



LAWS OF KENYA



ESTATE AGENTS ACT

CHAPTER 533

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CHAPTER 533

ESTATE AGENTS ACT

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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.

CHAPTER 533

ESTATE AGENTS ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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ESTATE AGENTS (FORMS AND FEES) RULES, 1986

[L.N. 290/1986, L.N. 35/1989.]

1. These Rules may be cited as the Estate Agents (Forms and Fees) Rules, 1986.
2. The application for registration as an estate agent in accordance with section 13(1) of the Act shall be in Form I set out in the First Schedule.
3. The register of estate agent to be maintained by the registrar under section 7(1) of the Act shall be in Form II set out in the First Schedule.
4. The certificate of registration to be issued to a person whose name has been entered in the register in accordance with section 8(1) of the Act shall be in Form III set out in the First Schedule.
5. An application for an inquiry in accordance with sections 16(2) and 23(1) of the Act shall be in Form IV set out in the First Schedule.
6. An application for restoration of the name on the register pursuant to section 24 of the Act shall be in Form V set out in the First Schedule.
7. The application for renewal of registration shall be in Form VI set out in the First Schedule.
- 7A. The annual practising certificate shall be in Form VII set out in the First Schedule.
[L.N. 35/1989, s. 2.]
8. The fees set on the Second Schedule shall be payable in respect of the matters set out therein.

FIRST SCHEDULE

Form I

(r. 2)

ESTATE AGENTS ACT

[Cap. 533.]

APPLICATION FOR REGISTRATION AS AN ESTATE AGENT

The Registrar,
 Estate Agents Registration Board,
 P.O. Box
 Nairobi.



A – GENERAL INFORMATION

1. Main name
(BLOCK CAPITALS)
- Other names
(BLOCK CAPITALS)
- Postal address
- Residential address
House No. etc.
- Office physical address
- Office telephone No.

Estate Agents

[Subsidiary]

FIRST SCHEDULE, Form I —continued

- 3. Date of birth
- 4. Nationality and citizenship

(Please tick as applicable)

(a) By birth

(b) By naturalization

In each case please attach the following:

- (i) Your current passport size photo
- (ii) Copy of your identity card or birth certificate

B – EDUCATIONAL PARTICULARS

Read carefully before completing all sections Copies of relevant leaving certificates, qualifications and testimonials must be attached in each case

- 1. Secondary schools attended:
 - (a) (i) Name
 - (ii) Address
 - (iii) Period from to
 - (b) (i) Name
 - (ii) Address
 - (iii) Period from to
- 2. Colleges attended:
 - (a) (i) Name
 - (ii) Address
 - (iii) Period from to
 - (b) (i) Name
 - (ii) Address
 - (iii) Period from to
- 3. Universities attended:
 - (a) (i) Name
 - (ii) Address
 - (iii) Period from to
 - (b) (i) Name
 - (ii) Address
 - (iii) Period from to
- 4. Membership of professional institutions:
 - (a) (i) Name
 - (ii) Date of registration
 - (b) (i) Name
 - (ii) Date of registration

C – EXPERIENCE AND EMPLOYMENT

- (a) (i) Name of Employer
- (ii) Address

FIRST SCHEDULE, Form I —continued

- (iii) Period from to
- (b) (i) Name of Employer
- (ii) Address
-
-
- (iii) Period from to
- (c) (i) Name of Employer
- (ii) Address
-
-
- (iii) Period from to

D – SELF EMPLOYMENT

- (a) (i) Name of Company
- (ii) Address
-
-
- (iii) Period from to

E – PRACTICE IN ESTATE AGENCY

(Please enclose a certified copy of certificate of registration in each case)

1. LIMITED LIABILITY COMPANY

- Name
- Address
-
-
- Period from to
- Names and addresses of the directors:
- 1.
- 2.
- 3.
- 4.

2. PARTNERSHIP

- Name
- Address
-
-
- Period from to
- Names and address of the partners:
- 1.
- 2.
- 3.
- 4.

3. SOLE PROPRIETORSHIP

- Name
- Address
-
-
- Period from to

Estate Agents

[Subsidiary]

FIRST SCHEDULE, Form I —continued

F – OTHER BUSINESS PRACTICES

(Give the names and addresses of all other business practices you are currently involved in)

1. Name
Address

Period from to

2. Name
Address

Period from to

3. Name
Address

Period from to

G – OTHER GROUNDS TO SUPPORT YOUR APPLICATION

Give name and address of an official referee who knows your background history well, e.g. magistrate, chief or assistant chief of your area.

- 1.
2.
3.

H. — BANKRUPTCY OR CONVICTION

Have you ever been declared bankrupt or convicted of any offence involving fraud or dishonesty?

Please tick as appropriate

Yes [] No []

I, enclose herewith banker's cheque, money order payable o the Estate Agents Registration Board for Sh. 3,300, which I understand is not refundable.

J – DECLARATION

I, declare that the foregoing statements are true and correct to the best of my knowledge and belief. I understand that any statement contained in this application which is found to be false shall invalidate this application. I have read the Estate Agents Act (Cap. 533) understood it and undertake to be bound by the Act and any amendments thereto or replacement thereof so long as I am a registered estate agent.

Applicant's signature

Date

Witness: Full name (Please print)

Address

Telephone

Signature

FIRST SCHEDULE, Form I —continued

FOR OFFICIAL USE

Application No.
 Date acknowledged
 Approved/rejected minute No.
 Date notification sent
 Gazette Notice No.
 Certificate despatched
 Certificate acknowledged

 Registrar's signature
 Date
 Date received
 Receipt No. Date
 Deferred Minute No.
 Registration No.

