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Currency points

A Bill an Act

ENTITLED

THE REAL ESTATE BILL, 2024

An Act to provide for: the regulation and administration of the practice of real estate business; scope of real estate business; register of real estate agents and sales persons; regulation of practice of real estate agency; provision of professional code of ethics of real estate agents; regulation of real estate development business; regulation of trust accounts held by real estate agents and other related matters.

BE IT ENACTED by Parliament as follows:

PART I - PRELIMINARY

1. Commencement

This Act shall come into force on a date appointed by the Minister by statutory instrument.

2. Interpretation

In this Act, unless the context otherwise requires-

“advertisement” means any document described or issued as a prospectus or any notice, circular, or other document including any audio or video, offering for sale or any real estate project or inviting any person to make advances or deposits for such purposes;

“commission” means the payment earned by a real estate real estate agent for the conduct of real estate business;

“Commissioner” means the Commissioner responsible for the Department of Housing Development and Estates Management in the Ministry of Lands, Housing and Urban Development;

“financial institution” has the meaning assigned to it under the Financial Institutions Act, Cap. 57;

“Minister” means the Minister responsible for housing;

“property management” means work done on behalf of a property owner for the purpose of management and administration of residential or commercial property or group of properties;

“real estate” means property consisting of land or buildings;

“real estate agency” means the practice of real estate business as a real estate agent;

"real estate agent" means a person, who acts on behalf of one person in auctioning or negotiating the sale, exchange, purchase, lease or licensing of real property, and procuring of vendors, purchasers, lessors, lessees, landlords or tenants of real property for remuneration or a fee;

“real estate developer” means a person who, whether alone or in conjunction with another person develops, sells, causes to sell or offers for sale to the public plots of land, units, sale of proposed units or any real property of which he is the owner;

“real estate development business” has the meaning assigned to it under section 8;

“real estate project” means development of housing units or estates, or a building consisting of units or the development of land into plots, as the case may be, for selling some or all;

“sales person” means an individual who for compensation, salary or other consideration is employed either directly or indirectly by a licensed real estate real estate agent to perform real estate agency services.

“trust account” means an account at a financial institution held by a real estate real estate agent or developer in which money is deposited on behalf of a named client;

“trust money” means money paid by a client to a real estate real estate agent or developer to facilitate the conduct of real estate business on his behalf and does not include a commission.

3. Application

This Act applies to all persons who engage in the business of real estate.

4. Object of Act

The object of this Act is to-

- (a) promote and protect the interests of consumers in respect to transactions that relate to real estate;
- (b) promote public confidence in the performance of real estate business and development;
- (c) raise and maintain the standards of ethics in real estate business;
- (d) regulate real estate development business;
- (e) provide accountability in the real estate industry through a disciplinary process that is transparent and effective; and
- (f) promote the real estate sector.

PART II- ADMINISTRATION AND MANAGEMENT OF THE PRACTICE OF REAL ESTATE BUSINESS

5. Administration, management and regulation

The administration, management and regulation of the real estate sector under this Act shall be undertaken by the Department of Housing Development and Estate Management, subject to the overall policy guidance of the Minister.

6. Functions of Minister

The Minister shall-

- (a) mobilise financial and other resources for the management and development of the real estate subsector;
- (b) review licence regimes; and
- (c) perform any other function incidental to the purposes of real estate business.

Department of Housing Development and Estate Management

7. Functions of Department of Housing Development and Estate Management

(1) The Department of Housing Development and Estate Management is responsible for the regulation of the business of real estate.

(2) The Department of Housing, with the supervision of the Commissioner, shall-

- (a) administer the licensing and registration regimes under this Act;
- (b) regulate the practice of real estate real estate agents and salespersons;
- (c) promote integrity and competence among estate real estate agents and salesperson, and to maintain and enhance their status;
- (d) develop measures to equip consumers with the necessary knowledge to conduct their property transactions with prudence and diligence;
- (e) perform such other functions and discharge such other duties as may be conferred on the Department by any written law;
- (f) set and maintain standards of real estate agency and development in Uganda;
- (g) ensure the protection of the public and promote understanding of matters relating to the provision of real estate services;
- (h) promote education, training and development of real estate agency;
- (i) employ disciplinary mechanisms on errant practitioners;
- (j) be responsible for the development of a comprehensive database for the real estate sector management relating to property housing indices as well as housing stock;
- (k) be responsible for the recognition of real estate associations; and
- (l) coordinate and maintain a database of real estate data, including property listings, sales records, prices, property characteristics and market trends, among others.

PART III - PRACTICE OF REAL ESTATE BUSINESS

8. Real estate business

(1) A person shall be deemed to engage in real estate business where the person offers real estate agency services or undertakes real estate development business.

