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ESTATE AGENTS ACT

CHAPTER 533

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CHAPTER 533

ESTATE AGENTS ACT
ARRANGEMENT OF SECTIONS
PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II – ESTABLISHMENT OF THE BOARD

3. Establishment of the Board.
4. Functions of the Board.
5. Limitation of liability of members.

PART III – THE REGISTRAR AND THE REGISTER

6. Appointment of registrar.
7. Register of estate agents.
8. Certificate of registration.
- 8A. *Repealed.*
- 8B. Licensing of dual Occupations.
9. Publication of register and list.
10. Publication *prima facie* evidence of registration.
11. Inspection of register.
12. Proof of documents.

PART IV – REGISTRATION

13. Conditions and qualifications for registration.
14. Acceptance for registration.
15. Removal of name from register.
16. Reinstatement of name on the register.
17. Appeals.

PART V – RESTRICTION ON PRACTICE

18. Unregistered persons not to practice as estate agents.
19. Indemnity requirements.
20. Carrying on practice for purposes of winding up, etc.

PART VI – REGULATION OF PRACTICE

21. Code of Conduct.
22. Rules of practice, etc.
23. Allegations against estate agents.
24. Action of Board in case of conviction, etc.

PART VII – MISCELLANEOUS PROVISIONS

25. Dishonest practices.
26. Offences by a body corporate.
27. Finance.

SCHEDULE –

THE ESTATE AGENTS REGISTRATION BOARD

CHAPTER 533

ESTATE AGENTS ACT

[Date of assent: 13th December, 1984.]

[Date of commencement: 9th April, 1985.]

An Act of Parliament to provide for the registration of persons who, by way of business, negotiate for or otherwise act in relation to the selling, purchasing or letting of land and buildings erected thereon; for the regulation and control of the professional conduct of such persons and for connected purposes

[Act No. 17 of 1984, L.N. 71/1985, Act No. 20 of 1989, Act No. 21 of 1990, Act No. 11 of 1992, Act No. 5 of 1996, Act No. 9 of 2000.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Estate Agents Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Board**” means the Estate Agents Registration Board established by section 3;

“**Minister**” means the Minister for the time being responsible for matters relating to Land;

“**practice as an estate agent**” means the doing, in connection with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or other building forming part thereof, of any of the following acts—

- (a) bringing together, or taking steps to bring together, a prospective vendor, lessor or lender and a prospective purchaser, lessee or borrower; or
- (b) negotiating the terms of sale, mortgage, charge or letting as an intermediary between or on behalf of either of the principals;

“**register**” means the register kept under section 7;

“**registrar**” means the registrar of the Board appointed under section 6.

(2) For the purposes of this Act, a person shall be treated as being a practising estate agent if he or a partnership of which he is a member—

- (a) receives payment for acts done by way of practice as an estate agent by him, or by a partner of his, or by an employee of his or of the partnership or by any person acting on his behalf; or
- (b) holds himself or itself out as being prepared, in return for payment, to undertake the doing by any such person of acts by way of practice as an estate agent:

Provided that in this subsection “**payment**” shall not include payment limited to the reimbursement of expenses or payment of salary by an employer to an employee.

(3) Nothing in this Act shall extend to the doing of any acts which would constitute practice as an estate agent—

- (a) by a corporation which is incorporated directly by an Act of Parliament;
- (b) by a local authority;
- (c) by an advocate in the course of his practice;
- (d) by a newspaper, magazine or other periodic publication in the course of so much of its business as relates to the publishing of advertisements on behalf of others;
- (e) by the owner of a right or interest in an immovable property in relation to that immovable property; or
- (f) by a licensed auctioneer selling immovable property or any interest therein by auction.

(4) In subsection (3)(f), the expression “**licensed auctioneer**” has the meaning assigned to it in section 2 of the Auctioneers Act, 1996.

[Act No. 5 of 1996, s. 37.]

PART II – ESTABLISHMENT OF THE BOARD

3. Establishment of the Board

(1) There shall be established a Board to be known as the Estate Agents Registration Board which shall by that name—

- (a) be a body corporate with perpetual succession and a common seal;
- (b) be capable of suing and being sued;
- (c) be capable, for and in connection with the carrying out of the purposes of this Act, of acquiring, holding and disposing of movable and immovable property.

