

Real Estate Authority Bill, 2014

ARRANGEMENT OF SECTIONS

Section

Application, Establishment, Functions and Governing Body

1. Application of this Act
2. Real Estate Authority
3. The object of the Authority
4. Functions of the Authority
5. Governing body of the Authority
6. Tenure of office of members
7. Meetings of the Board
8. Disclosure of interest
9. Establishment of committees
10. Allowances
11. Ministerial oversight responsibility

Administration and Staff of the Authority

12. Appointment of Chief Executive
13. Functions of the Chief Executive
14. Appointment of other staff
15. Regional offices of the Authority

Finances of the Authority

16. Funds of the Authority
17. Accounts and audit
18. Annual report and other reports

Licensing and Related Matters

19. Licensing
20. Application for a licence
21. Conditions for the grant of a licence
22. Examinations
23. Procedure for grant of licence
24. Non-transferability of licence
25. Use of licence by a designated officer or partner
26. Renewal of licence
27. Power to suspend, revoke or refuse to renew a licence

Real Estate Authority Bill, 2014

Appeals to the Authority

28. Appeals Committee
29. Powers of the Appeals Committee
30. Submission of the decision to the Board
31. Action of the Authority in relation to a decision
32. Settlement by alternative dispute resolution
33. Review of decision

Inspection

34. Appointment of Inspectors
35. Inspection by the Authority

Real Estate Operation and Practice

36. Register of real estate agents and salespersons
37. Place of business of licensed real estate agent or salesperson
38. Use of forms for real estate transaction
39. Affiliation of real estate salesperson
40. Sales and purchase agreement
41. Mode of payment for real estate transactions
42. Client account
43. Real Estate Transfer Certificate
44. General rules of conduct in real estate practice
45. Transaction reports
46. Books of account and audit of real estate agent or salesperson
47. Other records to be kept by real estate agent
48. Annual report of real estate agent

Miscellaneous Matters

49. Regulations
50. Offences
51. Interpretation
52. Repeal
53. Transitional provisions
54. Application of the Anti-Money Laundering Act, 2008 (Act 749)

Real Estate Authority Bill, 2014

A
BILL
ENTITLED

REAL ESTATE AUTHORITY ACT, 2014

AN ACT to establish a Real Estate Authority to regulate real estate agency practice, commercial transactions in real estate including the sale, purchase, rental and leasing of real estate and related fixed assets and to provide for connected purposes.

PASSED by Parliament and assented to by the President:

Application, Establishment, Functions and Governing Body

Application of this Act

1. (1) This Act applies to real estate transaction including a lease for a term of not less than one year.

(2) For the purpose of subsection (1), a tenancy agreement for a term of less than one year which provides for an extension of the tenancy either in the lease agreement or by verbal agreement which will result in the total term of tenancy extending over one year is deemed to be a lease for a term of more than one year.

Real Estate Authority Bill, 2014

(3) Despite subsection (1), this Act does not apply to a real estate transaction in which

- (a) a person acts personally or an employee acts on behalf of the employer in the regular course of their employment who
 - (i) acquire, lease or rent real estate for that person's or employer's own use or investment; or
 - (ii) personally negotiates a loan secured or to be secured by a mortgage or other encumbrance on real estate for that person or employer;
- (b) a person acts as a licensed auctioneer;
- (c) a person buys, sells or otherwise deals in any stock, bond or any other security, or certificate of beneficial interest in any trust;
- (d) a public officer or employee who performs that officer's or employee's official duties;
- (e) a receiver, a trustee in bankruptcy, executor, administrator, guardian or conservator is performing the function of that person;
- (f) a person sells real estate under an order of a court;
- (g) a trustee acts under a written instrument of trust, or deed or declaration of trust, or will, or a trustee's regular employee acting in the course of the employment;
- (h) a bank under the laws of this country or an insurance company lawfully engages in business in this country or a regular employee of a bank or insurance company acts in the course of the employment, when that bank or insurance company is acting
 - (i) in the capacity of a fiduciary,
 - (ii) for itself in negotiating a loan secured or to be secured by a mortgage or other encumbrance on real estate,
 - (iii) for itself with reference to real estate owned, mortgaged, leased or rented, by or to it or which it seeks to acquire, lease or rent for its own use, or
 - (iv) a credit union that operates under the laws of this country or the regular employees of that credit union acts in the course of the employment.

Real Estate Authority Bill, 2014

Real Estate Authority

2. (1) There is established by this Act a body corporate with perpetual succession to be known as the Real Estate Authority.

(2) For the performance of its functions, the Authority may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is a hindrance to the acquisition of property, the property may be acquired for the Authority under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Authority.

The object of the Authority

3. The object of the Authority is to promote and facilitate the development of real estate practice and improve the provision of real estate agency services.

