

THE ESTATE AGENTS ACT, 2000

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ACTS CONSTITUTING PROFESSIONAL MISCONDUCT

GOVERNMENT OF ZAMBIA

ACT

No. 21 of 2000

Date of Assent: 23rd December, 2000

An Act to provide for the regulation of the practice and business of estate agents; to provide for the establishment of the Zambia Institute of Estate Agents and for its functions and membership; to provide for the establishment of the Council of the Institute and for its functions and composition; to provide for the registration of estate agents and for their professional conduct and discipline; to provide for the management of clients' moneys by estate agents in the course of business and for the establishment of an Estate Agents Compensation Fund; and for other matters connected with incidental to the foregoing.

[29th December, 2000

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Estate Agents Act, 2000 and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

Short title and commencement

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

Interpretation

"Council" means the Council of the Zambia Institute of Estate Agents established under section *eight*;

"estate agent" means a person who is registered as an estate agent under subsection (3) of section *twelve* or under section *thirteen*;

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“ former Institute ” means the Zambia Institute of Estate Agents registered as a society under the Societies Act;

“ Fund ” means the Estate Agents Compensation Fund established under section *twenty-nine*;

“ immovable property ” includes any interest therein, but does not include a mine, a quarry or a mineral;

“ institute ” means the Zambia Institute of Estate Agents established by section *three*;

“ Registrar ” means the person appointed Registrar under section *six*.

(2) For the purposes of this Act, to practice or carry on business as an estate agent means, subject to subsection (3), to do for payment or reward any of the following acts—

(a) bringing together or taking steps to bring together the parties to a sale or lease or proposed sale or lease; or

(b) negotiating the terms of a sale or lease or a proposed sale or lease,

in the course of business in connection with immovable property belonging to another person.

(3) For the purposes of this Act, the following persons shall not be regarded as practicing or carrying on business as an estate agent:

(a) a person who does an act referred to in subsection (2) in connection with immovable property belonging to that person or to that person's employer or which is to be purchased by that person's employer;

(b) a person in the *bona fide* employment of an estate agent whilst that person is working under the direction and control of the estate agent;

(c) an administrator or executor of the estate of a deceased person, in relation to that estate;

(d) a trustee, liquidator or judicial manager whilst exercising any powers conferred upon that person by the law relating to insolvency;

(e) the Sheriff and other officers, in the performance of their functions under the Sheriffs Act;

(f) a legal practitioner, an accountant or a valuation surveyor in the course of practising as such;

(g) a public officer;

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- (h) a person employed by a bank or financial institution whilst carrying out the functions of the bank or financial institution; or
- (i) any other person who, or any category of persons which, the Minister may, by a statutory instrument declare as not being regarded as practising or carrying on business as an estate agent.

PART II

THE ZAMBIA INSTITUTE OF ESTATE AGENTS

3. There is hereby established the Zambia Institute of Estate Agents which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Institute

4. (1) The seal of the Institute shall be such device as may be determined by the Council and shall be kept by the Registrar. Seal of Institute

(2) The Council may use a wafer or rubber stamp in lieu of the seal.

(3) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson, and the Registrar or one other person authorised in that behalf by a resolution of the Council.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed without seal on behalf of the Institute by the Registrar or any other person generally or specifically authorised in that behalf by the Institute.

5. The functions of the Institute shall be— Functions of Institute

- (a) to promote and regulate the practice and business of estate agents;
- (b) to promote and maintain best standards and practices in the business of estate agents;
- (c) to register members of the Institute and persons qualified to be registered as estate agents and to maintain a register for both;
- (d) to provide continuing education for its members;
- (e) to regulate the professional conduct and discipline of estate agents; and
- (f) to promote the general interests of estate agents.

Registrar
and other
employees

6. (1) The Council shall appoint a Registrar of Estate Agents and such other employees as it considers necessary for the performance of the functions of the Institute.

(2) The Registrar shall be the Chief Executive of the Institute and shall be responsible for the day-to-day management and administration of the affairs of the Institute in accordance with the directions of the Council.