(2) The provisions of the Schedule shall have effect in relation to the Board.

4. Functions of the Board

The Board shall be charged with the responsibility of registering estate agents and of ensuring that the competence and conduct of practising estate agents are of a standard sufficiently high to ensure the protection of the public, and for that purpose may exercise the powers conferred, and shall perform the duties imposed, upon the Board by the provisions of this Act.

5. Limitation of liability of members

No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of carrying out the responsibilities and functions of, or exercising the powers conferred upon, the Board.

PART III – THE REGISTRAR AND THE REGISTER

6. Appointment of registrar

The Minister shall appoint a public officer as the registrar of the Board who shall hold and vacate his office in accordance with the terms of his appointment.

7. Register of estate agents

(1) The registrar shall keep and maintain a register in which the name of every person accepted by the Board for registration under this Act shall be entered

showing—

- (a) the date of the entry in the register;
- (b) the address of the person registered;
- (c) the qualifications of the person; and
- (d) such other particulars as the Board may from time to time direct.

(2) All changes in the particulars registered under subsection (1) shall be entered in the register by the registrar.

(3) The registrar shall remove from the register any name which is ordered to be removed from the register under section 15.

8. Certificate of registration

(1) Where the name of a person is entered in the register, the registrar shall issue to him a certificate of registration in such form as the Board may prescribe and the certificate shall remain the property of the Board.

(2) Where the name of a person is removed from the register the Board shall give notice to that person, or if he is dead, to his legal personal representative, requiring him to surrender the certificate of registration to the Board.

(3) Any person who fails to comply with the requirements of a notice given under subsection (2) within twenty-one days after the receipt by him of the notice shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

(4) A certificate of registration issued by the registrar shall be valid and shall remain in force for one year, but shall be renewable on the payment of the prescribed fee; and if the prescribed fee has been paid before the renewal date and there is no order for the name of the holder of the certificate to be removed from the register, the certificate shall remain in force until it is renewed.

8A. *Repealed by Act No. 9 of 2000, s. 120.*

8B. Licensing of dual Occupations

(1) Where any person to whom section 8A applies carries on more than one professional occupation at the same time such person shall elect in writing which of such occupations shall be deemed to be his primary occupation.

(2) A person to whom subsection (1) applies shall be required to obtain an annual licence in respect of his primary occupation to the intent that no such person shall obtain more than one annual licence in any one year.

[Act No. 21 of 1990, Sch.]

9. Publication of register and list

(1) The registrar shall cause to be published in the *Gazette*, as soon as may be practicable after entry in the register, the name, address and qualification of each registered estate agent and, subject to the directions of the Board, he may cause to be so published any amendment to the register.

(2) The registrar shall cause to be published in the *Gazette*, at the beginning of each year, a list containing the names, addresses and qualifications of all registered estate agents then remaining on the register.

10. Publication prima facie evidence of registration

Publication under section 9 shall be *prima facie* evidence that the persons named therein are registered estate agents and the deletion from the register of the name of any person notified by the publication, or the absence of the name of

any person from the publication, shall be *prima facie* evidence that the person is not registered.

11. Inspection of register

Any person may, during normal office hours and on payment of the prescribed fee, inspect the register and any document relating to any entry therein and may obtain from the registrar a copy or extract from the register or of or from any such document.

12. Proof of documents

(1) In any legal proceedings a document purporting to be a copy of an extract from the register or of or from any document kept or published by the registrar, and purporting to be certified by the registrar as a true copy or extract shall be admissible as *prima facie* evidence of the contents of the register or document.

(2) The registrar shall not, in any legal proceedings to which he is not a party, be compelled—

- (a) to produce the register or any document if its contents can be proved under subsection (1);
- (b) to appear as a witness to prove any entry in the register or the matters recorded in the register or any document,

unless the court for special cause so orders.

