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ESTATE AGENTS: HOW TO SECURE YOUR COMMISSION

Are you an agency trading through a company or close corporation (CC)? If so, this is for you - a recent High Court (Full Bench) case in which a close corporation lost its commission because its Fidelity Fund Certificate (FFC) was only in the sole member's name and no separate FFC had been issued to the CC.

Coming short – a CC without its own FFC

1. A close corporation estate agency successfully carried out its mandate to find a tenant for a landlord.
2. Only the sole member of the CC held an FFC, which stated that it was issued to her in her 'capacity' as 'Principal (Sole Proprietor at Firm)' of the CC, with the CC's trading name also specified.
3. The agency sued for its commission when the landlord refused to pay it.
4. Holding that the FFC had clearly been issued to the member herself and not to her CC, and that this disentitled the CC to its commission, the Court dismissed its claim.

Protecting your commission

Don't put your commission claims at risk. Obtain separate FFCs for your trading entity/ies as well as for all directors/members/principals and agents. The entity's FFC is issued free of charge but you must display it "in a prominent position" on its premises.

Another risk – the "trading as" scenario

In another recent High Court case, a CC with a valid FFC had fulfilled its mandate to find a buyer for a property, but it did so not in the CC's name but in its trading name. The seller refused to pay the agency's commission, arguing that it had never given a mandate to the CC, which was neither mentioned nor named in either the agency's documentation or on its website.

The Court, finding on the facts that the CC and its trading name were effectively one and the same, awarded the agency its R78k commission. **But don't risk having to go the litigation route** - avoid uncertainty by disclosing both your legal entity's name and its trading name/s on all documents, letterheads, website etc. Take full advice in any doubt.

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