 Board member's signature
 Date

 Chairman's signature
 Date

Form II

(r. 3)

REGISTER OF ESTATE AGENTS

No.	Full Name	Address	Basic Qualification	Date of Registration	Date and No. of Original Registration	Remarks

Estate Agents

[Subsidiary]

FIRST SCHEDULE—continued

Form III

(r. 4)

ESTATE AGENTS ACT

[Cap. 533.]

CERTIFICATE OF REGISTRATION AS AN ESTATE AGENT

Mr. / Mrs. / Miss

(Full name in BLOCK LETTERS)

has been registered as an Estate Agent in accordance with the provisions of section 8(1) of the Estate Agents Act.

Dated the 19

Seal of the Board

Chairman
Estate Agents Registration Board.

Member Estate Agents
Registration Board.

Form IV

(r. 7)

ESTATE AGENTS ACT

[Cap. 533.]

THE ESTATE AGENTS REGISTRATION BOARD APPLICATION FOR RENEWAL

The Registrar,
Estate Agents Registration Board,
P.O. Box
Nairobi.

1. Main name

(BLOCK CAPITALS)

Other names

(BLOCK CAPITALS)

2. Postal address

Residential address

House No. etc.

Office physical address

Attached herewith is:

1. My cheque/money order for Sh.

2. My current indemnity bond or policy of insurance.

Signed

Form V

ESTATE AGENTS ACT

[Cap. 533.]

APPLICATION FOR AN INQUIRY

[L.N. 35/1989, s. 3.]

Mr./Mrs./Miss

FIRST SCHEDULE, Form V—continued

Address

Dear Sir/Madam,

On behalf of the Estate Agents Registration Board, notice is given to you that in consequent of a complaint made to the Board against your/information received by the Board an inquiry is to be held into the following complaint against you.

If the complaint relates to a conviction:

That you were on the day of

.....at (specify

court recording conviction)

convicted of

.....

.....

.....

(set out particulars of the conviction in sufficient detail to identify the case).

OR

If the complaint relates to conduct

That being registered under the Act you

.....

.....

(set out briefly the facts alleged)

and that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect.

Where there is more than one complaint, the complaints are to be stated consecutively (complaints relating to convictions being set out before complaints relating to conduct).

Notice is further given to you that on

day of20 a meeting of the Board

will be held at Nairobi

at a.m./p.m. to consider the above

complaint/complaints against you to determine whether or not the Board should direct the registrar to remove your name from the register pursuant to rules 16(2) and 23(1) of the Estate Agents Rules, 1984.

You are hereby invited to answer in writing the above mentioned complaint and also to appear in person before the Board at the place, date and time specified above for the purpose of answering the complaint. You may bring your advocate with you. The Board has power to hear and decide upon the complaint in your absence if you do not appear.

Any answer, admission or other statement or communication which you may desire to make with respect to the said complaint should be addressed to the chairman of the Board.

If you desire to make any application that the inquiry should be postponed you should send the application to the secretary of the Board as soon as possible, stating the grounds upon which you desire postponment.

Dated the 20

.....
Registrar of the Board.

Estate Agents

[Subsidiary]

FIRST SCHEDULE—continued

Form VI

ESTATE AGENTS ACT

[Cap. 533.]

APPLICATION FOR RESTORATION OF NAME IN THE REGISTER

[L.N. 35/1989, s. 3.]

Note: (This declaration must be made before an estate agent of not less than 10 years experience and of good standing).

I, the undersigned
of (address)
now holding the qualification(s) of

do solemnly and sincerely declare as follows:

- 1. I am the person formerly registered as an estate agent under the name of
and the qualification(s) of
registration number
and I hereby apply for the restoration of my name in the register.
2. In an inquiry held on the day
of 20 at
(place) the Board directed
removal of my name for the following reasons
3. Since the removal of my name from the register, I have been residing at
and my occupation has been
4. It is my intention if my name is restored on the register to engage in private practice/to be
employed, (others specify).
5. The grounds of my application are
6. Names and address of my referees:
(a)
(b)
(c)

Declared at Signed
on Date
Before me
(full name)

FIRST SCHEDULE, Form VI —continued

Signed
Name of practitioner in full and registration/date of qualification.
Date

Form VII

ESTATE AGENTS ACT
[Cap. 533.]
THE ESTATE AGENTS REGISTRATION BOARD
ANNUAL PRACTISING CERTIFICATE

[L.N. 35/1989, s. 3.]

I hereby certify that
.....
has renewed his certificate to practise as an Estate Agent for the current year ending 31st day of
December, 20
Dated at Nairobi this day of 20

REGISTRAR,
Estate Agents Registration Board.

ESTATE AGENTS (REMUNERATION) RULES, 1987

[L.N. 36/1987, L.N. 198/2002.]

1. These Rules may be cited as the Estate Agents (Remuneration) Rules, 1987.
2. The estate agents remuneration shall be calculated in accordance with the scale of fees set out in the Schedule.

SCHEDULE

[L.N. 198/2002.]

SCALE OF FEES

SCALE I

Sales:

On the first KSh. 100,000	10%
On the next KSh. 900,000	6%
On the residue	3%

SCALE IA

Purchases:

On the first KSh. 100,000	5%
On the next KSh. 900,000	3%
On the residue	1.5%

SCALE IB

On Sales of Plant and Machinery:

Ten per cent of the total value realised.

SCALE IC

Sales and Purchases Effected by a Transfer of Shares:

Scales I and IA shall apply undiminished by any loan or other charges upon the property of the company's assets.