Membership
of Institute

7. (1) The following persons shall be eligible for membership of the Institute:

- (a) a person registered as an estate agent under this Act;
- (b) any other person, not registered as an estate agent, who may be admitted to membership by the Council.

(2) The Institute shall have the following classes of membership:

- (a) full membership;
- (b) associate membership;
- (c) student membership; and
- (d) honorary membership.

(3) The Council shall make rules setting out the rights, obligations and privileges relating to each class of membership.

(4) A person who, immediately before the commencement of this Act, is a member of the former Institute shall be entitled, without further assurance, to be a member of the Institute established by this Act and in the class of membership to which that person belongs.

(5) An estate agent shall not be removed or suspended from membership of the Institute except upon the cancellation of the estate agent's registration or suspension from practice under section *twenty-one*.

PART III

THE COUNCIL OF THE ZAMBIA INSTITUTE OF ESTATE AGENTS

Council of
Institute

8. (1) For the proper management of the affairs of the Institute, there is hereby established the Council of the Zambia Institute of Estate Agents which shall consist of the following members:

- (a) a Chairperson and a Vice-Chairperson, each elected by the members of the Institute from among the full members of the Institute;
- (b) six estate agents elected by the members of the Institute from among the members of the Institute;

(c) one member elected by the members of the Institute from among classes of members of the Institute who are not registered as estate agents; and

(d) a legal practitioner, whether or not a member of the Institute, appointed by the Minister.

2. The Council shall be the governing body of the Institute with authority, in the name of the Institute, to perform the functions conferred on the Institute by this Act.

(3) The Council may, either generally or in any particular case, delegate in writing to any person any of its functions under this Act.

(4) The First Schedule shall apply to the proceedings and other matters of the Council.

PART IV

REGISTRATION OF ESTATE AGENTS

9. The Registrar shall establish and maintain a register in which the Registrar shall enter the names, addresses and such other particulars of persons registered as estate agents as the Council may direct.

Register of
estate agents

10. The Registrar shall have the following powers:

Powers of
Registrar

(a) to alter the name, address or any other particulars of an estate agent entered in the register, if so requested by the estate agent concerned;

(b) to delete from the register the name of an estate agent who has died or otherwise ceased to be an estate agent; and

(c) to record in the register the suspension of an estate agent from practice.

11. (1) A person who wishes to be registered as an estate agent shall apply for registration to the Registrar, in the form prescribed by the Council.

Application
for
registration
as estate
agent

(2) An application for registration shall be accompanied by —

(a) a registration fee payable to the Institute;

(b) a certificate of relevant qualifications; and

(c) such other information as the Registrar may reasonably require for the purpose of determining the application.

Qualifications
for
registration
as estate
agent

12. (1) Subject to subsection (2), a person shall be qualified to be registered as an estate agent if that person—

(a) possesses such qualifications as the Minister may, on the recommendation of the Council, by statutory instrument, prescribe; and

(b) is a member of the Institute.

(2) A person shall not be qualified to be registered as an estate agent if that person—

(a) has been convicted of an offence under this Act or an offence, under any other law, involving dishonesty;

(b) has been adjudged or otherwise declared to be of unsound mind under any law in Zambia or elsewhere; or

(c) is an undischarged bankrupt.

(3) A member of the former Institute who, immediately before the commencement of this Act, is practising or carrying on business as an estate agent shall be entitled, without further assurance, to be registered as an estate agent.

Procedure
for
registration

13. (1) The Registrar shall refer every application submitted under section *eleven*, and any report that the Registrar may wish to make on the application, to the Council and the Council shall consider the application together with any such report.

(2) The Registrar may, or if so directed by the Council shall, require a statement made in an application for registration or in connection with that application to be supported by an affidavit.

(3) Where the Council decides that an applicant qualifies to be registered as an estate agent, the Council shall direct the Registrar, in writing, to register the applicant immediately as an estate agent.