(2) A person shall be deemed to offer real estate agency business referred to in subsection (1), where the person or his or her representative either as a real estate agent or a sales person, where applicable -

- (a) negotiates the sale, exchange, purchase or lease of real property;
- (b) engages in property management, either as a consultant or as an real estate agent;
- (c) takes part in the procuring of vendors, purchasers, lessors, lessees, landlords or tenants of real property;
- (d) directs or assists in the procuring of prospects, or the negotiation or closing of transactions which result in the sale, exchange, lease or licensing of real property;
- (e) directs or assists in the procuring of prospects, or the negotiation or closing of transactions which result in the sale, exchange, lease or licensing of real property;
- (f) develops, sells, or offers for sale to the public, units or proposed units;
or
- (g) causes the subdivision of large parcels of land of which he is the owner into smaller lots for sale as required by the Physical Planning Act Cap. 142.

(3) Subject to subsection (1), a person shall be deemed to engage in real estate development business where -

- (a) whether alone or in conjunction with another person develops, sells or offers for sale to the public, units or proposed units; or
- (b) whether alone or in conjunction with another person, causes the subdivision of large parcels of land of which he is the owner into smaller lots for sale.

(4) For the avoidance of doubt, a person shall not be deemed as engaging in real estate business where the person –

- (a) acts for and on behalf of a client under a power of attorney for the purpose of negotiating or executing a contract, transfer or conveyance in respect of real property, provided always that he does not engage in these transactions in breach of his fiduciary duties or for personal profit;
- (b) furnishes legal advice and services ancillary thereto in his capacity as an attorney-at-law;

- (c) is an administrator, executor, receiver or trustee acting under or by virtue of an appointment by will or written instrument or by order of a court;
- (d) is an assignee, custodian, liquidator, receiver, or trustee acting under any written law;
- (e) deals with real property in a one off sale for which he is an owner or a part owner and not being in the real estate development business defined under subsection (3); or
- (f) is employed as a salaried employee of a financial institution dealing with real estate transactions.

PART IV- REGISTER OF REAL ESTATE AGENTS AND PRACTISING OF REAL ESTATE AGENCY

9. Registers of Real Estate Agents and Sales Persons

(1) There shall be a Register of Real Estate Agent and Salespersons in which all real estate agents licences issued under this Act shall be registered.

(2) The Register established under subsection (1) shall include the following information relating to real estate agents and salespersons registered under this Act-

- (a) the registration number and date of the entry in the register;
- (b) the full name, contact details, address and National Identification Number or passport details or refugee status of the person being registered;
- (c) the qualifications of the person being registered;
- (d) the particulars of the business including its name, registered address, and of type of enterprise;
- (e) a completed declaration of any information required under the Anti-Money laundering Act on the prescribed form under this Act; and
- (f) such other particulars as the Commissioner may from time to time direct.

(3) The Register shall indicate all changes in the particulars registered under subsection (1) including whether a certificate or practice in the case of real estate agents or licence in the case of a sales person was suspended in the last 3 years, the grounds for, period of, and conditions for lifting of the suspension.

(4) The Register shall be prepared and maintained in a manner prescribed by regulations made under this Act.

(5) Subject to section 7(2), the Commissioner shall be responsible for the Register of Real Estate Agents and Salespersons.

(6) The Commissioner shall remove from the Register any name of a person registered as a real estate agent who ceases to qualify as a real estate agent either by written applied law or order of court.

(7) A person may access information on the Register upon making an application to the Commissioner in a manner prescribed by regulations.

(8) A person shall not –

(a) practice as a real estate agent;

(b) pass off as or willfully pretend to be a real estate agent; or

(c) make use of any name, title or description implying that he is entitled to be recognised to act as a real estate agent,

unless the person's name appears on the Register of Real Estate Agents.

10. Eligibility for registration to Register of Real Estate Agents

(1) A person who seeks to be registered in the Register of Real Estate Agents shall apply to the Commissioner for registration as a registered real estate agent.

(2) A person to whom subsection (1) applies shall be eligible for registration if he or she-

(a) has a degree in real estate agency or an equivalent qualification with practical experience recognised by the Commissioner;

(b) is a member of a professional body of real estate agents; and

(c) a Financial Intelligence Authority Certificate issued under the Anti-Money Laundering Act Cap. 118.

(2) A person who qualifies for registration under subsection (1) shall before registration undertake professional training and take and pass the professional qualification examinations of the professional examinations committee.

(3) Notwithstanding subsection (2), the Commissioner may upon satisfactory evaluation of the academic qualifications and experience of a person referred to in subsection (1)(a), exempt the person from undertaking the professional qualification examinations.

(4) A person who intends to be registered under this section shall pay registration fees as may be prescribed by regulations made under this Act.

(5) A person is not qualified to be registered in the Register of Real Estate Real estate agents or to continue to be on the Register if he or she-

(a) is adjudged by a competent court to be a person suffering from mental illness;

(b) is convicted of an offence involving fraud or dishonesty by a competent court; or

(c) without reasonable or justifiable cause, has not renewed his or her membership for two consecutive years.