SCALE 2 – LETTINGS

Residential:

Lease up to one year	7.5% of annual gross rent.
Lease of over one year	One month's rent.

Commercial:

Sole agency	7.5% of annual gross rent.
General agency	10% of annual gross rent.

Fees by negotiation if management services involved but not less than half scale.

SCALE 3

(a) For seeking and negotiating the tenancy or lease of a property to suit a client's requirements:

The fee payable as per the appropriate letting scale and by arrangement if negotiations abort.

Estate Agents

[Subsidiary]

SCHEDULE—*continued*

(b) For negotiating the tenancy or lease of a particular property named by a client:

The fee payable shall be three quarters of the appropriate letting scale and half the estimated one month's rent subject to a minimum of KSh. 500.

SCALE 4 – MANAGEMENT

Residential:

10 per cent of the gross rents or less according to the circumstances but not less than 5 per cent.

Commercial:

7.5 per cent of the gross rents or by arrangement but not less than 2.5 per cent.

SCALE 5

Mortgages:

For negotiating the terms of mortgages or charges as an intermediary between or on behalf of either of the principals:

(a) In case of a successful deal, the agent is entitled to a negotiated commission but no fees.

(b) Where agent is instructed to fund and negotiate a mortgage without handling the sale:

Fees to be not more than 0.25 per cent of the capital value of the mortgage.

ESTATE AGENTS (DEPOSIT INTEREST) RULES, 1987

[L.N. 34/1987.]

1. These Rules may be cited as the Estate Agents (Deposit Interest) Rules, 1987.
 2. In these Rules “**separate designated account**” means a deposit account in the name of the estate agent or his company in title of which the word “client” appears as to the identity of the client or matter concerned.
 3. Except as provided by these Rules an estate is not liable by virtue of the relation between the estate agent and the client to account to the client for the interest received by the estate agent on moneys deposited in a client account being moneys received or held for or on account of his clients generally.
 4. When an estate agent holds or receives for or an account of a client money on which, having regard to all circumstances (including the amount and the length of time for which the money is likely to be held), interest ought in fairness to the client to be earned for him, the estate agent shall take instructions from the client concerning the investment of that money.
 5. An estate agent is liable to account to a client for interest received on moneys deposited in a client account where the moneys are deposited in a separate designated account.
-

ESTATE AGENTS (DISCIPLINARY PROCEEDINGS) (PROCEDURE) RULES, 1987

ARRANGEMENT OF RULES

PART I – PRELIMINARY

Rule

1. Citation.
2. Interpretation.

PART II – PROCEEDINGS RELATING TO CONVICTION AND PROFESSIONAL MISCONDUCT

3. Preliminary inquiry committee.
4. Functions of the preliminary inquiry committee.
5. Submission of complaints, etc.
6. Procedure in cases relating to conviction.
7. Procedure in cases relating to conduct.
8. Procedure where an estate agent admits the charge.
9. Procedure in cases relating both to conviction and to conduct.
10. Joint inquiries, etc.

PART III – PROCEEDINGS RELATING TO APPLICATIONS FOR RESTORATION

11. Application for restoration.
 12. Adjournment or proceedings.
 13. Proceedings be in camera.
 14. Summons at proceedings.
 15. Notes taken at proceedings.
 16. Venue of meetings.
 17. Service of documents.
 18. Evidence.
-

[Subsidiary]

ESTATE AGENTS (DISCIPLINARY PROCEEDINGS) (PROCEDURE) RULES, 1987

[L.N. 35/1987.]

PART I – PRELIMINARY**1. Citation**

These Rules may be cited as the Estate Agents (Disciplinary Proceedings) (Procedure) Rules, 1987.

2. Interpretation

In these Rules, unless the context otherwise requires—

“**complaint**” means a case where it is alleged that a practising estate agent has been convicted of an offence under the Act or under the Penal Code Cap. 63;

“**charge**” means a charge or charges to be specified in a notice of inquiry;

“**complainant**” means a person who makes a complaint to the Board;

“**Board’s advocate**” means an advocate appointed by the Board to assist in conducting an inquiry under these Rules;

“**professional misconduct**” means serious misconduct judged by the statement published by the Board pursuant to section 21(1) of the Act and all rules, which govern the practice of estate agency;

“**inquiry**” means a disciplinary inquiry into the conduct of an estate agent held by the Board sitting as a tribunal;

“**notice of inquiry**” means a written and signed notice from the Board which is sent to an estate agent specifying, in the form of a charge of charges, matters upon which the inquiry is to be held, and stating the date, time and place where the inquiry is to be held.

PART II – PROCEEDINGS RELATING TO CONVICTION AND PROFESSIONAL MISCONDUCT**3. Preliminary inquiry committee**

(1) There is hereby established a committee to be known as the Preliminary Inquiry Committee which shall consist of five members elected from the members of the Board.

(2) The chairman of the Board shall also be the chairman of the Preliminary Inquiry Committee and shall convene the meeting of the Committee as and when necessary.

4. Functions of the preliminary inquiry committee

(1) The functions of the Preliminary Inquiry Committee shall be to receive and review complaints against an estate agent and to determine and report to the Board whether an inquiry should be held pursuant to sections 18(2) and 23(1) of the Act in respect of the estate agent.

(2) Subject to paragraph (1), the Preliminary Inquiry Committee after considering the complaint and making such inquiries with respect thereto as it may think fit, shall—

- (a) if of the opinion that the complaint does not warrant reference to the Board for inquiry, reject the complaint and so inform the Board;

[Subsidiary]

- (b) if of the opinion that the complaint does warrant reference to the Board, cause it to be referred to the Board, together with its findings and recommendations.