(4) The Registrar shall inform the applicant of the registration under subsection (3) within seven days of the registration.

(5) Where the Council decides that an applicant does not qualify to be registered as an estate agent the Council shall, within seven days of that decision and in writing, inform the applicant of its decision and shall give reasons for the decision.

Certificate of
registration

14. (1) The Council, shall issue a certificate of registration to an estate agent registered under this Act.

(2) A certificate of registration issued under subsection (1) shall take effect from the day it is issued and shall continue in force until the 31st of December next following the date of issue.

(3) A registration certificate may be renewed annually upon payment of such fees, and upon compliance with such other requirements, as may be prescribed by the Council.

(4) A person registered as an estate agent shall be entitled to use the title "Registered Estate Agent".

15. The Registrar shall, once in each year, cause copies of the register and all alterations and additions to the register to be published in the *Gazette* and in a daily newspaper of general circulation in Zambia.

Publication
of copies of
register

16. (1) An estate agent shall not practise or carry on business except as an individual or a firm under a business name registered under the Registration of Business Names Act.

Restrictions
on practice
Cap. 389

(2) A person registered as an estate agent shall not practise or carry on business on that person's own account or without the direction and control of an estate agent practising or carrying on business on the estate agent's own account and who has practised or carried on business for five years or more, unless that person has—

(a) attained the age of eighteen; and

(b) completed a period of three years' of practical training, to the satisfaction of the Council, under the direction and control of the estate agent.

(3) An estate agent who contravenes the provisions of subsection (1) or (2) commits an offence and, on conviction, is liable to the same penalties provided for in section *thirty-eight*.

PART V

PROFESSIONAL CONDUCT AND DISCIPLINE

17. (1) An estate agent is in breach of professional conduct if the estate agent does any act prohibited under the Second Schedule.

Professional
conduct

(2) The Minister may, on the recommendation of the Council, by statutory instrument, amend the Second Schedule.

18. (1) The Council shall establish a Disciplinary Committee consisting of the following members, each appointed by the Council for a period not exceeding two years:

Disciplinary
Committee

(a) a Chairperson;

(b) a Vice-Chairperson;

(c) a legal practitioner; and

(d) five other persons.

(2) The members of the disciplinary Committee referred to in paragraphs (a), (b) and (d) shall be appointed from among persons registered as estate agents.

(3) Five members of the Disciplinary Committee shall constitute a quorum.

(4) The Disciplinary Committee shall, subject to any directions of the Council, regulate its own procedure.

Functions of
Disciplinary
Committee

19. The functions of the Disciplinary Committee shall be to hear and determine complaints brought before it by any person against an estate agent in relation to the estate agent's practice.

Powers of
Disciplinary
Committee

20. (1) The Disciplinary Committee may, for the purposes of any inquiry hear and receive evidence and may administer oaths.

(2) For the purposes of carrying out its functions, the Committee may—

(a) enter and inspect any premises relevant to a complaint under section *nineteen*;

(b) question any person employed by the estate agent or who is on the premises of the estate agent;

(c) inspect, make copies of, take extracts from any books, records or other documents relevant to the complaint.

(3) A person summoned to appear before the Disciplinary Committee who, without sufficient cause—

(a) refuses or fails to attend at the time and place specified in the summons or, having attended, absents oneself from proceedings without the permission of the Committee;

(b) having attended refuses to be sworn or to affirm;

(c) refuses, without lawful excuse, to answer to the best of that person's knowledge any question lawfully put to him; or

(d) refuses to produce any book, record or document which that person has been required by summons to produce.

commits an offence and is liable, on conviction, to a fine not exceeding four hundred penalty units or to imprisonment not exceeding three months or to both.

(4) A person summoned before the Committee shall not be compelled to answer any question or to produce any book, record, document or thing which that person would not be compelled to answer or produce in proceedings before a court.

21. (1) If the Disciplinary Committee finds an estate agent in breach of professional conduct, it may do any one or more of the following: Disciplinary penalties, etc.

