3%	5.8%

Scrapped = 3/Scrapped = 4

Table 10: Support for clauses in the Code of Conduct per category of estate agent.

#### **4.1.4 Ethical behaviour in the real estate industry**

Section 4 posed seven scenarios, which estate agents had to rate on a scale from strongly agree to strongly disagree. The scenarios were all related to level of ethical behaviour experienced by respondents. Principal estate agents were not required to answer the section as certain questions related to ethical behaviour of principals as perceived by employee estate agents.

Ho: Real estate agents behave ethically

	Strongly agree	Agree	Disagree	Strongly disagree
My principal stresses I work in an ethical manner.	71.8%	20%	3.5%	4.7%
My principal always behaves in an ethical manner.	60%	28.2%	8.2%	2.4%
My company provides clear guidance on how I should behave ethically.	62.4%	31.8%	4.7%	
I have never been required to do something I believe was unethical.	69.4%	27.1%	1.2%	
I have never observed any of my estate agent colleagues behave in an unethical manner.	41.2%	34.1%	18.8%	4.7%
I have never done anything I feel to be unethical.	74.1%	23.5%	1.2%	
If someone in my company did something unethical, they would be punished.	54.1%	32.9%	9.4%	2.4%

There were 85 respondents excluding 15 scrapped answers (respondents may have been unwilling to participate due to fear of reprisal from principals or colleagues, hence the high level of scrapped answers).

Table 11: Level of perceived ethical behaviour

#### **4.1.5 Moral Intent**

Section 5 of the questionnaire explored whether there is a positive correlation between support of the EAAB Code of Conduct (Item 13) and moral intent.

Ho: There is a positive correlation between support of the EAAB Code of Conduct and moral intent

	Strongly agree	Agree	Disagree	Strongly disagree	Ethical best option
1. A purchaser tells me he is willing to up his offer price on a property, but requests me not to tell the seller. I will disclose this information to the seller.	33%	24.7%	27.8%	14.3%	Ethical dilemma
2. A purchaser, new in town, shows interest in a property I have on show. The area is locally known for its high level of crime. I will not disclose this information to the purchaser if the purchaser doesn't ask me about the crime situation.	7.2%	15.5%	43.3%	36.1%	Disagree
3. I always explain in detail the implications to the purchaser of his breaching the sales contract.	61.9%	38.1%	1%		Agree
4. I will tell a seller that I have purchasers suitable for his property in order to secure a sole mandate, even if I don't have potential buyers.	3.1%	9.3%	28.9%	59.8%	Disagree
5. I will disclose to a prospective purchaser that the seller is selling due to getting divorced, as this will indicate to the purchaser that the seller is serious about selling.	11.3%	28.9%	38.1%	22.7%	Disagree
6. A purchaser discloses that he had seen a particular property the previous day through another agency. I will tell the buyer he can put an offer in through me and I will	3.1%	15.5%	28.9%	53.6%	Disagree

share commission with the other estate agency.					
7. I insist, or will insist that purchasers use the bond originators I choose.	4.1%	1%	45.4%	49.5%	Disagree
8. A purchaser's deposit can be used to pay my commission prior to registration of transfer.	4.1%	9.3%	34%	52.6%	Disagree
9. I take, or will take, sole mandates without inserting the expiry date.		4.1%	18.6%	78.35	Disagree
10. I place, or will place classified property ads in the press without disclosing that I am estate agent.	1%		35.1%	63.9%	Disagree

Altogether 97 respondents (excluding scrapped questionnaires) supported the Code of Conduct.

Table 12: Correlation between support of the Code of Conduct and moral intent

	Strongly agree	Agree	Disagree	Strongly disagree	Ethical best option
1. A purchaser tells me he is willing to up his offer price on a property, but requests me not to tell the seller. I will disclose this information to the seller.	41.7%	16,7%	33.3%	8.3%	Ethical dilemma
2. A purchaser, new in town, shows interest in a property I have on show. The area is locally known for its high level of crime. I will not disclose this information to the purchaser if the purchaser doesn't			66.7%	33.3%	Disagree

ask me about the crime situation.					
3. I always explain in detail the implications to the purchaser of his breaching the sales contract.	91.7%	8.3%			Agree
4. I will tell a seller that I have purchasers suitable for his property in order to secure a sole mandate, even if I don't have potential buyers.		8.3%	41.7%	50%	Disagree
5. I will disclose to a prospective purchaser that the seller is selling due to getting divorced, as this will indicate to the purchaser that the seller is serious about selling.	33.3%	41.7%	16.7%	8.3%	Disagree
6. A purchaser discloses that he had seen a particular property the previous day through another agency. I will tell the buyer he can put an offer in through me and I will share commission with the other estate agency.	8.3%	8.3%	41.7%	41.7%	Disagree
7. I insist, or will insist that purchasers use the bond originators I choose.	8.3%	16.7%	50%	25%	Disagree
8. A purchaser's deposit can be used to pay my commission prior to registration of transfer.		33.3%	33.3%	33.3%	Disagree
9. I take, or will take, sole mandates without inserting the expiry date.	8.3%		25%	66.7%	Disagree
10. I place, or will place classified property ads in the press without		8.3%	25%	66.7%	Disagree

disclosing that I am estate agent.

Altogether 12 respondents (excluding scrapped questionnaires) DID not support the Code of Conduct

Table 13: Correlation between NON-support of the Code of Conduct and moral intent

## **4.2 Qualitative research results**

In order to gain a deeper understanding of ethical behaviour of estate agents and the effectiveness of the Code of Conduct in supporting and improving ethical behaviour, as well as to develop the foundation of the recommendations and model, qualitative research was also conducted by means of the following interviews:

Mr Clive Ashpol, EAAB Manager for education and training: Appendix 4

Mr Ken Ralph, IEASA National Vice President: Appendix 5

Professor Marius Vermaak, Rhodes University Associate Professor of Philosophy and Dean of the International Office: Appendix 6

Professor Piet Naude, Head of NMMU Unit for Business Ethics and President Business Ethics Network of Africa (BEN-Africa): Appendix 7

Franchisor Interview: Appendix 8

Franchise Group Training Managers: Appendix 9 and 10

Independent Real Estate Trainer: Appendix 11

Macro Real Estate Agency Principals: Appendix 12, 13 and 14

Medium Real Estate Agency Principals: Appendix 15, 16 and 17

Micro Real Estate Agency Principals: Appendix 18, 19 and 20

For ease of reference, the respondents are addressed by surname or position.

The interviews were made relevant to the particular participant, with underlying themes that supported our guiding questions:

- Is the EAAB Code of Conduct supported by stakeholders?
- Is the EAAB Code of Conduct effectively communicated to real estate agents?
- Is the EAAB Code of Conduct enforced by stakeholders?

- Do principals have an influence on the ethical behaviour of real estate agents?
- What level of self-regulation takes place in the real estate industry?
- What disciplinary action is taken when the EAAB Code of Conduct is contravened?
- Is the disciplinary action effective in reducing contravention?

The results of these interviews are divided broadly in line with the questions asked of respondents:

#### ***4.2.1 Characteristics of an ethical real estate agent***

Ashpol's (2008) opinion is that the EAAB Code of Conduct is simply a code of good business practice, and that agents should act in such a way as to reflect positively on estate agents and not bring the industry into disrepute.

Ralph (2008) touches on the issue of professionalism, where estate agents do what should be done within the ambit of a professional industry.

The franchise group CEO stated that an ethical estate agent is someone who observes the Code of Conduct, and who has a belief of what is right or wrong. The rule of 'do unto others as you would want them to do unto you' is applicable.

The training managers interviewed spoke of honesty, integrity and transparency and underlying good business practice. An ethical estate agent is one who puts his clients first, and has the correct mindset according to the independent real estate trainer. He felt that an action is right or it is wrong - an estate agent is ethical or not.

Macro 1 emphasized that an ethical estate agent should service the client and be driven by empathy, believing that most deals collapse because of unethical behaviour. Macro 2 spoke of the importance of working according to the Code of Conduct which was the '10 commandments' of real estate. She felt that there was a fine line between been 'skelm' and 'sharp' – she would ask the estate agent how they would feel if someone did the same thing to them, and if they wouldn't like it, then it was 'skelm'. Macro 3 also spoke of sticking to the rules.

Medium 1 spoke of honesty to the general public, and that ethical behaviour included reliability and a motivated approach by the estate agent. Medium 2 echoed that an ethical estate agent is honest and displays integrity, while Medium 3 felt ethical behaviour encompassed the values of trustworthiness and professionalism.

Micro 1 believed an ethical estate agent is one who does what is right. Micro 2 interpreted an ethical estate agent as one who has rules and regulations to follow. Micro 3 spoke of putting the other person first and knowing what the EAAB Code of Conduct is about and keeping to it.

#### ***4.2.2 Perception of ethical behaviour in the real estate industry***

The EAAB receives about 40 written complaints per day, of which 20 are valid, and in Ashpol's (2008) opinion, could have been avoided if the real estate agent had complied with the Code of Conduct. He further adds that the primary reason for this is that real estate agents are rewarded on results, which acts as an incentive to non-disclosure if disclosure would impact negatively on a sale. The rewarding of results also encourages agents to put undue pressure on their clients to agree to an offer. Ralph (2008) echoes the fact that unethical behaviour is a particular feature of the sales industry; it is a reality and it would be impossible to stamp out unethical behaviour.

The franchise group CEO was of the opinion that one cannot make a blanket statement that there is a lack of ethical behaviour by estate agents. Rather there is a lack of ethical behaviour by some – it depends on the individual.

Training manager 1 felt that ethical behaviour had improved dramatically over the last 25 years because the industry is more career orientated today. This doesn't, however, prevent 'loose cannons' especially in a booming property market. The new training requirements were felt to be positive in that they would root out unethical estate agents. She felt that ethical estate agents stay in the business for a long time because of their ethical behaviour. Training manager 2 stated that she believed there was a general lack of ethical behaviour amongst estate agents, while the independent real estate trainer believed a large percentage of estate agents to be unethical across the spectrum, with the larger real estate groups also exhibiting unethical behaviour.

Macro 1 believes that there is a lot of unethical behaviour in the real estate industry, citing examples of mandates not being explained to sellers, agents discrediting other estate agents, and greed undermining the real estate process. Macro 2 concurs that there is a lack of ethical behaviour by estate agents and is therefore supportive of the new training requirements. Macro 3 highlights the unethical behaviour amongst estate agents, calling them 'cut-throat and hungry'.

Medium 1 believes that the main problem is with new estate agents. Medium 2 explains that this could be due to older estate agents having a better ethical grounding, and there having

been a subsequent influx of unethical estate agents. Medium 3 has experienced unethical behaviour and the concern that estate agents get away with their unethical behaviour.

Micro 1 states that in general estate agents are ethical, although there are agents she feels uncomfortable with due to unethical behaviour. Micro 3 feel that there is a lack of ethical behaviour because real estate agents don't know the concept of looking after buyers and sellers.

#### ***4.2.3 Primary ethical concerns***

One of the main ethical concerns from the EAAB is the lack of disclosure by real estate agents, or at the very least, making light of negative aspects. While Ashpol (2008) feels consumers should exercise some measure of caution, in general consumers rely on the integrity of real estate agents. Another concern cited is that real estate agents do not advise clients of their right to interest on trust monies.

#### ***4.2.4 Does the EAAB Code of Conduct address these ethical concerns?***

Ashpol (2008) does believe that the EAAB Code of Conduct deals with the primary ethical concerns he cited. He felt that areas that still needed to be addressed were where there were gaps, such as sectional title administrators and specialisations such as business broking. He confirmed that the EAAB is currently reviewing the Code of Conduct.

#### ***4.2.5 Has the EAAB Code of Conduct had an impact on ethical behaviour of estate agents?***

Ashpol (2008) believes that the Code of Conduct has indeed had such an impact, in the sense that real estate agents are forced to comply, for fear of having their Fidelity Certificates revoked. He does acknowledge that there are real estate agents in the industry who are sticklers for the Code of Conduct, but regrets that they are likely to be in the minority. The EAAB is hoping that the new training requirements will lead to a reduction in complaints and disciplinary hearings.

The Code of Conduct is clear and gives a clear understanding of what an estate agent can and cannot do, and as such, provides ethical guidelines for the franchise group, according to its CEO.

Training manager 1 believes the EAAB Code of Conduct provides ethical guidelines to the entire industry, while Training manager 2 stated that franchisees and offices act along the guidelines of the Code of Conduct.

#### ***4.2.6 EAAB exam***

Real estate industry participants in the research were asked whether it was compulsory for their estate agents, or estate agents within their group, to write the EAAB exam.

The franchise group CEO stated that it would depend on certain factors. An experienced estate agent would not be required to write the EAAB exam. Training manager 1 confirmed that it was compulsory for company-owned branches' estate agents to write the EAAB exam, but not so for franchisees, although it was company policy that estate agents write the exam. Training manager 2 said it was not compulsory for estate agents to write the EAAB exam, although she strongly encouraged them to do so.

Macro 1 believes that knowledge is power, and encourages her estate agents to write the EAAB exam. Medium 2 encourages her estate agents to write the exam although it is not compulsory. She cites the example of one of her good and ethical estate agents having failed the EAAB exam three times. It is compulsory for estate agents to write the EAAB exam in Macro 2, Macro 3, Medium 1 and Medium 3 estate agencies.

#### **4.2.7 Role of Services SETA**

Ashpol (2008) was quite emphatic that it is the EAAB's responsibility to inculcate ethical behaviour in the industry, and that SETA performs the role of quality assurance for education only.

#### **4.2.8 Role of the IEASA**

One of the prime aims of the IEASA is education in the industry. It does not provide training exclusively to members, although non-members may have to pay a slightly higher amount. This training, Ralph hopes, will keep unethical behaviour to a minimum (2008).

The franchise group CEO confirmed that Code of Conduct training should be a role of IEASA.

Training Manager 1 felt that the role of IEASA was critical for smaller estate agencies that did not benefit from internal group training – they must in effect provide the training function that is lacking for these firms. Training manager 2 felt that IEASA should improve knowledge of ethical behaviour and the Code of Conduct.

Training for estate agents, especially ethics training, was a predominant theme in the principal interviews when principals were asked for their opinion on the role of the IEASA. Macro 1 (2008: personal interview) raised the issue that they had never received any ethics training, feeling that the 'Institute only wakes up when there is a dispute'. Medium 2 also suggested ethics training. Macro 2 raised the concern that IEASA only has the ability to regulate its own members and there is little the IEASA can do about unethical estate agents

outside its membership base. Macro 3 felt the IEASA should back the EAAB, and provide agents and the general public with support. Medium 1 and Micro 1 felt IEASA should also restrict internal membership based on ethical behaviour.

#### ***4.2.9 Relationship between IEASA and the EAAB***

Organised industry, in Ashpol's (2008) view, is valuable in ensuring the inculcation of the Code of Conduct in its members. He states that due to the fact that the EAAB doesn't operate at grassroots level, it relies on IEASA reporting on what is happening in the workplace, and what the EAAB needs to do. The EAAB relies on IEASA expertise and takes their comments very seriously.

#### ***4.2.10 IEASA Code of Conduct***

Ralph (2008) explains the rationale of a separate Code of Ethics for IEASA as being applicable to IEASA members because it is more elaborative and more comprehensive, and includes inter-member behaviour. The IEASA tries to handle problems before EAAB involvement. Membership of their ILS (Institute Listing Service) includes compulsory training on the IEASA Code of Conduct.

#### ***4.2.11 Internal Code of Conduct***

The franchise group does not have an internal Code of Conduct. Every member of the group gets a copy of the Code, which they have to observe. Their Policy Document makes reference to the Code of Conduct.

Training manager 1 stated that they also didn't have an internal Code of Conduct, but worked according to the EAAB Code of Conduct and IEASA Code of Ethics. Training manager 2 made mention of an 'Office Policy' that covered how estate agents should deal with their clients and how they should behave in their offices.

Of the principals interviewed, none reported that their agencies had a specific internal Code of Conduct, although some referred to their internal office policies or mission and values as offering ethical guidelines. Two of the Micro estate agencies indicated an intention to develop internal codes of conduct as they grew.

#### ***4.2.12 Role of principal estate agents***

From the perspective of the Franchise Group CEO, the franchise principal does have an influence on the ethical culture of the franchise. It 'starts at the top', hence the complicated process when getting a franchise.

Professor Naude (2008) felt that principals should play an important role in the discipline aspect of the Code of Conduct, ensuring that procedures are strictly adhered to.

The independent real estate training provider suggested that the EAAB should sponsor / conduct principal training, believing that if principals come right, the industry will 'come right'.

In the interviews, principals were asked whether they believed they had any influence on the ethical behaviour of their estate agents. Macro 2 stated that she acts ethically and estate agents are made aware that should they act unethically, they will be dismissed. Macro 3 believes it is an issue of 'leading by example', and feels that his life is run by ethics.

Medium 1 believes that real estate agents follow in the principal's footsteps: "I do the right thing and they follow my steps". Medium 2 believes that as principal you set the precedent, and this translates into ethical behaviour of estate agents. Similarly, Medium 3 states that ethical behaviour 'rubs-off', and encourages estate agents to call to check what to do, and thus ensure ethical activity. Micro 3 believes as principal one is a role model, and that her ethical behaviour would have an impact on her estate agents.

#### ***4.2.13 Role of real estate groups***

Ashpol (2008) believes the franchisor needs to play a more constructive mentorship role to franchisees. They also need to properly qualify their franchisees prior to selling the franchise – 'the only qualification they seem to do at the moment is to see if they have the money.' He adds that a lot of the complaints received by the EAAB are regarding franchisees. Another complaint is that the franchising company does not disclose the true cost of buying a franchise, and Ashpol does not see a mentoring relationship accompanying the franchise.

The franchise group CEO was a member of the EAAB, and served as Chairman for three years. He was very involved in the development of the EAAB Code of Conduct, and worked with Professor Henk Delport in this regard. He further felt that his group did play a role in improving the ethical behaviour of estate agents – their recruitment process provides for estate agents agreeing to comply with the EAAB Code of Conduct.

Training manager 1 also felt that real estate groups play a critical role in creating a culture of ethical behaviour, where there is a focus on ethics and not finance. Within her group, unethical behaviour was seen as an embarrassment.

Training manager 2 felt the franchisor should start by ensuring that their franchisees act ethically. The franchise groups should lead the industry by example – hopefully this would siphon down to the broader real estate community.

The independent real estate trainer felt that there should be higher levels of entry qualifications for franchisees and licensees. The EAAB should provide information on whether these applicants had faced disciplinary action in the past.

The independent real estate trainer suggested Real Estate Groups should establish a 'Complaints Call Centre' for the public, which could encourage the public to do more business with franchisees.

The influence of the larger real estate groups was recognised by principals interviewed. Macro 1 felt that estate agents 'look up to' bigger companies, citing her personal experience of the influence Pam Golding has had on her. Medium 2 shared a similar view, stating that franchise groups should set a precedent for the industry. Macro 2's opinion was that most franchise group CEOs were reputable, and suggested that these groups share information on unethical estate agents to prevent re-employment. Macro 3 emphasised the role that franchise groups should play in providing regular internal training on the Code of Conduct, and the need to dismiss those who are unethical. Medium 3 criticised franchise groups for not providing enough training and for choosing principals and agents poorly. Micro 2 felt that these groups should also contribute towards IEASA to provide industry-wide training.

#### ***4.2.14 Role of EAAB***

The franchise group CEO stated the EAAB should also mediate between agent and agent in order to improve ethical behaviour.

The time taken to handle complaints against estate agents was also highlighted as a problem by the franchise group CEO, and a speedier process was recommended to deal with the complaint and conduct a hearing if need be. Training manager 2's perception was also that the EAAB was not following up on complaints. Training manager 1 felt that the EAAB was playing a role in the disciplinary hearings, and believed that the EAAB was investigating.

Training manager 1 voiced the concern that there was not enough awareness among the public of their rights when encountering unethical behaviour, where the EAAB could play a bigger role. The independent real estate trainer similarly felt that the EAAB should inform the public about what their rights are in layman's language.

Macro 1 and Medium 1 felt that the EAAB should check before accepting estate agents (criminal / financial), and that stricter criteria need to apply for principals. Macro 2 suggested regional offices with respective inspectors should enforce compliance. This sentiment was repeated by Macro 3, that an office is needed in each region, as well as a need for the Code

of Conduct to be entrenched in the new training requirements. Medium 2 suggested more control (enforcement) of the Code of Conduct and consequences to pay.

Medium 3 covered compliance, registration, expelling unethical estate agents, and the provision of regular training sessions. Micro 1 spoke of training and enforcement. Micro 3 felt it important that the EAAB provide a better service to real estate agents and treat them with more respect. Micro 1 also suggested that the Code of Conduct document be distributed to all estate agents on an annual basis.

#### ***4.2.15 Communication of the Code of Conduct***

Ashpol (2008) confirmed that the EAAB communicates the contents of the Code of Conduct by means of their website, imbizos and their magazine, and that it will be well communicated in their new training material. The EAAB had expected principals to inculcate the Code of Conduct, but in Ashpol's opinion, this has never happened, and therefore the need for the EAAB to inculcate it themselves. Irrespective of how it is communicated, he is of the view that real estate agents should know the Code of Conduct and that ignorance is no excuse for not knowing what the Code lays down.

Ashpol also confirmed, when the question was posed, that the EAAB intends making information on disciplinary hearings available to estate agents through its website. It also intends publishing case studies that can assist estate agents interpret the Code of Conduct.

#### ***4.2.16 Training on the Code of Conduct and in general***

Ashpol (2008) confirmed that great emphasis was placed on the Code of Conduct in the new training material. The new training regimen will ensure monitoring of the mentoring relationship between principal and real estate agent, which he hopes will encourage Code of Conduct compliance.

The IEASA used to run EAAB exam courses which covered the Code of Conduct as a major focus.

The franchise group CEO confirmed that they run an introductory course to real estate three times a year as well as on-going training. The lecture format training covers the EAAB Code of Conduct, both in going through the Code and in dealing with specific issues. Integrity is stressed.

The real estate group that Training Manager 1 is accountable to, has an internal training academy with designated trainers for franchisees, and training managers within each province. Training for the group is seen as a competitive advantage. The training covers the

EAAB Code of Conduct in the (previous) EAAB exam course and in their internal training. Training manager 2 was responsible for principal and estate agency training, and training covers the EAAB Code of Conduct in detail.

The independent real estate trainer confirmed that he covers the EAAB Code of Conduct in detail, and his management training focuses on fair behaviour to estate agents and clients. He has created a simplified Code of Conduct, and goes through each clause with trainees and gives examples.

Macro 1 has internal training which covers ethical issues, but indirectly. The Code of Conduct is referred to in the training. Macro 2 has formal training on the EAAB Code of Conduct and each estate agent has a 'blue book' which contains the Code of Conduct. They also receive training on the Code of Conduct if they receive training prior to writing the EAAB exam. Macro 3 does receive training on the Code of Conduct in training provided by the franchisor.

Medium 1 does not provide specific training on the Code of Conduct, but provides general training which does cover ethical issues. The principal of Medium 2 has gone through the Code of Conduct in internal training, and the Code of Conduct is displayed on their notice board. Medium 3 facilitates training on the EAAB Code of Conduct when they join, principally through attendance at the IEASA regional training.

#### ***4.2.17 Ethics education and training***

Professor Vermaak (2008) suggested that training should begin with real cases. The first step would be to spot the problem – they should see that there is a problem or else it would be pointless. Once the problem is spotted the individual should be allowed to work through solutions, applying the Code of Conduct. The training should sharpen the awareness, which he termed salience. Individuals may be able to solve the problem, but sometimes the problem comes in the form of a dilemma such as between self-interest and the other person's interest. A second dilemma is a conflict of interests, and the third type of dilemma is when there is a conflict between two ethical 'thoughts'.

Ethics training, in Professor Vermaak's view, allows people to see the bigger picture and allows them to apply the Code 'more intelligently, more effectively'. Estate agents should understand the important role they play in society. He cautioned that there was a limitation to ethics training: 'if someone is open to temptation, if someone is weak, if someone is bad, ethics training will not help', hence the need for enforcement.

Professor Naude (2008) talks of how ethics training is not about telling people what to do, but rather it aims to force people to think about what they do. Ethics training, in his view, should

marry the ethical dilemma experiences of individuals to provisions in the Code of Conduct, and this in turn will allow them to understand the rationale of the particular Code.

The independent real estate trainer felt that one could not train someone to be honest, but one can explain the ramifications of unethical behaviour and advise guidelines. He suggests that real estate agents resign if they experience unethical behaviour.