(3) For the purposes of enabling the Preliminary Inquiry Committee to carry out its functions under these Rules, the committee may correspond with persons, including the estate agents to whom the complaint relates, as it thinks fit and may peruse or inspect all documents relating to the complaint.

5. Submission of complaints, etc.

(1) Whenever a complaint or information is received by the chairman from a body or person and it appears to him that—

- (a) an estate agent has been convicted of an offence under this Act or under the Penal Code (Cap. 63); or
- (b) that a question arises whether the conduct of an estate agent constitutes serious professional misconduct,

the chairman shall submit the matter to the Preliminary Inquiry Committee.

(2) When the Preliminary Inquiry Committee refers the complaint to the Board under rule 4(2)(b), the chairman shall send to the estate agent to whom the complaint relates a notice of inquiry which shall—

- (a) be in Form IV in the First Schedule to the Estate Agents (Forms and Fees) Rules, 1986 (L.N. 290/1986) and shall, unless the Board otherwise directs, require the party to whom it is addressed to furnish the chairman and every other party a notice of all the documents which he intends to rely on at the hearing;
- (b) set out, in general terms, the charge or charges of professional misconduct made against the estate agent; and
- (c) specify the date and time and the place at which the inquiry is proposed to be held.

(3) The notice of inquiry shall be sent to the estate agent by registered post addressed to his last known address as notified to the registrar or by any other means approved by the Board.

(4) In any case where there is a complaint, a copy of the notice of inquiry shall be sent to him.

6. Procedure in cases relating to conviction

(1) In case relating to condition, where the estate agent appears, the following order of proceedings shall be observed as respects proof of convictions alleged in the charge or charges—

- (a) the complainant, or if a complainant does not appear or there is no complainant, the Board's advocate shall adduce evidence of the conviction and produce before the Board a certified copy of the court proceedings which resulted in the conviction of the estate agent;
- (b) if, as regards a conviction, no evidence is adduced, the chairman shall thereupon announce that the conviction has not been approved;
- (c) the chairman shall ask the estate agent whether he admits each previous conviction of which evidence is so adduced;
- (d) if the estate agent does not admit all the convictions, he may, if he intends to adduce other oral evidence as respects any conviction which he does not admit either in person or by his advocate, open his case;

[Subsidiary]

- (e) the estate agent or his advocate, as the case may be, may adduce evidence in respect of any conviction which he does not admit;
- (f) at the close of the evidence for the estate agent, the complainant or the Board's advocate, as the case may be, may with the leave of the Board, adduce evidence to rebut any evidence adduced by the estate agent;
- (g) The estate agent or his advocate may then address the Board and close his case.

(2) Where the estate agent does not appear and the Board has decided to proceed with the inquiry, subparagraphs (a) and (b) of paragraph (1) shall apply but the remainder of that paragraph shall not apply.

(3) On the conclusion of the proceedings under this rule the Board shall consider every conviction alleged in the charge or charges, other than a conviction which has been admitted by the estate agent, and shall determine whether it has been proved and the chairman shall determine whether it has been proved and the chairman shall then announce its determination in such terms as the board may approve.

7. Procedure in cases relating to conduct

(1) In all cases relating to conduct where the estate agent appears the following order of proceedings shall apply—

- (a) if the complainant appears, he shall open the case against the estate agent or where the complainant does not appear or there is no complainant, the Board's advocate shall present all the facts on which the complainant or information is based;
- (b) the complainant or the Board's advocate, as the case may be, may address the Board and adduce evidence of the facts alleged in the charge or charges;
- (c) If as respects any charge no evidence is adduced, the Board shall announce a finding that the estate agent is not guilty of infamous or disgraceful conduct in a professional respect as alleged in the charge or charges;
- (d) at the close of the case against him the estate agent or his advocate may make either one or both of the following submissions as respects any charge which remain outstanding namely—
 - (i) that no sufficient evidence has been adduced upon which the Board could find that the facts alleged have been proved.
 - (ii) that the facts of which evidence has been adduced are insufficient to support a finding of infamous or disgraceful conduct in a professional respect;

and where any such submission is made, the complainant or the Board's advocate, as the case may be, may answer the submission and the estate agent or his advocate may reply thereto;

- (e) if a submission is made under paragraph (d), the Board shall consider and determine whether the submission should be upheld and if the Board determines to uphold such a submission as regards any charge, it shall record,, and the chairman shall announce, that the estate agent is not guilty of infamous or disgraceful conduct in a professional respect in respect of the matters to which that charge relates;
- (f) the estate agent may then, if he intends to adduce oral evidence in addition to his own evidence, open his case upon any charge which remains outstanding;

[Subsidiary]

- (g) at the close of the evidence for the estate agent the complainant or the Board's advocate, as the case may be, may with leave of the Board, adduce evidence to rebut any evidence adduced by the estate agent;
- (h) the complainant, or the Board's advocate, as the case may be, may then address the Board and close his case.

(2) The estate agent or his advocate may then address the Board and close his case.

(3) Where in a case relating to conduct the estate agent does not appear the Board decides to proceed with the inquiry only subparagraphs (a), (b) and (c) of paragraph (1) shall apply.

(4) on conclusion of the proceedings under paragraph (1) the Board shall consider and determine, as respects each charge which remains outstanding which, if any, of the facts alleged in the charge has been proved to their satisfaction.

(5) if under paragraph (3) the Board decides, as regards any charge, either that none of the facts alleged in the charge have been proved would be insufficient to support a finding of misconduct in a professional respect, the Board shall record a finding that the estate agent as the case may be, is not guilty of the misconduct alleged in the charge or charges.