Functions of the Authority

4. To achieve its object, the Authority shall
- (a) regulate the practice of real estate agency;
 - (b) prescribe or approve courses of study for real estate agency and conduct and set standards for qualifying examinations for registration as a real estate agent;
 - (c) license real estate agents and salespersons;
 - (d) provide forms for real estate transactions;
 - (e) issue real estate transfer certificates;
 - (f) maintain and publish a register of real estate agents;
 - (g) set performance standards for real estate practice;
 - (h) facilitate and promote education which is necessary for the development and growth of real estate practice;
 - (i) monitor and evaluate compliance with this Act and in furtherance of that, conduct inspections;
 - (j) establish and enforce a code of conduct and ethics for real estate practice;
 - (k) monitor the performance of real estate agents;
 - (l) monitor advertisements in both the print and electronic media including the world-wide web or the internet to ensure compliance with this Act;

Real Estate Authority Bill, 2014

- (m)* maintain a national database of real estate transactions;
- (n)* establish structures and mechanisms for
 - (i) resolving disputes between real estate agents and their clients;
 - (ii) settling complaints made against real estate agents and their clients; and
 - (iii) the discipline of real estate agents who fall below the established standards or who breach the code of conduct and ethics; and
- (o)* perform any other function connected with the object of the Authority.

Governing body of the Authority

- 5. (1) The governing body of the Authority is a Board consisting of
 - (a)* a chairperson nominated by the Minister,
 - (b)* one representative each of
 - (i) the Valuation and Estate Surveying Division of the Ghana Institution of Surveyors;
 - (ii) real estate agents, nominated by the real estate agents;
 - (iii) real estate developers, nominated by the real estate developers;
 - (iv) the Lands Commission who is not below the rank of Director;
 - (v) the Ministry of Water Resources, Works and Housing who is not below the rank of Director; and
 - (vi) the Financial Intelligence Centre who is not below the rank of Deputy Chief Executive Officer;
 - (c)* the Registrar of the Collateral Registry;
 - (d)* the Chief Executive of the Authority; and
 - (e)* two other persons at least one of whom is a woman.
- (2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

Real Estate Authority Bill, 2014

(3) The Board shall ensure the proper and effective performance of the functions of the Authority.

Tenure of office of members

6. (1) A member of the Board shall hold office for a period not exceeding four years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Chief Executive of the Authority.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, other than the Chief Executive of the Authority, who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Board.

(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or section 8(2),

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Meetings of the Board

7. (1) The Board shall meet at least once every three months for the dispatch of business at the times and in the places determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extra-ordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is seven members or a greater number determined by the Board in respect of an important matter.

Real Estate Authority Bill, 2014

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

Disclosure of interest

8. (1) A member of the Board who has an interest in a matter for consideration shall

(a) disclose the nature of the interest and the disclosure shall form part of the record of the consideration of the matter; and

(b) not be present at, or participate in the deliberations of the Board in respect of the matter.

(2) A member ceases to be a member of the Board if that member has an interest in a matter before the Board and

(a) fails to disclose that interest; or

(b) is present at or participates in the deliberations of the matter.

Establishment of committees

9. (1) The Board may establish committees consisting of members or non-members or both to perform a function.

(2) Without limiting subsection (1), the Board shall establish

(a) an Examinations Committee; and

(b) an Appeals Committee.

(3) Section 8 applies to members of committees of the Board.

Allowances

10. Members of the Board and members of a committee of the Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for Finance.

Ministerial oversight responsibility

11. The Minister may give directives to the Board on matters of policy and the Board shall comply.

Real Estate Authority Bill, 2014

Administration and Staff of the Authority

Appointment of Chief Executive

12. (1) The President shall, in accordance with article 195 of the Constitution appoint a Chief Executive for the Authority.

(2) The Chief Executive shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Chief Executive

13. (1) The Chief Executive is responsible for the day to day administration and operations of the Authority and is answerable to the Board in the performance of the functions under this Act.

(2) The Chief Executive may delegate a function to an officer of the Authority but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Appointment of other staff

14. (1) The President shall, in accordance with article 195 of the Constitution, appoint other staff of the Authority that are necessary for the proper and effective performance of the functions of the Authority.

(2) The President may, in writing, delegate the power of appointment under subsection (1) to the Board.

(3) Other public officers may be transferred or seconded to the Authority.

(4) The Authority may engage the services of advisers on the recommendation of the Board.

Regional offices of the Authority

15. (1) The Board may establish regional offices of the Authority in each region.

(2) The regional office of the Authority shall perform the functions of the Authority in the region as the Board may direct.

Finances of the Authority

Funds of the Authority

16. The funds of the Authority include

(a) moneys approved by Parliament;

(b) moneys from fees charged by the Authority in the performance of its functions under this Act;

Real Estate Authority Bill, 2014

- (c) donations and grants; and
- (d) any other moneys that are approved by the Minister responsible for Finance.

Accounts and audit

17. (1) The Board shall keep books of account and proper records in relation to the accounts in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Authority to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Authority shall be the same as the financial year of government.