None of the estate agency principals interviewed had benefited from any formal ethics training course. This excludes ethical issues covered by the Code of Conduct as detailed in the previous section.

#### ***4.2.18 Ethical behaviour and business success***

The franchise group CEO was insightful in as much as he felt it was a dual-edged sword. They had turned business away because it was unethical, thus forfeiting commission. While he felt that the public knew they were an ethical company, he was sure that this translated into client support. This was irrelevant though, as this was simply the way they conducted their business.

Macro 1 believed that ethical behaviour had a definite influence on the business, and felt the business would not be where it is today had it not acted ethically. It helps the company develop a rapport with clients. Macro 2 concurred, while Macro 3 believed it paramount in business and a drawcard to repeat business.

Medium 1 was able to cite examples of how ethical behaviour led to business, while Medium 2 experienced comments from public and feedback from clients on their ethical behaviour. Medium 3 took the stance that unethical behaviour damages the firm's reputation and that 'bad things spread like fire'.

Micro 1 stated that a lot of people are referred to her because she is 'professional' which she believes is implied ethical behaviour. Micro 2 feels that unethical behaviour would negatively impact her business if her estate agents misrepresented the firm. Micro 3 also talks of word of mouth and how clients refer business to her because her service is good.

#### ***4.2.19 Enforcement of the Code of Conduct***

Professor Vermaak (2008) felt that while the Code of Conduct may help with spotting the problem, it won't necessarily provide a solution. Even if an individual knows what to do, it doesn't mean an individual will necessarily do it. In his view, this necessitated an enforcement aspect to the Code of Conduct with disciplinary action.

The EAAB has acknowledged that policing of estate agents has not been at the level that it should have been. They are now establishing an inspectorate division with four main functions: Firstly to police non-registered estate agents and take criminal steps against them, secondly to check that trust accounts are being properly maintained, third, as supervisory body of the FIC (Financial Intelligence Centre) to ensure compliance with FICA, and lastly, education compliance – external moderations and verifications of the accredited providers.

While the EAAB conducts the disciplinary hearings, the IEASA are often asked for recommendations of people who should be involved in disciplinary hearings.

The IEASA has its own internal mechanism for enforcement of the Code of Conduct. Prior to becoming a member of IEASA, members must sign a form confirming that they will abide by the EAAB Code of Conduct and the IEASA Code of Ethics. The IEASA will not cover up an issue, but if a complaint is received from the general public, IEASA will try to sort out the problem prior to referral to the EAAB. If an agent's behaviour is found to be a disgrace, the IEASA would remove their membership.

From the franchise group CEO's perspective, when a franchisee has behaved unethically, he would firstly find out both sides of the story. If it is a mistake – it is seen as part of the process. If it is unethical, they have the ability to utilise the escape clause in their franchise agreement, and have in the past cancelled a franchise agreement due to unethical behaviour. In this case the franchise group carries the family name, and they take their reputation very seriously. When asked how he would deal with a franchisee that had been found guilty of contravention of the Code of Conduct, the answer was that it would depend on the contravention itself.

While the franchise group did not allude to an actual policing mechanism, the CEO felt that their open door policy worked due to the fact that management were hands on – 'our people know there is a line that cannot be crossed'.

The franchise group CEO felt that the EAAB needed to firmly apply the Code of Conduct, with speedy disciplinary hearings, and that agent vs agent disputes also needed to be addressed.

The independent real estate trainer held the strong view that 'you create unethical behaviour' by not policing. And even with the new training requirements, these will mean nothing unless the industry is effectively policed.

The interviews with principal estate agents questioned what action the principal would take if their agent acted unethically. The question tried to identify internal enforcement of Code of Conduct principles.

Macro 1 would confront the estate agent when becoming aware of the problem. This would be followed up with contact with the client and corrective action. If 'unbearable', the principal would dismiss the real estate agent, irrespective of how 'good' they were. Macro 2 was more emphatic: if she discovered unethical behaviour of a real estate agent 'I pack their bags and take it to their car'. Macro 3 would also conduct a thorough investigation into the matter and dismiss the estate agent if the behaviour was unethical.

Medium 1 takes a strong approach, believing that there is only right or wrong. Medium 2 feels she could not have such an estate agent in her office as there is a level of trust within her office. Medium 3 would also investigate the issue, and the agency would take responsibility for the action. Medium 3 proposes first to re-train the estate agent, failing which, the estate agent would be dismissed. Micro 2 also talks of 'counselling' the estate agent, believing that the action may have been out of ignorance.

#### ***4.2.20 Disciplinary hearings***

The principal interviews included a section on reported contravention by respondent estate agencies of the Code of Conduct. An attempt was made to understand the nature of the complaint, the findings, support of findings, and the reaction towards the estate agent concerned.

Most of the principals interviewed had not experienced any complaint or faced a disciplinary hearing. As has been mentioned in this research report, this is an area of potential future research.

Macro 2 had faced an EAAB disciplinary hearing, and while the agent was not found guilty of contravention of the Code of Conduct, the principal's perception was that the process was biased in order to 'nail the agent'. The principal supported the real estate agent whom she felt to be innocent. If the agent had acted unethically, the principal would have dismissed the agent.

Medium 1 had had a complaint against them, but the complainant did not arrive for the disciplinary hearing and the matter went no further. The principal felt the complainant to be unfair. She discussed the issue with the estate agent in question, and supported the estate agent through the process.

Macro 3 had not experienced any complaint against their estate agency, mentioning that normally complaints would be handled by the IEASA, thus negating the need for the issue to be addressed at EAAB level. Medium 3 had faced a disciplinary hearing of IEASA and been found not guilty. The principal investigated the matter, attempted to resolve the issue with the complainant, and supported the agent through the process.

#### **4.2.21 Essential elements in the Code of Conduct**

The franchise group CEO believed that the current Code of Conduct had stood well over time, and that the headings themselves were the essential elements of the Code of Conduct – various ethical duties of estate agents.

Training manager 2 felt that a Code of Conduct must guide the estate agents on how they should conduct themselves when dealing with the general public in order to protect the general public.

The independent training manager believed the essential elements in the Code to be estate agents' behaviour with buyers and sellers, guidelines when working with other estate agents, and the relationship between principal and estate agent.

Medium 2 discussed issues surrounding the sole mandate and property valuations (misrepresentations). Medium 3 looked at values, inter-agency rules, and disclosure of personal interest. Micro 1 spoke of the treatment of clients, procedural standards, do's and don'ts. Micro 3 also suggested that the Code of Conduct should specify consequences of non-compliance.

#### **4.2.22 Does the Code of Conduct need a revision?**

Ashpol (2008) confirmed that the Code of Conduct was being reviewed. One area under review by the EAAB was that differentiated aspects of the industry need to be incorporated into the Code.

Ralph (2008) felt that the Code of Conduct needed to be more user friendly – in layman's language. He stated that he would prefer the IEASA Code of Conduct to the current EAAB Code of Conduct. Training Manager 1 also believed the Code of Conduct language to be above the man on the street – 'you need a lawyer to interpret', and has had to resort to summarising and training on her interpretation of the Code.

The franchise group CEO wished for the Code of Conduct provisions to be broadened to include disputes between estate agents themselves, citing a lack of ethical behaviour between estate agents. He also felt that the Code should allow for estate agents to recommend attorneys.

Training manager 1 was concerned that some of the current Codes were open to interpretation, which was a concern. She also felt the Code of Conduct to be 'deurmekaar' and that it did not follow a logical sequence. Training manager 2 also highlighted this

concern that some clauses were ambiguous and could be interpreted differently. The independent real estate trainer felt the EAAB Code of Conduct to be difficult to understand.

He further felt that some clauses were difficult to enforce, and should not even be in the EAAB Code of Conduct, an example of which is the Code dealing with the practice of overvaluing properties in order to secure a mandate. He also believed that there was possibly a need for more clauses.

Macro 1 felt that the mandate time period should be regulated.

Both Macro 2 and 3 raised the issue of protection for the real estate agent, and Medium 1 suggested a Code of Conduct for principals.

Micro 2 also brought up the issue of the need for a re-write, believing the current Code of Conduct to be 'far too long winded'. Her perception is that most estate agents don't understand the Code of Conduct because it is a legal document, and should be more like a training manual.

#### ***4.2.23 Suggestions on improving ethical behaviour***

Training manager 1 felt that ethical behaviour could be improved through creating a company culture based on 'a desire to learn and improve yourself'.

Training manager 2 felt that the EAAB should expose unethical behaviour. Real case studies should be made available in order for estate agents to learn from these examples.

The independent training manager suggested proper inspections

The independent training manager suggested that attorneys should be restricted in the payment of commissions, where payment can only be made on verification that the estate agent holds a Fidelity Certificate.

Macro 1 stressed stronger enforcement by means of EAAB branches in smaller areas. Macro 2 said the starting point was with principals, and to ensure that principals are of good nature. Macro 3 believed everyone in the industry should do a course on the EAAB Code of Conduct. His main concern was the smaller estate agency that does not benefit from the regular training that an estate agent does in a larger real estate group, and suggested that there should be more focus on them joining the larger groups.

Medium 1 believes there needs to be more 'clarification' of the Code of Conduct on ethical dilemma issues. Micro 1 suggested stricter entry criteria, and encouraged principals to dismiss unethical estate agents. Micro 2 took the sentiment one step further and suggested

that a panel should screen estate agents before they can be employed by estate agencies. Micro 3 broadened principal responsibilities to include training on the Code of Conduct.

#### ***4.2.24 Professionalising the industry***

Professor Naude (2008) raised the concern that the real estate industry faces two critical weaknesses. Firstly that the entry threshold is too low, and secondly that there is no Continuous Professional Development (CPD) programme in place.

Both issues were addressed in the interview with Ashpol. The EAAB has a strategy on professionalising the real estate industry and Ashpol hopes that professionalising the industry will be self-serving to the extent that estate agents will start acting as professionals. Once estate agents have passed their (new) Professional Designates Exam, the EAAB is hoping that estate agents will identify as professionals and will understand their professional responsibilities.

When asking Ashpol (2008) whether the NQF Level 4 qualification was sufficient to professionalise the industry, he countered that it was a part of a lifelong learning programme. NQF4, in his view, is sufficient as an initial entry requirement without been a barrier to entry. NQF4 is a qualification for people who are actively engaged in the workplace and thus suitable for the real estate industry. Real estate agents will in addition have to pass the Professional Designates Exam, which is EAAB controlled. There will still be the Continuous Professional Development (CPD) programme, and NQF 5, 6, 7, and 8 are already registered for an individual to progress through during his career.

Ralph (2008: personal interview) pronounced clearly what so many respondents have intimated – 'it would be so nice not to be seen as the bottom rung of the ladder and to be recognised as a professional industry.'

#### ***4.2.25 Transformation***

Ashpol (2008) believes that transformation has no impact on the effectiveness of the Code of Conduct. Language barriers have not proved to be problematic with most new entrants being comfortable with English.

#### ***4.2.26 Self-regulation vs statutory regulation***

Again Ashpol (2008) was emphatic on this point, stating that under no circumstances would the EAAB consider self-regulation. The reason the EAAB was established was that the then industry had requested that a statutory body be established as a result of self-regulation not working.

Professor Naude's (2008: personal interview) view was that a profession should be self-regulated where the 'industry should run itself according to its expectations, discipline, checks, expel, within the legal framework of the land'. The reason for this is autonomy where an individual can make a decision based on specialist knowledge without external influences.

Ralph (2008), who made it clear that he was speaking from a personal perspective, would support internal regulation. He felt that EAAB Board members not all being from the real estate industry was a problem and, in his opinion, didn't work. This viewpoint was supported by the independent real estate trainer who suggested the composition of the EAAB should change.

Principals interviewed had differing views on regulation. Macro 1 opted for statutory regulation, as did Macro 3 who felt the EAAB had more 'strength'.

Macro 2 strongly supported self-regulation citing underperformance of the EAAB as the reason. Medium 1 concurred, saying that disciplinary hearings would be better handled on a regional basis. Medium 2 favoured self-regulation, with the opinion that IEASA is more efficient than the EAAB where 'no-one is brought to task'. Micro 2 and 3 both opted for self-regulation, and supported the IEASA role in this regard as it 'promotes the interests of estate agents'.

Medium 3 was undecided. The principal felt the EAAB was not doing a good job, but felt the IEASA was understaffed to handle the task. Micro 1 did not hold a strong opinion, but sided with the EAAB as it was more 'national' in scope.

#### ***4.2.27 Concluding comments***

Ashpol (2008) confirmed that the EAAB and SARS / Law Society are in discussions to introduce a system of confirming real estate agent registration with the EAAB prior to payment of commission as a tool to ensure estate agents are properly registered and hold a Fidelity Certificate.

When asked how the new training requirements would be promoted to the general public, Ashpol confirmed that there would be a public awareness campaign dealing with issues such as registration of estate agents, right to interest, and access to advice.

The independent real estate training provider suggested a more user-friendly website.

The independent real estate training provider believed the EAAB should have a branch in each major regional centre of the country – wherever there is a deeds office.

The independent real estate training provider felt the EAAB should act on estate agent complaints against unethical behaviour of other estate agents.

Macro 1 made the comment that estate agencies do not need trust accounts (which is currently a statutory regulation).

Most principals interviewed were passionate about improving the professional standard of the industry.

Macro 1 suggested that commission payments be controlled by conveyancing attorneys, where payment would be subject to the estate agent holding a Fidelity Certificate.

Macro 2 believes that the effectiveness of the Code of Conduct starts at the top – namely the EAAB – and that the EAAB needs to be strong and to support both the general public and estate agents.

To improve the stature of estate agents, Macro 3 recommended publicising the new training requirements to the general public.

# CHAPTER 5: CONCLUSION, RECOMMENDATIONS AND THE TEN ELEMENT MODEL FOR AN EFFECTIVE CODE OF CONDUCT

## 5.1 Reflection on quantitative research results

Tables 1 – 13 in Chapter 4 provide a valuable 'snapshot' of the real estate industry with regard to estate agents and principals in South Africa.

Of the estate agents who took part in the census, 23.8% were candidate estate agents, 54.56% full status estate agents and 18% principal estate agents. The high percentage of candidate estate agents possibly reflects the high turnover of estate agents and current ease of entry into the industry prior to the new training requirements. The large number of principals relative to other categories of estate agents, namely 18%, is indicative of the fact that many estate agencies are relatively small in size with few estate agents.

The period of operation of estate agents supports the fact that many agents are new to the industry, with 31.96% of the census having less than one year's experience in the industry. Most agents in all categories had been estate agents for between one and five years (36.1%). Only 14% of estate agents had been operating for longer than ten years.

The registration of estate agents with the EAAB was a concern with only 59.8% of the respondents possessing a Fidelity Fund certificate. The EAAB acknowledges that there were past administrative problems in the issuing of Fidelity Fund certificates, which they have made a substantial effort to rectify. The high figure of estate agents not holding Fidelity Fund Certificates could also be attributed to other causes, for example, principals not holding Fidelity Certificates due to the lack of submission of a trust account auditors' report. This in itself is also a concern. The fact that 5.7% of estate agents had not even attempted to register raises the question of whether they are operating illegally due to administrative reasons or simply because they don't understand the ramifications of acting without a Fidelity Certificate. Could the current lack of policing activities by the EAAB have influenced a lax attitude towards registration with the EAAB?

The geographical area in which the research was conducted is a stronghold for the IEASA, and the results may not be a national reflection of IEASA membership. Some 70.5% of respondents were voluntary members of the IEASA, indicating strong support for the industry body.

A high percentage of respondents (24.6%) had not written the EAAB exam. This exam contains a strong emphasis on the Code of Conduct and ethical behaviour, and it could be assumed that those respondents had not had a structured opportunity to study the Code of Conduct. The failure figure is relatively high at 12.3%. Respondents may have failed due to some degree of inability to interpret the Code of Conduct. Approximately 66.7% of respondents who failed had failed in the year prior to the census, while 75% of respondents who passed had done so a year or more prior to the research. It is inconclusive whether training plays a role in improving the ability of estate agents to pass the exam - the majority of estate agents who failed had in actual fact participated in training while the majority of estate agents who had passed had participated in formal training. The training would have included formal training and interpretation of the Code of Conduct for the purposes of preparing for the exam.

The vast majority of estate agents, namely 91.01%, correctly identified that the Code of Conduct was a set of compulsory rules for estate agents. A high proportion of respondents, namely 87.6%, had at some time during their real estate career read the Code of Conduct. The research did not question how long ago this had taken place. There was not a strong correlation between reading the Code of Conduct and writing the EAAB exam.

Of the respondents, 47.5% had a visible Code of Conduct in their offices. While this may seem on the face of it to be a low percentage, the figure is positive in that estate agencies are voluntarily making the Code of Conduct accessible to estate agents within their office environment. The vast majority of estate agents, 85.2%, supported regulation of their industry through the EAAB Code of Conduct.

Only three respondents indicated that they had been reported to the EAAB, of whom none had been fined or disciplined. It is difficult to make any inference based on the small number of estate agents who had been reported. Possible future research could be conducted into complaints, disciplinary hearings, and subsequent penalties.

### ***5.1.1 Interpretation of the EAAB Code of Conduct***

Our first null hypothesis was that real estate agents understand the EAAB Code of Conduct. Two clauses of the Code were detailed and two interpretations per Code given. The respondents were given the option of choosing between the two interpretations and an 'I don't know option'.

Altogether 50.8% of respondents incorrectly interpreted the first clause, and 50.1% of respondents incorrectly interpreted the second clause. The null hypothesis could not be

accepted, thus it cannot be proved that estate agents are correctly able to interpret clauses of the EAAB Code of Conduct.

The results also suggest that there is no correlation between the category of real estate agent and the ability to correctly interpret the clauses of the EAAB Code of Conduct. There is also a lack of correlation between the period of operation as a real estate agent and their ability to interpret the EAAB Code of Conduct. Lastly, there was also a lack of correlation between interpretation of the EAAB Code of Conduct and whether the respondents had written (passed or failed) the EAAB exam.

The clauses chosen were reasonably complex, so it cannot be inferred that estate agents lack the ability to interpret other clauses in the Code of Conduct. However, the fact remains that even having passed the EAAB exam, having gained experience as an estate agent, or being a full status estate agent, does not necessarily equate to the real estate agent's ability to correctly interpret all clauses of the EAAB Code of Conduct.

### ***5.1.2 Support of clauses within the Code of Conduct***

Two clauses were again used in the questionnaire, where respondents were asked whether they support the clause itself or not. This was in terms of our null hypothesis that real estate agents support the contents of the EAAB Code of Conduct.

The vast majority of real estate agents supported the two clauses, with 84.4% supporting the first clause, and 89.3% supporting the second clause. The null hypothesis was thus proved. The research did not explore whether those who did not support the clauses would contravene the clauses in practice.

### ***5.1.3 Ethical behaviour in the real estate industry***

Table 11 reflects the ethical environment of estate agents and their own ethical behaviour. Only non-principal estate agents were required to complete this section of the questionnaire.

Altogether 71.8% of respondents indicated that their principals stressed they work in an ethical manner and 8.2% felt their principals did not stress ethical behaviour. Only 60% of respondents strongly agreed that their principals always acted in an ethical manner, with 10.6% indicating that their principals did not always act ethically. Some 62.4% felt their agencies provided clear guidelines with regard to ethical behaviour. Only 1.2% of real estate agents indicated they had been required to do something unethically. Only 54.1% strongly agreed that their agencies would punish unethical behaviour, with 11.8% indicating that they felt their agencies would take no action.

A concern is the low percentage (41.2%) of respondents, who indicated that they had never observed unethical behaviour by colleagues, and in fact, 23.5% of respondents had observed colleagues behave unethically. Altogether 74.1% of respondents strongly believed they had done nothing unethical, 23.5% agreed that they had done nothing unethical, and only 1.2% indicated they had in the past acted unethically.

Our null hypothesis was that real estate agents behave ethically. With 23.5% of respondents indicating that they had observed unethical behaviour by colleagues, and 10.6% of respondents indicating that their principal does not always act ethically, we are unable to accept this null hypothesis. It is quite clear that in our census there is an element of unethical behaviour.

#### ***5.1.4 Correlation between support of the EAAB Code of Conduct and moral intent***

A total of 97 respondents supported the EAAB Code of Conduct, while 12 respondents did not support the Code. Tables 12 and 13 evaluated moral intent from the perspective of these two opposing views in order to prove our null hypothesis, namely that there is a positive correlation between support of the Code of Conduct and moral intent.

Question 1 is a classic ethical dilemma between buyer and seller's interest. There are a number of alternatives to the question, although respondents were only given two options. Of the supporters of the Code, 57.7% chose to favour the seller, while 58.4% of non-supporters also chose to favour the seller.

The second question explored the issue of disclosure by the real estate agent. A total of 79.4% of the respondents who supported the Code would make disclosure to the purchaser, while 100% of the respondents who did not support the Code would disclose the relevant information.

The third question revolved around the estate agent explaining clauses of an offer to purchase. Only 1% of respondents who supported the Code indicated they would not explain the clause. Once again, 100% percent of the respondents who did not support the code would explain the clause.

Question 4 asked respondents if they would mislead the seller in order to obtain a sole mandate. Some 10.4% of those supporting the Code of Conduct indicated they would mislead the seller, while only 8.3% of those respondents who didn't support the Code would mislead the seller.

Question 5 explored whether the respondents would disclose personal information which infringes on the seller's right to confidentiality. A total of 40.2% of those supporting the Code would disclose the information, while 75% of respondents not supporting the Code would disclose this personal information.

Question 6 deals with estate agents putting their clients at risk of double commission claims. Altogether 18.6% of respondents supporting the Code would put their clients at risk, while 16.6% of those not supporting the Code would put their clients at risk.

The Code of Conduct prohibits undue influence when it comes to issues such as the purchaser's right to use whatever financial institution they may wish to use. Question 7 asks respondents whether they would insist on a purchaser utilising a specific financial institution. Only 5.1% of respondents supporting the Code affirmed that they would insist that a purchaser use a particular bond originator, while 25% of respondents not supporting the Code would similarly insist on utilising the particular bond originator.

While there are certain provisos, deposits held in trust may not be used to pay an estate agent's commission. Some 13.4% of respondents supporting the Code indicated they would use the deposit to pay their commission prior to registration of transfer, while 33.3% of those not supporting the Code would use the deposit.

Question 9 relates to the Code of Conduct provision that all sole mandates should have a calendar date expiry, and not inserting an expiry date is clearly contrary to the Code of Conduct. Only 4.1% of respondents who support the Code would take a sole mandate without an expiry date, while 8.3% of respondents not supporting the Code would take such a sole mandate.

Misleading advertising is covered in the Code of Conduct, and advertising in the press without specifying the estate agency name, may lead potential purchasers to think it is a private sale. Only 1% of respondents supporting the Code would not disclose that they were agents, while 8.3% of non-supporters would disclose that they were real estate agents.

The null hypothesis is rejected as there is no clear correlation between support of the Code of Conduct and moral intent. While questions 5, 7, 8, 9, and 10 indicate a positive correlation, questions 2, 3, 4 and 6 indicate a negative correlation.

The results are, however, valuable in that even though real estate agents support the Code of Conduct, this does not necessarily mean that they will act in accordance with the Code of Conduct's provisions. The reasons for this are unclear, but it could be due to a lack of interpretation capabilities, lack of knowledge of the provisions of the code of conduct, or contradictory non-support of certain of the provisions of the Code of Conduct.



## **5.2 Recommendations to the EAAB**

Both the quantitative and qualitative research results reflect the prevalence of unethical behaviour and a lack of understanding of the provisions of the Code of Conduct.

These results have been interpreted by the researcher who now proposes certain recommendations to the EAAB in an attempt to improve the effectiveness of the Code of Conduct.

### ***5.2.1 Revision of Code of Conduct***

The Code of Conduct itself needs revision. Reasons cited in the research were difficulty in interpretation, difficulty in enforcement, ambiguity and the need to broaden the provisions. Ashpol (2008) has confirmed that a revision of the Code of Conduct is being conducted. The following are key areas that should be addressed in consultation with stakeholders

#### **1. Simpler language**

The language needs to be simpler, and legal terminology should be avoided. The assumption can be made that most estate agents do not have a legal academic background which makes it difficult for them to understand the current terminology of the Code of Conduct. This is also necessary for the general public, who should be in a position to reflect on the Code of Conduct should they feel a real estate agent has acted unethically.