(6) The chairman shall announce determination or the finding of the Board after the procedure prescribed under this rule has been complied with.

8. Procedure where an estate agent admits the charge

(1) Where in case relating to conduct or conviction the estate agent admit at the opening of the inquiry all the facts alleged in any charge or charges against him, the chairman shall thereupon announce that the facts alleged in such charge or charges have been proved.

(2) the complainant or the Board's advocate, as the case may be, shall address the Board and may adduce evidence as to the circumstance leading up to the charge or charges and the character and previous history of the estate agent.

(3) The Board shall consider then invite the estate agent or his advocate to address it by way of mitigation.

(4) The Board shall consider and determine the charge or charges and announce their determination or finding.

9. Procedure in cases relating both to conviction and to conduct

Where the estate agent is alleged to have been convicted of any offence under this Act or the Penal Code (Cap. 63) and also to have been guilty of misconduct in a professional respect, the Board shall first deal with the charge or charges relating to conviction before dealing with charge or charges relating to conduct; and in both cases the provisions or rules 6 and 7 shall apply respectively.

10. Joint inquiries, etc.

(1) Nothing in these Rules shall be construed as preventing an inquiry being held jointly into charges against two or more estate agents.

(2) where a joint inquiry is held, the provisions of these Rules shall apply subject to the necessary adaptations and any directions which may be given by the Board.

[Subsidiary]

PART III – PROCEEDINGS RELATING TO APPLICATIONS FOR RESTORATION

11. Application for restoration

(1) An application for restoration of the name of estate agent on the register or the restoration of a licence after removal or cancellation pursuant to section 16 and 23 of the Act shall be in Form V set out in the First Schedule, the Estate Agents (Forms and Fees) Rules (L.N. 290/1986).

(2) All applications for restoration of the name on the register shall be accompanied by a certificate of identity and good character in Form V set out in the Schedule to the Estate Agents (Forms and Fees) Rules and signed by an estate of at least ten years standing.

(3) The Estate agent making an application under paragraph (1) shall give the names of three referees, two of whom shall be estate agents of at least ten years experience and of good repute and social status, to whom the Board can send a request for information about the character, habits and conduct of the applicant during the period of suspension.

(4) At the hearing of the application the following procedure shall be followed—

- (a) the registrar shall state to the Board the circumstances in which the applicant's name was removed or erased from the register and shall adduce evidence as to the conduct of the estate agent since that time;
- (b) the chairman shall then invite the applicant to address the Board if he so wishes, and adduce evidence as to his conduct since his name was erased from the register;
- (c) the Board may, if it thinks fit, receive oral or written observation on the applicant from any body or person whose complaint resulted in the applicant's name being erased from the register.

(5) At the close of the proceedings under this rule the Board shall record and the chairman shall pronounce the finding or determination of the Board.

(6) Subject to the provision of this rule, the proceedings of the Board in connexion with applications for restoration of the name of an estate agent on the register, shall be such as the Board may determine.

12. Adjournment or proceedings

The Board may at any state during an inquiry under these Rules adjourn its proceedings as it thinks fit.

13. Proceedings be in camera

The proceedings of the Board shall be held in camera.

14. Summons at proceedings

(1) The Board may issue a summons, in Form I set out in the Schedule to any person to attend as a witness or to produce any documents.

(2) Any person who files when summoned by the Board to attend as a witness or to produce any books or documents which he is required to produce shall be guilty of an offence and liable to a fine of two thousand shillings or to imprisonment for one month or to both such fine and imprisonment.

15. Notes taken at proceedings

Any party to the proceedings shall, on application, be furnished with a transcript of the shorthand notes or a certified copy of the proceedings or determination or findings of the Board on the payment of a fee for every page of the shorthand notes or certified proceedings or determination or finding of the Board.

16. Venue of meetings

Meeting of the Board for purposes of an inquiry under these Rules, except in so far as the chairman may otherwise direct, shall be held at the offices of the Board and may be held as regularly as circumstances require.

17. Service of documents

The service of a summons or documents shall be by post or by any means approved by the Board as being the most convenient in the circumstances.

18. Evidence

(1) For the purpose of these Rules, the Board may receive oral, documentary or other evidence of any fact or matter which appears to it be relevant to the inquiry into any matter before it.

(2) The Board may, if satisfied that the interests of justice will not be prejudiced, admit in evidence without strict proof, copies of documents which are themselves admissible, maps, plans, recorded tapes, photographs, certificates of conviction and sentence, certificates of birth and marriage and death, the records including records of the Lands and Settlement and other Government Ministries, records of estate agents and any other Government Ministries, records of estate agents and any other relevant sources, the notes and minutes of proceedings before the Board and before other tribunals and courts, and the board may take note without strict proof thereof of the professional qualifications, the address and identity of the estate agent.

SCHEDULE

Form I

(r. 14)

ESTATE AGENTS ACT

[Cap. 533.]

WITNESS SUMMONS

To:
.....
.....

In pursuance of rule 14(1) of the Estate Agents (Disciplinary Proceedings) (Procedure) Rules you are hereby commanded to attend in person as a witness in an inquiry to be held before the Estate Agents Registration Board Mr./Mrs./Miss
at
..... on

and to remain in attendance until released by the Board. Under the provisions of rule 14(2) of the Estate Agents (Disciplinary Proceedings) (Procedure) Rules, any person who fails when summoned or to produce any books, documents or other exhibits, shall be guilty of an offence and shall be liable to a fine of KSh. 2,000 or to imprisonment for one month or to both such fine and imprisonment.