- (a) caution or censure that estate agent;
- (b) order the estate agent to pay a disciplinary fine, to the Institute, not exceeding six thousand penalty units;
- (c) suspend the estate agent from practice for such period as it may determine;
- (d) cancel the registration of the estate agent; or
- (e) make such order as it considers appropriate;

and may order the estate agent to pay to the institute any costs connected with or incidental to the disciplinary proceedings.

(2) An estate agent whose registration is cancelled or who is suspended from practice shall surrender the certificate of registration to the Registrar.

(3) The Registrar shall, upon the cancellation of the registration, or the suspension from practice, of an estate agent, publish a notice of the cancellation or suspension in the *Gazette*.

(4) The Disciplinary Committee shall, as soon as possible after the conclusion of each disciplinary case, submit a report to the Council.

PART VI

MANAGEMENT OF CLIENTS' MONEYS

22. In this Part, "client" includes any person on whose behalf an estate agent receives or holds money in the course of business. Meaning of "client"

23. (1) An estate agent shall open and maintain an account, designated as a "client account", with a bank or financial institution in which the estate agent shall, subject to sections *twenty-four* and *twenty-five*, deposit all moneys received from, or on behalf of, clients. Client account

(2) The client account shall be in the name of the estate agent but shall be maintained separately from any other account of the estate agent.

(3) An estate agent shall deposit, without undue delay, all moneys payable into the client account under subsection (1).

(4) Except as otherwise provided in this Act, any interest or other benefit accruing to the moneys held in the client account on behalf of a client shall be for the benefit of the client.

(5) An estate agent shall, periodically or on the request of a client, provide the client with a statement of account relating to the money which the estate agent receives or holds on behalf of the client.

Money to be deposited into client account

24. An estate agent shall deposit the following into a client account:

- (a) money held or received on account of a client;
- (b) such money belonging to the estate agent as may be necessary for the purpose of opening or maintaining the account; and
- (c) a cheque or draft received by the estate agent representing in part money belonging to the client and in part due to the estate agent pending, the division of the proceeds.

Money which not need be deposited into client account

25. Subsection (1) of section *twenty-three*, section *twenty-four* and section *twenty-six* shall not apply to money which—

- (a) is paid to an estate agent expressly on account of fees; or
- (b) the Council, upon an application made to it in writing by an estate agent, specifically authorises to be withheld from a client account.

Withdrawing of money from client account

26. (1) An estate agent shall not draw any money from a client account other than money properly required for—

- (a) a payment to, or on behalf of, a client;
- (b) the payment of a debt due to the estate agent from a client:

Provided that the money so drawn shall not in any case exceed the total of the money so held for the time being for the client concerned.

Regulations for management of clients' moneys

27. (1) The Minister may, on the recommendation of the Council, by statutory instrument, make Regulations for the proper management of moneys received by estate agents from, or on behalf of, their clients.

(2) Regulations made under subsection (1) may provide, in respect of their contravention, for penalties of fines not exceeding one hundred thousand penalty units or imprisonment for a period not exceeding three years or both.

28. An estate agent shall keep books of account and accounts in such a manner as to show and distinguish between—

Segregation of account books and accounts

(a) the money received from, paid to, or on account of each of the estate agent's clients; and

(b) the moneys received or paid on the estate agent's own account.

PART VII

ESTATE AGENTS COMPENSATION FUND

29. (1) The Council shall establish and administer a fund to be known as the Estate Agents Compensation Fund. Compensation Fund

(2) The purpose of the Fund shall be to constitute a scheme for the payment of claims for compensation by person who suffer loss caused by estate agents, their agents or employees in the course of the business of estate agents.

(3) An estate agent shall, on registration and thereafter, pay into the fund such contributions at such intervals as may be prescribed by the Council.

30. (1) The Council shall issue a Compensation Fund certificate to an estate agent who complies with subsection (3) of section *twenty-nine*. Compensation Fund Certificates

(2) An estate agents shall not practise or carry on business as an estate agent unless the estate agent is in possession of a valid Compensation Fund Certificate.