PART IV – REGISTRATION

13. Conditions and qualifications for registration

(1) Subject to this Act, a person who is a citizen of Kenya shall be entitled, on making an application to the Board in the prescribed form and on payment to the Board of the prescribed fee, to be registered under this Act and to have his name entered in the register if he is—

- (a) a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors; or
- (b) a corporate member of the Royal Institution of Chartered Surveyors (in the General Practice or Land Agency or Agriculture sections) and he is qualified to be or is a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors;
- (c) the holder of a degree, diploma or licence from any university or college or school which is recognized for the time being by the Board; or
- (d) a person who—
 - (i) is the holder of a degree, diploma or licence of a university or college or school or a member of an institution the membership of which is recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training for practice as an estate agent; and
 - (ii) has had, to the satisfaction of the Board, practical post-qualification experience in such practice of not less than two years of which not less than six months has been in Kenya; or

- (e) a person who is not qualified under paragraphs (a), (b), (c) or (d) but is of good character and satisfies the Board that he has not been convicted (whether in Kenya or elsewhere) of an offence involving fraud or dishonesty.

(2) Notwithstanding the fact that he has sufficient qualifications under subsection (1), the Board may require an applicant for registration as an estate agent under this Act to satisfy it that his professional and general conduct has been such that, in the opinion of the Board, he is a fit and proper person to be registered under this Act and the Board may direct the registrar to postpone the registration of an applicant until it is so satisfied.

[Act No. 11 of 1992, Sch.]

14. Acceptance for registration

(1) Upon application being made to the Board in the prescribed form by a person claiming to be qualified for registration under section 13 and upon payment of the prescribed fee the Board shall consider the application and, if it is satisfied that the person is so qualified, it shall accept that person for registration and shall direct the registrar to enter his name on the register.

(2) The consideration of an application under this section shall be undertaken by the Board and shall not be delegated to any committee of the Board.

15. Removal of name from register

(1) The Board may, at any time after being satisfied that a registered person has—

- (a) died; or
- (b) failed to pay his renewal or registration fee; or
- (c) requested his name to be removed from the register; or
- (d) been found by the Board to be guilty of any act or omission contrary to the public interest or misconduct as described in section 21 or section 22; or
- (e) been convicted of an offence under this Act; or
- (f) had his name entered in the register by mistake or by reasons of false or misleading information; or
- (g) had his qualification under section 13 withdrawn or cancelled by the body through which it was acquired or by which it was awarded; or
- (h) been adjudged bankrupt,

direct that the name of that person be removed from the register.

(2) Except in the circumstances specified in subsection (1)(a), the removal of a person's name from the register shall be notified by the registrar to the registered person by a registered letter addressed to the address appearing in the register against his name.

(3) The registrar shall cause to be published in the *Gazette*, as soon as may be practicable after the removal of the name under this section, the name, address and qualification of any person whose name is ordered to be removed from the register under subsection (1).

16. Reinstatement of name on the register

(1) Where the name of any person has been removed from the register under

section 15, the name of that person shall not again be entered on the register except on the direction of the Board.

(2) Where the name of any person has been removed from the register or the registration of any person has been suspended under section 24, the Board may, either of its own motion or on the application of any person made in the prescribed form, and in either case after holding such inquiry as the Board considers necessary, direct that—

- (a) the removal from the register be confirmed; or
- (b) the name of that person be restored on the register; or
- (c) the suspension of the effect of registration of that person be terminated.

(3) A direction given by the Board under subsection (2) may include provision for the date upon which restoration on the register or the termination of a suspension of the effect of registration shall take effect and the payment by the person concerned of such fee as the Board may prescribe.

17. Appeals

Any person aggrieved by a decision of the Board—

- (a) refusing to register his name; or
- (b) removing his name from register; or
- (c) suspending his registration under this Act; or
- (d) refusing to restore his name on the register,

may, within twenty-eight days of receiving the written decision of the Board, appeal to the High Court against the decision of the Board and in the case of that appeal—

- (i) the appeal shall be treated as an appeal to the High Court from a subordinate court exercising civil jurisdiction;
- (ii) the High Court may give such decision as it deems fit; and
- (iii) the decision of the High Court shall be final.

[Act No. 11 of 1992, Sch.]