Estate Agents

[Subsidiary]

SCHEDULE, Form I—*continued*

Dated the, 20

Registrar of the Board

Summons Received on

By

Signature of Witness

Served by

Date and Time

Place

ESTATE AGENTS (ACCOUNTANT'S CERTIFICATE) RULES, 1989

ARRANGEMENT OF RULES

Rule

1. Citation.
2. Interpretation.
3. Accountant's certificate.
4. Qualification of accountant.
5. Duty of accountant.
6. Form of accountant's certificate.
7. Powers of the Board.
8. Accounting period.
9. Duration of accounting period.
10. Accounting periods for firms of estate agents.
11. Accounting periods for estate agents not exempt under rule 7.
12. Complaints.
13. Certificate from Registrar.
14. Final proof.
15. Notice of estate agent.
16. Notice to accountant.

SCHEDULE

[Subsidiary]

ESTATE AGENTS (ACCOUNTANT'S CERTIFICATE) RULES, 1989

[L.N. 36/1989.]

1. Citation

These Rules may be cited as the Estate Agents (Accountant's Certificate) Rules, 1989.

2. Interpretation

(1) In these Rules unless the context otherwise requires—

“**accountant's certificate**” means the certificate provided for by rule 3;

“**estate agent**” means any person whose name is duly entered upon the register of estate agents kept in accordance with section 7 of the Act;

“**the Board**” means the Estate Agents Registration Board;

(2) The expressions “**client**”, “**client account**”, and “**client money**” have the meanings assigned to them in the Estate Agents (Accounts) Rules, 1989 (L.N. 20/1989).

3. Accountant's certificate

Subject to these Rules, every estate agent shall once in every practice year deliver to the Board a certificate signed by an accountant and complying with these Rules.

4. Qualification of accountant

(1) An accountant is qualified to give an accountant's certificate under these Rules if—

(a) he has neither been at any time during the accounting period, nor subsequently, before giving the certificate, become a partner, clerk or servant of the estate agent or any partner or co-director of any company of which he is a member of; and

(b) he is not subject to notice of disqualification under paragraph (2);

(2) In either of the following cases, that is to say, where—

(a) the accountant has been found guilty by the Disciplinary Tribunal of his professional body of professional misconduct or discreditable conduct; or

(b) the Board is satisfied that an estate agent has not complied with the provisions of the Estate Agent (Accounts) Rules, 1989, in respect of matters not specified in an accountant's certificate and that the accountant was negligent in giving such certificate, the Board may at any time notify the accountant concerned, that he is not qualified to give accountant's certificate, and it may give notice of that fact to any estate agent on whose behalf he has given an accountant's certificate, and after the accountant has been so notified, unless and until the notice is withdrawn by the Board, he is not qualified to give an accountant's certificate.

5. Duty of accountant

(1) With a view to the signing of an accountant's certificate an accountant is not required to do more than—

(a) make a general test examination of the books of account of the estate agent;

[Subsidiary]

- (b) ascertain whether a client account is kept and operated in accordance with the Estate Agents (Accounts) Rule, 1989;
- (c) make a general test examination of the bank pass books and statements kept in relation to the estate agent's practice;
- (d) make a comparison, as at not fewer than two dates selected by the accountant, between—
 - (i) the liabilities of the estate agent to his clients as shown by his books of account;
 - (ii) the balance standing to the credit of the client account; and
- (e) ask for such information and explanations as he may require arising out of paragraphs (a) to (d);

(2) If after making the investigation prescribed by paragraph (1), it appears to the accountant that there is evidence that the Estate Agents (Accounts) Rules, 1989 have not been complied with, he shall make such further investigations as may be necessary to enable him to sign the accountant's certificate.

6. Form of accountant's certificate

An accountant's certificate delivered by an estate agent shall be in the form set out in the Schedule or in a form to the like effect approved by the Board.

7. Powers of the Board

The Board shall, in each practice year, be satisfied that the delivery of an accountant's certificate is unnecessary, and shall not require evidence of that fact, in the case of an estate agent who—

- (a) holds his first current practising certificate; or
- (b) after having for twelve months or more ceased to hold a current practising certificate, holds his next current practicing certificate; or
- (c) delivers to the Board a statutory declaration stating that the Estate Agents (Accounts) Rules, 1989 did not apply to him because he had not, during the period to which the declaration refers, practised on his own account either alone or in partnership or held or received client's money; or
- (d) has ceased to hold a current practising certificate and, if he has at any time after the 9th February, 1986, held or received client's money, has delivered an accountant's certificate covering an accounting period ending on the date upon which he ceased to hold or receive client's money; or
- (e) has at no time since the 9th February, 1986, held a current practising certificate or held or received client's money.

8. Accounting period

Subject to rules 9, 10 and 11 the accounting period specified in an accountant's certificate shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's certificate has been delivered;
- (b) cover not less than twelve months;
- (c) terminate not more than six months before the date of the delivery of the certificate to the Board; and
- (d) where possible correspond to a period or consecutive periods for which the accounts of the estate agent or his firm are ordinarily made up.

[Subsidiary]

9. Duration of accounting period

The accounting period specified in an accountant's certificate delivered during the practice year beginning on the 9th February, 1986 shall begin on—

- (a) the date to which the estate agents books were last made up before the 9th February, 1986;
- (b) if the books were not made up during the practice year beginning on the 9th February, 1986, either on the 9th February, 1986, or on the day upon which the estate agent began or began again to hold or receive client's money, whichever be the later; or
- (c) in the case of an estate agent retiring from practice who has ceased to hold or receive client's money after the 9th February, 1986, the period up to the date upon which he so ceased.