11. Recognition of other qualifications

The Commissioner may, upon review of an application made under section 10, take into account other qualifications acquired relevant to the disciplines of real estate agency services.

12. Use of description “Registered Real Estate Real estate agent” and effect of registration

A person whose name has been entered in the register shall, for the time his or her name is on the register be entitled to adopt and use the style and title- “Registered Real Estate Real estate agent” and to offer his or her services to the public for gain or reward by way of trade as a professionally qualified real estate real estate agent.

13. Registration as practising real estate agent

(1) A person who is eligible under section 10 who wishes to practice as real estate real estate agent shall, on payment of registration fees prescribed by

regulations made under this Act, apply to the Commissioner to be registered as a practising real estate real estate agent.

(2) A person who makes an application under subsection (1) shall provide to the Commissioner-

(a) a signed recommendation; and

(b) proof of passing the professional qualification examinations where applicable.

(3) Where the Commissioner is satisfied that the person who makes an application under this section qualifies for registration as a practising real estate real estate agent, the Commissioner shall cause to enter the name of the applicant on the register of real estate real estate agents.

(4) The Commissioner may refuse to register a person as a practising real estate real estate agent and where the Commissioner refuses, he or she shall, within thirty days, inform the member of the decision and the reason for the decision and of the right to appeal to the High Court against the decision of the Commissioner.

(5) An appeal to the High Court shall be made within twenty-one days after receipt of the decision of the Commissioner.

(6) A person who is registered under this section shall practice as a sole practitioner or as a firm.

14. Certificate of practice for sole practitioner

(1) A person who is registered as a practising real estate real estate agent under section 13, shall for each year of practice, on payment of fees prescribed by regulations made under this Act, be granted a certificate of practice.

(2) Subject to subsection (1) a practising real estate real estate agent who is issued with an annual certificate of practice shall have a practice stamp with his or her name or the trade name and his or her profession and shall affix the stamp to all documents signed by him or her.

(3) For the purposes of subsection (1), the practising real estate real estate agent shall make an application for a certificate of practice to the Commissioner.

(4) A certificate of practice shall be valid for the year of issue and shall in all cases expire on the 31st day of December of the year in which it is issued.

(5) The Commissioner may refuse to grant a certificate of practice and where the rejects the Commissioner shall, within thirty days, inform the applicant of the decision and the reason for the decision and of the right to appeal to the High Court against the decision of the Commissioner.

(6) An appeal to the High Court shall be made within twenty one days after receipt of the decision of the Commissioner.

(7) A practising real estate real estate agent who wishes to renew his or her certificate of practice shall, on payment of fees for renewal, as may be prescribed by regulations made under this Act, make an application for renewal of the certificate of practice by the 31st day of October of the year of issue, to the Commissioner.

(8) A practising real estate real estate agent who makes an application under subsection (7) shall accumulate the hours of continuous professional development as may be prescribed by regulations made under this Act.

15. Licence of practice for real estate real estate agent firms

(1) Where two or more persons who are registered as practising real estate agents under section 14, seek to practice as a real estate agent firm, the Commissioner shall, for each year of practice, on payment of fees, as may be prescribed by regulations made under this Act, grant a licence of practice to the real estate real estate agent firm.

(2) A real estate real estate agent firm shall be a partnership registered under the Partnership Act, Cap. 110 and the Commissioner shall, as may be prescribed by regulations made under this Act, approve the name of the partnership before registration under the Partnership Act, Cap. 110.

(3) For the purposes of subsection (1), the real estate real estate agent firm shall make an application for a licence of practice to the Commissioner.

(4) For the avoidance of doubt, each of the partners of a real estate real estate agent firm shall have a certificate of practice granted under section 15.

(5) A licence of practice shall be valid for the year of issue and shall in all cases expire on the 31st day of December of the year in which it is issued.

(6) The Commissioner may refuse to grant a licence of practice for a real estate real estate agent firm and where the Commissioner rejects the Commissioner shall, within thirty days, inform the real estate real estate agent firm of the decision and the reason for the decision and of the right to appeal to the High Court against the decision of the Commissioner.

(7) An appeal to the High Court shall be made within twenty one days after receipt of the decision of the Commissioner.

(8) A real estate real estate agent firm that wishes to renew its licence of practice shall, on payment of fees for renewal, as may be prescribed by regulations made under this Act, make an application for renewal of the licence of practice by the 31st day of October of the year of issue, to the Registrar.