PART V – RESTRICTION ON PRACTICE

18. Unregistered persons not to practice as estate agents

(1) After the expiration of six months from the commencement of this Act or such further period as the Minister may, by notice in the *Gazette*, allow either generally or in respect of any particular person or class of persons—

- (a) no individual shall practise as an estate agent unless he is a registered estate agent;
- (b) no partnership shall practise as estate agents unless all the partners whose activities include the doing of acts by way of such practice are registered estate agents;
- (c) no body corporate shall practise as an estate agent unless all the directors thereof whose duties include the doing of acts by way of such practice are registered estate agents.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

[Act No. 20 of 1989, Sch., Act No. 9 of 2000, s. 121.]

19. Indemnity requirements

(1) Notwithstanding section 18, after the expiration of one month from the commencement of this Act, no person shall practise as an estate agent unless there is in force in relation to his practice an indemnity bond or policy of insurance entered into or issued by an insurance company approved by the Board, so expressed as to guarantee that compensation shall be payable, up to the required limit, to persons suffering monetary or other property loss through the dishonest or professional misconduct of the person so practising.

(2) For the purposes of subsection (1), the required limit shall be—

- (a) in the case of a business carried on by a single individual, a sum of two hundred thousand shillings;
- (b) in the case of a business carried on by two or more individuals, the sum specified in paragraph (a) multiplied by the number of such individuals;
- (c) in the case of business carried on by a body corporate, the sum specified in paragraph (a) multiplied by the number of directors whose duties include the doing of acts by way of practice as estate agents.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding two years or to both.

20. Carrying on practice for purposes of winding up, etc.

Notwithstanding any other provision of this Act, where a person ceases to carry on a lawful practice as an estate agent by reason of his death or insolvency, or by reason of having been adjudicated as being of unsound mind, the practice may be carried on for the purpose of winding-up or disposing of the practice by any person authorised by law to deal with the property of that person for a period not exceeding twelve months from the date of death or commencement of the disability.

PART VI – REGULATION OF PRACTICE**21. Code of conduct**

(1) The Board shall, with the approval of the Minister, publish a statement specifying acts or omissions which, if done or made by a practising estate agent in his capacity as such would, in the opinion of the Board, be contrary to the public interest or amount to professional misconduct by the person so practising.

(2) The statement published under this section—

- (a) shall serve as a guide to practising estate agents but the mentioning or failure to mention in it of any particular act or omission shall not be taken as conclusive;
- (b) may at any time be amended or replaced in like manner as it is made.

22. Rules of practice, etc.

(1) The Minister may, after consultation with the Board, make rules—

- (a) prescribing the charges which may be made for services rendered by way of practice as an estate agent;
- (b) relating to the keeping of accounts by practising estate agents and to the opening of separate bank accounts for money held on behalf of clients;

- (c) setting out the occasions on which a practising estate agent is required to account for interest on the money so held and the manner of such accounting;
- (d) providing for the methods, whether by check by accountants or auditors or otherwise, by which it can be ascertained that the rules are being complied with by practising estate agents;
- (e) providing for the conduct of the business of the Board and the procedure to be followed by the Board at an inquiry under this Act;
- (f) prescribing anything which may be prescribed under this Act,

and may in like manner make such other rules for the regulation of practice as an estate agent as he may consider necessary.

(2) Notwithstanding any other provision of this Act, the breach by a practising estate agent of any rules made under subsection (1)(a) to (c) (inclusive) shall constitute professional misconduct by that estate agent.

(3) The Minister may, by notice in the *Gazette*, amend the Schedule.

23. Allegations against estate agents

(1) An inquiry into any act or omission contrary to public interest or the professional misconduct of a registered estate agent may be instituted by the Board either on its own initiative or upon receipt of a written complaint addressed to the Board by or on behalf of any other person alleging such act, omission or professional misconduct against the estate agent.

(2) Where the Board is of the opinion that an inquiry may be instituted it shall as soon as practicable proceed to hold the inquiry.

24. Action of Board in case of conviction, etc.

If a registered estate agent is convicted of an offence under this Act or is after due inquiry found to have been guilty of an act or omission contrary to the public interest or amounting to professional misconduct the Board may—

- (a) direct that during such period as the Board may specify, his registration under this Act shall be suspended;
- (b) caution the person and may also order that such caution shall be entered on the register;
- (c) impose a fine not exceeding five thousand shillings upon that person;
- (d) order that the name of the person shall be deleted from the register.