Annual report and other reports

18. (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Authority for the year to which the report relates.

(2) The annual report shall include the Auditor-General's report.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall submit to the Minister any other report which the Minister may require in writing.

Licensing and Related Matters

Licensing

19. (1) The Authority shall license a person to

- (a) provide real estate agency services,
- (b) provide services as a real estate salesperson, or
- (c) engage in any business connected with the provisions of real estate services.

(2) A person shall not engage in a real estate transaction including the business of finding accommodation for a prospective tenant for a fee if that person is not a licensed real estate agent or real estate salesperson.

Real Estate Authority Bill, 2014

(3) The Authority shall submit an annual report to the Ghana Revenue Authority and the Financial Intelligence Centre of persons licensed in accordance with subsection (1).

Application for a licence

20. The application for a licence shall

- (a) be signed and supported with a statutory declaration by the applicant;
- (b) be made to the Board in the form determined by the Authority;
- (c) in the case of a company, society, association or partnership be accompanied with an attestation that officers of the company, society, association or partnership do not have any criminal record;
- (d) where appropriate, be accompanied with the prescribed fee for examination; and
- (e) be accompanied with evidence that the applicant is a citizen.

Conditions for the grant of a licence

21. The Board may issue a licence to a person if that person

- (a) is an individual who has passed a qualifying examination conducted by
 - (i) the Board, or
 - (ii) an independent testing service designated by the Board;
- (b) is a valuation and estate surveyor registered by the Ghana Institution of Surveyors or is a lawyer licensed by the General Legal Council to practise as a lawyer;
- (c) in the case of a person who is not resident in this country, is a licensed real estate agent or real estate salesperson in the country of residence of that person;
- (d) in the case of a company, society, association or partnership
 - (i) has submitted an application which is not an application for a real estate salesperson's licence;
 - (ii) has designated at least one of its officers or partners as its representative for the purpose of obtaining the licence; and
 - (iii) has for the purpose of the licence, designated an officer or partner who as an individual has a licence

Real Estate Authority Bill, 2014

to practise as a real estate agent as the representative of that company, society, association or partnership; or

- (e) has executed and submitted to the Authority a bond or has had executed and submitted to the Authority on behalf of that person, by a surety company licensed to operate that business in this country, a bond in the sum specified and in the form approved by the Board and guaranteed by a surety approved by the Board.

Examinations

22. (1) The Authority shall establish a committee of at least five members or appoint a competent institution to be responsible for the examinations required for an applicant under this Act.

(2) The committee or competent institution shall

- (a) design the curricula and programme of studies including the relevant subjects or courses and the duration of studies for the examinations; and
- (b) assess persons who apply to be examiners and make recommendations to the Board for the appointment of examiners.

(3) An examination conducted under this Act shall require the applicant being examined to demonstrate competence through a fair understanding of

- (a) the principles of real estate practice,
- (b) real estate agreements,
- (c) principal and agent relationship,
- (d) rudimentary principles of economics,
- (e) appraisal of real estate, and
- (f) the provisions of this Act.

(4) The Board shall conduct examinations at least once in each year.

(5) An individual applicant for a licence as a

- (a) real estate salesperson who is required to write an examination shall as a condition for writing the examination,

Real Estate Authority Bill, 2014

submit satisfactory proof to the Board that that applicant has successfully completed courses in real estate subjects approved by the Board;

- (b) real estate agent, who is required to write an examination shall as a condition for writing the examination, provide to the Board satisfactory proof that the applicant has
 - (i) been actively involved in real estate agency practice for a period of at least one year as a real estate salesperson; and
 - (ii) completed courses in real estate subjects approved by the Board.

(6) A person shall only be permitted to write an examination if that person has paid the required examination fee determined by the Board.

Procedure for grant of licence

23. (1) The Authority shall, on receipt of an application, carry out background checks including investigation of criminal history and inspection of the facilities of the applicant that the Board considers necessary.

(2) The Authority shall, within ninety days after the receipt of an application, if it determines that the applicant has satisfied the conditions of a licence, grant the applicant a licence.

(3) A licence issued under subsection (2) shall

- (a) be in the form determined by the Authority;
- (b) bear the name and address of the licensee;
- (c) specify the nature of the licence by stating whether it is a real estate agent's or real estate salesperson's licence;
- (d) in the case of a real estate agent's licence to a company, society, association or partnership bear the name of each designated officer or partner to whom as an individual an agent's licence has been issued;
- (e) indicate the date of issue;
- (f) be valid for one year from the date of issue but be subject to renewal;

Real Estate Authority Bill, 2014

- (g) be subject to terms and conditions determined by the Board;
and
- (h) bear the seal of the Authority.

Non-transferability of licence

24. A licence issued under this Act shall not be transferred.

Use of licence by a designated officer or partner

25. A person who is designated as an officer or a partner for the purpose of obtaining a real estate agent's licence is entitled to perform the functions of an agent as an agent or officer of the company, society, association or partnership to which that person is a designated officer or partner, but that person shall not act as a real estate agent on that person's own behalf for as long as that person remains a designated officer or partner of the company, society, association or partnership.