16. Certificate of temporary practice

(1) Subject to section 10, where a person satisfies the Commissioner-

(a) that he or she is not ordinarily resident in Uganda;

(b) that he or she is, or intends to be, present in Uganda in the capacity of a professionally qualified real estate real estate agent for the express purpose of carrying out specific work or works for which he or she has been engaged;

(c) that he or she is, or immediately prior to entering Uganda was, in practice as a real estate real estate agent in such a capacity as to satisfy the Commissioner of his or her fitness to serve the public as a professionally qualified real estate real estate agent,

the Commissioner may, if it deems it fit, direct that the person shall be registered under this section either for a period not exceeding one year or for the duration of any specific work or works.

(2) An application for registration under this section shall be in the prescribed form, accompanied by the prescribed fee, and the Commissioner may require an applicant to appear before it, for the purposes of considering his or her application and shall require every applicant to produce documentary evidence of his or her work or employment immediately prior to his or her entering Uganda.

(3) Registration of a person under this section shall continue only for the period or for the duration of the work or works as is directed by the Commissioner under subsection (1) and on its termination the person shall cease to be registered.

(4) In case of doubt, the decision of the Commissioner as to the termination of the work or works shall be conclusive.

(5) A person registered under this section shall, in relation to the period or the duration of the work or works as is directed by the Commissioner under subsection (1) and to things done and omitted in the course of the work or works, be treated as registered under this Act as a registered real estate real estate agent but in relation to other matters shall be treated as not so registered.

(6) Subject to subsection (1), a real estate real estate agent not practising in Uganda, however intending to practice in Uganda as a real estate real estate agent, shall register within four months before arrival in Uganda.

(7) A firm, entity, or organisation, private or public, which recruits an real estate real estate agent into Uganda shall ensure that the real estate real estate agent has in accordance with this section obtained temporary registration within four months before his or her arrival in Uganda.

17. Practising real estate agent

(1) A person who practices real estate agency services in Uganda shall be a person who has a certificate of practice or a licence of practice issued in accordance with this Act.

(2) For the purposes of subsection (1), a person who practices real estate agency services shall be -

- (a) shall not facilitate the sale or rent of a real estate project which is not registered in accordance with this Act;
- (b) maintain and preserve such books of account, records and documents in a manner prescribed by regulations;
- (c) not facilitate the sale or rent of any parcel of land, apartment or building in a real estate project which is not registered in accordance with this Act; and
- (d) not be involved in any unfair trade practices.

(3) For the avoidance of doubt, unfair trade practices referred to under subsection (2) (c) include-

- (a) making any statement, whether orally, in writing or visible representation, which-
 - (i) falsely represents that the services are of a particular standard or grade;
 - (ii) represents that the real estate real estate agent has approval or affiliation with another real estate real estate agent or developer which they do not have;
 - (iii) makes a false or misleading representation concerning the services rendered or offered; and
- (b) permitting the publication of any advertisement for property that is not intended to be offered.

(4) A person to whom subsection (1) applies, shall be entitled to payment of professional fees as prescribed by regulations made under this Act.

(5) A person who practices real estate agency services contrary to subsection (1) commits an offence and is, on conviction, liable to a fine not exceeding five hundred currency points or imprisonment not exceeding two years, or both.

Registration of Salespersons

18. Salespersons to be registered

(1) A person shall not engage in real estate business as a salesperson unless he or she is a registered salesperson under this Act.

(2) Subsection (1) shall not be construed as -

- (a) requiring any registered salesperson, by reason only of the fact that he does real estate agency work solely as a salesperson, to hold an estate real estate agent's licence; or
- (b) requiring any licenced real estate real estate agent to be registered as a salesperson.

(3) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding six months or to both.

(4) No person other than a natural person may be registered as a salesperson.

19. Application for registration of sales persons

A person who intends to engage in real estate business as a salesperson shall apply to the Commissioner in a manner prescribed by regulations and on payment of the prescribed fee.

20. Professional Qualification Examinations Committee

(1) There is established a professional qualification examinations committee which shall be responsible for the professional training and professional qualification examination referred to in section 10 (3).

(2) The Professional Qualification Examinations Committee shall consist of the following members-

- (a) two senior members of professional bodies, one of whom shall be appointed by the Commissioner as the Chairperson of the Professional Qualification Examinations Committee;

- (b) two persons, who shall be instructors of disciplines of real estate agency services at universities or other institutions of higher learning and are registered as real estate real estate agents;
 - (c) the Commissioner responsible for higher education or his or her representative who shall be an officer at the rank of principal officer or a higher rank; and
 - (d) a representative of the National Council for Higher Education.
- (3) The Professional Qualification Examinations Committee shall –
- (a) manage the professional training and professional qualification examinations;
 - (b) determine the syllabus and curriculum for the professional training and professional qualification examinations;
 - (c) appoint trainers, examiners and moderators of the training and examinations, respectively; and
 - (d) do any other thing connected with the management of the professional training and professional qualification examinations of the Commissioner.
- (4) The syllabus and the curriculum referred to in subsection 3 (b) shall be approved by the National Council for Higher Education.
- (5) The members of the Professional Qualification Examinations Committee referred to in subsection 2 (a) and (b) shall hold office for three years, and shall be eligible for reappointment for one further term.