(3) An estate agent who contravenes subsection (2) commits an offence and, on conviction, is liable to the same penalties provided for in section *thirty-eight*.

31. The Council shall insure the Fund with an insurer registered under the Insurance Act in order to provide for indemnity to the Fund against the making of grants under this Part. Insurance of Fund Act No. 27 of 1997

32. (1) The Fund shall consist of such moneys as may— Moneys of Fund

(a) be paid into the Fund as contributions by estate agents;

(b) accrue from any investments of the Fund;

(c) be borrowed for purposes of the Fund;

(d) be received by the Fund from the insurance referred to in section *thirty-one*; and

(e) be paid, vest in, or accrue to, the Fund in any other manner.

- Grant out of Fund 33. (1) Where a person has suffered loss of—
- (a) any moneys or other property held in trust for that person by the estate agent, or by the agent or employee of the estate agent;
 - (b) any moneys collected or received and payable on account of a contract of sale or purchase; or
 - (c) any other moneys collected or received in respect of the interest in immovable property or any business undertaking,
- caused by an estate agent or by an agent or employee of the estate agent, that person may make an application to the Council for a grant out of the Fund to make good the loss.
- (2) Where the Council is satisfied that the person making the application under subsection (1), for compensation has suffered loss, the Council shall, subject to the provisions of this Part, make a grant out of the Fund to that person.
- (3) A grant may be made under this section notwithstanding that after the commission of the act giving rise to the claim—
- (a) the estate agent has died or ceased to practise; or
 - (b) the registration of the estate agent has been cancelled or the estate agent has been suspended from practice.
- Rules of Fund 34. The Minister may, on the recommendation of the Council and by statutory instrument, make Rules for the management and administration of the Fund.
- Audit of Fund 35. The Council shall appoint an auditor to audit the accounts of the Fund and shall ensure that the accounts are audited once or more times in each financial year of the Institute.

PART VIII

OFFENCES AND PENALTIES

- Prohibiting of practising without registration or while on suspension 36. A person who is not registered as an estate agent or an estate agent who is on suspension from practice shall not—
- (a) practice or offer to practise as, or hold oneself out to be, an estate agent;
 - (b) adopt, use or exhibit the title “ estate agent ” or any other similar title; or
 - (c) do anything likely to lead other person to ~~infer that that~~ person is an estate agent.

37. A person shall not procure registration for oneself or for another person by means of fraud, misrepresentation or concealment of any material fact. Prohibition of registration through fraud, etc.

38. A person who contravenes any of the provisions of this Part commits an offence and, on conviction, is liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding four years or to both. Penalties for offences

PART IX

MISCELLANEOUS

39. The Minister may, on the recommendation of the Council, by statutory instrument, prescribe fees and other charges for services to be rendered by estate agents. Fees and charges for services

40. (1) The Chairman of the Council shall, within six months after the end of each financial year of the Institute, submit to the Minister a copy of the annual report of the Institute for that financial year and an audited statement of its accounts. Submission of annual reports to Minister

(2) The Minister may, at any time, require the Council to make a report to the Minister regarding the activities of the Institute or any other matter relating to the business of estate agents.

41. (1) On the commencement of this Act—

(a) the former Institute shall be dissolved and cease to be a society registered under the Societies Act;

(b) all assets, rights, liabilities and obligations of the former Institute shall vest in the Institute established by this Act; and

(c) all pending proceedings by or against the former Institute may be continued by or against the Institute established by this Act.

Dissolution, vesting of assets and liabilities of former Institute and continuation of proceedings
Cap. 119

(2) Notwithstanding the dissolution of the former Institute by paragraph (a) of subsection (1), the Council of the former Institute shall continue in existence until a Council is constituted under section *eight*.