Renewal of licence

26. A licence granted under section 23 may be renewed after the licence has expired, if

- (a) the application for renewal
 - (i) is made not later than thirty days before the licence expires;
 - (ii) is signed and accompanied with a statutory declaration by the applicant; and
 - (iii) is in the form determined by the Authority; and
- (b) the applicant
 - (i) is not in breach of any of the terms and conditions of the licence;
 - (ii) satisfies the requirements for the grant of the licence; and
 - (iii) has paid the prescribed fee for the renewal of the licence.

Power to suspend, revoke or refuse to renew a licence

27. (1) Except as otherwise provided in this Act, the Authority shall revoke the real estate agent licence of a company, society, association or partnership, if that company, society, association or partnership ceases to have a licensed real estate agent as its designated officer or agent.

Real Estate Authority Bill, 2014

(2) The Authority may revoke the licence of a real estate agent, where the bond entered into by that real estate agent in relation to that real estate agent's licence ceases to be effective.

(3) The Authority shall revoke or refuse to renew the licence of a real estate agent or salesperson if that agent or salesperson is convicted by a court of competent jurisdiction for a serious offence.

(4) In addition to subsection (1) to (3), the Authority shall

(a) revoke or refuse to renew the licence of a real estate agent or salesperson, where the Authority finds that the licence has been obtained by fraud or misrepresentation;

(b) suspend, revoke or refuse a licence, where the Authority finds out that the licensee in performing a function authorised by the licence has

- (i) knowingly made a misrepresentation;
- (ii) failed to use the real estate forms required for that function, where the function is a real estate transaction;
- (iii) acted in the dual capacity of agent and undisclosed principal in the same transaction;
- (iv) acted for more than one party in the same transaction without the knowledge and consent of the parties that the licensee represented in the transaction;
- (v) accepted cash in payment for the function, where the function is a real estate transaction;
- (vi) failed, within reasonable time which shall not exceed one month, to pay out money received into the client account, to the person entitled to that money;
- (vii) paid commissions or fees or divided commissions or fees and paid them to a person who is not a licensed agent or salesperson;
- (viii) accepted, given or charged an undisclosed commission, rebate or profit on expenditures for a principal;
- (ix) commingled the money or other property of a property owner with those of the licensee;

Real Estate Authority Bill, 2014

- (x) failed to give a copy of the sale and purchase agreement to both the seller and purchaser of real property;
 - (xi) accepted from a prospective seller a net listing; or
 - (xii) contravened any provision of this Act.
- (5) The Authority shall only suspend, revoke or refuse to renew a licence if the Authority
- (a) gives at least ten working days notice to the person whose licence it intends to
 - (i) suspend or revoke; or
 - (ii) refuse to renew;
 - (b) states in the notice the grounds of the refusal;
 - (c) serves on the affected licensee a copy of any complaint or charges which the Authority proposes to consider; and
 - (d) gives the licensee affected, the opportunity to
 - (i) appear personally for a hearing and be represented by a lawyer;
 - (ii) examine and cross-examine witnesses and present documents and other evidence in support of that affected licensee's case.

Appeals to the Authority

Appeals Committee

- 28.** (1) The Authority shall establish, for the purpose of hearing grievances under this Act, an Appeals Committee comprising
- (a) three members of the Board; and
 - (b) two real estate agents one of whom is a lawyer.
- (2) A person aggrieved by the conduct of a real estate agent or salesperson or by a decision of the Authority relating to a licence may make a complaint to the Board.
- (3) The Board shall refer the complaint to the Appeals Committee for a hearing within seven days after receipt of the complaint.
- (4) The decisions of the Appeals Committee shall be by simple majority and shall
- (a) contain a statement of the reasons for the decision, including a determination of each issue of fact or law;

Real Estate Authority Bill, 2014

- (b) be signed by each member of the Appeals Committee; and
- (c) be submitted to the Board.

Powers of the Appeals Committee

29. (1) The Appeals Committee shall determine the time and place for its hearings.

(2) The Appeals Committee may by summons require the attendance and testimony of witnesses and the production of documents.

(3) Where a witness fails to appear or testify before the Appeals Committee or to produce a document required by the Appeals Committee, the Appeals Committee may apply to the High Court for an order to compel the attendance of the witness or the production of the document.

Submission of the decision to the Board

30. (1) The Board shall approve the decision or refer the decision back to the Appeals Committee for reconsideration within fourteen days after receipt of the decision of the Appeals Committee in relation to a hearing.

(2) Where the Board refers the decision back to the Appeals Committee for reconsideration, the Board shall attach to the decision the reasons for the reference for reconsideration.

(3) Where the Board approves the decision of the Appeals Committee, the Board shall within fourteen days after the approval serve on the affected licensee a copy of the decision and the reasons for the decision.