PART V - PROFESSIONAL CODE OF ETHICS

21. Professional Code of Ethics for Practising Real Estate Real estate agents

The Minister shall issue a Professional Code of Ethics for Practising Real Estate Real estate agents.

22. Compliance with Professional Code of Ethics for Practising Real Estate Real estate agents

- (1) Every person who is registered as a practising real estate real estate agents under section 11, shall be subject to the Professional Code of Ethics for Practising Real estate real estate agents specified in section 18.

- (2) A practising real estate real estate agent who contravenes the Professional Code of Ethics for Practising Real Estate Real estate agent commits an offence of professional misconduct and shall be subject to disciplinary measures imposed under the Professional Code of Ethics.
- (3) The Commissioner or any person with an allegation against a practising real estate real estate agent may make a complaint of professional misconduct to the Disciplinary Committee.

23. Disciplinary Committee

- (1) The Commissioner shall have a disciplinary committee to hear complaints of professional misconduct brought against practising real estate real estate agents under the Professional Code of Ethics for Practising Real estate real estate agents.
- (2) The Disciplinary Committee shall consist of the following members -
 - (a) a Chairperson who shall be the Commissioner;
 - (b) two registered practising real estate real estate agents; and
 - (c) two senior members of a professional body, and who shall be persons of good repute.
- (3) The quorum of the disciplinary committee shall be three members, two of whom shall be practising real estate real estate agents.
- (4) Save for the Commissioner, the term of office for a member of the Disciplinary Committee shall be three years and a member shall be eligible for reappointment for one further term.
- (5) The Minister shall make regulations for the conduct of the Disciplinary Committee.

PART VI - REGULATION OF REAL ESTATE DEVELOPMENT BUSINESS

24. Requirement for prior registration of real estate projects

(1) A person who intends to engage in real estate development business as a developer shall not advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any planning area, unless the developer causes the registration of the real estate project under section 25.

(3) A person who contravenes this subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding ten thousand currency points, or imprisonment not exceeding two years, or both.

25. Application for registration of real estate projects

(1) A developer shall, prior to selling or leasing individual lots under a project including commercial, industrial and institutional projects, apply to the Commissioner to be registered in the Register of Real Estates Projects.

(2) For avoidance of doubt, the selling or leasing individual lots shall include the different modes of sale such as direct sale, off plans, mortgages or whatever form of name the mode of sale will take.

(3) An application made under subsection (1) shall be in a form prescribed by regulations made under this Act.

(4) Subject to subsection (3), the application shall be supported with-

(a) relevant authorisations such as building permits and occupation permits;

(b) proof of funds for the project;

(c) title of the project property;

(d) a feasibility study

(e) sales agreement proposed to be executed with buyers;

(f) a payment plan or financing model, where applicable; and

(g) a statutory declaration by the developer or any person authorised by the developer, indicating-

(i) that the developer has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(ii) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land;

(iii) Where applicable, that the developer maintains a trust account in a financial institution in accordance with the Condominium Property Act, Cap .. in which the amounts realised for the real estate project from the purchasers shall be deposited and shall be used only for that purpose; and

(iv) such information and documents as may be prescribed.

(5) The Commissioner shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

26. Register of Real Estate Projects

(1) There shall be a Real Estate Projects Register in which all real estate projects within Uganda shall be registered.

(2) The Real Estate Projects Register established under subsection (1) shall include the following information relating to the real estate projects registered under this Act-

(a) location, type of development, type of land, proposed facilities and number of units for sale; including current status of the projects, whether completed or being developed, as the case may be;

(b) certificated copy of the approvals from the relevant authority obtained in accordance with the laws as may be applicable for the real estate project;

(c) the sanctioned plans, layout plan and specifications of the proposed project or the phase;

(d) Date of completion

(e) particulars of the sales agreement proposed to be executed with buyers; and

(f) the names and addresses of the developer and the developer's real estate agents, sales persons if any, for the proposed project.

(3) The Real Estate Projects Register shall be prepared and maintained in a manner prescribed by regulations made under this Act.

(4) Subject to section 7(2), the Commissioner shall be responsible for the Real Estate Projects Register.

(5) A person may access information on the Register upon making an application to the Commissioner in a manner prescribed by regulations.

Obligations of Real Estate Developers

27. Obligations regarding advertisement

(1) A developer shall not publish a statement in relation to a real estate project that-

(a) is false or misleading; or

(b) omits material facts without which it is false or misleading.

(2) For the purposes of subsection (1), “publication” includes information in an article in a newspaper or other media of a similar nature, publicly exhibited, posted electronically or in hard copy, or broadcasted by radio, television, or electronically disseminated that matches any advertisement or demonstration model.