As a departure point, one could refer to the Public Service Commission Code of Conduct for Public Servants (2008) which makes use of a simple, easy to understand point form Code of Conduct. This is combined with an extensive manual that can be referred to for more detailed guidance. Certain principals interviewed, requested that the Code of Conduct be more specific, to avoid incorrect or unfair interpretation. An example cited was the mandate period with the principal requesting a specific guideline on period of mandates. This could be covered in this form of manual.

The training material (EAAB training material, 2008) for Unit Standard 246737 (Appendix 22) is extensive in highlighting ethical issues and application of the Code of Conduct. The numerous case studies in the document will go some way in providing real estate agents with ethical guidelines in applying the Code of Conduct.

#### **2. Additional provisions**

- Provision should be made for behaviour between principals and agents. This point was highlighted in the interviews, where it was felt that much of the

unethical behaviour in the real estate industry was between estate agents, or between estate agents and their principals.

- Differentiated industry: Ashpol himself felt that the Code of Conduct should be broadened to take cognisance of the differentiated industry of real estate, such as business broking.
- A more extensive study should be undertaken of global real estate Codes of Conduct and other Professional Codes of Conduct to determine where there may be a need for further provisions. In the comparison undertaken in this research of real estate Codes of Conduct (Appendix 23), NAR deals with internet advertising, REIA covers the duty to verify information, AIREP details confidentiality, and AIPP looks at training and dispute resolution.

### **5.2.2 Entry requirements**

Professor Naude (2008) highlighted his concern that a critical weakness of the real estate industry is the fact that the entry threshold is too low. Entry requirements should be made more stringent for entrants into the industry. Rossouw et al (2006: 173) detail the key duties of a professional body in governing a profession as 'regulating entrance into the profession by means of training and education minimum requirements, implementing a registration regimen, regulating the technical standards with which members must comply, and regulating the ethical standards with which members must comply'. With regard to the EAAB, the following entry requirements can be enhanced:

#### **1. Training requirements**

The new training requirements came into effect from 15 July 2008, and substantially address this issue. New entrants will now be obliged to enter into a year-long learnership to obtain the FET Certificate Real Estate NQF 4, will have to write the PDE (Professional Designates Exam), and will have to undergo CPD (Continuous Professional Development). Principals will need to undergo more stringent requirements of the National Certificate in Real Estate NQF Level 5. Delport (2007) raised the concern that these new training requirements could become too much of a barrier to entry and lead to lower levels of competition. Ashpol (2008: personal interview) states that the EAAB is 'satisfied that NQF4 is sufficient as an entry requirement without creating a barrier to entry' and that NQF4 is a 'qualification for people who are working' and 'NQF4 is good in that environment'.

#### **2. More stringent screening of principals and estate agents**

It was felt that principals and real estate agents should be better screened to ensure that individuals who had been involved in fraudulent behaviour, or who were unrehabilitated insolvents, did not enter the industry.

3. More stringent enforcement of Fidelity Certificate registration criteria.

### ***5.2.3 Professional industry image***

The EAAB has a strategy on professionalising the industry. Ashpol (2008) hopes that, once real estate agents have passed the new Professional Designates Exam, estate agents will identify as professionals and will understand their professional responsibilities.

The real estate industry currently has a poor reputation and one of the challenges for the EAAB as it professionalises the industry, is to change that perception. The new training requirements should be communicated to the general public, and they should be made aware of the protection that the Code of Conduct affords them. Ralph (2008: personal interview) concludes 'it would be so nice not to be seen as the bottom rung of the ladder and to be recognised as a professional industry'.

### ***5.2.4 Living document***

Forshey et al (2007:17) emphasised the importance of a 'living code of ethics' that is intrinsically the organisation's identity. This should be underpinned by authentic leadership, formal and informal organisational processes, and finally by an ethical organisational culture.

Similarly, the EAAB Code of Conduct needs to be viewed as a living document, and the EAAB should encourage discussion, debate and knowledge transfer. An ideal opportunity would be during the process of revising the Code of Conduct where industry interaction could be encouraged. It is again important to emphasise the importance of simplifying the language of the Code of Conduct, in order for it to be better interpreted and applied.

Levin (1982: 65) cautioned against the tendency for a Code of Conduct 'to be left in a corner gathering dust'. In view of this, another suggestion is that the Code of Conduct be given more exposure through regular distribution of the Code to real estate agents, and possibly the development of a Code of Conduct poster that can be displayed in real estate agency offices.

Ethical behaviour should be rewarded (Irvie, Lindsay & Lindsay, 2996), and the EAAB is encouraged to develop an ethics awards system to recognise real estate agents and estate agencies that further the ethical culture of the industry. Real estate groups and principals should be encouraged to reward their estate agents for ethical behaviour, in order to cultivate

a culture that engenders ethical behaviour, rather than just relying on enforcement and penalties.

### ***5.2.5 Improved communication between the EAAB and stakeholders***

A critique has been levelled at the EAAB that they are based in Johannesburg and lack the communications infrastructure to handle the national spread of real estate activity.

It is understood that the EAAB is prevented from accessing the Fidelity Fund for operational activities and that the EAAB does not have its own resources to open regional offices. In view of this, it is recommended that the EAAB lobby government for the establishment of offices in regional centres. This will improve communication between the EAAB, the general public, and the real estate industry. Disciplinary hearings would be able to be convened more speedily, inspections could be more regular, and the registration process streamlined.

Communication can also be enhanced through improvement of its current website and more regular publishing of its industry magazine. These would support the need for communication of ethics-based case studies and ethics issues.

Communication between the EAAB and IEASA, training providers, real estate groups and principals should be actively promoted. The EAAB could use these communication channels to further develop an ethical culture, encourage internal training on ethical matters, encourage compliance and improve contravention reporting mechanisms.

### ***5.2.6 Improved enforcement and higher penalties***

Issacharoff (Moore et al, 2005: 191-197) questioned whether market mechanisms could adequately deal with conflict of interest situations, and Di Lorenzo (2007) determined that regulatory enforcement had a more positive impact on compliance. Higgs-Kleyn and Kapelianis (1999) determined that contravention of professional codes in South Africa took place due to a perception of limited potential of detection.

Ashpol (2008) detailed how the EAAB was embarking on a process to improve enforcement through its new inspectorate activities, and this should assist in improving compliance. The independent training provider also suggested a control mechanism whereby attorneys will not be allowed to pay commission to the real estate agent, if the agent does not hold a valid Fidelity Certificate. Ashpol confirmed that they were in negotiations with SARS and the Law Society in this regard.

It is also suggested that the EAAB should encourage complaints by estate agents of other estate agents as another method of detecting unethical behaviour.

The role of IEASA and principal estate agents should be highlighted, and they should be encouraged to develop internal mechanisms for enforcing and disciplining members and employee estate agents. The EAAB should encourage transparent ethics audits to determine shortcomings by industry participants, and to encourage adoption of corrective action.

The penalties for contravention should be increased to provide a stronger disincentive to contravention.

### ***5.2.7 Training and education programme on ethics and Code of Conduct***

The interviews highlight the fact that training on the Code of Conduct is being conducted by principals, real estate groups, independent trainers and the IEASA. Ethics training is not provided formally.

A critical component of the effectiveness of the Code of Conduct is in education and training. The new FET Certificate in Real Estate NQF 4 does contain Unit Standard 246737 on ethics and the Code of Conduct (Appendix 22) which is commendable. However, in the researcher's opinion, an intensive ethics training programme needs to be embarked upon that will improve understanding and interpretation of the Code of Conduct. In Professor Vermaak's words (2008: personal interview), it will allow estate agents to apply the Code of Conduct 'more intelligently, more effectively'.

The ethics training programme should be developed in consultation with experts in the field. A Rational Interaction for Moral Sensitivity (RIMS) strategy may be one approach that could be utilised in teaching and assisting individuals in resolving ethical dilemmas (Rossouw, 2006). It should firstly target principals. Training and education need to be supported through management (principals and real estate group leadership) setting an ethical precedent (Adam and Avshalom, 2004). This would assist in engendering an ethical culture, and ethics training should be aimed at inculcating ethical behaviour within that estate agency. This should be supplemented with ethics training for real estate agents themselves.

The CPD (Continuous Professional Development) programme should have a strong bias in favour of developing ethical maturity.

### **5.3 Ten Element Model for an Effective Code of Conduct**

Professor Naude (2008) speaks of the limitations of a Code of Conduct. Firstly, he is concerned with the psychological contact with the code. The second limitation is that a Code of Conduct cannot deal with all eventualities and this is when 'ethical maturity' is needed. The third limitation is that a Code of Conduct can be used for marketing to the outside world, but yet be lacking in implementation.

Kaptein and Schwartz (2007: 113) evaluated research into the effectiveness of Business Codes, finding that results differed substantially. They suggest that the effectiveness of a Code of Conduct be analysed on the basis of expectations of stakeholders, environmental circumstances, organisational objectives, how the code was developed (involvement by those for whom it applies), content of the code, implementation of the code, characteristics of the people to whom it applies and consequences on non-compliance.

This research report was unable to establish a relationship between the Code of Conduct, ethical behaviour and moral intent.

The research has, however, highlighted certain themes that the researcher feels could assist in improving the effectiveness of an industry-wide Code of Conduct. In view of this, he has developed the Ten Element Model for an Effective Code of Conduct.

**Ten Element Model for an effective Code of Conduct**

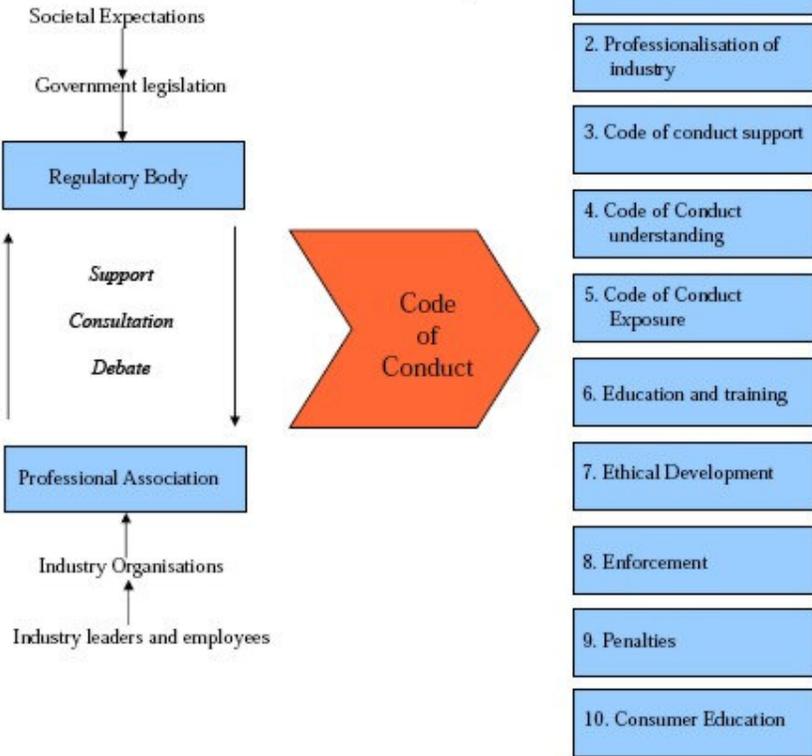


Figure 5: Ten Element Model for an Effective Code of Conduct

Levin (1982) argued that a universal Code of Conduct was impossible. Whilst this may be true of a Code of Conduct, it can also be argued that the tenets underlying the effectiveness of a Code of Conduct can be universally applied. This model is not intended to be specific to the real estate industry, and it is envisioned that the Model could serve as a guideline to most industries tasked with improving ethical behaviour within that industry.

The input to the development of a Code of Conduct lies with the combination of industry needs and societal expectations. Simplistically put, society expects ethical behaviour when dealing with participants in any industry. If there is a perceived or actual risk of unethical behaviour, there will be pressure on government to regulate the industry. This could be implemented by means of establishing a regulatory body such as the EAAB.

From an industry perspective, elements of unethical behaviour could damage the reputation of the industry, and put the industry at risk of regulation or further regulation. For this reason there may be an incentive for organisations to establish a self-regulatory body, such as a professional association.

The Ten Element Model highlights the critical importance of support, consultation and debate that should occur if there is the presence of both a regulatory body and a professional association. This interaction will ensure that the statutory body is kept abreast with the industry developments that impact its regulatory function. The interaction will also allow the professional body to harness the support of the regulatory body in areas of mutual interest.

Obviously different industries and different environments lead to different regulatory mechanisms. Some may be self-regulatory with little government regulation, while others may be entirely government-regulated without the presence of a professional association.

The regulatory and / or professional association develop the Code of Conduct, which should have the following functions (Roussouw et al, 2006: 170): 'Guidance on proper conduct for professionals, adherence to the Code of Conduct protects public interest, and the Code of Conduct should be adhered to by members, the Code of Conduct should be a point of debate, and the Code of Conduct should support a professional's argument when dealing with pressure to violate a particular code'.

For this Code of Conduct to be effective, ten critical elements need to be in place.

## **1. Ethical culture**

An ethical culture should permeate the industry and its stakeholders as its key value. The regulatory body and professional association should place ethical behaviour high on the

industry agenda. Leadership on all levels should be both ethical and entrench ethical behaviour. Organisations and individuals should further ethical behaviour which should be a key element of their organisational culture,

This culture should be translated into active support of the Code of Conduct. This culture can be furthered through the rewarding of ethical behaviour. Regular ethics audits would be a valuable tool to ensure the industry is adopting the correct behaviour.

## ***2. Professionalising the industry***

The Code of Conduct should not operate in a vacuum and it is imperative that the industry be professionalised. We briefly re-visit Rossouw et al (2006: 170), who state that the functions of a Code of Conduct should be to guide professionals on proper conduct, protection of public interest, be a point of debate and support a professional's argument when dealing with pressure to violate a particular Code.

Roussouw et al (2006: 173) detail further how a professional body should govern the profession, with the following key duties:

1. Regulating entrance into the profession by means of minimum requirements in training and education
2. Implementing a registration regimen
3. Regulating the technical standards with which members must comply
4. Regulating the ethical standards with which members must comply – normally adherence to a Code of Conduct which is enforced by disciplinary committees

## ***3. Code of Conduct support***

While this research was unable to prove a correlation between Code of Conduct support and moral intent, support of the Code of Conduct is felt still to be an important element for effectiveness of a Code of Conduct.

Peslak (2007) found that past reading of a Code of Ethics garnered support for the Code, although no significant impact on ethical behaviour was found, yet he determined a positive relationship between Code of Ethics agreement and moral intent.

The relationship between societal expectations and the regulatory body should ensure that societal needs are incorporated into the Code of Conduct, thus garnering the general public support for the provisions of the Code. The relationship between industry individuals and organisations and the professional association should ensure that provisions of the Code are

relevant to the industry, and will be supported by the industry. If they are relevant, the necessity of the Code will be better understood by industry participants, and could lead to better adherence of the Code of Conduct.

#### ***4. Code of Conduct understanding***

The Code of Conduct should be written in such a way as to be easily understood by those to whom the Codes apply. The Codes should also be easily interpreted, easily remembered and easily taught. The Codes should give practical guidance on ethical decision making.

Professor Naude (2008) talks of aspirational and directional codes. Aspirational codes are short and allow for a high level of interpretation, while directional codes are more specific on behavioural elements. A Code of Conduct that is industry wide will normally have to be applied by those who have ethical maturity and by those who lack such maturity.

The Public Service Commission Code of Conduct for Public Servants (2008) addresses the need for a combined aspirational and directional code. The Code of Conduct is aspirational in nature, and this is supported by an explanatory manual (directional) that provides practical examples on how this Code of Conduct should be applied by making use of practical examples.

#### ***5. Code of Conduct exposure***

Peslak (2007) found that past reading of a Code of Ethics garnered support for the code. The Code of Conduct should be viewed as a living document and should be widely available and visible. Code of Conduct provisions should be visible in offices, and industry participants should have copies available.

The Code of Conduct should be a topic of debate and discussion. Conferences and conventions would be an ideal forum to re-emphasise the terms and understanding of the Code of Conduct.

#### ***6. Education and training***

Roussouw et al (2006: 167) suggest that one of the key requirements to a professional industry is an extended period of training and education prior to entry. Professionalising an industry will put an onus on new entrants to comply with entry level requirements. An entry level exam should cover Code of Conduct provisions to ensure new entrants both have the necessary skills as well as know the Code of Conduct.

## **7. Ethical development**

While the Code of Conduct provides guidelines, it will be impossible for a Code to cover all eventualities. This necessitates that the Code be supplemented with formal ethics training. Fact-based case studies and publication of disciplinary hearing findings can provide industry participants with the opportunity to continually improve their awareness of ethical issues and knowledge of how to deal with these issues. This view is supported by Falkenberg and Woiceshyn (2008) who found that exposure to ethics cases can teach and develop moral reasoning.

A CPD (Continuous Professional Development) programme should be implemented that constantly strives to improve understanding and interpretation of the Code of Conduct and ethical issues.

Professor Naude (2008) suggested a peer review system that checks whether agents are acting according to ethical ideals.

Leadership plays a critical role in ethical development. Adam and Avshalom (2004) explored what influenced behaviour when a Code of Conduct was applicable, and found informal methods to be more effective than formal training methods – for example a manager setting an ethical precedent. Stevens (2007: 607) developed a five-step leadership plan to ensure that a Code of Ethics becomes a strategic document within an organisation, some aspects of which can be applied here: 'discussing the topics in the code frequently with everyone and debating trouble spots, using the Code to resolve ethical issues, communicating ethical decisions to all members of the organisation by explaining the rationale and how the code was used to arrive at a decision, and to reward people who behave consistently with the code'.

## **8. Enforcement**

Snell (2007) concludes that ethical behaviour may not occur without investigation, corrective measures and discipline of unethical activities. Issacharoff (Moore et al, 2005: 191-197) suggests that conflicts of interest require the following legal responses: Substantive regulation of legal conflict (Professional Codes of Conduct), Liability regulation (Enforcement to deter negative agent behaviour) and Process regulation (Procedures to limit conflict of interest situations).

The Code of Conduct should be actively enforced. This can take place on all levels: Individual self-control, organisational enforcement of employee behaviour, industry enforcement through professional association condonement, and finally, regulatory body enforcement.

Industry participants should be inspected to ensure compliance with the Code of Conduct. There should also be a mechanism in place to allow for complaints by the general public and industry participants to the regulatory body. These complaints should be investigated and hearings held if necessary.

Professor Naude (2008) cautions against external policing too soon, suggesting that ethics should be an educational process

## **9. Penalties**

Unethical behaviour should be shunned due to the ethical culture of the industry. This in itself could play a valuable role in dissuading individuals from unethical behaviour. Publication of the offence should be an option which could also serve as a tool against unethical behaviour.

The statutory body and / or professional association should have the power to withdraw membership from an individual due to unethical behaviour, and as such prevent the individual from operating within the industry.

Monetary fines and criminal prosecutions may be other options to ensure compliance with the Code of Conduct.

## **10. Consumer education**

The primary rationale behind an industry Code of Conduct is to safeguard the general public. A Code of Conduct should be well publicised to ensure the public know their rights when dealing with the industry. This type of communication will also promote a professional industry image, where unethical behaviour is not acceptable.

## 5.4 Possible future research

This research document has uncovered a number of areas suitable for future research.

The timing of the research was during the transition of the training requirements of estate agents. A valuable research topic would investigate whether the new FET Certificate in Real Estate is more effective in improving the ethical behaviour of estate agents than the previous EAAB exam structure.

Much of the research was limited to one province of South Africa. This may have created some bias in the research results. A larger geographic sample could be undertaken to determine whether the results hold true for a wider geographic area.

A most valuable research topic could be the investigation of the nature of complaints against estate agents and the results of disciplinary hearings. This research could highlight problem areas of unethical behaviour or difficulties with Code of Conduct interpretation.

The low number of estate agents holding Fidelity Certificates was a concern and could compromise the EAAB's strategy to professionalise the industry. Research could be undertaken into the reasons for the low level of estate agents holding a Fidelity Certificate and the relevant underlying factors.

The development of an ethics training programme for the real estate industry could be made the subject of an investigation.

The research did explore self-regulation versus statutory regulation. Interview respondents had conflicting views on whether the EAAB should regulate the industry or not. Future research could explore whether self-regulation or statutory regulation is more effective in professionalising an industry.

The Ten Element Model for an Effective Code of Conduct provides a number of opportunities for future research. The Model should be tested to determine whether effective Codes of Conduct are in actual fact supported by the ten elements.

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# APPENDIXES

1. Glossary of terms
2. Agent and Principal Questionnaire
3. Agent and Principal Questionnaire: Results table
4. EAAB: Manager of education and training (Interview)
5. IEASA: National Vice President (Interview)
6. Professor Marius Vermaak – Rhodes University, Associate Professor of Philosophy (Interview)
7. Professor Piet Naude – NMMU, Head of NMMU Unit for Business Ethics and President: BEN-Africa (Interview)
8. Franchise Group CEO (Interview)
9. Franchise Training Manager 1 (Interview)
10. Franchise Training Manager 2 (Interview)
11. Independent Real Estate Trainer (Interview)
12. Macro Real Estate Agency Principal 1 (Interview)
13. Macro Real Estate Agency Principal 2 (Interview)
14. Macro Real Estate Agency Principal 3 (Interview)
15. Medium Real Estate Agency Principal 1 (Interview)
16. Medium Real Estate Agency Principal 2 (Interview)
17. Medium Real Estate Agency Principal 3 (Interview)
18. Micro Real Estate Agency Principal 1 (Interview)
19. Micro Real Estate Agency Principal 2 (Interview)
20. Micro Real Estate Agency Principal 3 (Interview)
21. The Estate Agency Affairs Board Code of Conduct
22. SAQA Unit Standard 246737: Demonstrate knowledge of and apply the Real Estate Code of Conduct and ethics

## 23. Comparison between the EAAB Code of Conduct and other industry Codes of Conduct

## 1. Glossary of terms

1. EAAB: Estate Agency Affairs Board. A statutory body regulating the activities of real estate agents
2. Code of Conduct. The EAAB Code of Conduct – ethical rules governing the conduct of estate agents.
3. Services SETA: The Sector Education and Training Authority responsible for the service industry. Real estate agents fall within this sector.
4. IEASA: Institute of Estate Agents of South Africa. A body representing estate agents and agencies
5. NAR: National Association of Realtors. An American association of real estate agents and agencies that has its own, non-statutory, code of conduct
6. Principal: The owner of a real estate agency
7. Candidate estate agent: An estate agent who had not passed the EAAB exam or held a Fidelity Certificate for a period of a year (candidate status applied until 15 July 2008)
8. Intern estate agent: An estate agent who has not complied with minimum training requirements after the effective date of 15 July 2008
9. Full status estate agent: An estate agent who has complied with minimum training requirements or who was registered for one year according to the previous registration requirements (prior to 15 July 2008)
10. Real estate agent: All categories of estate agent
11. NQF: National Qualifications Framework. A national standard of education
12. FET Certificate in Real Estate. Further education and training Certificate in Real Estate. The new compulsory certificate real estate agents will need to obtain to achieve full status level
13. Fidelity Fund Certificate. The certificate received by real estate agents and agents when registered with the EAAB
14. SAQA: The Department of Education's 'South African Qualifications Authority'

## 2. Agent and Principal Qualitative Questionnaire

(Section headings were deleted for the purpose of the actual questionnaire)

Bryan Robinson is undertaking research on the Estate Agency Affairs Board. You are kindly requested to assist by completing the questionnaire below.

*Please note the following:*

It will take you approximately 20 minutes to complete the questionnaire

3. It is VOLUNTARY. Please do not complete the questionnaire if you are at all uncomfortable with such a questionnaire, and you may withdraw from participation at any stage
4. ANONYMITY. The questionnaire does not ask for your name or any other personal details.
5. The research report will not disclose your city or province.
6. The results of the research will be made publicly available once complete and you can request to view the research report.
7. Please do not hesitate to ask any questions.

Please cross (X) the appropriate shaded block

NB. All questions must be answered.

### Section 1: Exposure to the Code of Conduct

1. What category of estate agent are you?

I am not an estate agent	I am a candidate estate agent	I am a full status estate agent
I am a principal estate agent		I am not sure of my category

2. If you are acting as an estate agent, how long have you been operating as an estate agent?

Just started	Less than 6	Between 6 months and 1-5 Years	6-10 Years	More than 10 years
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	months	a year			
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3. If you are acting as an estate agent, are you registered with the Estate Agency Affairs Board?

No	I have tried to register, but I haven't received a Fidelity Certificate yet	I am in possession of a Fidelity Certificate
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4. Are you a member of IEISA (Institute of Estate Agents)?