Action of the Authority in relation to a decision

31. (1) Where the Board approves the decision of the Appeals Committee, the Authority shall

- (a) suspend, revoke or refuse to renew a licence; or
- (b) take any other action as appropriate.

(2) In addition to subsection (1), the Authority may by notice in writing, request a licensee to take the remedial action specified in the notice and within the time specified in the notice where it suspends a licence.

Real Estate Authority Bill, 2014

(3) The Authority shall revoke the licence of a person who after being given notice fails to take the required remedial action within the specified time.

Settlement by alternative dispute resolution

32. (1) Parties may agree to alternative dispute resolution before the institution of legal proceedings but the agreement shall not oust the jurisdiction of the court.

(2) A mediator shall attempt to resolve the dispute through mediation, fifteen days after referral by a party and a party may be represented at the mediation by a representative of the party's choice.

(3) On resolution of the dispute by mediation, the agreed terms shall be reduced to a written agreement.

(4) The mediator shall submit the mediation to a court seven days after resolution of the dispute.

Review of decision

33. (1) A person not satisfied with a decision in relation to a hearing may within one month after being informed of the decision, apply to the High Court for a review of that decision.

(2) An application for a review of a decision shall not, unless otherwise determined by the Court, operate as a stay of execution of the decision.

Inspection

Appointment of inspectors

34. (1) The Authority shall appoint inspectors for the effective implementation of its functions under this Act.

(2) An inspector shall be issued with a certificate of appointment by the Authority.

(3) An inspector shall produce the certificate whenever required in the discharge of the inspector's duties by a manager or real estate agent under this Act.

Inspection by the Authority

35. (1) An officer of the Authority or any other person authorised by the Authority may at a reasonable time during the day for the purpose of inspection, enter premises

(a) of a real estate agent or real estate salesperson; or

Real Estate Authority Bill, 2014

- (b) which the officer has reasonable grounds to believe relate to a real estate transaction including a transaction otherwise exempted from the application of this Act in subsection (3) of section 1.

(2) An officer or an authorised person may only enter premises for inspection after that officer or authorised person has produced for the inspection of the occupier of the premises, the identification and authority of that officer or authorised person.

(3) The officer or authorised person may in furtherance of an inspection request, among others, for

- (a) copies of real estate agreements;
- (b) information and records on real estate transactions; and
- (c) the real estate transfer certificate for any completed real estate transaction.

Real Estate Operation and Practice

Register of real estate agents and salespersons

36. (1) The Authority shall keep and maintain a register of real estate agents and salespersons in which it shall record the personal and business details of licensed real estate agents and salespersons.

(2) The register shall be open for inspection during working hours and a copy of or an extract from the register may be made by any interested person on the payment of the fee determined by the Board.

(3) The Authority shall at intervals of six months publish in the *Gazette* and a national daily newspaper that the Authority may determine, an alphabetical list of licensed real estate agents and salespersons who are in good standing.

(4) The Authority shall establish and maintain a national database on real estate transactions which shall contain the transaction records of each licensed real estate agent or salesperson.

(5) The Authority shall keep the transaction records of real estate agents or real estate salespersons for a period of at least five years.

(6) The national database on real estate transactions shall, on request made in writing to the Authority, be made accessible to the Economic and Organised Crime Office, the Financial Intelligence Centre and the Ghana Revenue Authority.

Real Estate Authority Bill, 2014

Place of business of licensed real estate agent or salesperson

37. (1) A licensed real estate agent or real estate salesperson shall maintain a place of business in this country and conspicuously display in that place of business that agent's or salesperson's licence or a certified copy of that licence.

(2) A licensed real estate agent or real estate salesperson shall give written notice of a change of business location to the Authority before the change and the Authority shall effect the change in the register and in any subsequent publication of the list of real estate agents and salespersons.

(3) Failure of a licensed real estate agent or a real estate salesperson to give notice of a change in business location to the Authority is a ground for revocation of the licence of that real estate agent or real estate salesperson.

Use of forms for real estate transaction

38. (1) Only real estate transaction forms issued by the Authority shall be used for real estate transactions including a transaction otherwise exempted from the application of this Act in section 1(3).

(2) The application for a real estate transaction form shall be made to the Authority and the Authority shall on the payment of the required fee,

(a) record the personal details and the business details of the applicant, and

(b) issue the forms to the applicant.

(3) A real estate transaction in which forms issued by the Authority are not used is void.

(4) For the purpose of this section, real estate transaction forms include purchase agreement and sales agreement forms.

Affiliation of real estate salesperson

39. (1) A real estate salesperson shall not undertake any real estate transaction unless that salesperson is affiliated to a licensed real estate agent.

(2) A real estate salesperson who is not licensed shall not be affiliated to a real estate agent.