10. Accounting periods for firms of estate agents

In any practice year beginning on or after the 9th February, 1986—

- (a) in the case of an estate agent who—
 - (i) becomes under an obligation to deliver his first accountant's certificate; or
 - (ii) having been exempt under rule 7 from delivering an accountant's certificate in the previous practice year becomes under an obligation to deliver an accountant's certificate,

the accounting period shall begin on the date upon which he first held or received client's money or, after such exemption, began again to hold or receive client's money, and may cover less than twelve months, and shall in all other respects comply with rule 8; and

- (b) in the case of an estate agent retiring from practice who, having ceased to hold or receive client's money, is under an obligation to deliver his final accountant's certificate, the accounting period shall end on the date upon which he ceased to hold or receive client's money, and may cover less than twelve months, and shall in other respects comply with rule 8.

11. Accounting periods for estate agents not exempt under rule 7

(1) In any practice year beginning on or after the 9th February, 1986, in the case of an estate agent who—

- (a) was not exempt under rule 7 from delivering an accountant's certificate in the preceding practice year; and
- (b) since the expiry of the accounting period covered by such accountant's certificate has become, or ceased to be a member of a firm of estate agents,

the accounting period may cover less than twelve months and shall in all other respects comply with rule 8.

(2) In the case of an estate agent who has two or more places of business—

- (a) separate accounting periods, covered by separate accountant's certificates, may be adopted in respect of each such place of business provided that the accounting periods comply with rule 8; and
- (b) the accountant's certificate or accountant's certificates delivered by him to the Board in each practice year shall cover all client's money held or received by him.

12. Complaints

If any estate agent fails to comply with these Rules a complaint in respect of such failure may be made by or on behalf of the Board to the Disciplinary Committee.

13. Certificate from Registrar

On receipt either of an accountant's certificate or of a declaration under rule 7(3) the Registrar will forward to the estate agent a certificate under his hand stating that an accountant's certificate for a specified period has been received or that no accountant's certificate is required for a specified period, as the case may be.

14. Final proof

A certificate under the hand of the Registrar is, until the contrary is proved, evidence that an estate agent has or has not, as the case may be, delivered to the Board an accountant's certificate or supplied any evidence required under these Rules.

15. Notice of estate agent

Every notice to be given by the Board under these Rules to an estate agent shall 'be in writing under the hand of the Registrar and sent by registered post to the last address of the estate agent appearing in the register of estate agents kept by the Registrar under section 7 of the Act and when so given and sent. is taken to have been received by the estate agent within seven days after the date of posting.

16. Notice to accountant

Every notice given by the Board under these Rules to an accountant shall be in writing under the hand of the Registrar and sent by registered post to the address of the accountant shown on an accountant's certificate or appearing in the records of the accountancy body of which the accountant is a member, and when so given and sent, is taken to have been received by the accountant within seven days after the date of posting.

SCHEDULE

(r. 6)

FORM OF ACCOUNTANT'S CERTIFICATE

Note.—In the case of a firm with a number of partners or company with directors carbon copies of the certificate may be delivered provided section 1 below is completed on each certificate with the name of the individual estate agent.

1. Estate agent's full name.
2. Firm(s) name(s) and address(es).

Note.—All addresses at which the estate agent(s) practice(s) must be covered by an accountant's certificate or certificates.

3. State whether practising alone or in partnership.
4. Accounting period(s).

Note.—The period(s) must comply with the Estate Agents (Accountant's Certificate) Rules.

ACCOUNTANT'S CERTIFICATE

In compliance with the Estate Agents (Accountant's Certificate) Rules, 1989.

I, have examined the books, accounts and documents of the above-named estate agent relating to the above practice(s)

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[Subsidiary]

SCHEDULE—continued

produced to me and I hereby certify that from my examination pursuant to rule 5 of the Estate Agents (Accountant’s Certificate) Rules, and from explanations and information given to me, I am satisfied that—

(1) During the above-mentioned period(s) he has complied with the provisions of the Estate Agents (Accounts) Rules, 1989 except so far as concerns—

(a) certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery; I am satisfied that none of such breaches resulted in any loss to any client;

(b) the matters set out on the back hereof;

(2) Having retired from active practice as an estate agent he ceased to hold client’s money on the:

Particulars of the Accountant

Full name

Qualifications (if any)

Firms name

Address

Signature

Date

To: The Registrar,
The Estate Agents Registration Board,
P.O. Box
NAIROBI.

*Delete clause not applicable.

ESTATE AGENTS (ACCOUNTS) RULES, 1989

[L.N. 20/1989.]

1. These Rules may be cited as the Estate Agents (Accounts) Rules, 1989.

2. In these Rules, unless the context otherwise requires—

“estate agent” means a person who deals with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or building, forming part thereof or does any of the following acts—

- (a) bringing together or taking steps to bring together a prospective vendor, lessor, 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;

“client” means any person on whose account an estate agent holds or receives client’s money;

“client account” means a current or deposit account at a bank or financial institution operating under the Banking Act (Cap. 488) or a building society registered under the Building Societies Act (Cap. 489), in the name of the estate agent the title of which accounts contains the word “client” or “trust”;

“client’s money”, in relation to an estate agent, means any money received by him in the course of estate agency work which is a contract or a pre-contract deposit, whether the money is held or received by him as agent, bailee, shareholder or in any other capacity;

“contract deposit”, means any sum paid by a purchaser—

- (a) which in whole or in part is intended to form part of the consideration for acquiring an interest in land in Kenya; or
- (b) which is paid by him at or after the time at which he acquires the interest or enters into an enforceable contract to acquire it;

“pre-contract deposit” means any sum paid by any person—

- (a) in whole or in part as a show of his intention to acquire such an interest in immovable property or any house, shop or building forming part thereof;
- (b) in whole or in part towards meeting any liability of his in respect of the consideration for the acquisition of such an interest which will arise if he acquires or enters into an enforceable interest; or
- (c) in respect of a connected contract and which is paid by him at the time or before he either acquires the interest or enters into an enforceable contract to acquire it;

“connected contract”, in relation to the acquisition of an interest in land, means a contract which is conditional upon entering into an enforceable contract for such an acquisition (whether or not it is also conditional on other matters).