No	Yes
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5. If you are acting as an estate agent and/or principal, please mark the appropriate box,

I have NOT written the Estate Agency Affairs Board Exam	I have written the Estate Agency Affairs Board Exam, but failed	I have PASSED the Estate Agency Affairs Board Exam
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6. If you wrote the Estate Agency Affairs Board Exam, did you receive any training or lectures specifically to help you pass the Estate Agency Affairs Board Exam?

No	Yes
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7. If you wrote the Estate Agency Affairs Board (failed or passed) exam, how long ago was this?

Less than 6 months ago	7-11months	1-5 Years	6-10 Years	11 Years and more
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8. What is the Estate Agency Affairs Board Code of Conduct?

Never heard of it	Voluntary ethical guidelines for estate agents	Compulsory ethical rules for estate agents
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9. Have you ever read the Estate Agency Affairs Board Code of Conduct?

No	Yes	Not sure
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10. Is there a visible Estate Agency Affairs Board Code of Conduct in your office?

Yes	No
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11. Have you ever been reported to the Estate Agency Affairs Board by a member of the general public?

Yes	No
-----	----

12. If you were reported and faced a disciplinary hearing, were you fined and/or disciplined for contravening the Estate Agency Affairs Board Code of Conduct?

Yes	No
-----	----

13. Do you want a Code of Conduct, such as the EAAB Code of Conduct, to regulate your activities?

Yes	No
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## Section 2 Understanding of the Code of Conduct

*(Test understanding of the code of conduct – i.e. how easily understandable is the wording. These examples are from the Code of Conduct)*

14. What does the following provision of the Code mean?

*'No estate agent shall accept a sole mandate which contains a provision conferring upon him a mandate to continue to render the same estate agency service referred to in the sole mandate, after expiry of the sole mandate, unless-*

- *The client has prior to his signature of the sole mandate expressly consented in a written document executed independently of the said sole mandate, to the inclusion of such provision or provisions (as the case may be); and*
- *Such document contains an explanation of the reasons for and implications of the inclusion of such provision; and*
- *Such document is signed by both the client and the estate agent in question.*

I don't know	If the sole mandate expires and the seller agrees to give an extension, I must complete a new mandate document which must be signed by both parties	I can get an automatic extension of a mandate if this is provided for in a separate document, the consequences of which are explained, and the document is signed by both parties
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15. What does the following provision in the Code mean?

*'An estate agent shall convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, or buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge and which are or could be material to a prospective purchaser or lessee thereof*

I don't know	An estate agent need only disclose to a buyer facts that could be relevant and	An estate agent must disclose to a buyer everything he knows of the property and reasons for the seller
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	important to a buyer	selling
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Section 3 Support of the Code of Conduct

*Test support of the some of the actual provisions in the Code of Conduct*

Do you agree with the following provisions in the Code?

*16. 'No estate agent shall affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let, unless the seller or lessor (as the case may be) has given his written consent to do so'.*

Yes	No
-----	----

*17. 'No estate agent shall accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent'.*

Yes	No
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Section 4 Level of Ethical behaviour (Adapted from the business ethics survey developed by Castellano et al (2007: 54))

(Only real estate agents who are not principals should complete this section)

	Strongly agree	Agree	Disagree	Strongly disagree
18. My principal stresses that I work in an ethical manner				
19. My principal always behaves in an ethical manner				
20. My company provides clear guidance on how I should behave ethically				
21. I have never been required to do something that I believe was unethical				
22. I have never observed any of my estate agent colleagues behave in an unethical manner				
23. I have never done anything I feel to be unethical				
24. If someone in my company did something unethical, they would be punished				

Section 5: Moral intent

To be completed by all participants

	Strongly agree	Agree	Disagree	Strongly disagree
25. A purchaser tells me he is willing to up his offer price on a property, but requests me not to tell the seller. I will disclose this information to the seller.				
26. A purchaser, new in town, shows interest in a property I have on show. The area is locally known for its high level of crime. I will not disclose this information to the purchaser if the purchaser doesn't ask me about the crime situation.				
27. I always explain in detail the implications to the purchaser of his breaching the sales contract.				
28. I will tell a seller that I have purchasers suitable for his property in order to secure a sole mandate, even if I don't have potential buyers.				
29. I will disclose to a prospective purchaser that the seller is selling due to getting divorced, as this will indicate to the purchaser that the seller is serious about selling				
30. A purchaser discloses that he had seen a particular property the previous day through another agency. I will tell the buyer he can put an offer				

<p>in through me and I will share commission with the other estate agency.</p>				
<p>31. I insist, or will insist that purchasers use the bond originators I choose.</p>				
<p>32. A purchaser's deposit can be used to pay my commission prior to registration of transfer</p>				
<p>33. I take, or will take, sole mandates without inserting the expiry date.</p>				
<p>34. I place, or will place classified property ads in the press without disclosing that I am estate agent</p>				

### 3. Agent and principal qualitative questionnaire: Results Table and matrix

## **Agent and Principal quantitative questionnaire**

**Code matrix:**

**A. Group 1**

**B. Group 2**

**S – Scrapped question**

**N – Not applicable**

**1. What category of estate agent are you?**

1. I am not an estate agent
2. I am a candidate estate agent
3. I am a full status estate agent
4. I am a principal estate agent
5. I am not sure of my category

**2. If you are acting as an estate agent, how long have you been operating as an estate agent?**

1. Just started
2. Less than 6 months
3. Between 6 months and a year
4. 1-5 years
5. 6-10 years
6. More than 10 years

**3. If you are acting as an estate agent, are you registered with the Estate Agency Affairs Board?**

1. No
2. I have tried to register, but I haven't received a Fidelity Certificate yet
3. I am in possession of a Fidelity Certificate

**4. Are you a member of IEASA?**

1. No
2. Yes

**5. If you are acting as an estate agent and / or principal, please mark the appropriate box:**

1. I have not written the Estate Agency Board Exam
2. I have written the Estate Agency Affairs Board Exam, but failed
3. I have passed the Estate Agency Affairs Board Exam

**6. If you wrote the Estate Agency Affairs Board Exam, did you receive any training or lectures sp to help you pass the Estate Agency Affairs Board Exam?**

1. No
2. Yes

**7. If you wrote the Estate Agency Affairs Board (failed or passed) exam, how long ago was this?**

1. Less than 6 months ago
2. 7-11 months
3. 1-5 years
4. 6-10 years
5. 11 years and more

**8. What is the Estate Agency Affairs Board Code of Conduct?**

1. Never heard of it
2. Voluntary ethical guidelines for estate agents
3. Compulsory ethical rules for estate agents

**9. Have you ever read the Estate Agency Affairs Board Code of Conduct?**

1. No
2. Yes
3. Not sure

<b>10. Is there a visible Estate Agency Affairs Board Code of Conduct in your office?</b>	
	1. Yes
	2. No
<b>11. Have you ever been reported to the Estate Agency Affairs Board by a member of the general public?</b>	
	1. Yes
	2. No
<b>12. If you were reported and faced a disciplinary hearing, were you fined and/or disciplined for contravening the Estate Agency Affairs Board Code of Conduct?</b>	
	1. Yes
	2. No
<b>13. Do you want a Code of Conduct, such as the EAAB Code of Conduct, to regulate your activities?</b>	
	1. Yes
	2. No
<b>Questions 14 and 15: Understanding clauses in the Code of Conduct</b>	
	1.
	2.
	3.
<b>Questions 16 and 17: Acceptance of clauses in the Code of Conduct</b>	
	1. Yes
	2. No
<b>Questions 18 – 24: Ethical environment</b>	
	1. Strongly Agree
	2. Agree
	3. Disagree
	4. Strongly disagree
<b>Questions 25-34: Moral intent</b>	
	1. Strongly Agree
	2. Agree
	3. Disagree
	4. Strongly disagree

Respondent	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	
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A 4	3	1	2	S	3	1	1	3	2	2	2	N	S	3	2	2	2	2	2	2	2	2	2	2	3	3	2	2	3	3	3	3	3	3	3
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A 9	3	4	3	2	1	N	N	3	2	2	2	N	1	2	3	1	1	1	3	2	1	3	1	2	2	3	1	4	2	4	3	4	2	4	4
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A 14	2	3	3	2	2	2	2	3	2	1	2	N	1	S	S	1	1	1	1	1	S	1	1	1	1	2	2	3	2	3	3	3	3	3	4
A 15	2	1	2	2	1	N	N	3	2	1	2	N	S	S	S	S	S	S	S	S	S	S	S	S	S	1	2	2	3	2	3	3	3	3	4
A 16	3	5	3	2	3	1	4	3	2	2	2	N	1	2	3	1	1	1	2	1	1	2	1	2	4	4	1	4	1	4	4	4	4	4	4
A 17	3	4	3	2	2	1	1	3	2	1	2	N	2	3	3	2	1	1	1	1	1	1	1	1	1	2	4	1	4	2	4	4	4	4	4
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A 19	4	6	2	1	1	N	N	3	2	1	2	N	1	2	2	1	1	N	N	N	N	N	N	N	N	2	3	1	4	3	4	4	4	4	4
A 20	4	4	3	1	3	2	3	3	2	2	2	N	1	3	2	2	2	N	N	N	N	N	N	N	N	4	3	2	3	3	3	3	3	3	3
A 21	4	5	3	1	3	1	4	3	2	1	2	N	1	2	3	1	1	N	N	N	N	N	N	N	N	4	3	1	3	4	3	3	3	4	4
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A 23	4	6	3	2	3	2	5	3	2	1	2	N	1	3	2	1	1	N	N	N	N	N	N	N	N	2	3	1	3	4	4	3	4	4	3
A 24	4	5	3	2	3	1	4	3	2	2	2	N	1	3	2	1	1	N	N	N	N	N	N	N	N	3	3	2	4	4	4	4	4	4	4
A 25	2	1	3	2	S	S	S	3	2	1	2	N	1	3	3	1	1	1	1	1	1	1	1	1	1	4	4	1	4	2	3	4	4	4	4

<b>Respondent</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>32</b>	<b>33</b>	<b>34</b>		
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A 40	2	2	2	2	1	N	N	3	2	1	2	N	1	2	3	1	1	S	S	S	S	S	S	S	S	3	3	2	4	3	4	3	4	4	4	4
A 41	3	4	2	2	1	N	N	3	2	1	2	N	1	3	3	1	1	1	1	1	1	1	1	1	1	1	1	1	4	1	4	4	4	4	4	4
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A 44	2	2	2	2	1	N	N	S	1	1	2	N	1	2	3	1	1	2	2	2	2	2	2	2	2	2	3	2	2	2	1	3	4	4	4	4
A 45	3	4	3	2	2	1	3	2	1	3	2	N	1	2	3	1	1	1	1	1	1	1	1	1	1	2	4	1	4	1	1	4	1	4	4	4
A 46	2	4	3	S	1	N	N	3	1	2	2	N	1	2	2	1	1	1	1	1	1	1	2	1	1	3	2	1	3	3	3	4	4	3	4	3
A 47	1	1	1	1	1	N	N	3	1	2	2	N	1	2	1	1	1	S	S	S	S	S	S	S	S	3	3	1	4	3	2	3	3	4	3	3
A 48	2	2	2	S	1	N	N	3	2	1	2	N	1	2	2	1	1	1	1	1	1	1	1	1	2	2	2	1	3	2	2	3	3	4	4	4
A 49	2	3	3	2	S	S	S	3	2	2	2	N	1	2	2	1	1	2	2	2	2	2	2	2	2	3	3	2	2	2	3	3	3	3	3	3
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<b>Respondent</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>32</b>	<b>33</b>	<b>34</b>		
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A 52	2	2	3	2	2	2	1	3	2	1	2	N	S	2	3	1	1	2	2	2	2	2	2	2	2	2	4	2	3	2	3	3	3	3	3	3
A 53	3	4	2	2	3	2	3	3	2	1	2	N	1	3	2	1	1	1	1	1	1	1	1	1	1	1	3	1	4	3	4	4	1	4	4	4
A 54	4	5	2	2	3	2	3	3	2	1	2	N	1	3	2	1	1	N	N	N	N	N	N	N	N	1	3	1	4	3	4	4	4	4	4	4
A 55	4	6	3	2	3	1	3	3	2	1	2	N	1	2	2	1	1	N	N	N	N	N	N	N	N	3	3	3	4	4	4	3	4	4	4	4
<b>Respondent</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>25</b>	<b>26</b>	<b>27</b>	<b>28</b>	<b>29</b>	<b>30</b>	<b>31</b>	<b>32</b>	<b>33</b>	<b>34</b>		
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B 6	2	3	3	2	2	1	2	3	2	2	2	N	1	2	3	1	1	2	3	1	2	2	1	3	2	3	2	3	2	3	3	4	3	4	4	3
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B 11	3	6	3	2	3	2	S	3	2	1	2	N	S	2	S	1	S	S	S	S	S	S	S	S	S	3	2	2	3	2	4	4	4	4	4	3
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B 21	2	2	2	1	1	N</																														

Respondent	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	
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B 39	3	4	3	2	3	1	5	3	2	1	2	N	1	2	2	1	1	1	1	1	1	1	1	1	1	2	2	2	4	4	4	4	2	4	4
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B 42	3	3	2	2	3	1	2	3	2	2	2	N	1	3	2	1	1	1	2	1	2	1	2	1	2	2	3	2	4	3	3	3	2	3	3
B 43	3	6	3	2	3	2	5	3	2	1	2	N	1	2	3	2	1	1	1	1	1	3	1	1	3	4	1	3	1	4	4	2	4	3	
B 44	2	3	2	2	1	N	N	3	2	1	2	N	1	2	3	1	1	1	1	1	1	1	1	1	3	1	1	3	3	3	1	3	3	3	
B 45	3	5	3	2	1	N	N	3	2	1	2	N	1	3	2	1	1	1	1	1	1	1	1	1	1	1	1	3	3	4	4	4	4	4	
B 46	4	6	2	2	3	2	5	3	2	1	2	N	1	3	3	1	1	N	N	N	N	N	N	N	2	3	1	4	3	4	3	3	4	4	
B 47	2	2	3	2	S	2	1	3	2	1	2	N	1	3	2	1	1	1	1	1	1	1	1	1	1	3	3	2	3	3	3	3	3	3	
B 48	2	2	2	1	1	N	N	3	2	1	2	N	S	3	2	1	1	4	S	S	S	S	S	S	4	4	1	4	4	4	3	4	3	4	
B 49	2	1	2	1	1	N	N	3	2	1	2	N	1	3	2	1	1	2	4	2	1	3	1	4	4	4	1	4	3	4	1	4	4	4	
B 50	3	4	2	2	3	1	3	3	2	2	2	N	1	3	3	1	1	1	1	1	1	2	2	1	4	3	1	4	3	4	3	4	4	4	
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B 51	3	3	3	2	3	2	2	3	2	1	2	N	1	2	3	1	1	1	2	2	2	3	1	2	1	4	1	4	3	3	3	3	3	3	
B 52	3	6	3	1	1	N	N	3	2	1	2	N	1	3	2	1	1	1	2	3	2	2	2	3	1	4	1	3	2	2	3	4	4	4	
B 53	2	3	2	2	3	1	1	3	2	2	2	N	1	3	2	1	1	1	3	2	1	3	1	2	2	2	3	3	3	3	3	4	2	2	
B 54	3	4	3	2	3	2	3	3	2	2	2	N	1	2	3	1	1	1	1	1	1	4	1	2	3	3	2	4	2	4	4	4	4	4	
B 55	2	3	1	1	1	N	N	3	2	1	2	N	1	2	3	1	1	S	S	S	S	S	S	S	3	3	2	3	3	S	3	S	3	3	
B 56	3	6	2	2	3	2	5	3	2	2	2	N	2	2	3	1	1	2	2	2	2	2	2	1	1	3	2	3	2	3	3	3	3	3	
B 57	3	4	2	1	3	2	3	3	2	2	2	N	2	3	2	1	1	4	2	2	2	2	2	1	2	3	1	4	4	4	4	2	4	4	
B 58	3	2	3	1	1	N	N	3	2	2	2	N	1	3	2	1	1	2	2	2	2	2	2	4	3	3	2	2	2	2	3	3	3	3	
B 59	3	4	3	1	3	2	2	3	2	2	2	N	1	3	2	1	1	2	2	3	2	3	2	3	1	2	1	4	4	4	4	3	4	4	
B 60	2	2	3	1	1	N	N	3	2	2	2	N	1	3	2	1	1	2	2	2	2	2	2	2	3	3	2	3	3	2	3	3	3	3	
B 61	4	4	3	2	3	2	3	3	2	2	2	N	S	3	2	1	1	N	N	N	N	N	N	N	3	3	2	3	3	4	3	3	3	3	
B 62	4	4	3	2	3	2	3	3	2	2	2	N	1	3	2	1	1	N	N	N	N	N	N	N	4	3	1	3	3	4	3	3	4	3	
B 63	3	5	3	2	3	2	4	3	2	1	2	N	1	3	3	1	1	1	1	1	1	1	1	1	1	2	1	1	2	2	3	3	2	3	4
B 64	3	5	3	2	3	2	4	3	2	1	2	N	1	3	2	1	1	S	S	S	S	S	S	S	1	4	1	4	4	4	4	1	4	4	
B 65	2	3	3	1	1	N	N	3	2	2	2	N	1	2	3	1	1	2	2	2	2	2	2	2	3	3	2	3	2	2	3	2	3	3	
B 66	3	5	3	2	2	2	3	3	2	1	2	N	1	3	2	1	1	2	1	1	1	3	1	2	3	4	1	4	4	4	3	4	4	4	
B 67	3	S	3	2	3	2	5	3	2	1	2	N	2	S	3	2	1	1	1	1	1	1	1	1	1	3	1	4	3	4	3	2	4	4	

## 4. Estate Agency Affairs Board: Clive Ashpol

The structure of the interview will be as follows:

1. Introduction: The researcher will advise that confidentiality cannot be provided. The participant will be afforded the opportunity to request that any information provided during the interview not be published in the research document.
8. Interview: The interview will be conducted
9. Conclusion: The interview will be concluded and the participant thanked

### Personal Details

Position: Manager of education and training

#### Question 1

What characterises an ethical estate agent?

*Golden Rule: Do unto others as you would want them to do unto you. An estate agent that acts in such a way that reflects positively on estate agents and does not bring the industry into disrepute. My view is that the Code of Conduct is nothing more than a code of good ethical business practice. The Code of Conduct should be second nature – general knowledge of estate agents. Nothing in the Code of Conduct that is extraordinary.*

#### Question 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Definite lack of ethical behaviour. The EAAB receives about 40 written complaints per day. Although 20 may be nonsensical complaints, 20 probably are valid complaints which could have been avoided if the estate agent had complied with the Code of Conduct.*

*One of the major constraints to ethical behaviour is that estate agents are only rewarded on results. Unless they can get someone to sign on the dotted line, they don't get paid. Creates an incentive and an initiative to act unethically.*

*They will fail to make disclosure if the disclosure will negatively impact on the sale. There is no question about it. And that is a huge problem in estate agency. Estate agents will not make disclosure if disclosure will put the buyer off. It is a pressure industry.*

*Bring pressure to bear on the public. For example – this comes across often – they present the seller with an impossible deadline on an Offer to Purchase, puts seller under pressure to agree. It is called a 'Midnight Roll' – present offer at 11pm and seller has until midnight to accept. The Alienation of Land Act's Cooling Off Period does not deal with these issues. Only applicable to residential property worth less than R250 000. This needs to be amended to control these types of things.*

*We get crazy complaints at the Board. One guy phoned with a complaint on an R3million house where chips were found on the marble staircase that would cost R10 000 to repair – it comes across as immaterial or irrelevant. Perhaps the estate agent should have disclosed it - ethics can't be linked to value I suppose. I feel more an obligation to protect vulnerable people than rich people. I am not sure that that is right.*

## **SECTION 2: THE EAAB AND ETHICAL ISSUES**

### **Question 3**

What are the main ethical issues the EAAB is concerned with?

*A major ethical issue is lack of disclosure. Giving incorrect information. In fact anything to persuade someone to buy a property and not disclosing any negative aspects of that property. Or if there are negative aspects, putting it a very moderate light.*

*Consumers are not guiltless. When you buy a R4 million house you just sign on the dotted line. Consumers should use the same degree of caution as when they buy a car (Used the example of AA checks). Consumers rely on the integrity of the estate agent.*

*Another problem we encounter is that estate agents don't advise clients of their right to earn interest on trust account monies. (50%/50% split between EAAB and agency if held in agency's trust account).*

#### **Question 4**

Does the current Code of Conduct deal with these issues?

*It does. Where there is a gap, is in Sectional Title administrators and other specialisations – e.g. business broking, where there needs to be a review. We are reviewing the Code of Conduct.*

#### **Question 5**

How is the Code of Conduct communicated in the real estate industry?

*It is communicated on our website, Imbizos, refer to it in our magazine, and it will be well communicated in our new educational material. It was always one-dimensional. Anyone who has passed the previous exam will be credited for the Code of Conduct as they have done it already (Code covered in the previous EAAB exam). What we expected, which never happened, was that principals would inculcate the Code of Conduct. We need to inculcate it ourselves.*

*You should know the Code of Conduct. Ignorance of the Code does not excuse you.*

#### **Question 6**

In your opinion, what impact will the new training requirements have on the promotion of ethical behaviour of real estate agents?

*If you are recognised as a professional you need to act as a professional. We are hoping professional status will be self-serving to the extent that estate agents start acting as professionals.*

*Great emphasis is placed on the Code of Conduct in the new training material. Allow the monitoring of the mentoring between the principal and estate agent. We are hoping in that way to encourage compliance.*

*Once they get their recognition statement after passing the Professional Designates exam, we are hoping that they will say 'I am a professional person, I understand my professional responsibilities and I will abide by them.'*

#### **Question 7**

What is Services SETA's role in the promotion of ethical behaviour by estate agents?

*The EAAB is the statutory regulator. It is our function to inculcate ethical behaviour.*

*The role that SETA performs is the role of quality assurance for education. They assess moderate and verify. They have nothing to do with ethics – not their department.*

#### **Question 8**

Does the EAAB have a strategy specifically for ethical issues?

*Yes, the Board has a strategy on professionalisation of estate agents which clearly deals with ethical issues. If you don't behave ethically, and with integrity and all the nice values, you cannot be professional.*

#### **Question 9**

How active is the EAAB in policing estate agents with regard to contraventions of the Code of Conduct?

*It has been a gap until now. Policing has taken place on an ad hoc basis. We have relied on competitors and individuals reporting non-registered estate agents.*

*We are now establishing an inspectorate division with four main functions: Firstly to police non-registered estate agents and take criminal steps against them, secondly, to check that trust accounts are being properly maintained, third, as supervisory body of the FIC (Financial Intelligence Act) to ensure compliance of FICA, and lastly, education compliance – external moderations and verifications of the accredited providers. Until we have verified, it cannot be uploaded. We are going to be moderating the ethical professionalism of education providers.*

*It will start with eight inspectors with different requirements. E.g. an education inspector must be an accredited assessor and moderator.*

#### **Question 10**

In your opinion, what impact has the Code of Conduct had on the ethical behaviour of estate agents?

*It has had an impact in the sense that estate agents would rather not appear before a disciplinary committee of the Board. Board acts as a deterrent to contravention of the Code of Conduct - the risk of having their Fidelity Certificate revoked. Probably a negative and not a positive – which we now want to change around. I am not sure that they are happy to comply, but they are forced to.*

*Some estate agents, Eskel Jawitz for example, is a stickler for the Code of Conduct, and instils the Code of Conduct in all of his staff. 'My reputation means far more to me than losing one or two deals'. There are some estate agents like that. The problem is that they are in the minority. If we had more of them we wouldn't need disciplinary committees. Disciplinary committee meets once a week in Gauteng and hear 10-15 complaints each time.*

*With the introduction of the new training dispensation, complaints and hearings should go down. We are going to carefully monitor that – if it does go down, we know we are doing something correctly. What is the trend?*

#### **Question 11**

Is there any need for a revision of the Code of Conduct?

*There is a need, especially in the differentiated aspects of estate agency. Sectional title administrators for example, we need to make sure that the Code meets their needs.*

*Generally that Code of Conduct has been an effective document and has survived well over time. It is a living document and needs review.*

#### **Question 12**

What is the role of industry bodies, such as IEASA in improving ethical behaviour of real estate agents?