(3) The advertisement or prospectus issued or published by a developer shall include sufficient detail to identify the developer including-

(a) the trading name, location of business premises and office telephone number;

(b) the registration number issued upon registration of the real estate project or practitioner under this Act; and

(c) the Department’s website address for use by potential buyers to verify the real estate project or practitioner.

(4) Where a person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building and sustains any loss or damage by reason of any incorrect, false statement forming part of the notice advertisement by the developer, the developer shall compensate that person for the extent of the loss or damage sustained.

(5) If the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, they shall be compensated their entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

28. Obligation to comply with consumer protection requirements

(1) A developer, before selling of or dealing with a real property ensure that the real property-

- (a) is sold with legal title, unless buyers were informed otherwise before the sale;
- (b) is fit for the disclosed purpose;
- (c) is sold with a right to undisturbed possession and no one has a legal right to the property or can prevent the buyer from using the property;
- (d) does not have any undisclosed encumbrances, for instance a mortgage

(2) Where a developer sells a real property directly to a buyer without the use of a real estate agent; the developer shall exercise the same duty of care required of a real estate agent as specified in this Act.

(3) Subject to subsection (1), a developer shall not request, solicit or receive deposits from the public without agreement for sale.

(4) A developer shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under the applicable law.

(5) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed under regulations.

29. Adherence to sanctioned plans and project specifications

(1) A real estate developer shall develop and complete a proposed project in accordance with the approved plans, layout plans and specifications as approved by the relevant authorities.

(2) A real estate developer shall not make any additions and alterations in the approved plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of a purchaser.

(3) A real estate developer shall not make any other alterations or additions in the approved plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the purchasers, other than the developer, who have agreed to take apartments in such a building.

(4) In case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the developer as per the agreement for sale relating to such development is brought to the notice of the developer within a period of five years by the purchaser from the date of handing over possession, it shall be the duty of the developer to rectify such defects without further charge, within thirty days.

(5) In the event of a real estate developer's failure to rectify defects under subsection (4), the aggrieved purchasers shall be entitled to receive appropriate compensation in the manner provided under this Act.

(6) A real estate developer shall not, in case of transfer of a real estate project to a third party, transfer or assign their majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two thirds of the purchasers and without notifying the Commissioner.

(7) A transfer or assignment under subsection (6) shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the Real Estate developer.

(8) On the transfer or assignment being permitted by the purchasers under subsection (6), the third party shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile Real Estate developer with the purchaser.

30. Transfer of title

(1) A real estate developer shall, as per the plans approved in accordance with the relevant written law, execute a transfer in favour of a purchaser and hand over the physical possession of the plot, apartment or building, as the case may be, to the purchaser in a real estate project, and any other applicable title documents within a specified period.

(2) Subject to subsection (1) the Real Estate developer shall, within three months from date of issue of occupancy certificate, transfer to the purchaser both the title and hand over physical possession of the property.

31. Rights and duties of purchasers

(1) A purchaser shall be entitled to-

- (a) obtain the information relating to the approved plans, layout plans along with the specifications, approved by the relevant authority or the agreement for sale signed with the real estate developer and such other information required under this Act;
- (b) know the time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the real estate developer and the purchaser in accordance with the terms and conditions of the agreement for sale;
- (c) claim the possession of apartment, plot or building purchaser in accordance with the terms and conditions of the agreement for sale and relevant laws;
- (d) the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the real estate developer, where the developer fails to

comply or is unable to give possession of the apartment, plot or building; and

- (e) have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the real estate developer.

(2) A purchaser, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, where applicable.

(3) A purchaser shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under subsection (2).

(4) Where there is mutually agreement between the developer and the purchaser, the obligations of the purchaser under subsection (2) and the liability towards interest under subsection (3) may be reduced or waived.

32. Failure of developer to deliver project

Where a developer fails to complete or is unable to give possession of a real property in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified due to discontinuance of his or her business as a developer or for any other reason, the developer shall-

- (a) be liable on demand to the purchaser, in case the purchaser wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him or her in respect of that real property as the case may be; and
- (b) compensate the purchaser in case of any loss caused by him or her due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act.

PART V – REGULATION OF TRUST ACCOUNTS

Trust Accounts

33. Opening trust accounts

(1) A practising real estate agent shall hold in trust client money received by him or her in accordance with this Act.

(2) A practising real estate real estate agent shall keep a trust account at an authorised financial institution in Uganda under a name that includes-

- (a) the name or business name of the real estate agent as the case may be; and
- (b) the words “trust account”.

(3) A practising real estate agent may keep more than one trust account.

(4) When opening a trust account, a practising real estate agent shall inform the authorised financial institution, in writing, that the account is a trust account for the purposes of this Act.

(5) A practising real estate agent shall ensure that the words “trust account” appear in every mention of a trust account in the records of the real estate agent and every cheque drawn on a trust account.