PART VII – MISCELLANEOUS PROVISIONS

25. Dishonest practices

Any person who—

- (a) fraudulently makes or causes or permits to be made any false or incorrect entry in the register or any copy thereof; or
- (b) fraudulently procures or attempts to procure the entry in the register of any name or other particulars whether on his own behalf or on behalf of any other person; or
- (c) knowingly and wilfully makes any statement, oral or written, which is false in any material particular or which is misleading with a view to gaining any advantage or privilege under this Act, whether for himself or for any other person,

shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.

26. Offences by a body corporate

Where an offence under this Act is committed by a body corporate with the consent or connivance of, or is attributable to any neglect on the part of, any director, secretary or other similar officer of the body corporate, or any person purporting to act as any such officer, the director or that other person shall be guilty of the like offence and be punishable accordingly.

27. Finance

The Minister may, with the consent of the Treasury, out of moneys provided by Parliament—

- (a) make to the Board such grants as may be necessary to enable it to discharge its functions under this Act;
- (b) pay remuneration and travelling and other allowances to the members of the Board other than members who are public officers in receipt of a salary;
- (c) make such other payments as may be necessary to give effect to the provisions of this Act.

SCHEDULE

[Section 3(2), Act No. 11 of 1992, Sch.]

THE ESTATE AGENTS REGISTRATION BOARD

1. Membership of the Board

The Board shall consist of nine members appointed by the Minister as follows—

- (a) a chairman, who shall be a full member of any of the following chapters of the Institution of Surveyors of Kenya namely Valuation and Estate Management, Building Surveyors and Land Management;
- (b) two public officers who are full members of any of the chapters of the Institution of Surveyors of Kenya referred to in paragraph (a);
- (c) two persons who are full members of any of the chapters of the Institution Surveyors of Kenya referred to in paragraph (a) appointed by the Minister from the names of persons recommended by the institution who are in private practice;
- (d) three persons appointed to represent the general public;
- (e) one person who shall be an advocate appointed to represent the legal profession nominated by the Attorney-General.

[Act No. 11 of 1992, Sch.]

2. Tenure of office

(1) The office of a member appointed under paragraph 1 shall become vacant—

- (a) in the case of members appointed under paragraph 1(c) or (d) if such member ceases for any reason to be a registered estate agent;
- (b) if he resigns his office by written notice addressed to the Minister;
- (c) at the end of three years from the date of appointment.

(2) Any casual vacancy shall be filled by appointment as it arises.

3. Chairman and vice-chairman

(1) The Minister shall appoint the chairman under paragraph 1(a) and the Board shall elect one of its members, other than the chairman, to be the vice-chairman of the Board.

(2) The chairman and vice-chairman shall hold office for a period of three years from the date of appointment or election, as the case may be, unless they cease to be members of the Board before the expiration of that period.

4. Meetings of the Board

(1) The chairman of the Board shall convene an ordinary meeting of the Board whenever it may be necessary or expedient, but at least once in every three months, for the transaction of its business and shall appoint a suitable time, place and date for holding the meeting.

(2) The chairman of the Board may convene a special meeting of the Board at any time, and shall cause a special meeting of the Board to be held within twenty days after receiving a written request to do so signed by not less than three members of the Board.

5. Quorum at meetings of the Board

(1) The chairman or vice-chairman and three other members of the Board shall constitute a quorum at any meeting of the Board.

(2) All acts, matters and things authorized to be done by the Board shall be decided by resolution at a meeting of the Board at which a quorum is present.

(3) A decision of the majority of the members present and voting at a meeting of the Board shall be deemed to be a decision of the Board.

(4) Every member of the Board shall have one vote, and in the event of an equality of votes the person presiding shall have a second or casting vote in addition to his deliberative vote.

6. Minutes of meetings and appointment of secretary

(1) Minutes in proper form of each meeting of the Board shall be kept, and shall be confirmed by the Board at the next meeting and signed by the person presiding at the meeting.

(2) The registrar shall be the secretary to the Board.

7. Procedure

Subject to this Schedule, the Board may regulate its own procedure.

8. The seal of the Board

The seal of the Board shall not be affixed to any instrument except in the presence of the chairman or the vice-chairman and one other member of the Board.