*We would like organised estate agency to inculcate the Code of Conduct into their members. I think they do to a large extent .We allow them to report problems with the Code, report proposed amendments to the Code. We (the EAAB) don't function at grassroots level at all. We function at a regulatory level. We need that grassroots level reporting to know what's happening in the workplace and what we need to do. We use them as a kind of litmus test to see if everything is going well and where there may be problems. We rely on their expertise. We listen very attentively to comment from stakeholders, and take it seriously.*

### **Question 13**

What is the role of the larger franchise groups in improving ethical behaviour of real estate agents?

*We have a lot of complaints regarding franchisees. I don't think their role is where it should be. Again it is a question of finances. We believe the franchisor is rather interested in selling franchises that ensuring ethics. Franchisor often works through a franchising company – not an estate agent – when they botch up there is no recourse against them as they are not estate agents - there is a problem that needs to be corrected with franchising operations.*

*We find that the big complaint is that the franchising company fails to disclose the true cost of buying a franchise. We are not happy with franchising arrangements. We do not see a mentoring relationship going with the franchise. Franchising is something of a rip-off in my view. And we have had a lot of complaints about them.*

*What has happened is that we are getting complaints from franchisors 'I want to sell a franchise' but this person is not competent to act as a principal, what can you do about it?' - surely the first thing is to get the person to the stage where they can operate as a principal before selling a franchise to them.*

*They need to play a more constructive mentorship role. Not put the pocketbook first. Properly qualify the person who is going to buy the franchise. The only qualification they seem to do at the moment is to see if they have the money.*

### **Question 14**

Would the EAAB consider self-regulation by the real estate industry?

*No, under no circumstances. It didn't work, that is why the EAAB was formed initially. It was the then industry that requested that a statutory body be formed – self-regulation was not working. The only way to implement an effective Code of Conduct and an educational programme and a disciplinary programme is through a statutory body.*

*(referred researcher to arelli.org – 100 jurisdictions of which South Africa is one – every single one is regulated by Acts of Parliament. Overwhelming majority of real estate industries regulated by law)*

#### **Question 15**

How is transformation of the industry affecting the effectiveness of the Code of Conduct – for example language barriers, cultural differences?

*Not at all. Most new entrants are comfortable with English. We have never had complaints from indigenous people regarding the use of English.*

#### **Question 16**

Are there any further comments and recommendations you would like to make with regard to this research?

#### *Professional Industry:*

*There are certain elements that make an industry professional. Firstly there needs to be a regulatory industry body. There has to be a code of conduct. The code of conduct must be enforceable and sanctioning of non-compliance. The only thing that was missing from the factors to create a profession was the lack of a professional qualification, which we are now putting into place, and the continuing professional development.*

*To all intents and purposes, estate agency is as much a profession as an attorney or accountant.*

Question to Mr Ashpol: Is NQF level 4 sufficient for the profession?

*It has got to be a lifelong learning programme. That is why we have created a career pathing system for estate agents. We had to ensure that NQF 4 was enough to grant special recognition without creating a barrier to entry. We are satisfied that NQF4 is*

*sufficient as an initial entry requirement without creating a barrier to entry. But obviously we are going to emphasize CPD (Continuous Professional Development). Whatever NQF 4 doesn't cater for, we can make compulsory through CPD. So that becomes a huge weapon in the armoury. And we are then hoping to create the differentiated aspects of estate agency for career pathing. We have an incremental education system in place. NQF4, 5, 6, 7, 8 are registered. You can start off at a level 4 and progress to a master's and doctoral level.*

*NQF4 is a qualification for people who are working. People who are actively engaged in the workplace. We are satisfied that NQF 4 is good in that environment. I think it is pitched at the right level. Remember that once they have completed the NQF4 they still need to do the PDE (Professional Designates Exam) which is a Board controlled exam and doesn't fall under SETA or SAQA. What we are working on is that the PDE will be in the form of a case study written in exam conditions and will be open book. It has got to be as close to practical as possible. Four areas will need to be addressed: Residential, commercial and industrial, community schemes and business broking. Say you have done your internship in the residential environment, you wouldn't have a clue on the other areas. We were then thinking of giving a recognition statement (we can't use the word certificate) - 'Joe Bloggs having passed the PDE' is recognised as a professional estate agent'...*

#### *Law Society discussions*

*(Researcher asked about the current discussions between the EAAB and SARS / Law Society – an effort to prevent payment of estate agency commission should the estate agent not be registered)*

*In the transfer duty declaration, the estate agent, buyer and seller have to disclose tax details. We have requested that in addition to disclosing tax details, the Fidelity Fund Certificate number should be added to the Transfer Duty Declaration. It has been well received.*

#### *Information of disciplinary hearings*

*(The researcher asked whether disciplinary hearings are made available to estate agents – for purposes of learning from those examples)*

*We do want to make the information available and put it on the website.*

*We want to publish case studies and put them into our magazine*

Promotion of new training requirements

*(The researcher asked whether the new training requirements would be promoted to the general public – i.e. with the intent of improving the general public's perception towards estate agents)*

*We are going to be publishing a prospectus dealing with the training requirements, what they involve. Our public awareness campaign will not only be to estate agents, but to the consuming public. The campaign will address: 'Is your estate agency registered, do you know you can ask for interest on the deposit, if you are unsure of something ask for pro-active advice and not reactive advice.'*

## 5. Institute of Estate Agents South Africa

The structure of the interview will be as follows:

1. Introduction: The researcher will advise that confidentiality cannot be provided. The participant will be afforded the opportunity to request that any information provided during the interview not be published in the research document.
2. Interview: The interview will be conducted
3. Conclusion: The interview will be concluded and the participant thanked

### Personal Details

Name: Ken Ralph

Position: National Vice-President - IEASA

#### SECTION 1: PERCEPTION OF ETHICAL BEHAVIOUR OF REAL ESTATE AGENTS

##### Question 1

What characterises an ethical estate agent?

*Really so simple: Any professional person, who does what should be done. With the new training requirements, we can now say we are a professional industry.*

##### Question 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes there is a lack of ethical behaviour. This is particular to the sales industry. It will be impossible to stamp out unethical behaviour. It is a reality.*

#### SECTION 2: THE RELATIONSHIP BETWEEN IEASA AND THE EAAB

##### Question 3

Was IEASA involved in the development of the EAAB Code of Conduct? If so, how?

*I am not sure. IEASA is 70 years old and preceded the EAAB. IEASA was the regulator prior to the Board. The Institute promoted the establishment of the EAAB.*

##### Question 4

Is IEASA involved, on any level, in the disciplinary hearings conducted by the EAAB?

*Because of our long-standing relationship with the Board, the EAAB often asks the Institute for recommendations of people who should be involved in the disciplinary hearings, which we provide.*

**Question 5**

Is IEASA consulted on any issue relating to ethical behaviour?

*No, but we are involved on other levels in providing input.*

**SECTION 3: THE IEASA CODE OF CONDUCT**

**Question 6**

What is the rationale behind the IEASA having a separate Code of Ethics?

*The EAAB Code of Conduct deals with the estate agent. The IEASA Code applies to members and is more elaborative and more comprehensive. It also deals with inter-member behaviour.*

*The Institute wants to handle problems before EAAB involvement.*

**Question 7**

Does IEASA communicate / train their members on the Code of Conduct?

*Certainly. With the Board exam, we run courses under the auspices of the Institute – the Code of Conduct is a major focus.*

*We also run our own training. Membership of the ILS (Institute Listing Service) enforces new members to undergo training on the Institute Code.*

**Question 8**

Does IEASA communication and training on ethical issues only extend to IEASA members?

*One of the prime aims of the Institute is education in the industry. We don't turn non-members away. Training is available to all, but non-members may have to pay a slightly higher amount.*

*We assist agents irrespective of their membership status.*

**Question 9**

Does IEASA have any internal mechanism to enforce the EAAB Code of Conduct?

*If an agent's behaviour is felt to be a disgrace, we would remove their membership. Members sign a form that says they must abide by the EAAB Code of Conduct and the IEASA Code of Ethics. IEASA has an internal disputes committee.*

*An example of the steps taken when there is a dispute between two estate agencies:*

- *Principals try to sort out the problem*
- *If no resolution, a written formal complaint is addressed to IEASA*
- *IEASA will comment on the issue*
- *Committee will meet and try to sort out the issue without a formal hearing*
- *If no resolution, a formal hearing will be held*
- *Arbitration*

*We will not cover up an issue. If a complaint is received from the public, IEASA will try to sort out the problem to avoid referral to the EAAB or legal action.*

#### **SECTION 4: OPINION**

##### **Question 10**

What role does IEASA see itself playing in improving the ethical behaviour of real estate agents?

*Only role is to continue educating, which will hopefully keep unethical behaviour to a minimum.*

##### **Question 11**

Does IEASA support self-regulation or external regulation by the EAAB? If so why?

*I can't talk on behalf of the Institute, but I would support internal regulation. A problem is created by the EAAB Board members not all being from the real estate industry. I don't think it works.*

##### **Question 12**

Does IEASA endorse the content of the Code of Conduct?

*Certainly we do.*

**Question 13**

Does IEASA wish for any amendments to the Code of Conduct?

*I would like to see it more user friendly. User friendly in layman's language. I would prefer the IEASA Code of Conduct to be THE Code of Conduct.*

**Section 5: Other**

**Question 14**

What is your role within the IEASA with regard to promotion of ethical behaviour?

*To make sure our training carries on and to promote ethical training by the Institute.*

**Question 15**

Any other comments, suggestions and recommendations regarding the research?

*We are here to see that this is regarded as a Professional Industry.*

*It would be so nice not to be seen as the bottom rung of the ladder and to be recognised as a professional industry. A lot of progress has been made by the Institute in eradicating the tainted side of the industry.*

## 6. Business Ethics Education and Training: Comment from Professor Marius Vermaak

The structure of the interview will be as follows:

1. Introduction: The researcher will advise that confidentiality cannot be provided. The participant will be afforded the opportunity to request that any information provided during the interview not be published in the research document.
2. Interview: The interview will be conducted
3. Conclusion: The interview will be concluded and the participant thanked

### Personal Details

Name: Professor Marius Vermaak

Position: Rhodes University: Associate Professor of Philosophy  
Rhodes University: Dean of the International Office

### QUESTION 1

What has been your experience in ethics education / training?

*We are not into ethics training. I see 'training' as much more focused, much more practical. We are more on the educational side. We started in 2006 - we offer a term-length course called Accounting Ethics. That course aims to be close to SAICA requirements (the South African Institute of Chartered Accountants). The hope is that it will change the attitude of students. I think a term is too short to change attitudes. If you are a crook, a course in accounting ethics will have no impact on you. What we are trying to do is create some awareness. Some theoretical understanding. Especially with the tutorials, some application, especially philosophical ethics. Background to Codes of Conduct / Codes of Ethics. A selection of problems that accountants would encounter.*

*I have no idea as to whether this actually works. There is a problem of understanding that we want to capture – so we want to make people more forceful, more aware. Then there is the problem of decision making - that they use these principles / concepts in their thinking. After the decision making there is still the problem of motivation and action – you have made a*

*decision, now you need to act – there is a big gap between the two things. We have done no research on how effective it is.*

*I think the students appreciate the more practical relevant stuff. There is an uneasy fit between what we try to do and what they have done in their other accounting courses. The Code of Conduct is done by lecturers in accounting. What we do is much more on the philosophical side.*

*Being philosophers we go for more philosophical ethics and I think that comes as quite a shock to students as they are used to a certain ethical stance – that comes from tradition or religion, or the ethos in which they were brought up. And then we come with theory: deontology etc, or we confront them with big deep questions on the meaning of life.*

*I think you find two opposite poles: one of which is students that feel what we are trying to do to be impossible: cannot really think about these things you just have to accept it. These would be religious fundamentalists, people from fairly rigid upbringing – you can't think about something, you just do it. On the opposite side are people that think there is nothing to think about, because it all a matter of taste – subjective. So on one hand you have people having an absolute view of ethical principles – they find these courses irritating, frustrating. On the other side you have students who think this is a non-area, because it is just a matter of taste / of fashion. Bulk of the students fall between these poles.*

*I would like someone to do research in a year or two to determine whether these courses have had an impact.*

*How you measure ethical behaviour comes down to what would counter ethical behaviour. You have certain criteria: is it purely egotistical? – driven by considerations from your own perspective – selfish behaviour. Is your thinking consistent? Is it universal? Does your behaviour cause any harm? Is your behaviour impartial? There is a whole range of criteria. There is some behaviour that I don't think comes up for ethical consideration. For example, your shirt you put on today, I think it would be silly for me to tell it is unethical to wear a striped shirt. But if you mislead me about this interview – that would be unethical.*

*That is why I need to shift my students to say there is an area where things are objective – we can describe a situation and we can say 'this is a case of lying and you should not lie'. But I don't think we have to go to the absolute position where we say lying is always bad, or the situation is always lying. There is also another side where it is lying if you think it is lying, or bad if you think it is bad.*

*There are three philosophical areas where you can find the tools to think with. The first two considerations concern your actions. If you do something you can ask yourself what is the rule I am applying here? Is that rule a rule that could apply to everybody? The other question is what will the consequences of my actions be? May be good for you, but for everyone else they will be pretty bad (used the example of selling a substandard house without disclosure – good for estate agent but bad for the real estate industry). These are two starting points for thinking about your actions.*

*The other area to think about is what sort of person should I be? What does my life mean to me? Do I want to work in an industry that is always ducking and diving, conning people – how does that fit into your personal value of integrity? Basically comes down to the question of what is a worthwhile life to lead? Deep questions about the different professions. And all the professions have different ideals.*

*All those areas might clash with the traditional attitudes we are talking about.*

*That is what we try to cover in the course. We do it in terms of theory, and try to find case studies. That is the biggest gap in ethics education and training for me. Most of our cases are from the States. Make a big effort to get South African case studies.*

## **QUESTION 2**

What 'lessons' from this training could be applied to training of real estate agents?

*I think since at this level it won't be done at university level, NQF4 level, training should start from real concrete cases. You're not going to impose all kinds of theories on these people. You take it from a real case, and the first step is to get people to spot the problem. Unless you see that there is a problem, the rest of the stuff will be pointless. And you will probably have to elicit this response. Some people will say 'I can't see any problem'. Some people will say 'there is a problem'. And the training should sharpen that awareness. It's called salience. An example could be people walking down the High Street everyday, they see beggars but don't even notice them anymore. Others see the problem, a poverty problem. (Training estate agents - ) Go through a portfolio that will come up in your life if you are an estate agent.*

*Sometimes if you spot a problem you know what to do. Sometimes the problem comes in the form of a dilemma. It might be a 'me' / 'other' dilemma between self-interest and the other person's interest, Very difficult one to handle. If the mother hasn't done a good job, you are going to have very little impact. A course is not going to change the person. Another type of dilemma is the conflict of interest between the buyer and the seller. Whose side do you take?*

*The third dilemma will be where you have two ethical thoughts clashing. If lying causes more harm than good, then it is bad. If lying causes more good than harm – ethical dilemma. (Gave example of lying about someone’s hairstyle – lie to make person feel good). Conflict between two ethical principles. This is the really difficult one.*

*So first step is to spot the kind of problem. A legal problem is not an ethical problem. Not everything that is legal is ethical, and not everything that is ethical is legal. Huge gap there. Maybe it is just a practical problem. Once the problem is spotted, let them work through solutions. Use the Code of Conduct / Ethics.*

### **QUESTION 3**

Is a Code of Conduct/Ethics sufficient, in your view, in ensuring ethical behaviour?

*The Code of Conduct / Ethics will not be sufficient.*

If not, why not?

*The Code of Conduct might help you spot a problem. But you still need practice. The Code of Ethics may point you in two directions. Might not give an answer. You might have to think of a solution yourself. You are never going to have a gapless set of rules. And then obviously, you might know what to do, but are you going to do it? And there I think the best addition to a code of ethics is enforcement. And follow up. And penalties. But that is way beyond training, that is through disciplinary action.*

### **QUESTION 4**

How can ethics training assist in ensuring the effectiveness of a code of conduct / ethics?

*What can help is to get people to see the bigger picture – to allow them to apply the code of conduct more intelligently, more effectively.*

*Training in ethical thinking can help. Codes can have gaps / may have conflicting points. Gives you the ability to use it more intelligently. I am very sceptical about whether it is going to help on the motivation side. If someone is open to temptation, if someone is weak, if someone is bad, ethics training will not help. This motivation side should happen in the first five years of your life. So in order to handle that problem – safeguards need to be put in place. If you cheat you will be exposed, you will be punished.*

*In training estate agents, do you talk about the public good of what you are doing, what is the bigger picture, where does it fit into people’s lives, in the economy? How important are*

*houses and accommodation? If you think of how crucial houses are for people, for stability. Do people entering the real estate industry really understand that?*

*There is a lot of scope for more ethical education.*

#### **QUESTION 5**

Any other comments, suggestions and recommendations regarding the research?

*Possible further research in developing a curriculum that you could propose to the industry. 'This is best practice - benchmarked'. Maybe everyone (in the industry) should have done a course like this.*

*An estate agent should have basic understanding of the general economy, finance, architecture and ethical training. Unless you have that you are a dangerous amateur.*

## 7. Business Ethics Education and Training: Comment from Professor Piet Naude

The structure of the interview will be as follows:

1. Introduction: The researcher will advise that confidentiality cannot be provided. The participant will be afforded the opportunity to request that any information provided during the interview not be published in the research document.
2. Interview: The interview will be conducted
3. Conclusion: The interview will be concluded and the participant thanked

### Personal Details

Name: Professor Piet Naude

Position: Head of NMMU Unit for Business Ethics  
President: Business Ethics Network of Africa (BEN-Africa)

#### QUESTION 1

What has been your experience in ethics education / training?

*A lot of people question the validity of ethics education. Misunderstanding of power of ethics education. People can be conscientised and learn new things. In my experience ethics training has been extremely positive.*

*It's not about telling people what to do, but to force them to think about what they do. And then measure them against generally acceptable standards, whether this be by the Constitution or religious values.*

*When I train, I ask the profession to give me case studies of ethical dilemmas. I work with what they give me.*

*This can be applied through comparison with what the Code tells us – how do we interpret it? Ethics training is fun and enjoyable. People just love it. People learn from each other.*

#### QUESTION 2

What 'lessons' from this training could be applied to training of real estate agents?

*Broad question. I think it is to bring together their experiences of ethical dilemmas with the framework that the EAAB provides in the Code of Conduct. Try to get these two spheres of interpretation to talk to one another. People can see that their decision was valid, but they can also be enlightened. Very interesting reaction. 'I now understand why the Code says X'. Decisions are validated or criticised.*

*Use people's experiences to bring in reality. I don't start a workshop with ethical theories, I finish a workshop with ethical theory.*

### **QUESTION 3**

Is a Code of Conduct/Ethics sufficient, in your view, in ensuring ethical behaviour?

*No.*

If not, why not?

*One must understand the limitations of a Code of Conduct.*

*First limitation is the psychological contract with the Code – being involved in the development of the Code or being induced in the Code to make the psychological contract with the code.*

*Another limitation is the fact that a Code can never deal with all eventualities. Two types of codes: Aspirational or directional codes. Aspirational codes are normally quite short. While directional Codes are 'you shall not...' Both have their value. For higher level employees you would probably have aspirational Codes, for professions, directional Codes are more suitable. Aspirational codes need high interpretation. Need a certain intellectual and ethical maturity to work with aspirational Codes. Very useful, but do people who are subject to those Codes have the maturity to interpret them? Directional codes are very useful for Professions – doctors, lawyers, teachers, architects etc. It is easier to interpret. But still, there will be situations where the Code does not prescribe behaviour, and in this case ethical maturity is needed, which may not be there.*

*Another limitation is when the code is used as marketing to the outside world instead of as a living document within the organisation. The question is whether it is convincing? A Code's moral force does not lie in it being available, but in it being demonstrated by actual actions.*

*I think when you come to the estate agency side, I think there are two crucial weaknesses. The threshold for entrance into the estate agency business is extremely low. Anyone with a hammer and a board can start selling. I personally would increase the legal requirements. If entrance threshold is low, unethical behaviour goes up. And the second thing, is that your*

*Continuous Professional Development CPD is not in place, you cannot constantly upgrade, conscientise, educate people. It is taken extremely seriously in other industries.*

*My advice. Push up thresholds and make your CPD work. No guarantee, but it helps a lot.*

*I don't think you can call estate agency a profession. I value their role in society, but I want them to be better – more trustworthy. Subject to stricter controls. Biggest single transaction an individual makes (property sales or purchase) is in the hands of people like you. I think it is actually dangerous having a profession with a low entry threshold and no CPD.*

*I don't have much confidence in SETA. If we could get something like the Medical Council / Bar Council that is set up by law. The industry then sets the standards. My view is that Professions should always go for self-regulation. Limit government interference, but the law enables this.*

*It is always better to have internal control: the industry should run itself according to its expectations, discipline, checks, expel, within the legal framework of the land. If the industry does not look after its own affairs, the politicians will move in. You should run yourself, but you have to prove to the general public that you can do it. One of the ethical issues of a profession is autonomy. Autonomy – because of my superior knowledge of the field, I can make a decision based on my specialist knowledge which should not be clouded by external influences. It is fine to have outsiders on a Board, but they should not be in the majority (in comment to the structure of the EAAB Board members).*

#### **QUESTION 4**

How can ethics training assist in ensuring the effectiveness of a code of conduct / ethics?

*Firstly letting people openly discuss the Code. Perhaps a person never even went through the clauses of the Code. Also to learn to interpret the Code. A Code cannot cover all eventualities. Ethics training creates an ability to interpret a Code in unforeseen circumstances. Understand the spirit of the Code, but to do this you need a certain moral framework.*

#### **QUESTION 5**

In your opinion, what essential elements are necessary for ethical behaviour in an industry?

*Differs from industry to industry. Different standards of behaviour based on the specifics of the industry.*

*Estate agents should determine the generic and unique concepts that apply to their industry.*

*What kind of conflict can arise in the real estate industry?*

#### **QUESTION 6**

Any other comments, suggestions and recommendations regarding the research?

*Emerging profession. Should approach parliament at some stage to legally become a profession. Real estate is not a profession. I suggest you look at the requirements for professionalising the industry for your research. That will have a great ethical influence.*

*Principals should be the first port of call when it comes to, what I call the discipline aspect of the Code. Normal procedures should be strictly adhered to. Client feedback should be taken extremely seriously.*

*Peer review: On a regular interval you should check that agents act in a way that complies with the ethical ideals. If people make mistakes, make sure they are disciplined in a positive way.*

*Serious mistake – you would say this is out of bounds*

*If you start external policing too soon, you create distrust. Ethics should be an educational process.*

*There must also be examples. People must lose their right to sell at the extreme end. And then you must be excluded by law from re-entering the industry.*

*Principals are on the ground, they should check on their staff, but from an education and development perspective.*

*(Aspect of theology): All religions have strong ethical values. Extremely valuable codes of conduct. Use religion in its most positive sense. I think we should include religion in business as we can enhance the ethicality of business.*

*(Discussed practical codes – e.g. '10 commandments for office'): One could collapse the Code into a one pager. Why not? Doctors only have 4 statements that come from the Medical Council.*

*What you need to look at is the Public Servants Code of Conduct. It has a manual to interpret the Code of Conduct. This could be useful for the EAAB Code of Conduct for interpretation. This could be a magnificent help. (Possibly the Code needs a re-write.)*

## 8. Franchise Group CEO

### Franchisor interview questionnaire

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 1969

Number of offices (Franchisor): 9 Offices, 18 Franchises

Approximate number of agents: 350-400

Legal entity

Sole proprietor	Partnership	Close Corporation	Company X	Other
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### Section 1: Perception of ethical behaviour of real estate agents

#### QUESTION 1

What characterises an ethical estate agent?

*Somebody who observes the rules of the Code of Conduct. Belief of what is right or wrong. Do unto others as you would want them to do unto you – Biblical and Hebrew basis.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes there is and there isn't. There is a lack of ethical behaviour by some. You can't make a blanket statement. Depends on the individual.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that a franchisee of yours has behaved unethically, how do you deal with the situation?

*Find out both sides of the story. Our business is our family name. We take it very seriously. Has the behaviour been negligent or fraudulent? If it is a mistake, then it is part of the process. If unethical, we have an escape clause in our franchise contract. We have in the past cancelled a franchise contract (due to unethical behaviour).*

### **QUESTION 4**

If a franchisee is found guilty of a contravention of the EAAB Code of Conduct, how do you deal / would you deal with the situation?

*Depends on the contravention itself. We go through a very involved process with new franchises. It is a culture of how you win, not just to win.*

### **QUESTION 5**

Is it compulsory for estate agents within your franchise group to write and pass the EAAB Board Exam?