(3) A licensed real estate salesperson who is affiliated to a licensed real estate agent shall not

(a) act as a real estate salesperson for any other real estate agent;
or

Real Estate Authority Bill, 2014

- (b) accept valuable consideration for the performance of any act as a real estate salesperson from a person other than the real estate agent to whom that salesperson is affiliated.

Sales and purchase agreement

40. A real estate agent shall in relation to each real estate transaction prepare as appropriate sales and purchase agreement or a lease agreement and give the seller and the buyer or the lessor and the lessee a copy each of the agreement.

Mode of payment for real estate transactions

41. (1) Payment for each real estate transaction shall be by bank draft or cheque.

(2) A real estate agent or a real estate salesperson shall not accept cash in payment of any real estate transaction.

Client account

42. A real estate agent or salesperson shall open and operate a separate account for the property of a client into which moneys due in relation to the property shall be paid.

Real Estate Transfer Certificate

43. (1) A real estate transaction including a transaction otherwise exempted from the application of this Act in section 1(3), is not complete until the parties to the transaction have been issued with a Real Estate Transfer Certificate by the Authority.

(2) A real estate agent shall apply for a Real Estate Transfer Certificate and accompany the application with the fee determined by the Authority.

(3) In addition to subsection (2), the application shall contain, among others

- (a) the personal details of the applicant,
- (b) the particulars of the real estate transaction to which the certificate is intended to relate including
 - (i) personal details of the parties to the transaction,
 - (ii) details of the property which is the subject of the transaction,
 - (iii) the nature of the transaction,
 - (iv) the valuation report, if any, on the property which is the subject of the transaction,

Real Estate Authority Bill, 2014

- (v) the sums of money payable in the transaction,
 - (vi) details of the cheque or bank draft which is issued for payment of the transaction,
 - (vii) details of receipts issued to cover payment of taxes payable for the transaction including receipts from the Ghana Revenue Authority, and
- (c) copies of the purchase and sales agreement on the transaction.

(4) The Authority shall issue the Real Estate Transfer Certificate to an applicant within thirty days after receipt of the application.

(5) Where the Authority has reasonable grounds to believe that payments made in relation to the real estate transaction which is the subject of the application have been under-declared or far exceeds the value of the property, the Authority may

- (a) conduct an investigation into the transaction,
- (b) cause an independent valuation of the property to be made, or
- (c) refer the transaction to the Economic and Organised Crime Office, the Ghana Revenue Authority and the Financial Intelligence Centre for investigation.

(6) Despite any provision in any other enactment to the contrary, the Lands Commission shall not register any real property or interest in real property which has been the subject of real estate transaction, including a transaction otherwise exempted from the application of this Act in section 1(3), if the application for registration is not accompanied with a Real Estate Transfer Certificate issued by the Authority.

(7) Registration of real property or interest in real property by the Lands Commission contrary to subsection (5) is void.

General rules of conduct in real estate practice

44. A licensed real estate agent or salesperson shall not in relation to real estate practice do any of the following:

- (a) make any misrepresentation
 - (i) for the purpose of obtaining a licence; or
 - (ii) in any report it submits to the Authority;
- (b) act in the dual capacity of agent and undisclosed principal in the same transaction;

Real Estate Authority Bill, 2014

- (c) act for more than one party in the same transaction without the knowledge and consent of all the parties involved in the transaction;
- (d) pay commissions or fees to or share commissions or fees with a person who is not a licensed agent or salesperson;
- (e) accept, give or charge any undisclosed commission, rebate or profit on expenditures for a principal;
- (f) commingle the money or property of a client or principal with the agent's or salesperson's own money or property;
- (g) fail to give the seller and the buyer a copy of the sales and purchase agreement; or
- (h) accept from a prospective seller a net listing.

Transaction reports

45. (1) A real estate agent or real estate salesperson shall in addition to the reporting obligation under the Anti-Money Laundering Act, 2008 (Act 749), submit to the Authority

- (a) quarterly reports in hard copy and electronic format; and
- (b) monthly reports in electronic format,

covering each real estate transaction undertaken by that real estate agent or salesperson within the quarter and the month to which the report relates.

(2) The report shall be in the form and contain the matters determined by the Authority.

Books of account and audit of real estate agent or salesperson

46. (1) A real estate agent or real estate salesperson shall keep books of account and proper records in relation to the account.

(2) The books of account and the records shall be in conformity with the national accounting standards and shall on request by the Authority be opened by the real estate agent or salesperson for inspection by the Authority.

(3) The books of account and records shall among others contain the financial details of each real estate transaction undertaken by the real estate agent or real estate salesperson.

(4) A real estate agent shall within one month after the end of the calendar year appoint a qualified auditor to audit the accounts of that real estate agent and the auditor shall submit the audit report to that real estate agent within one month after the appointment.

Real Estate Authority Bill, 2014

(5) A real estate agent or salesperson shall keep the transaction records of real estate agents or salespersons for a period of at least five years.