42. An estate agent or a member of the Institute aggrieved by the decision of the Council or of the Disciplinary Committee may, within thirty days of the notification of the decision to that person, appeal to the High Court. Appeals

43. The Minister may, by statutory instrument make Regulations for the purposes of this Act. Regulations

FIRST SCHEDULE

(Section 8)

THE COUNCIL OF THE INSTITUTE OF ESTATE AGENTS

Tenure of
office and
vacancies

1. (1) A member of the Council shall hold office for three years and may be re-elected or reappointed for a further period of three years.

(2) Upon the expiration of the term for which a member is elected or appointed, the member shall continue to hold office until a successor has been elected, but in no case shall any extension of one term exceed three months.

(3) The office of a member shall become vacant—

(a) upon the member's death;

(b) if the member is adjudged or otherwise declared bankrupt;

(c) if the member is adjudged or otherwise declared to be of unsound mind under any law in Zambia or elsewhere;

(d) if the member is absent, without prior approval of the Council from three consecutive meetings of the Council of which due notice was given to the member;

(e) upon the expiry of not less than one month's notice, in writing, of that member's intention to resign given by the member to the Chairperson; or

(f) if such circumstances arise that, if the person were not a member, would disqualify that person from being elected or appointed a member.

Proceedings
of Council

2. (1) The Council shall, for the transaction of business, meet once or more times in every calendar year at such places and at such times as the Chairperson may determine.

(2) Five members shall constitute a quorum.

(3) Subject to subparagraph (1) the Chairperson shall, upon giving notice of not less than fourteen days, call a special meeting of the Council if not less than five members so request in writing.

(4) If the urgency of any particular matter does not permit the giving of the notice referred to in subparagraph (3), a special meeting may be called upon giving shorter notice.

(5) There shall preside at a meeting of the Council the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or, in the absence of both the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

(6) A decision of the Council on any question shall be by a majority of the members present and voting at the meeting, and in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote.

(7) The Council may invite any person whose presence is in its opinion desirable, to attend and participate in the deliberations of a meeting of the Council, but that person shall have no vote.

(8) The validity of any proceedings, act or decision of the Council shall not be affected by any vacancy in the membership of the Council or by any defect in the appointment of any member.

(9) The Council shall cause minutes to be kept of the proceedings of every meeting of the Council and of every meeting of any committee established by the Council.

3. (1) If a person is present at a meeting of the Council at which any matter in which that person or that person's spouse is directly interested, the person shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on, any question touching that matter. Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Subject to the other provisions of this Act, the Council may regulate its own procedure.

SECOND SCHEDULE

(Section 17)

ACTS CONSTITUTING PROFESSIONAL MISCONDUCT

(1) An estate agent is in breach of professional conduct if, in the course of practice as an estate agent, the estate agent—

- (a) contravenes any provision of this Act or is convicted of an offence under this Act or of an offence, under any other law, involving dishonesty;
- (b) wilfully or negligently misleads, or makes misrepresentations to, a client with regard to any matter pertaining to, immovable property;
- (c) having a client's mandate to arrange for the sale or lease of immovable property, purchases or leases the property for the estate agent's own benefit without the knowledge or consent of the client;

- (d) sells or leases immovable property in which the estate agent has a direct or indirect interest, without informing the purchaser or lessee of that interest;
 - (e) pays or offers to pay, directly or indirectly, any consideration to any party to secure business;
 - (f) uses any confidential information obtained from another estate agent concerning immovable property to the prejudice of such other estate agent;
 - (g) wilfully or negligently fails to perform duties normally performed by an estate agent with such degree of care and skill as in the opinion of the Disciplinary Committee may reasonably be expected;
 - (h) charges, for professional work, fees or other charges other than on the scale prescribed under this Act;
 - (i) unlawfully discloses or uses to the estate agent's advantage any information acquired in the course of professional engagement with clients;
 - (j) certifies or submits in the estate agent's name or in the name of the estate agent's firm a report or document which has not been made by the estate agent, the estate agent's partner or an estate agent employed by the first-mentioned estate agent.
- (2) An estate agent is in breach of professional conduct if the estate agent does any act which is likely to bring the practice, the Institute or the Council into disgrace, contempt or disrepute.
-