*Yes and no. We would not insist an experienced agent must write the Board exam.*

### **QUESTION 6**

What training does the franchisor offer to franchise principals and agents?

*We offer an introductory course to Real Estate 3 times a year. On-going training is provided and we encourage our franchises to come.*

### **QUESTION 7**

Does the training cover the EAAB Code of Conduct?

*Absolutely. Both in going through the Code and in dealing with specific issues. Stress the integrity.*

If so, how is this training conducted?

*Lecture format with group participation.*

**QUESTION 8**

What influence does a franchise principal have on the ethical culture of the franchise?

*Obvious answer. Starts at the top. Very complicated process when getting a franchise. Franchise principal does have an influence.*

**QUESTION 9**

Were you, or representatives of your franchise group, consulted in the development of the EAAB Code of Conduct?

*Yes, I was a member of the Board and Chairman for 3 years. I worked with Professor Henk Delpport (in the development of the Code) - very involved.*

**QUESTION 10**

Does the Code of Conduct provide ethical guidelines for your franchise group?

*Absolutely. It is clear and gives clear understanding of what you can and cannot do.*

**QUESTION 11**

Do you have any written document detailing an internal code of conduct?

*No, every member gets a copy of the EAAB Code, which they have to observe. Our Policy Document makes reference to the Code of Conduct.*

**QUESTION 12**

Do you have any mechanisms in place to police ethical behaviour in your group?

*Open door policy. Management are hands on. Our people know there is a line that cannot be crossed.*

**QUESTION 13**

Do you believe ethical behaviour has any impact on the profitability of your business?

*Not sure. Difficult question. We will refuse business if unethical. The public know we are ethical – not sure whether this leads to sellers’ support. It is not the issue – it is just the way we do business.*

#### **QUESTION 14**

How do you view your role in ensuring ethical behaviour within the franchise group?

*Carries my name. I respect people, they respect me and the company. It is not about holding a big stick. Franchises come to us because they like the way we do business – meeting of minds.*

### **Section 3: Opinions of the EAAB Code of Conduct**

#### **QUESTION 15**

Is there anything you would like changed in the Code of Conduct? If so, what?

*Yes:*

- 1. Should include disputes between estate agent and estate agent and estate agent and principal. Currently it allows agents to get away with unethical behaviour – such as between estate agents.*
- 2. We are not allowed to recommend attorneys, but attorneys are able to recommend agents. The playing field needs to be levelled.*

#### **QUESTION 16**

Do you have any concerns about the current EAAB Code of Conduct?

*Refer previous question – attorneys.*

#### **QUESTION 17**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*Code of Conduct has been running for 14 years. It needs to be re-looked at. It is relevant today. There are other things that need to be included.*

#### **QUESTION 18**

What are the essential elements that should be in a Code of Conduct?

*The headings in the Code itself – duty to disclose, duty on mandates etc. The Code has stood well up to time.*

**QUESTION 19**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

- 1. In terms of mediating between agent and agents*
- 2. The EAAB is taking too long to handle complaints. Lucky if a complaint is heard within 12 months. Period should be three months to determine whether a hearing (is needed)*

**QUESTION 20**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*I don't know. They could have seminars and training on the Code.*

**QUESTION 21**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*We do it already. Part of our recruitment process (ensuring agents agree to the Code of Conduct). We have a good name, we have a good standing. People register with us because they enjoy been members of our company culture.*

**QUESTION 22**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Firmer application of the Code: if agents step out of line, hearings should be quicker. Either come into line or they should leave.*

*Agent vs agent disputes (need to be addressed)*

**QUESTION 22**

Are there any further comments you would like to make with regard to this research?

1. *Respondent asked that the research document be made available to members of the EAAB Board.*
2. *Respondent was concerned that the quantitative research was conducted in one province only*

## 9. Franchise Group – Training Manager / Director 1

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and training company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established:	1970s
Number of offices:	Approx 300 offices and branches
Approximate number of agents:	3000
Legal Entity:	Number of companies

### Section 1: Perception of ethical behaviour of real estate agents

#### QUESTION 1

What characterises an ethical estate agent?

*Obvious things. Honesty, Integrity, Transparency. Good business practice which underpins these things.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*It is difficult to say. I have been in business 25 years. It has improved dramatically, because the industry is more career-orientated. Of course you will get your loose cannons, especially in a good market. Ethical estate agents stay in business for a long time – because they are ethical. New training requirements will root out a lot of the unethical estate agents.*

### Section 2: The EAAB, ethics training and enforcement

#### QUESTION 3

Is it compulsory for estate agents within your franchise group to write and pass the EAAB Board Exam?

*Yes it is within the company's branches, but not so for franchisees. There is not as much control over franchisees although this is company policy.*

#### **QUESTION 4**

What training does the franchisor offer to franchise principals and agents?

*Internal training academy. Designated trainers for franchisees. Training manager within each province. Training is very high up on our priorities. It is a competitive advantage. All our managers and franchisees have done a management course specifically designed for the group.*

How often is the training offered?

*Agents: 10 modules over four days, which is held every quarter*

*Introduction course is offered monthly for new estate agents*

*Legal updates quarterly*

*In Gauteng there is weekly training*

*Full training academy which is in the process of acquiring SETA certification. Three admin staff and 6-7 trainers.*

*All trainers are assessors*

*We will currently only offer the FET Certificate to agents within the group*

#### **QUESTION 5**

Does the training cover the EAAB Code of Conduct?

*Yes, covered during our EAAB Exam training and part of our internal training*

#### **QUESTION 6**

Does the EAAB Code of Conduct provide ethical guidelines for your franchise group?

*Yes it does, it provides for the whole industry.*

*It is one of our training modules – Code of Conduct which includes the IEASA Code of Ethics. It is a full-day training session.*

*Our whole culture is an ethical culture. I have related codes to selling modules. More logical. Then do the application through case studies.*

**QUESTION 7**

Do you have any written document detailing an internal code of conduct?

*No, we work according to the Code of Conduct and Institute's Code.*

**QUESTION 8**

How do you view your role in ensuring ethical behaviour within the franchise group?

*Through training. Answering questions. Agents phone saying 'what do I do now?' - I consult to the agents. I spend half the day on the phone. They know they must call us first.*

**QUESTION 9**

What techniques do you use in ethics training?

*Covered earlier.*

**Section 3: Opinions on the EAAB Code of Conduct**

**QUESTION 10**

Do you have any concerns about the current EAAB Code of Conduct?

*None, except the language is above the man on the street. You need a lawyer to interpret. That is why I have summarised the Code, and that is what I train on.*

**QUESTION 11**

Are there any clauses in the Code of Conduct that you believe should not be in the Code?

*No, some of it is open for interpretation, and that is not good.*

**QUESTION 12**

What are the essential elements that should be in a Code of Conduct?

*I think the Code is relatively well done. Covers all aspects. Just deurmekaar, not a logical sequence. All obtuse, but it is there.*

### QUESTION 13

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*They are playing a role – disciplinary committees. They do investigate. I don't think there is enough awareness by the public of their rights when dealing with unethical behaviour. They can play a bigger role (in educating the public).*

*I think the new training will weed out unethical behaviour – lean and mean estate agency profession.*

### QUESTION 14

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Very important role. IEASA is home to a lot of smaller estate agencies. Huge responsibility to medium and small agencies. They offer training. They must take the place of training offered (by franchise groups).*

### QUESTION 15

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Very big role. Especially in creating a Culture. Culture comes from inside. Culture of ethical behaviour. That is the route to go. Focus on ethics and not finance.*

*Individuals (in our group) do not want to behave unethically. An embarrassment to the whole company.*

### QUESTION 16

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*By creating a company culture. Desire to learn and improve yourself – learning culture. That is the way to improve sales – creating a desire to improve.*

### QUESTION 17

Are there any further comments you would like to make with regard to this research?

*No*

## 10. Franchise Group – Training Manager / Director 2

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and training company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established:	1962
Number of offices:	Approx 34 offices and branches
Approximate number of agents:	380
Legal Entity:	Company

### Section 1: Perception of ethical behaviour of real estate agents

#### QUESTION 1

What characterises an ethical estate agent?

*Honesty with their clients – regarding pricing / availability of buyers. Basically not lying about stuff, which is what they do.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Generally speaking, I would say yes.*

### Section 2: The EAAB, ethics training and enforcement

#### QUESTION 3

Is it compulsory for estate agents within your franchise group to write and pass the EAAB Board Exam?

*In the past we encouraged them to all write the Board exam. I pushed it severely.*

#### **QUESTION 4**

What training does the franchisor offer to franchise principals and agents?

*Principal: Week-long orientation course – general management principles, operations, financial management, agent management. Also on-site training for new franchisees, mentor them.*

*Agents: Introductory three-day practical course – basic terminology. Advanced two-day training course – negotiations etc. Workshop style. Will offer new unit standard training (in the future)*

#### **QUESTION 5**

Does the training cover the EAAB Code of Conduct?

*Yes. Training is conducted in detail. Explain what each code means.*

#### **QUESTION 6**

Does the EAAB Code of Conduct provide ethical guidelines for your franchise group?

*Yes, franchises and offices act along the guidelines of the Code.*

#### **QUESTION 7**

Do you have any written document detailing an internal code of conduct?

*Yes, we call it an 'Office Policy'. Each office has one based on our guidelines. It is a work ethic type of contract. Covers how they should deal with clients and how they should behave in offices.*

#### **QUESTION 8**

How do you view your role in ensuring ethical behaviour within the franchise group?

*Important. I would be the one to set and teach the guidelines. In enforcing the guidelines, that would be the principal's responsibility.*

#### **QUESTION 9**

What techniques do you use in ethics training?

*Part and parcel of all the training I give. How to deal with clients in an ethical manner. When we deal with the Code, every agent will receive (a copy of) the Code and explanation. This will be workshopped – impact of unethical behaviour on them, company and industry.*

### **Section 3: Opinions on the EAAB Code of Conduct**

#### **QUESTION 10**

Do you have any concerns about the current EAAB Code of Conduct?

*Not at all*

#### **QUESTION 11**

Are there any clauses in the Code of Conduct that you believe should not be in the Code?

*Some of the clauses could be clearer. An example is on the issue of sole mandates – can't solicit a sole mandate in an offer to purchase – it is ambiguous and can be interpreted differently.*

#### **QUESTION 12**

What are the essential elements that should be in a Code of Conduct?

*Way an agent should conduct himself when dealing with a buyer and a seller. Code of Conduct indicates behaviour – What you can and can't do – protect the public.*

#### **QUESTION 13**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*When the EAAB receives a complaint, it should be followed up, which it is not.*

*Giving legal advice – they have tunnel-vision.*

*Fidelity Fund certificates a problem – makes it difficult for estate agents to make money. Needs more control or latitude.*

*Administration must be streamlined so that agents can act in accordance with the Code of Conduct. The departments (at the EAAB) don't work together.*

#### **QUESTION 14**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Make (Improve) knowledge of ethical behaviour and Code of Conduct. Discuss the Code and present to estate agents. If IEASA gets complaints, they should follow it up and ensure that it is sorted out.*

#### **QUESTION 15**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*They should lead by example. Ensure that their agents walk the straight and narrow. Hopefully it will siphon down to the rest of the estate agents (in the industry). Franchisor should start by getting franchisees to act properly. Otherwise agents will follow principal's behaviour.*

#### **QUESTION 16**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Ongoing awareness of the Code of Conduct. Ongoing training. Instil what is right and what is wrong. If an estate agent acts contrary to the Code of Conduct, and the Board gets wind of it, the act should be exposed. For example on the Web. We learn from these examples. Real case studies.*

#### **QUESTION 17**

Are there any further comments you would like to make with regard to this research?

*Certain Unit Standards promulgated by law, but the implementation is a problem. Not enough Assessors and infrastructure. No control. EAAB do not have the training material. Very scary for a training provider, assessment tools not available.*

*Us who have to train are looking like fools. The Board could do a lot to streamline the process.*

## 11. Independent Real Estate Trainer Interview

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and training company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 2000

Training Offered: Management, marketing, sales, letting,  
EAAB Board Exam and related real estate

Number of training sessions per month (days): 14-18

Approximate number of agents trained per month: 40 Agents

### Section 1: Perception of ethical behaviour of real estate agents

#### QUESTION 1

What characterises an ethical estate agent?

*One who puts his clients first. Old saying 'If you lie you can steal'. It is a mind set. Ethics is black or white. It is right or it isn't right. You are either ethical or not.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes, a large percentage. At least a 3<sup>rd</sup> are unethical. Cutting corners, even minor stuff is unethical. Unethical behaviour is prevalent amongst big chains as well – they are not necessarily better.*

### Section 2: The EAAB, ethics training and enforcement

#### QUESTION 3

Does your training cover the EAAB Code of Conduct?

*Very thoroughly. In Marketing and the Board exam. In management training I focus on fair behaviour to estate agents and clients.*

If so, how is this training conducted?

*I have a simplified Code of Conduct. I go through each clause and give examples. Same with marketing training.*

#### **QUESTION 4**

Do you believe that the EAAB Code of Conduct provides ethical guidelines for estate agents and principals?

*Vaguely so. The Code of Conduct is very difficult to understand. New training dispensation will mean nothing if not policed and agents inspected. You create illegal behaviour by not policing.*

#### **QUESTION 5**

How do you view your role in ensuring ethical behaviour in the real estate industry?

*Leading by example. I am scrupulously honest. I stress fairness and resulting repeat business. Can only do this if you behave ethically.*

#### **QUESTION 6**

What role should private real estate training providers play in ethics training?

*To simplify and explain the legalese in layman's terms. I can't train someone to be honest, but I can explain the ramifications of unethical behaviour and advise guidelines. I suggest to agents that they resign if they experience unethical behaviour by principals. You cannot be honest in grades.*

#### **QUESTION 7**

What techniques do you use in ethics training?

*I have covered to some extent. I often advise agents recourse when principals and other agents behave unethically. I do this for free. I do not offer arbitration.*

### **Section 3: Opinions on the EAAB Code of Conduct**

#### **QUESTION 8**

Do you have any concerns about the current EAAB Code of Conduct?

*I have taken the Code of Conduct as granted. I would like it simplified in layman's language. Some clauses are difficult to enforce, in this case, the clause should not even be in the code, for example overvaluing properties to get mandates. There is room for improvement and possibly more clauses are necessary*

*The Fidelity Fund monies should be used to promote visibility of the Board – this will create knowledge of the Code. The EAAB is like the secret service. The public can't get through on telephones to lodge complaints. There needs to be visible policing.*

#### **QUESTION 9**

What are the essential elements that should be in a Code of Conduct?

*Behaviour with buyers and sellers*

*Guidelines when working with other agents*

*Expanded to relationship between principal and estate agent*

#### **QUESTION 10**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*It should inform the public about what their rights are, in layman's language that the public can understand.*

*EAAB website needs to be more user-friendly.*

*EAAB branch should be established in each major regional centre of the country – wherever there is a Deeds Office.*

*Lots of inspectors are needed*

#### **QUESTION 12**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*The composition of the Board should change, incorporating more players from the real estate industry. I would prefer the industry to be self-regulated.*

### QUESTION 13

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*There should be higher levels of entry qualification of franchisees/ licensees. The Board should be more forthcoming with information on whether applicants have faced disciplinary action in the past. Franchisors should establish a 'complaints call centre' for the public. Then the public will do more business with franchisees.*

### QUESTION 14

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Mainly proper inspections.*

*Attorneys should be restricted in payment of commissions – only pay if the estate agent holds a Fidelity Certificate*

### QUESTION 15

Are there any further comments you would like to make with regard to this research?

*The inefficiency of the Board has done the industry the most damage. There is no trust in the Board and that is why people take chances.*

*I don't think the Code of Conduct creates ethics, but rather creates a framework if agents want to adhere.*

*I think the EAAB Board must take its head out of the sand. If an agent reports another agent for unethical behaviour, the EAAB should take action – i.e. we must be allowed to police ourselves.*

*Board should sponsor / conduct principals' training. If we get principals right, the industry will come right.*

*Reinstate the EAAB Magazine – 'Agent'*

*Imbizos are a waste of time*

## 12. Principal interview questionnaire: Macro 1

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 2003

Are you a franchise: 7 Offices – Principal of all

Approximate number of agents: 55

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
		X		

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Somebody that doesn't serve themselves and are driven by greed. Ethical – to service client. Forget about money, focus on the client. Open and honest to the client. No hidden information. Rather lose a deal than get one through unethical means. 80% of time deals will collapse if not obtained ethically. Driven by empathy.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*There is a lot of unethical behaviour.*

*Most mandates are not explained to sellers – feedback / reasonable period / overpricing*

*Some agents influence clients against an agent.*

*Buying a house is emotional, greed undermines this.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*Call agent, address issue with agent, call client and correct matter.*

*If unbearable I will dismiss – I don't care how 'good' the agent is – the goodness is short lived.*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*I encourage them to write. Encourage them to go to training. Knowledge is power. Must be empowered. Even if they leave and open their own agencies, they must be competent. This is my legacy.*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*We run internal training. Cover ethical issues, but not word for word. Refer to Code of Conduct when training on ethical issues.*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*Covered by various training, but not a formal ethics course.*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

**QUESTION 8**

Do you personally provide any training on ethical issues?

*See question 5*

**QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

*They must never misrepresent, be truthful, and show empathy and loyalty. If you behave ethically, the business will grow. Referrals have been a major reason for growth. Confidentiality must be respected.*

**QUESTION 10**

Do you have an internal written code of conduct?

*No*

**QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*It has. We wouldn't be where we are if we hadn't run the business in ethical manner. Develop a rapport. People do not want to be forced.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct?

*No*

What were the circumstances?

*N/A*

What were the findings?

*N/A*

Were you satisfied with the findings?

N/A

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

N/A

#### **Section 4: Opinions of the EAAB Code of Conduct**

##### **QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*Prefer EAAB. We need a governing body – the lawmakers. Government of our industry.*

##### **QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*No.*

##### **QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*No, but I haven't studied details. Nothing I have questioned.*

##### **QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Regulate the mandates. I think the time period for mandates should be regulated.*

##### **QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*They need to monitor. A window of monitoring. They must check before accepting agents. They should have stricter criteria for principals. Careless in accepting people in real estate.*

*We do not need a trust account.*

##### **QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*They should provide a lot of training on ethics, not just legal issues. I have never attended any ethics training. Institute only wakes up when there is a dispute. Every estate agent should be familiarised with the Code of Conduct.*

#### **QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Bigger groups do have an influence. Closed areas allows one to analyse performance of agents. Bigger companies have a broader vision.*

*People look up to bigger companies. I learn from the likes of Pam Golding. She has had an influence on me.*

#### **QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

- *Monitoring is very important. Branches in smaller areas.*
- *Each and every company must report back and account to EAAB / Institute*
- *Random research and understanding of people*
- *The EAAB is not efficient – people just trade without a Fidelity Certificate.*

#### **QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*The EAAB should regulate and check prior to allowing agents*

*I would like our industry to be a more professional industry. The general public do not see it as a professional industry. They see it as a 'part-time' housewife industry. We need to get our industry respected.*

*No attorney has ever checked on me as to whether I have a Fidelity Certificate. There should be pressure on attorneys to check Fidelity Certificates prior to paying commission.*



### 13. Principal interview questionnaire: Macro 2

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

#### Company description

Year Established: Feb 2004

Are you a franchise: Yes

Approximate number of agents: 28

Legal entity

Sole proprietor	Partnership	Close Corporation	Company <b>X</b>	Other
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#### Section 1:

##### QUESTION 1

What characterises an ethical estate agent?

*They have to work according to the Code of Conduct. It is like the 10 commandments. There is a fine line between skelm and sharp. I ask the agent 'Would you like it if someone did that to you', if no, then it is skelm.*

##### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Absolutely. This is why I am so happy they (the Board) are making it more difficult with their training requirements.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*I pack their bags and take it to their car. I will not be a partner to anything like that.*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*Yes*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*I train them on the Code of Conduct. We have a 'blue book' from a legal firm in town that contains the Code of Conduct. Each agent has one of these. I ask agents questions on the Code of Conduct. I think it very important.*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*The franchisor has a training arm and provides regular training on various aspects. My agents receive training prior to writing the Board exam, which covers the Code of Conduct.*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*Covered in question 6*

### **QUESTION 8**

Do you personally provide any training on ethical issues?

*Covered in question 5*

### **QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

*I am ethical and have never done anything I shouldn't do. I tell agents upfront that if they do not act ethically they are out. I bring the issue up when I interview agents.*

**QUESTION 10**

Do you have an internal written code of conduct?

*No we don't. They have the 'blue book' with the code of conduct.*

**QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*Yes, crooked agents don't deal with us. I have a written list of agents I will not deal with. If we deal with another agent we insist on using our Offer to Purchase.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct? *Yes*

What were the circumstances?

*Our client, a landlord refused to reimburse the tenant's deposit. The tenant reported us.*

What were the findings?

*We were found not guilty*

Were you satisfied with the findings?

*Yes. However, I felt the whole thing to be biased in order to nail the agent. The Board came down for the hearing while there are more important issues the EAAB should focus on: Bad agents are not taken to task / Agents acting without registering with the EAAB.*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*I stood behind the agent as it wasn't their fault. If the agent did act unethically I would ask them to leave.*

#### **Section 4: Opinions of the EAAB Code of Conduct**

##### **QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*Absolutely for self-regulation. The EAAB takes our money but doesn't perform. The Board is not doing a good job. I am comfortable with IEASA. They offer courses etc.*

##### **QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*No, not really. I just wish there was more to protect the agent.*

*Attorneys interpret the clauses differently – no standard interpretation of the clauses.*

##### **QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*No.*

##### **QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Protection for the agent. WE are paying into the fund but receive no protection. Skelms will interpret the Code to their advantage. I would just like it to be more difficult to become an estate agent.*

##### **QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*In all city centres the Board should have offices, with inspectors to do spot inspections. They should employ people who will not take bribes. We need a stricter presence of the Board.*

##### **QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*If you don't belong to IEASA, there is nothing IEASA can do against unethical estate agents.*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*I think most of them do play a role. Most of the CEOs are above board. Franchisees should get together and say 'don't employ agent X'. Most franchise groups do a lot of training.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Start with the principals. Make sure they employ people of good character. Can't just employ anyone.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*It starts at the top. The EAAB never used to be like this. We need a strong Board. The Board must be for the public and for estate agents. At the moment it is just for the public.*

## 14. Principal interview questionnaire: Macro 3

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 2004

Are you a franchise: Office within a real estate group

Approximate number of agents: 21

Legal entity

Sole proprietor	Partnership	Close Corporation	Company X	Other
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Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Sticking by the rules. Someone who has experience in real estate and has the backing of a company or brand.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*I don't think they are unethical to clients, more amongst themselves – cut-throat and hungry. Unethical in not explaining mandate or terms of contracts.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*Real investigation into it. Automatic dismissal if unethical. WE have a 'Formula to success' programme which we have bought into. If you don't buy into it, you don't belong here. Unethical people are shunned upon.*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*Candidates have to write the exam. Agents must be full status. All agents have to do a four-day selling course that includes the Code of Conduct.*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*Yes, integral part of a four-day day course which is compulsory.*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*Yes, through the four-day training course. No specific ethical course, but ethical issues are covered as we go along.*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*(Office) – included in the four-day training course.*

### **QUESTION 8**

Do you personally provide any training on ethical issues?

*No*

### **QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

*Lead by example – follow suit. My life is run by ethics. It is not acceptable to breach ethics.*

**QUESTION 10**

Do you have an internal written code of conduct?

*'Formula of success' which we abide to. Very wide, but covers the necessity of sticking to the Code of Conduct.*

**QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*Yes, your reputation is paramount in this business. Drawcard to repeat business.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct?

*No. Issues go to IEASA before going to EAAB.*

What were the circumstances?

*N/A*

What were the findings?

*N/A*

Were you satisfied with the findings?