(6) A practising real estate agent shall give to the Commissioner, in writing, the details of each trust account held by the real estate agent and, if the real estate agent opens a new trust account, of each new trust account.

(7) A practising real estate agent who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding ten thousand currency points or a term of imprisonment not exceeding two years, or both.

(8) Notwithstanding subsection (7) a practising real estate agent who contravenes subsection (1) commits a professional misconduct and shall be subject to a disciplinary hearing by the disciplinary committee.

34. Closing trust accounts

- (1) Where a real estate real estate agent closes a trust account, the real estate real estate agent shall notify the Commissioner, in writing, of the closure within ten working days after the day the account is closed.
- (2) A person who contravenes subsection (1) is liable, on conviction, to a fine not exceeding fifty currency points.

35. Dealing with trust money

- (1) A real estate real estate agent shall not deal with trust money otherwise than as directed by the person for whom the money is held on trust.
- (2) A real estate real estate agent who receives trust money shall pay the money into a trust account kept by the real estate agent within two business days of the transaction.
- (3) A real estate real estate agent shall not pay an amount out of a trust account except by electronic transfer; or by a non-negotiable cheque that is expressed to be payable to a person specified in the cheque.
- (4) A holder of a real estate real estate agent licence shall ensure that all trust money held by it-
 - (a) is not available for payment of the real estate agent's debts; and
 - (b) shall not be attached, or taken in execution, under a court order or court process at the request of a creditor of the real estate agent.
- (5) An authorised financial institution with which a trust account is kept shall not enforce any liability that the licensed real estate agent may have towards the institution against any amount held in the account, whether by way of claim, counterclaim, set-off, charge or otherwise.
- (6) A real estate real estate agent who receives trust money shall issue a receipt to the client for the money received and keep a copy of the receipt.
- (7) A person who contravenes this section is liable, on conviction, to a fine not exceeding one hundred currency points.

36.Statements by real estate real estate agents

(1) A practising real estate agent shall, every three months, prepare a quarterly statement providing the following information-

- (a) the name of each person on whose behalf the real estate agent held trust money; and
- (b) the amount of trust money held in the real estate agent's trust accounts on behalf of the person;
- (c) the total amount in each trust account kept by the real estate agent.

(2) A practising real estate agent shall prepare and submit bi-annual statements to the client and the Commissioner for purposes of monitoring transactions.

(4) The real estate agent shall keep the statement for a period of not less than 5 years following the end of the quarter to which the statement relates.

(5) The real estate agent shall provide the quarterly statement to the auditor who audits the real estate agent's trust account records for the audit period that includes the quarter to which the statement relates.

(6) A practising real estate agent who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding ten thousand currency points.

37.Requirement for audit

(1) A practising real estate agent shall ensure that the records relating to any trust money held by the real estate agent during an audit period of the real estate agent are audited by a qualified auditor annually after the end of the audit period or any longer period allowed by the Commissioner.

(2) The auditor shall, as soon as practicable after finishing the audit, prepare a report of the result of the audit and give the report to the Commissioner and a copy to the real estate real estate agent.

(3) Subject to subsection (2), where the audit does not provide a qualified opinion of the accounts of the practising real estate agent, the Commissioner

shall cause an audit on the trust money held by the real estate agent, at the expense of the real estate agent.

(4) A person who contravenes this section is liable, on conviction, to a fine not exceeding five hundred and fifty currency points or imprisonment not exceeding 3 months, or both.

38. Trust money held by former real estate agents

Where a practising real estate agent ceases to renew his or her certificate of practice in case of a sole practitioner, or a licence of practice in the case of a real estate firm, shall within three months after ceasing to be renewed, the practising real estate agent shall provide the Commissioner with an updated statement of the trust money held.

39. Unclaimed trust money held by real estate agents

(1) Where the trust money held by a real estate agent remains unclaimed by the client; the real estate agent shall give the Commissioner a statement about the unclaimed money within two months.

(2) A statement under this section shall contain details of-

- (a) the name and address of each person for whom or on whose behalf trust money is held;
- (b) the amount held for each person; and
- (c) for each person, the purpose for which the money was paid to the person giving the statement or licensed real estate real estate agent by whom the trust account was kept.

(3) The statement shall be accompanied by documents showing the efforts of the real estate agent to contact the client for cases of unclaimed trust money, as well as documents showing the receipt of funds from the client.

(4) The Commissioner shall prepare a written notice in the prescribed format and publish it in a newspaper of wide circulation.

(5) The notice shall indicate a period of 60 days within which a response must be given.

(6) The Commissioner may, by written notice to the person holding money to which the notice relates, require the person within 10 business days, to-

- (a) pay any of the money still being held by the person to the public trustee; and
- (b) give the Commissioner a statement containing details of any payments made.