Other records to be kept by real estate agent

47. A real estate agent shall keep records which contain among others, details of

- (a) the parties to each real estate transaction;
- (b) each cheque or bank draft issued for the payment of a transaction;
- (c) each property which is the subject of a transaction;
- (d) the nature of each transaction;
- (e) the valuation report on each property which is the subject of a transaction; and
- (f) the sums of money payable in respect of each transaction.

Annual report of real estate agent

48. (1) A real estate agent shall within three months after the end of each calendar year submit to the Authority a report covering the real estate transactions undertaken by that real estate agent and the salespersons of that real estate agent in the previous year.

(2) The report shall include the audit report of that real estate agent.

Miscellaneous Matters

Regulations

49. (1) The Minister may, on the advice of the Board, by legislative instrument make Regulations to prescribe for

- (a) facilities to be provided by a real estate agency practitioner for the practice;
- (b) the conduct of hearings by the Authority;
- (c) the conduct of examinations;
- (d) the content of an examination for the licensing of a real estate salesperson and a real estate agent;
- (e) the form and content of reports to be submitted by real estate agency practitioners to the Authority;
- (f) the effective monitoring, assessment and improvement of real estate agency practice; and
- (g) the effective implementation of this Act.

Real Estate Authority Bill, 2014

(2) The Minister may, in consultation with the Minister responsible for Finance, by Regulations prescribe the following fees to be paid to the Authority:

- (a) examination fees,
- (b) grant of licence and renewal of licence fees,
- (c) processing and recording of transactions fees, and
- (d) any other fees chargeable under this Act.

Offences

50. (1) A person who

- (a) engages in a real estate transaction without a licence contrary to section 19,
- (b) transfers a licence issued under this Act contrary to section 24,
- (c) obstructs an authorised officer in the performance of the duties of that officer under section 35,
- (d) fails to keep a separate client account contrary to section 42,
- (e) fails to submit transaction reports contrary to section 45, or
- (f) fails to keep books of account contrary to section 46,

commits an offence and is liable on summary conviction to a fine of not more than ten thousand penalty units or to a term of imprisonment of not more than fifteen years or to both.

(2) A person who

- (a) fails to conspicuously display the licence issued in accordance with this Act,
- (b) fails to use forms issued by the Authority for a real estate transaction contrary to section 38, or
- (c) fails to submit annual reports to the Authority contrary to section 48, or
- (d) does any act contrary to this Act,

commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units or to a term of imprisonment of not more than five years or both.

Real Estate Authority Bill, 2014

Interpretation

51. In this Act, unless the context otherwise requires,

“Economic and Organised Crime Office” means the Office established under section 1 of the Economic and Organised Crime Office Act, 2010 (Act 804);

“Financial Intelligence Centre” means the Centre established under section 4 of the Anti-Money Laundering Act, 2008 (Act 749);

“Minister” means the Minister responsible for Water Resources, Works and Housing;

“net listing” means an agreement to sell or lease real estate for a stated price that authorises the licensed agent or salesperson to keep money in excess of the stated price received from the sale or lease;

“quarter” means a period of three months;

“real estate” means an estate or interest in land and the improvement on the estate or interest, whether corporeal or incorporeal, whether absolute, freehold or non-freehold and whether or not the estate or land is situated in this country;

“real estate agency” means the business of dealing in real estate;

“real estate agent” means a person who on behalf of another person and for a fee, commission or any other valuable consideration, or with the intention or in the expectation of or on the promise of being paid or given a fee, commission or any other valuable consideration, acts as an agent and

(a) sells, exchanges, purchases, rents or leases real estate;

(b) lists or offers, attempts or agrees to list any real estate;

(c) buys, offers to buy, sells, offers to sell or otherwise deals in an option on real estate;

(d) advertises or is portrayed through conduct as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate;

Real Estate Authority Bill, 2014

- (e) assists or directs in the procurement of prospectus, negotiation or completion of an agreement or transaction which results or is intended to result in the sale, exchange, purchase, leasing or renting of real estate; or
- (f) negotiates, or offers, attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance on real estate;

“real estate practice” means the lawful operation of a real estate agency;

“real estate transaction” means the process by which a right in a unit of real property is transferred between two or more parties and in the case of conveyance involves one party being the seller and the other being the buyer;

“Regulations” means Regulations made under this Act; and

“salesperson” means an individual who

- (a) is affiliated to a real estate agent and who performs any act or engages in any transaction which results or is intended to result in
 - (i) the sale, exchange, purchase, renting or leasing of real estate; or
 - (ii) a loan secured or to be secured by mortgage or other encumbrance on real estate; or
- (b) undertakes any of the other activities stated in the interpretation of real estate agent.

Repeal

52. Section 3 of the Conveyancing Act, 1973 (N.R.C.D. 175) is repealed.

Transitional provisions

53. (1) Despite any other provision to the contrary in this Act, the Authority may on application by an individual who has continuously practised as a real estate agent for at least five years before the commencement of this Act, register that individual as a real estate agent or salesperson, if that individual has no criminal record.