*N/A*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*N/A*

**Section 4: Opinions of the EAAB Code of Conduct**

**QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*Prefer EAAB regulation – more strength.*

**QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*No. I haven't read it for a while. I revert to it when necessary.*

**QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*No, I think it covers everything.*

**QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Protect industry, clients and the agent. More to protect – A set of rules.*

**QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*The EAAB does not have an office in every centre. It should appoint someone in each region. Involved in training. Sometimes agents don't understand the legal jargon (of the Code of Conduct). The Code should be part of the new curriculum. If agents are aware of ethical issues, they will be better able to deal with situations that arise.*

**QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*They need to back the EAAB, supply training, give agents (and general public) support.*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*They should all have their own Code of Conduct. Keep to the EAAB Code. Dismiss those who are unethical. Provide regular internal training that evaluates provisions of the Code of Conduct.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Everyone must do a course on the Code of Conduct. As a bigger group we are sheltered. It is the one man band that one should be scared of. They don't get regular training. Membership fees (EAAB) should be higher. Small guys don't have anyone to answer to. More focus (encouraging) on agents working for larger companies. Bigger players should sit on IEASA Board.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*The new curriculum that aims to professionalise the industry should be promoted (to the general public) by EAAB and IEASA.*

## 15. Principal interview questionnaire: Medium 1

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 1998

Are you a franchise: No

Approximate number of agents: 15

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
		X		

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Honesty. They will be honest to people out there. Reliable. Motivated.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes, especially the new ones. If you have problems, it is with the new agents. I am not sure if this is because of the change in training requirements. (No longer necessary to write EAAB exam)*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*There is only one way. Right or wrong. I am very strict on them. I deal with the situation. I make them phone and speak to the person who was harmed. You must know the rules.*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*Yes*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*My agents are provided with general training which consists of aspects of ethics.*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*No specific training on the Code of Conduct*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

### **QUESTION 8**

Do you personally provide any training on ethical issues?

*In meetings I will discuss ethical issues*

### **QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

*I think I have good ethics. I do the right thing and they follow my steps.*

#### **QUESTION 10**

Do you have an internal written code of conduct?

Researcher was shown copy of employment contract as an example, but it wasn't a code of conduct.

#### **QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*Yes, there are lots of examples how ethical behaviour has led to business.*

### **Section 3: Contravention of the Code of Conduct**

#### **QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct?

*Yes, three times*

What were the circumstances?

*One example. An agent said it would take 6-8 months for a deceased transfer to be finalised, when in actual fact it took twice as long. Occupational rent was therefore for an extended period and purchasers lodged complaint.*

What were the findings?

*The buyer didn't pitch up for the hearing, so the complaint was chucked out*

Were you satisfied with the findings?

*I felt the buyer was unfair. Can never tell how long a deceased estate can take.*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*We discussed the matter. We went together. I am supportive. I never felt she was guilty.*

*If my agent was unethical, I would never hide the facts.*

### **Section 4: Opinions of the EAAB Code of Conduct**

**QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*The EAAB takes too long. One hearing took two years. It would be better handled on a local basis.*

**QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*The Code of Conduct does not give guidance on commission disputes – time frames between introduction and selling. There is confusion between ILS and Code of Conduct regulations.*

**QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*I didn't go through the Code of Conduct, so can't think of any clauses.*

**QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Must have written an exam and passed*

*I know people who have trust accounts who are insolvent – there needs to be more policing of trust accounts.*

*I would also like a Code of Conduct for principals.*

**QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*They must be more strict. Check the backgrounds of agents and principals. Must enforce.*

**QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Must play a big role. Must ensure not everyone becomes a member of IEASA. (i.e., if they are unethical etc.)*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Franchise groups are stricter in employing agents (her opinion). They should not be tasked with 'watching' smaller companies.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Clarify ethical issues. E.g. Intro and effective cause – give a date – we have lost a lot of money because of this.*

*The way agents dress. Unprofessional with way of dressing. Gives a negative impression*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*No*

## 16. Principal interview questionnaire: Medium 2

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: +/- 20 years

Are you a franchise: No

Approximate number of agents: 10

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
		X		

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Honesty and integrity*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Definitely. Older estate agents have ethical grounding. Newer agents haven't had in-house training. New estate agents also have a problem. We used to know what the right thing to do was. Influx of estate agents who are not as ethical.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*I don't think I could have them in my office. I trust my agents and don't think it would happen without due cause.*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*No, but encourage them to. I have a very good estate agent who has failed 3 times. She is a very ethical estate agent.*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*We have gone through the Code of Conduct. Code of Conduct is displayed on our notice board. New agents go through office rules and through the Code of Conduct.*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*No formal training. We talk about it a lot. In meetings we discuss the issues.*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

### **QUESTION 8**

Do you personally provide any training on ethical issues?

*More in terms of general interaction with the agents.*

### **QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

*You set a precedent as a principal. How you behave. I think it translates into ethical behaviour of estate agents. I don't take chances. I have access to legal specialists. Quick phonecall and I can clarify a grey area.*

**QUESTION 10**

Do you have an internal written code of conduct?

*No.*

**QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*I certainly do. Comments from public and feedback from clients and other agents on our ethical behaviour. I don't think directly – you do get buyers and sellers coming back to you, so it certainly does.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct?

*No*

What were the circumstances?

*N/A*

What were the findings?

*N/A*

Were you satisfied with the findings?

*N/A*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*N/A*

#### **Section 4: Opinions of the EAAB Code of Conduct**

##### **QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*At the moment it is a disaster. If someone does something unethical, no-one is brought to task. In my view, the IEASA is more efficient for regulating the industry.*

##### **QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*No.*

##### **QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*No.*

##### **QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Seller is your client*

*Responsibility towards public must be respected*

*Sole Mandate must not undermine seller - how it is signed. Seller not given info on ramifications, there is a lack of honesty.*

*Over-valuing of property in order to get mandates.*

##### **QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*EAAB should control more. There should be consequences.*

##### **QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Training on ethics*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Setting a precedent. People look up to them. Public see them as role players. Agents look up to them.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Training and consequences.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*I think it important that there be a Board exam, but in another format. Different structure. Questions are tricky. People who fail don't know why they fail. They get nothing out of the experience.*

## 17. Principal interview questionnaire: Medium 3

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 2004

Are you a franchise: No

Approximate number of agents: 5

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
X				

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*They need to be trained well, know the Code of Conduct. Ethical, trustworthy, professional.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes. New training requirements should be better for industry. I feel that no-one should operate without training. I have experienced unethical behaviour – agents get away with it.*

### Section 2: The EAAB, ethics training and enforcement

**QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*Get the full story from both sides, and determine what happened. If an agent does something wrong, try to sort it out in-house. The agency must take responsibility. I would re-train. If I can't get it right, I would make the agent leave.*

**QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*Yes*

**QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*Yes, in the beginning. They are also sent to ILS where they receive initial training on the Code of Conduct. If you had to tell an agent to read the Code of Conduct, 99% of them wouldn't.*

**QUESTION 6**

Does your agency receive any training on ethical issues?

*We used to have regular (internal) monthly training. We discussed issues, encouraged agents to talk about experiences – sharing of knowledge.*

**QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

**QUESTION 8**

Do you personally provide any training on ethical issues?

*In general – what our expectations of agents are.*

**QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

*Ethical behaviour 'rubs off'. Agents are able to phone me to check what to do. Rather deal with things upfront. Tell them if behaviour is unacceptable.*

**QUESTION 10**

Do you have an internal written code of conduct?

*No*

**QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*Yes, if you do the wrong thing, there goes your name. 'Bad things spread like fire'.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct?

*Yes (IEASA Disciplinary Hearing only)*

What were the circumstances?

*A tenant / purchaser was dissatisfied. The agent had put everything in writing and was not unethical.*

What were the findings?

*Not unethical behaviour. The IEASA supported the agent.*

Were you satisfied with the findings?

*Yes*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*I asked for her side of the story and gathered all the documentary proof. Jointly drafted letter to IEASA. Also tried to sort out the problem with the client.*

**Section 4: Opinions of the EAAB Code of Conduct**

**QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*The EAAB are not doing a wonderful job. How are they going to deal with the new (training) requirements. But the IEASA is also short manned.*

**QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*If someone does something wrong they are still in business? I know people who are insolvent who are still agents. Code should be in easy language to be understood. Codes can be interpreted in different ways.*

**QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*(She was not able to answer question as she could not remember contents)*

**QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Honesty, trustworthiness. Inter-agency rules. Disclosure of interests.*

**QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*Make sure everyone has a Fidelity Certificate. Expel unethical agents / principals. EAAB used to hold regular training sessions (which they no longer do). The EAAB should put money into the industry.*

**QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*They do provide regular training.*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Franchisors do not provide enough training. Principals and agents are poorly chosen. No in-house training.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Don't take anyone just off the street. If they don't have their heart in the industry they mustn't come in. They should see it as a career.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*No*

## 18. Principal interview questionnaire: Micro 1

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 1980

Are you a franchise: No

Approximate number of agents: 1

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
<b>X</b>				

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Someone who does what is right. There are ways not to do things. I have been asked to perform unethical acts by clients, but I tell them where to get off. But this hasn't happened recently.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Not the ones I work with. There are some agents I won't work with. I would say generally agents are ethical.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*N/A*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*N/A*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*N/A*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*Yes, I get invited by conveyancers, banks for training and attend roadshows. Not specifically ethics training, although it does come back to that.*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

### **QUESTION 8**

Do you personally provide any training on ethical issues?

*N/A*

### **QUESTION 9**

What influence do you believe you have on the ethical behaviour of your estate agents?

N/A

**QUESTION 10**

Do you have an internal written code of conduct?

*No, but possibly if I had people working for me.*

**QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*Yes, I have a lot of people who are referred to me because I am 'professional', more so than other people. They don't use the word 'ethical' although this is implied.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct? *No*

What were the circumstances?

N/A

What were the findings?

N/A

Were you satisfied with the findings?

N/A

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

N/A

**Section 4: Opinions of the EAAB Code of Conduct**

**QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*I don't think it makes a difference, but it needs to be national. So probably the EAAB.*

**QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*No, but I haven't read it for some time.*

**QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*I don't know*

**QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*Parameters in which to stay in your working environment.*

**QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*Training and enforcement. Once someone has gotten away once, they will tend to do it again if there was no penalty. Gives us all a bad name.*

*The EAAB must jack themselves up. Problem of getting certificates. They must do what it takes to make the certificates available. This is an ethical issue.*

**QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Same thing. Training & disciplining those who break the rules. No use having the rules if there is no control if the rules are broken.*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Training and discipline*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*If someone is a crook, they are not going to be trained straight. To get the Fidelity Certificate you just need to tick boxes that you haven't been sequestered etc – it doesn't control entry.*

*Principals must tell agents to leave if they behave unethically.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*EAAB must get its own house in order.*

## 19. Principal interview questionnaire: Micro 2

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 2008

Are you a franchise: No

Approximate number of agents: 1

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
		X		

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Someone who has rules and regulations to follow. Boundaries.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes. Other agents affect ethical behaviour.*

### Section 2: The EAAB, ethics training and enforcement

**QUESTION 3**

If it comes to light that an agent of yours were to behave unethically, how would you deal with the situation?

*I would counsel them. Find out why and reprimand them accordingly. It might just be that they were ignorant.*

**QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*N/A*

**QUESTION 5**

Will your agents provided with training on the EAAB Code of Conduct?

*Definitely*

**QUESTION 6**

Does you agency receive any training on ethical issues?

*Yes, regular training sessions. I try to go to as much training as possible. I also read a lot. Attorneys also keep us on the straight and narrow – provide guidelines.*

**QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

**QUESTION 8**

Would you personally provide any training on ethical issues?

*Yes, I want to put together training notes. I will make sure that agents receive modules including the Code of Conduct.*

**QUESTION 9**

What influence do you believe you will have on the ethical behaviour of your estate agents?

*By training and advising – reminding them about the Code and how to keep ethical in the field. I am above board.*

**QUESTION 10**

Do you have an internal written code of conduct?

*Yes I want to draft one, I already have a skeleton.*

**QUESTION 11**

Do you believe ethical behaviour will have any impact on your business?

*Definitely. Affects the good name of my company if agents misrepresent my company.*

**Section 3: Contravention of the Code of Conduct**

**QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct? *No*

What were the circumstances?

*N/A*

What were the findings?

*N/A*

Were you satisfied with the findings?

*N/A*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*N/A*

**Section 4: Opinions of the EAAB Code of Conduct**

**QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*Sel-regulated- E.g. IEASA - More people on hand to help you.*

**QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*It is far too long-winded. It's old news. It needs to be updated. 'Re-grammatised'.*

**QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*Nothing really.*

**QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*The way we should treat our clients – put them first.*

*The procedures (of selling) that should be done correctly.*

*Do's and Don'ts*

*I think we can add to the Code – seasoned people (agents) should re-visit the code and make it more use-friendly.*

*A lot of agents don't understand the Code. It is like a legal document. It should be like a training manual. Most agents don't have doctorates or masters – they are just normal people.*

**QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*I don't think they should play a role. They should just play an administrative function.*

**QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Provide training sessions – a lot more training. The Code of Conduct should be drummed into estate agents – emphasized.*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*They should train their agents. Contribute to IEASA to develop agents.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*Agents joining the industry should be screened. People could be in the industry for the wrong reasons. It should be a professional industry. There should be minimum training requirements. Agents should be screened for criminal records on certain elements. There should possibly be a panel that will screen estate agents before estate agencies can employ them.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*There is more good in the industry than bad. We must get rid of the bad players.*

## 20. Principal interview questionnaire: Micro 3

The structure of the interview will be as follows:

1. Introduction: The researcher will confirm that the identity of the participant and franchise group company will not be disclosed, and that their confidentiality will be respected.
2. Purpose of interview: The researcher will explain the reason for the research and role the interview will play in the research.
3. Interview: The interview will be conducted
4. Conclusion: The interview will be concluded and the participant thanked

### Company description

Year Established: 2006

Are you a franchise: No

Approximate number of agents: 1

Legal entity

Sole proprietor	Partnership	Close Corporation	Company	Other
		X		

### Section 1:

#### QUESTION 1

What characterises an ethical estate agent?

*Know what is expected of you. Honesty, feedback. Know what the Code of Conduct is about and keep to it. Put the other person first. I can't think of doing it any other way.*

#### QUESTION 2

In your opinion, is there a lack of ethical behaviour amongst real estate agents?

*Yes. They don't know the Code's concept of looking after buyers and sellers.*

## **Section 2: The EAAB, ethics training and enforcement**

### **QUESTION 3**

If it comes to light that an agent of yours has behaved unethically, how do you deal with the situation?

*N/A*

### **QUESTION 4**

Is it compulsory for your estate agents to write and pass the EAAB Board Exam?

*N/A*

### **QUESTION 5**

Are your agents provided with training on the EAAB Code of Conduct?

*N/A*

### **QUESTION 6**

Does your agency receive any training on ethical issues?

*No. Not aware of any training on the Code of Conduct. Training received is more on the selling aspect of the job.*

### **QUESTION 7**

If you are a franchisee, are you provided with any ethical training by your franchisor?

*N/A*

### **QUESTION 8**

Do you personally provide any training on ethical issues?

*N/A*

### **QUESTION 9**

What influence do you believe you have on the ethical behaviour of estate agents in your area?

*My ethical behaviour gets seen. I hope it has an impact on their behaviour. A role model.*

### **QUESTION 10**

Do you have an internal written code of conduct?

*My mission and vision include ethical issues - Deal with clients ethically and with integrity.*

#### **QUESTION 11**

Do you believe ethical behaviour has any impact on your business?

*Yes. Word of mouth. My initial clients come back to me or refer business because my service was good. If you bulldust them, they will never come back to you. I am what I believe in.*

### **Section 3: Contravention of the Code of Conduct**

#### **QUESTION 12**

Have you, your company or estate agents faced a disciplinary hearing/s due to alleged contravention of the Code of Conduct?

*No. IEASA tries to sort out problems before going to the EAAB. Their decisions are based on the Code of Conduct.*

What were the circumstances?

*N/A*

What were the findings?

*N/A*

Were you satisfied with the findings?

*N/A*

If it was your agent facing the disciplinary hearing, how did you deal with the agent?

*N/A*

### **Section 4: Opinions of the EAAB Code of Conduct**

#### **QUESTION 13**

Would you prefer the real estate industry to be self-regulated (for example, through a Code of Conduct developed by IEASA) rather than being regulated by the EAAB?

*Prefer to be regulated by IEASA. But then we must be at a point where all agents believe in the Institute. The EAAB is not for estate agents. The Institute promotes the interests of estate agents.*

**QUESTION 14**

Do you have any concerns about the current EAAB Code of Conduct?

*It is not 'out there'. Not everyone has a copy.*

**QUESTION 15**

Are there any clauses in the Code of Conduct that you believe should not be in document?

*I haven't looked at the Code of Conduct for ages. Not sure.*

**QUESTION 16**

What are the essential elements that should be in a Code of Conduct?

*How to behave.*

*If you don't behave in a certain way, the resulting consequences.*

*I like the current Code of Conduct.*

**QUESTION 17**

What role do you believe the EAAB should play in improving the ethical behaviour of real estate agents?

*Better service to estate agents. Don't make the agents feel they are always in the wrong. The EAAB does not help us. They can give us better service. Treat us with more respect. Every year the EAAB should send a Code of Conduct to agents.*

**QUESTION 18**

What role should industry bodies, such as IEASA, play in improving the ethical behaviour of real estate agents?

*Provide compulsory training on a regular basis – specifically on the Code. Talk more about the Code of Conduct. Agents and principals don't know the Code of Conduct (provisions). Be stricter on agencies' behaviour – must apply codes.*

**QUESTION 19**

What role should franchise groups play in improving the ethical behaviour of real estate agents?

*Make their agents more aware of the Code of Conduct. Regular training. Talk about the Code – make it part of meetings. Repercussions need to be communicated.*

**QUESTION 20**

Do you have any suggestions on how ethical behaviour of real estate agents and estate agencies could be improved?

*The IEASA should talk at zone meetings on clauses within the Code. Principals' responsibilities should include training on the code - consequences etc.*

**QUESTION 21**

Are there any further comments you would like to make with regard to this research?

*Further research should be conducted the how and why agents leave the industry.*

*Further research on the impact of the new training requirements.*

## 21. CODE OF CONDUCT (Estate Agency Affairs Board, 2008)

### 1. DEFINITIONS

In this code of conduct, unless the context otherwise indicates -

- (a) “board” means the Estate Agency Affairs Board;
- (b) “candidate estate agent” means a person referred to in paragraph c (ii) of the definition of “estate agent” in section 1 of the Act who has subject to the provisions of Government Notice R 1469 of 29 June 1990 been exempted from the standard of training prescribed by Government Notice R 1409 of 1 July 1983;
- (c) “client” means a person who has given an estate agent a mandate, provided that should an estate agent have conflicting mandates in respect of a particular immovable property, the person whose mandate has first been accepted by the estate agent, is regarded as the client;
- (d) “estate agency service” means any service referred to in subparagraphs (i) - (iv) of paragraph (a) of the definition of “estate agent” in section 1 of the Act;
- (e) “estate agent” means a person defined in section 1 of the Act, including a candidate estate agent;
- (f) “franchise” means an agreement, arrangement or understanding between a franchisor and a franchisee estate agent in terms of which the latter is entitled or required to operate under a trade name which is owned by, or which is associated with the business of, the franchisor or any other person;
- (g) “immovable property” means immovable property as defined in section 1 of the Act;
- (h) “mandate” means an instruction or an authority given to, and accepted by, an estate agent to render an estate agency service;
- (i) “sole mandate” means a mandate incorporating an undertaking on the part of the person giving the mandate, not to confer a similar mandate on another estate agent before the expiry of a determined or determinable period;

(j) "the Act" means the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976).

## **2. GENERAL DUTY TO PROTECT THE PUBLIC'S INTEREST**

In terms of estate agents' general duty to members of the public and other persons or bodies, an estate agent -

2.1 shall not in or pursuant to the conduct of his business do or omit to do any act which is or may be contrary to the integrity of estate agents in general;

2.2 shall protect the interests of his client at all times to the best of his ability, with due regard to the interests of all other parties concerned;

2.3 shall not in his capacity as an estate agent wilfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent;

2.4 shall comply with both the Act and the regulations promulgated thereunder;

2.5 shall not through the medium of a company, close corporation or third party, or by using such company, close corporation or third party as a front or nominee do anything which would not be permissible for him to do if he were operating as an estate agent;

2.6 shall not deny equal services to any person for reasons of race, creed, sex, or country of national origin;

2.7 shall not discriminate against a prospective purchaser of immovable property on the grounds that such purchaser will not, or is unlikely to, make use of financial assistance made available by any specific person or financial institution and which the estate agent offers to arrange on his behalf.

## **3. MANDATES**

No estate agent shall -

3.1 offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee therefor, unless he has been given a mandate to do so by the seller or lessor of the property, or his duly authorised agent;

3.2 on behalf of a prospective purchaser or lessee, offer, purport or attempt to offer to purchase or lease any immovable property or negotiate in connection therewith or canvass, or undertake or offer to canvass a seller or lessor therefor, unless he has been given a mandate to do so by such prospective purchaser or lessee, as the case may be, or his duly authorised agent;

3.3 accept a sole mandate, or the extension of the period of an existing sole mandate, unless -

3.3.1 all the terms of such mandate (or extension, as the case may be) are in writing and signed by the client;

3.3.2 the expiry date of the mandate (or extension, as the case may be) which shall be expressed as a calendar date, is specifically recorded in the written sole mandate (or extension, as the case may be);

3.4 accept a sole mandate which contains a provision conferring upon him -

3.4.1 an option to extend the sole mandate for a certain period after expiry of the sole mandate; or

3.4.2 a mandate to continue to render the same estate agency service referred to in the sole mandate, after expiry of the sole mandate, unless -

(aa) the client has prior to his signature of the sole mandate expressly consented in a written document executed independently of the said sole mandate, to the inclusion of such provision or provisions (as the case may be); and

(bb) such document contains an explanation of the reasons for and implications of the inclusion of such provision; and

(cc) such document is signed by both the client and the estate agent in question;

3.5 accept a sole mandate which also confers upon him a power of attorney to act

on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate;

3.6 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract;

3.7 accept any mandate or instructions for work in respect of immovable property if his interest therein would compete with his obligations towards an existing client in respect of the same immovable property without first disclosing such interest in writing to such client;

3.8 knowingly or negligently make a material misrepresentation concerning the likely market value or rental income of immovable property to a seller or lessor thereof, in order to obtain a mandate in respect of such property;

3.9 accept a mandate in respect of any immovable property if the performance of the mandate requires specialised skill or knowledge falling outside his field of competence, unless he will in the performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client;

3.10 accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client -

3.10.1 the legal implications should the client during the currency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent; and

3.10.2 what specific obligations in respect of the marketing of the property will be assumed by the estate agent in his endeavour to perform the mandate: Provided that such explanations, if contained in a standard pre-printed or typed sole mandate document, shall be in lettering not smaller than that generally used in the remainder of the document.

#### **4. DUTY TO DISCLOSE**

4.1 An estate agent shall -

4.1.1 convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge and which are or could be material to a prospective purchaser or lessee thereof;

4.1.2 if he conducts his business in terms of a franchise, disclose clearly and unambiguously in all his correspondence, circulars, advertisements and other written documentation that he operates in terms of a franchise and state thereon his name and the name of the franchisor;

4.1.3 if he conducts his business under a trade name or style other than his own name, clearly disclose his full name in all correspondence, circulars and other written documentation;

4.1.4 not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate, which conflicts with the aforesaid mandate, has been accepted by him, unless he has disclosed to the person who has given the later mandate the existence of such prior mandate, and the fact that he will not be the estate agent's client in respect of that property;

4.2 No estate agent shall purchase directly or indirectly for himself, or acquire any interest in, or conclude a lease in respect of, any immovable property in respect of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of, or interest in, such immovable property.

## **5. DUTY NOT TO MAKE MISREPRESENTATIONS**

### **OR FALSE STATEMENTS OR TO USE HARMFUL MARKETING TECHNIQUES**

No estate agent shall -

5.1 in his capacity as an estate agent publish or cause to be published any

advertisement which could create the impression that it was published by the owner, seller or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;

5.2 wilfully or negligently, in relation to his activities as an estate agent, prepare, make or assist any other person to prepare or make any false statement, whether orally or in writing or sign any false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of account or other records;

5.3 claim to be an expert or to have specialised knowledge in respect of any estate agency service if, in fact, he is not such an expert or does not have such special knowledge;

5.4 advertise or otherwise market immovable property in respect of which has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;

5.5 without derogating from the generality of the foregoing -

5.5.1 wilfully or negligently mislead or misrepresent in regard to any matter pertaining to the immovable property in respect of which he has a mandate;

5.5.2 use any harmful or misleading marketing technique or method to influence any person to confer upon him a mandate to render any estate agency service or to sell, purchase, let or hire immovable property, having regard to the general experience which such person has concerning property transactions and the circumstances surrounding the transaction or proposed transaction;

5.6 use any firm or trading name in respect of his business if such name may give rise to confusion on the part of the public in respect of the nature of the business carried on by him;

5.7 inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from a purchaser or the seller (as the case may be), unless such offer -

5.7.1 is in writing; and

5.7.2 has been signed by the offeror; and

5.7.3 is to the knowledge of the estate agent concerned, a bona fide offer;

5.8 affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let unless -

5.8.1 the seller or lessor (as the case may be) has given his written consent to do so; and

5.8.2 the estate agent concerned in fact has a mandate to sell or let the property, or in fact has sold or let the property, as the case may be.