40. Freezing of accounts

Where the Commissioner considers that trust money may be at risk of being stolen, misappropriated or misapplied, the Commissioner may, in writing, direct an authorised financial institution that-

- (a) no amount be withdrawn from a stated account without the Commissioner's written approval; and
- (b) an account be operated only in accordance with prescribed conditions.

41. Withdrawal of freezing directions

(1) The Commissioner may at any time upon satisfactory conditions, withdraw a freezing direction issued under section 43.

(2) The Commissioner shall upon withdrawal of a freezing direction, give written notice to the financial institution and each person or entity the Commissioner had notified of this action.

42. Information on trust accounts

(1) The Commissioner may require -

(a) a real estate agent to provide such information as the Commissioner requires in relation to trust accounts maintained or formerly maintained by that real estate agent;

(b) the manager or other officer for the time being in charge of an authorized financial institution to provide such information as Commissioner requires in relation to trust accounts maintained or formerly maintained with that institution; or

(c) including, without limiting this subsection, information as to the balances of and amounts of interest paid on such accounts.

- (2) A requirement under subsection (1) shall -
- (a) be given by notice in writing to the person required to give the information; and
 - (b) specify the time at or within which the information is to be given.
- (3) A person shall not, without reasonable cause, refuse or fail to comply with a requirement under subsection (1).
- (4) A person shall not give information in response to a requirement under subsection (1) that the person knows is false or misleading.

PART VIII – MISCELLANEOUS PROVISIONS

43. Notification of change in particulars

- (1) Where there is any change in the particulars of a real estate agent or a real estate project on the register under this Act, the real estate agent or developer shall within one month of the change, notify the Commissioner of the change in the prescribed form.
- (2) Where the Commissioner is notified of a change under section (1), the Commissioner shall cause the change to be reflected in the relevant register and correct a mistake caused by error or omission.
- (3) In this section, change of circumstances includes-
- (a) any change in the information recorded in the register;
 - (b) any change in the real estate business; or
 - (c) any change in the place of business.
- (4) A person who contravenes subsection (1), is liable, on conviction, to a fine of twenty currency points.

44. Form of registers

- (1) The registers established under this Act may be kept in an electronic form or other format as prescribed by regulation.

(2) The register shall be operated at all times, unless the Commissioner suspends the operation of the register, in whole or in part, in accordance with subsection (3).

(3) The Commissioner may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, where the Commissioner considers appropriate.

45. Search of registers

A person who intends to carry out a search or access information on a register kept and maintained under this Act, shall apply to the Commissioner in a manner prescribed by regulations.

46. Prohibition of unfair trade practices

(1) A person registered under this Act who indulges in unfair trade practices commit an offence and are liable on conviction to a fine not exceeding one thousand currency points or to imprisonment for a term not exceeding six months.

(2) For avoidance of doubt, unfair trade practices referred to under subsection (1) include-

(a) making any statements, whether orally, in writing or visible representation which-

(i) falsely represent that the services are of a particular standard or grade;

(ii) represent that the developer, real estate agent or salesperson has approval or affiliation with another developer, real estate agent or salesperson that they do not have;

(iii) makes a false or misleading representation concerning the services rendered or offered; or

(iv) the developer, real estate agent or salesperson indulges in any fraudulent practices.

(b) permitting the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered.

47. Power to make regulations

The Minister may by statutory instrument make regulations for the better carrying into effect the provisions of this Act, including-

- (a) rules of practice;
- (b) forms, licensing and renewal requirements, fees and levies payable under this Act;
- (c) the criteria for the surrender of licenses and registrations;
- (d) trust accounts and records management;
- (e) client protection requirements and procedures;
- (f) the establishment, maintenance and support of and subscription to charitable and public bodies and institutions;
- (g) the training institution for real estate recognised by the Commissioner for the purposes of this Act;
- (h) the scale of fees to be charged by real estate agents for professional advice, services rendered and work done;
- (i) professional code of conduct of real estate agents;
- (j) the better performing of the functions of the Commissioner; and
- (k) anything that is required to be prescribed under this Act.

48. Amendment of Schedules

The Minister may, by statutory instrument, with the approval of the Cabinet, amend Schedule 1 to this Act.

(2) The Minister may, by statutory instrument, amend the Schedules 2 to this Act.

49. Transitional provisions

(1) A person who, before the commencement of this Act was carrying on real estate business for which registration or a licence is required under this Act, may continue in operation and shall, within six months of the commencement of this Act apply for registration or issuance of a licence in accordance with this Act.

(2) A person referred to in subsection (1), who continues to carry on real estate business for which registration or issuance of a licence is required under this Act after the expiration of the six months following the date of commencement of this Act, commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points.

50. Amendment of Cap. 303

The Surveyors Registration Act is amended in section 1 by repealing the term “land agents” appearing in paragraph (h) of that section.

SCHEDULE

Currency point

A currency point is equivalent to twenty thousand Uganda shillings.