3. An estate agent may keep one client account or several client accounts as he thinks necessary.

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4. Client's money received by any agency work in Kenya—
- (a) is held by him on trust for the person who is entitled to call it to be paid over to him or to be paid on his direction or have it otherwise credited to him; or
 - (b) if it is received by him as a shareholder, is held by him on trust for the person who may become so entitled on the occurrence of the event against which the money is held.
5. Subject to rule 9, every estate agent who receives client's money, shall without delay pay the money into a client's account maintained by him or by a person in whose employment he is.
6. There shall be paid into the client's account—
- (a) client's money;
 - (b) such money belonging to the estate agent as may be necessary for the purpose of maintaining the account;
 - (c) money to replace any sum drawn from the account in contravention of these Rules; and
 - (d) a cheque or draft received by the estate agent which he is entitled under rule 7 to split but which he does not split.
7. (1) Where an estate agent holds or receives a cheque or draft which includes client's money—
- (a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or
 - (b) if he does not split the cheque or draft, he shall pay the cheque or draft into a client account.
- (2) Money which is not client's money but which is paid into a client's account, other than under rule 6, shall be paid out as soon as is reasonably possible.
8. An estate agent shall not account for any money other than money which he is required to pay into a client's account under these Rules.
9. An estate agent need not pay into a client account client's money held or received by him which—
- (a) is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to the client or to a third party; or
 - (b) he pays in, without delay to the credit or a separate account opened or to be opened in the name of a client, trust, or estate or of some person nominated by the client; or
 - (c) is received by him in the form of a cheque or draft and is without delay, endorsed over or delivered in the ordinary course of business to the client or to a third party for, or on behalf of or to the use of the client and is not cashed or passed through a bank by the estate agent.
10. (1) Subject to rules 11 and 12, an estate agent may withdraw from a client account—
- (a) money properly required for payment to the client;
 - (b) money properly required for or towards a payment authorized by client;

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- (c) money properly required for or towards a payment on behalf of the client within the mandate of the estate agent in the matter or any of the matters in which he is acting for or on behalf of the client;
- (d) money which he is transferring to a separate account opened or to be opened in the name of the client;
- (e) money properly required for or towards payment of a debt due to the estate agent from the client or in reimbursement of money properly expended by the estate agent for or on behalf of the client;
- (f) money properly required for or towards payment of the estate agent's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client;
- (g) money paid into the account in contravention of these Rules;
- (h) money paid into the account under rule 6(b);
- (i) money not being client's money paid in the account under rule 7(1)(b).

(2) Every cheque drawn upon a client account shall bear on its face the words "client account" or "trust account".

11. An estate agent shall not withdraw from a client account any sum in excess of the amount held for the time being in such account for the credit of the client in respect of whom, the drawing is proposed to be made.

12. No money may be withdrawn from the client account under paragraphs (e), (f), (g), (h) and (i) of rule 10 except by cheque drawn in favour of the estate agent.

13. No money may be withdrawn from the client account except as may be authorized by rule 10 or as specifically authorized in writing by the Board in pursuance of an application made by the estate agent.

14. (1) Every estate agent shall at all times keep properly written up such books of account as may be necessary to show—

- (a) every receipt by him of client's money for each separate client; and
- (b) every payment or application by him of or from client's money for each separate client; and
- (c) the amount held by him for the time being in a client account, for each separate client; and
- (d) the moneys expended by him for and the costs charged by him to each separate client.

(2) The books of account referred to in paragraph (1) shall include—

- (a) either—
 - (i) a cash book in which to record every transaction involving client's money or other money dealt with by the estate agent through a client account and a separate cash book in which to record every transaction involving the estate agent's own money and relating to the affairs of his client's; or
 - (ii) a cash book ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the estate agent through a client account and the other for recording every transaction involving the estate agent's own money and relating to the affairs of his client;

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- (b) either—
- (i) a ledger in which to record every transaction involving client's money or other money dealt with by the estate agent through a client account and a separate ledger in which to record every transaction involving the estate agent's own money and relating to the affairs of his clients; or
 - (ii) a ledger ruled with two principal money columns on each side one such column for recording every transaction involving client's money or other money dealt with by the estate agent through a client account and the other recording every transaction involving the estate agent's own money and relating to the affairs of his clients; and
- (c) a record showing particulars of all bills of costs delivered by the estate agent to his clients distinguishing between profit, cost and disbursement.

(3) A cash book ledger required to be kept under these Rules may be a loose-leaf book.

(4) In this rule, "cash 'book" and "ledger" include such cards or other permanent records as are necessary for the operation of a mechanical system of book-keeping.

(5) Every estate agent shall preserve for at least seven years from the date of the last entry therein all books of account required to be kept by him under rule 14.

16. Every estate agent shall take reasonable precautions to ensure the safety of all books of account which he is required by rule 15 to preserve and in the event of any of the books being lost, destroyed or materially damaged shall forthwith give notice thereof to the Board together with a written report on the circumstances.