## **6. DUTIES IN RESPECT OF OFFERS AND CONTRACTS**

6.1 No estate agent -

6.1.1 who has a mandate to sell or purchase immovable property shall wilfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a contract of sale in respect of such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;

6.1.2 who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to induce the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller;

6.1.3 shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.

6.2 An estate agent shall -

6.2.1 explain to every prospective party to any written offer or contract

negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he is unable to do so, refer such party to a person who can do so;

6.2.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted by the expiry date thereof, forthwith notify the offeror of such fact;

6.2.3 without undue delay furnish every contracting party with a copy of an agreement of sale, lease, option or mandate with which he is concerned as an estate agent, provided that the foregoing shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.

## **7. PROHIBITION AGAINST UNDUE INFLUENCE**

No estate agent shall without good and sufficient cause, directly or indirectly, in any manner whatsoever, solicit, encourage, persuade or influence any party or potential party to a pending or a completed transaction to utilise or refrain from utilising -

7.1 the services of any particular attorney, conveyancer or firm of attorneys;

7.2 the services or financial assistance offered by any financial institution to members of the public in general; or

7.3 the financial assistance offered to such party by any person.

## **8. REMUNERATION**

No estate agent shall -

8.1 stipulate for, demand or receive directly or indirectly any remuneration, commission, benefit or gain arising from or connected with any completed, pending or proposed contract of sale or lease which is subject to -

8.1.1 a suspensive condition, until such time as that condition has been fulfilled; or

8.1.2 a resolute condition, during the time that the transaction may fall away as a result of the operation of the said resolute condition: Provided that the foregoing shall not apply if -

(aa) good cause exists; and

(bb) the party liable for the payment of the remuneration, commission, benefit or gain has expressly consented in a written document executed independently of the contract in question, to such payment at any time, notwithstanding the fact that the said contract is subject to a suspensive or resolutive condition, as the case may be; and

(cc) such document contains an explanation of the implications and financial risks for such party of such payment; and

(dd) such document is signed by such party and the estate agent in question;

8.2 convey to his client or any other party to a completed or proposed transaction in

which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the board or any institute or association of estate agents or any other body;

8.3 introduce a prospective purchaser or lessee to any immovable property or to

the seller or lessor thereof, if he knows, or has reason to believe, that such person has already been introduced to such property or the seller or lessor thereof by another estate agent and that there is a likelihood that his client may have to pay commission to such other, or to more than one estate agent, should the sale or lease be concluded through his intervention: Provided that the foregoing shall not apply if the estate agent has informed his client of such likelihood and obtained his written consent to introduce such party to the property or the seller or lessor thereof;

8.4 include, or cause to be included, or accept the benefit of, any clause in a

mandate or in a contract of sale or lease of immovable property, providing for payment to him by the seller or lessor of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of the fact whether the purchaser or lessee is financially able to fulfill his obligations in terms of the said contract: Provided that the foregoing shall not apply if -

(aa) good cause exists; and

(bb) the seller or lessor has, prior to his signature of the contract or mandate (as the case may be) consented in writing in a document executed

independently of the said mandate and contract, to such payment; and  
(cc) such document contains an explanation of the implications and financial risks for the seller or lessor of such payment; and

(dd) such document is signed by both the estate agent and the seller or lessor;

8.5 include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, entitling him to deduct from any money entrusted to him in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract: Provided that the foregoing shall not be so construed so as to prohibit an estate agent from making such deduction when such money is actually paid over by him to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain.

## **9. TRUST MONEY AND INTEREST**

An estate agent -

9.1 shall not solicit or influence any person entitled to trust funds in the agent's possession or under his control to make over or pay to the estate agent directly or indirectly any interest on moneys deposited or invested in terms of section 32 (1) or 32(2)(a) of the Act;

9.2 shall, before he receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that unless they agree in writing to whom interest earned on such money must be paid, the interest shall, in terms of section 32(2)(c) of the Act, accrue to the Estate Agents Fidelity Fund;

9.3 shall, if any money is invested by him pursuant to section 32(2)(a) of the Act or pursuant to an instruction by the party entitled to the interest on money held in trust by the estate agent -

9.3.1 invest such money at the best interest rate available in the circumstances at the bank or building society where he normally keeps his trust account or accounts; and

9.3.2 pay the full amount of the interest which accrued on the investment to the

party entitled to such interest, or the board (as the case may be), subject to any written agreement in this regard between him and such party;

9.4 shall not include, or cause to be included, or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser: Provided that the foregoing shall not apply if -

(aa) good cause exists; and

(bb) the purchaser has prior to his signature of the contract in question, consented in writing in a document executed independently of the said contract, to such payment; and

(cc) such document contains an explanation of the implications and financial risks of such payment for the purchaser; and

(dd) such document is signed by both the seller and the purchaser and the estate agent in question.

## **10. CONFIDENTIALITY**

No estate agent shall, without just cause, divulge to any third party any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he acted as an estate agent.

## **11. VICARIOUS RESPONSIBILITY**

Every estate agent who is the sole proprietor of an estate agency business or a partner in a partnership or a director of a company or a member of a close corporation contemplated in paragraph (b) of the definition of "estate agent" in section 1 of the Act carrying on the business of an estate agent, shall be held responsible for any contravention of or failure to comply with this code of conduct by any other partner, director, or member or by any estate agent in the service of such sole proprietorship, partnership, company or close corporation, unless he has prior to such contravention or failure to comply taken all reasonable steps to prevent the same and could not in the circumstances have prevented such contravention or failure to comply.

## **12. GOVERNMENT NOTICES R 1799 OF 29 AUGUST 1986**

AND R 2106 OF 3 OCTOBER 1986 ARE HEREBY REPEALED.

**13. THIS NOTICE WILL COME INTO OPERATION ON 1 APRIL 1993.**

## 22. SAQA Unit Standard 246737: Demonstrate knowledge of and apply the Real Estate Code of Conduct and ethics (SAQA, 2008)



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### SOUTH AFRICAN QUALIFICATIONS AUTHORITY

#### REGISTERED UNIT STANDARD:

#### Demonstrate knowledge of and apply the Real Estate Code of Conduct and ethics

SAQA US ID	UNIT STANDARD TITLE		
246737	Demonstrate knowledge of and apply the Real Estate Code of Conduct and ethics		
ORIGINATOR		REGISTERING PROVIDER	
SGB Real Estate			
FIELD		SUBFIELD	
Field 11 - Services		Cleaning, Domestic, Hiring, Property and Rescue Services	
ABET BAND	UNIT STANDARD TYPE	NQF LEVEL	CREDITS
Undefined	Regular	Level 5	6
REGISTRATION	REGISTRATION	REGISTRATION	SAQA DECISION

<b>STATUS</b>	<b>START DATE</b>	<b>END DATE</b>	<b>NUMBER</b>
Registered	2007-11-28	2010-11-28	SAQA 0474/07
<b>LAST DATE FOR ENROLMENT</b>		<b>LAST DATE FOR ACHIEVEMENT</b>	
2011-11-28		2014-11-28	

This unit standard does not replace any other unit standard and is not replaced by any other unit standard.

### **PURPOSE OF THE UNIT STANDARD**

This unit standard is for learners seeking to enter the Real Estate profession or someone already in the Real Estate profession wishing to enhance his/her competences. This unit standard enables a learner to apply the necessary ethical principles and codes of conduct relevant to the Real Estate environment to his/her own work context.

The qualifying learner is capable of:

- Describing the factors that influence the development of a code of ethics.
- Explaining the contents of the Real Estate Code of Conduct.
- Explaining the implications of the Real Estate Code of Conduct for a Real Estate organisation.
- Relating a Code of Conduct to ethical values and standards within own organisation and discussing ethical best practices.
- Applying a Real Estate Code of Conduct and ethics in own work context.

### **LEARNING ASSUMED TO BE IN PLACE AND RECOGNITION OF PRIOR LEARNING**

It is assumed that the learner accessing this standard will be competent in Communications and Mathematical Literacy at NQF Level 4 or equivalent.

## **UNIT STANDARD RANGE**

N/A

## **Specific Outcomes and Assessment Criteria:**

### **SPECIFIC OUTCOME 1**

Describe the factors that influence the development of a code of ethics.

### **ASSESSMENT CRITERIA**

#### **ASSESSMENT CRITERION 1**

Different codes of ethics are identified and described in terms of their key elements.

#### **ASSESSMENT CRITERION 2**

The rationale for ethical codes within professions is explained with reference to internal and external regulation and moral responsibility.

#### **ASSESSMENT CRITERION 3**

The role ethics plays in forming professional ethical codes is described in terms of generally accepted literature on ethical approaches and theories.

#### **ASSESSMENT CRITERION 4**

Key influences in the formation of a code of ethics are identified and described in terms of a variety of social, interpersonal, moral and environmental factors.

#### **ASSESSMENT CRITERION 5**

Own perspectives of ethical actions are analysed in relation to a specified professional ethical code.

## **SPECIFIC OUTCOME 2**

Explain the contents of the Real Estate Code of Conduct.

## **ASSESSMENT CRITERIA**

### **ASSESSMENT CRITERION 1**

Key ethical concepts in forming a code of ethics are explained in terms of the history and context of the Real Estate profession.

### **ASSESSMENT CRITERION 2**

The Estate Agency Affairs Act is explained as it relates and governs the Code of Conduct that applies to the Real Estate sector.

### **ASSESSMENT CRITERION 3**

The main principles of conduct established by the Code of Conduct for Real Estate are identified and explained in relation to own work context.

### **ASSESSMENT CRITERION 4**

Related codes of conduct, ethics, values and missions that operate in the organisation in which the learner works are identified and the similarities to the Real Estate Code of Conduct are discussed with examples.

## **SPECIFIC OUTCOME 3**

Explain the implications of the Real Estate Code of Conduct for a Real Estate organisation.

## **ASSESSMENT CRITERIA**

### **ASSESSMENT CRITERION 1**

The consequences of non-compliance to the Code of Conduct are discussed with examples in relation to a Real Estate organisation.

### **ASSESSMENT CRITERION 2**

A recent example or case that illustrates the importance of the Code of Conduct for a Real Estate organisation is discussed in relation to issues of compliance and non-compliance.

### **ASSESSMENT CRITERION 3**

The implications of the Real Estate Code of Conduct are described as they relate to a Real Estate agent.

### **ASSESSMENT CRITERION 4**

A recent example or case that illustrates the importance of the Code of Conduct for a Real Estate agent is identified and explained to expose the costs to the individual of non-compliance and the benefits to the individual of compliance.

### **ASSESSMENT CRITERION 5**

The consequences of non-compliance to the Code of Conduct are discussed with examples in relation to other parties.

### **ASSESSMENT CRITERION RANGE**

Other parties include but are not limited to the buyer, the seller and other estate agents, principals due to their fiduciary responsibility

## **ASSESSMENT CRITERION 6**

A recent example or case that illustrates the importance of the Code of Conduct for a other parties is identified and explained to expose the costs to the individual of non-compliance and the benefits to the individual of compliance.

## **SPECIFIC OUTCOME 4**

Relate Real Estate Code of Conduct to ethical values and standards within own organisation and discuss ethical best practices.

## **ASSESSMENT CRITERIA**

### **ASSESSMENT CRITERION 1**

The concept of ethics is discussed with examples and in relation to examples of other rules of conduct and ethical best practices and benchmarks against other industries.

### **ASSESSMENT CRITERION 2**

Typical ethical dilemmas or conflicts within the Real Estate environment are discussed with examples.

### **ASSESSMENT CRITERION RANGE**

Ethical dilemmas or conflicts include but are not limited to acceptance of gifts, hospitality and travel, sponsorship, secondary employment, post-employment obligations, disclosure of information, kickbacks.

### **ASSESSMENT CRITERION 3**

The typical core ethical values and standards that apply to Real Estate are explained with examples.

## **ASSESSMENT CRITERION RANGE**

Core ethical values and standards include but are not limited to justice, fairness, integrity, responsibility, openness, accountability, stewardship, competence.

## **ASSESSMENT CRITERION 4**

The importance of ethical values and standards in relation to the Real Estate sector is explained with examples.

## **ASSESSMENT CRITERION RANGE**

Examples include but are not limited to customer expectations, nature of Real Estate transactions, accountability requirements.

## **SPECIFIC OUTCOME 5**

Apply the Real Estate Code of Conduct and ethics in own work context.

## **ASSESSMENT CRITERIA**

### **ASSESSMENT CRITERION 1**

Existing workplace duties and functions are compared with the Real Estate Code of Conduct.

### **ASSESSMENT CRITERION 2**

Individual conduct is evaluated against the Code of Conduct and inconsistencies identified, together with proposed alternatives.

### **ASSESSMENT CRITERION RANGE**

Alternatives include alternate behaviours or recommended adaptations to the

code.

### **ASSESSMENT CRITERION 3**

Methods for integrating Code of Conduct and ethical requirements into own work context are explained with examples.

### **ASSESSMENT CRITERION 4**

Typical ethical problems and dilemmas anticipated in own work context are defined and methods for overcoming them are discussed with examples.

### **ASSESSMENT CRITERION 5**

Methods for integrating Code of Conduct into own organisation`s mission and values in providing Real Estate services are outlined with examples.

### **ASSESSMENT CRITERION 6**

Current duties and functions of the workplace are identified and aligned to the principles of the work ethic.

### **ASSESSMENT CRITERION RANGE**

Duties and functions are described as consistent or inconsistent in relation to the work ethic in the workplace, sector or institution.

### **UNIT STANDARD ACCREDITATION AND MODERATION OPTIONS**

Any individual wishing to be assessed (including through RPL) against this unit standard may apply to an assessment agency, assessor or provider institution accredited by the relevant ETQA, or an ETQA that has a Memorandum of Understanding with the relevant ETQA.

- Anyone assessing a learner against this unit standard must be registered as an assessor with the relevant ETQA, or an ETQA that has a Memorandum of Understanding with the relevant ETQA.
- Any institution offering learning that will enable achievement of this unit standard or assessing this unit standard must be accredited as a provider with the relevant ETQA, or an ETQA that has a Memorandum of Understanding with the relevant ETQA.
- Moderation of assessment will be conducted by the relevant ETQA at its discretion.

#### **UNIT STANDARD ESSENTIAL EMBEDDED KNOWLEDGE**

- Real Estate Code of Conduct.
- Ethical standards and requirements in Real Estate Environment.
- Problem solving skills for handling ethical dilemmas within Real Estate environment.

#### **UNIT STANDARD DEVELOPMENTAL OUTCOME**

N/A

#### **UNIT STANDARD LINKAGES**

N/A

#### **Critical Cross-field Outcomes (CCFO):**

##### **UNIT STANDARD CCFO IDENTIFYING**

Identify and solve problems using critical and creative thinking processes to identify and overcome ethical dilemmas and issues relating to the Real Estate Code of Conduct.

### **UNIT STANDARD CCFO WORKING**

Work effectively with others as a member of a team, group, organisation or community to enhance standards of professionalism and ethics within real estate sector.

### **UNIT STANDARD CCFO ORGANISING**

Organise and manage oneself and one's activities responsibly and effectively in order to ensure ongoing compliance to Real Estate Code of Conduct.

### **UNIT STANDARD CCFO COLLECTING**

Collect, analyse, organise and critically evaluate information in order to effectively identify how to solve ethical dilemmas.

### **UNIT STANDARD CCFO COMMUNICATING**

Communicate effectively using visual, mathematical and/or language in the modes of oral and/or written persuasion to convey ethical standards and codes of conduct that apply in own work context.

### **UNIT STANDARD CCFO SCIENCE**

Use science and technology effectively and critically, showing responsibility to the environment and health of others to keep abreast of the latest developments relating to the Real Estate Code of Conduct and ethical requirements.

### **UNIT STANDARD CCFO DEMONSTRATING**

Demonstrate an understanding of the world as a set of interrelated systems by recognising that the ethical dilemmas that may arise in the Real Estate context do not exist in isolation and that a variety of extenuating factors can affect ethical standards and codes of conduct.

## UNIT STANDARD CCFO CONTRIBUTING

Participate as responsible citizens in the life of local, national and global communities by ensuring that Real Estate Code of Conduct and ethical standards are adhered to at all times.

### QUALIFICATIONS UTILISING THIS UNIT STANDARD:

	ID	QUALIFICATION TITLE	LEVEL	STATUS	END DATE
Core	<a href="#">59097</a>	Further Education and Training Certificate: Real Estate	Level 4	Registered	2010-11-28

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## 23. Comparison between the EAAB Code of Conduct and other industry Codes of Conduct

Utilising the table below, the EAAB Code of Conduct is unpacked into various content categories, and compared against the following real estate industry Codes of Conduct:

- Code of Ethics and Standards of Practice of the National Association of Realtors (NAR) (Code of Ethics and Standards of Practice of the National Association of Realtors, 2008) – The Code is a self-regulatory mechanism in the USA real estate industry
- Real Estate and Business Agents Supervisory Board (REBA) Code of Conduct for Board Members and Officers 2007 (Real Estate and Business Agents Supervisory Board (REBA) Code of Conduct for Board Members and Officers, 2008) – A Western Australia statutory code for the Board members themselves
- Code of Conduct of the Real Estate Institute of Australia (REIA) (Code of Conduct of the Real Estate Institute of Australia, 2008)
- Accreditation of International Real Estate Professional (AIREP) Code of Conduct (Accreditation of International Real Estate Professional (AIREP) Code of Conduct, 2008)
- Association of International Property Professional (AIPP) Code of Conduct (Association of International Property Professional (AIPP) Code of Conduct, 2008)
- Code of Ethics for the Institute of Estate Agents South Africa (IEASA) (Code of Ethics for the Institute of Estate Agents South Africa, 2008)
- ING Real Estate Code of Conduct (ING Real Estate Code of Conduct, 2008) – An Australian Real Estate Agency internal Code of Conduct

<b>EAAB Code of Conduct section content (summarised for ease of reference – please refer to code for actual description)</b>	<b>NAR</b>	<b>REBA</b>	<b>REIA</b>	<b>AIREP</b>	<b>AIPP</b>	<b>IEASA</b>	<b>ING</b>
Section 2: General duty to protect the public's interest							
2.1 Real estate agents may not do anything contrary to the integrity of estate agents	Y	Y			Y		
2.2 Shall protect the interests of his clients to the best of his ability with due regard to the interests of all parties	Y		Y			Y	Y
2.3 Must perform duties with a degree of care and skill as would be expected of him	Y						
2.4 Shall comply with the Estate Agency Affairs Act (or relevant Act)		Y	Y	Y	Y	Y	
2.5 May not use a legal persona or nominee to do anything not permitted of an estate agent						Y	
2.6 Shall not discriminate on the basis of race, creed, sex and nationality	Y	Y		Y			
2.7 Shall not discriminate against a buyer not making use of a financial institution of the real estate agent's choice	Y	Y					

Section 3: Mandates							
3.1 May not offer a property for sale without a mandate	Y		Y				
3.2 May not act on behalf of a buyer without a mandate to do so	Y		Y				
3.3.1 May not accept a sole mandate unless the mandate is in writing and is signed by the client							
3.3.2. May not accept a sole mandate unless it has an expiry date							
3.4.1 May not accept a mandate with an option to extend							
3.4.2 May not accept a mandate that allows the agent to continue offering the same estate agency service after expiry of the sole mandate (with exceptions)							
3.5 May not accept a sole mandate that confers on the real estate agent a power of attorney (with exceptions)							
3.6 May not include in a contract of sale or lease a clause providing for a sole mandate after the conclusion of such a contract							
3.7 May not accept a mandate if there would be a conflict of interest with another client	Y			Y			Y

3.8 May not make a material misrepresentation concerning the market value of a property in order to obtain a mandate	Y						
3.9 May not accept a mandate without the requisite specialised skill	Y						
3.10.1 May not accept a sole mandate unless he has explained to the client the legal implications of the client selling the property without the assistance of the real estate agent	Y						
3.10.2 May not accept a sole mandate without specifying what marketing obligations are being undertaken by the estate agent							
Section 4: Duty to disclose							
4.1.1 An estate agent must disclose all facts concerning the property which could be material to a prospective purchaser	Y			Y		Y	
4.1.2 Must disclose that he is a franchisee on all stationery if that is the case						Y	
4.1.3 If business is conducted under a trade name differing from the registered entity, it must be disclosed						Y	
4.1.4 The real estate agent must disclose that fact that he has a conflicting mandate	Y		Y	Y	Y		Y

4.2 A real estate agent may not purchase or sell a property personally without disclosing the fact	Y			Y	Y	Y	Y
Section 5: Duty not to make misrepresentations or false statements or to use harmful marketing techniques							
5.1 May not advertise in such a way as to create an impression that it is a private transaction	Y					Y	
5.2 May not prepare or assist in preparing false information							
5.3 May not claim to be an expert when this is not the case	Y						
5.4 May not advertise a property at a price other than that agreed to			Y				
5.5.1 May not mislead or misrepresent any matter concerning a property	Y			Y	Y		
5.5.2 May not use any harmful or misleading advertising and must take into account the experience of the person with whom he is dealing	Y			Y	Y		
5.6 May not use a firm or trading name that may give rise to confusion as to the nature of the business	Y						
5.7 May not communicate to a seller or purchaser the existence of an offer or counter offer unless it is in writing, has been signed, and is legitimate							

5.8 May not put up a 'to let' or 'for sale' board without written permission and without a mandate	Y					Y	
Section 6: Duties in respect of offers and contracts							
6.1.1 A real estate agent must not fail to present offers and counter offers	Y		Y	Y			
6.1.2 A real estate agent may not present offers in such a way as to influence the decision of the offeree to accept a particular offer	Y			Y			
6.1.3 May not amend any clause in an offer without the express consent of the offeror							
6.2.1 Must explain to all parties the meaning and consequences of all material terms of a contract	Y						
6.2.2 Must communicate to the offeror when an offer is accepted or rejected				Y			
6.2.3 Must provide copies of contracts to the parties concerned without undue delay	Y					Y	
Section 7: Prohibition against undue influence							
7.1 Not influence the decision of appointing a particular attorney	Y	Y			Y		Y

7.2 Not influence the decision of utilising a particular financial service provider	Y	Y					Y
7.3 Not influence the decision of accepting financial assistance by a particular party	Y	Y					Y
Section 8: Remuneration							
8.1 A real estate agent may not stipulate payment of commission on a contract with a suspensive or resolute condition (with exceptions)				Y			
8.2 A real estate agent may not convey that he is disallowed from charging less commission than stipulated by any law, board or institute							
8.3 May not introduce a purchaser to a property if he has reason to believe the purchaser was previously introduced to the property by another estate agency			Y				
8.4 May not have a clause in any contract providing for commission payment even if the purchaser is not able to fulfil his financial obligations (with exceptions)				Y			
8.5 May not have a clause allowing the agent to deduct commission from trust money				Y			
Section 9: Trust money and interest							

9.1 May not influence any person to pay over interest on trust account							
9.2 Shall disclose to the party depositing trust monies as to the accrual of trust account monies – EAAB Fidelity Fund unless otherwise stated							
9.3.1 Trust fund money must be invested in an interest bearing trust account							
9.3.2 Pay the interest to the party to whom it accrued							
9.4 Shall not have a clause allowing the real estate agent to deduct monies from the purchaser’s trust money prior to registration of transfer (with exceptions)							
Section 10: Confidentiality							
A real estate agent may not divulge confidential information	Y	Y	Y	Y			Y
Section 10: Vicarious Information							
Every proprietor, member or director shall be held liable for contraventions of other members, directors and estate agents in the agency			Y				

Content in other Codes of Conduct not incorporated in the EAAB Code of Conduct:

- Codes dealing with internet advertising - NAR
- Codes dealing with interactions between estate agencies, including obligations to work with other agencies for the benefit of clients – NAR
- Duty to verify information – REIA
- Letting and managing agent's duties, for example a duty to advise owner regarding breach by tenants – REIA
- Confidentiality covered in more detail – AIREP
- Training – AIPP
- Dispute resolution - AIPP