

# When does an estate agent earn a commission?

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Buyers and sellers alike often see an estate agent as a necessary evil when it comes to purchasing property. However, a property transaction is very complex, and often the biggest financial decision most South Africans will ever make and, for most, it's imperative to get the right advice and guidance throughout the process. Unfortunately, a number of unscrupulous and inexperienced estate agents have damaged the reputation of this essential profession.



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## What an estate agents brings to the table

A qualified estate agent has an extensive knowledge of the local property market which means that he or she knows what properties in the area are selling for, and is therefore able to make the most accurate valuation of a seller's property. Such an agent is also able to assist buyers in terms of valuations and with regards to important questions to ask every seller about property defects.

In any property transaction there is a mismatch of intent; the seller wants the best possible price for their home, while the buyer wants to pay as little as possible. Essentially, an estate agent serves as a skilled negotiator, working to obtain the most favourable result for both parties which can be very time consuming and complicated.

Signing the offer to purchase is only the first step in a property transaction; there are a number of intricate legal steps that still need to be completed and a qualified estate agent is trained to guide both the buyer and seller through the process.

## When an estate agent has earned a commission

What most buyers and sellers don't necessarily realise is that an estate agent only makes a commission on a property when a sale has been successfully concluded. That means that all of the funds they spend on marketing and showing a property can only be recouped if the property sells. If, however, they lose the mandate, these expenses fall to them, not to the seller. As such it's imperative for agents to offer professional, expert service in order to ensure that a sale is successfully completed.

Legal firm, Smith Tabata Buchanan Boyes recently released a list of conditions that have to be met in order for an agent to earn their commission. These state that:

- the agent was mandated and held a valid Fidelity Fund Certificate (buyers and sellers can ask an agent to produce this certificate which proves that they have the necessary qualifications and are registered as agents as required by law);
- the purchaser was, when the contract was signed, willing and able to purchase the property (this also implies that bond pre-approval was done and checked by the estate agent);
- the seller and purchaser entered into a binding agreement;
- the agent was the effective cause of the sale; and
- all suspensive conditions in the agreement have been met (a suspensive condition suspends rights and obligations until the sale occurs. Once the sale goes through, the suspended part of the contract (or indeed the entire contract) is brought to life). It is also the responsibility of the agent to help negotiate and advise on all suspensive conditions.

Managing the sale of a property, right through from advising the sellers on how to price the property correctly, marketing it (at the agent's own cost), finding a buyer and navigating the sales process is an extremely time-consuming process which often doesn't succeed (for example the buyer pulls out or there is a disagreement on the conditions of the sale). However, when the above conditions have been met, the agent has certainly earned their commission.

## ABOUT BRUCE SWAIN

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