Real Estate Authority Bill, 2014

(2) The registration of a person by the Authority as a real estate agent or salesperson shall only be for a period of two years, after which the person registered shall apply for a renewal of the registration.

Application of the Anti-Money Laundering Act, 2008 (Act 749)

54. This Act shall be read as one with the Anti-Money Laundering Act, 2008 (Act 749) and where there is any conflict the provisions of Act 749 shall prevail.

Date of *Gazette* notification: 24th October, 2014.

Real Estate Authority Bill, 2014

MEMORANDUM

The real estate sector is of great importance to the economy of every country and particularly to the financial market because of the large monetary transaction involved. Improvements in the real estate sector provide positive externalities, as well as direct consumption benefits. For instance, increased housing activities stimulate economic activities and also benefit professionals such as architects and civil engineers.

Ghana like all other economies has had the practice of real estate agency also referred to as estate agency in existence for a considerable length of time. The practice has grown considerably in recent years as the property market has become more active with the buying, selling and leasing of property for investment.

The role of the real estate agent has traditionally been as an intermediary between the purchaser and vendor of property. One result of the increase in activities in the property market has been the influx into the real estate agency trade of persons who have no particular training in real estate agency and many others who have no identifiable office accommodation.

Furthermore, a glance at the real estate business shows the lack or inadequacy of appropriate internal control mechanisms, policies, training and audit systems among other things. Thus apart from the need to regulate real estate agency services to streamline the activities of the sector, there is the greater national concern that an unregulated real estate sector will serve as a disincentive for potential investments in the sector.

The real estate transactions by their nature involve huge sums of money and because of this, there is a need to ensure that real estate practitioners and parties to real estate transactions keep records of their transactions for tax purposes. The lack of record keeping by most real estate practitioners and parties to real estate transactions results in failure to pay tax on the transactions and incomes earned from the transactions. This denies the government the necessary income for developmental purposes.

Real Estate Authority Bill, 2014

The purpose of the Bill therefore is to regulate real estate agency practice, commercial transactions in real estate including the sale, purchase, rental and leasing of real estate, real estate practitioners as well as real estate transactions. The Bill provides a detailed trail of record keeping that will help track the transactions and the persons involved in the transactions. The Bill also prohibits cash payments for real estate transactions.

Clause 1 provides for the application of the Act in relation to real estate transactions and provides for real estate transactions which are exempted from the application of the Act. The exemptions are intended to take care of the situations in which a person does not require a licence to engage in real estate transactions and in which that person is not bound by the rules that govern real estate practice.

Clause 2 establishes the Real Estate Authority as a body corporate to regulate real estate agency practice and practitioners.

The object of the Authority as specified in *clause 3* is to promote and facilitate the development of real estate agency practice and improve the provision of real estate agency services.

Provision is made for the functions of the Authority in *clause 4*. The functions include regulating the practice of real estate agency, prescribing courses of study for real estate agency practice, licensing real estate agents and monitoring the performance of real estate agents.

Clause 5 provides for the governing body of the Authority which is a Board, comprising eleven members appointed by the President of the Republic. It is the responsibility of the Board to ensure the proper and effective performance of the functions of the Authority.

Clause 6 to *10* contains standard provisions on the tenure of office of members of the Board, meetings of the Board, disclosure of interest by members of the Board, establishment of committees of the Board and allowances payable to members of the Board and committees of the Board, whilst *clause 11* provides for Ministerial oversight responsibility.

Real Estate Authority Bill, 2014

Clause 12 to 15 relates to administration. *Clause 12* provides for the appointment of a Chief Executive of the Authority whilst *clause 13* provides for the functions of the Chief Executive. Appointment of other staff is provided for in *clause 14*. The provision for the Authority to establish regional offices in the regions that the Board may determine is stated in *clause 15*.

The finances of the Authority are provided for in *clause 16 to 18*. *Clause 16* makes provision for the funds of the Authority, *clause 17* for accounts and audit and *clause 18* for annual reports and other reports.

Provisions relating to licensing are to be found in *clause 19 to 27*. In *clause 19*, provision is made for a person licensed by the Authority to provide real estate agency or salesperson services among others. This *clause* also prohibits unlicensed persons other than those authorised or exempted in the Act, from engaging in real estate transactions. *Clause 20* provides for the application for a licence. The application which is to be made to the Authority is, among others, required to be signed and supported with a statutory declaration by the applicant and to be in the form prescribed in the Regulations. The conditions for the grant of a licence are specified in *clause 21*.

In *clause 22*, provision is made for examination which is one of the conditions that needs to be satisfied by persons who are not surveyors or lawyers for the grant of a licence. *Clause 23* provides for the procedure for the grant of a licence and specifies the form and contents of the licence. A licence granted under the Act is, by *clause 24*, not transferable.

Clause 25 provides for the use of a licence by a designated officer or partner and restricts the use of a licence by a designated officer or partner to the functions of the designation. Renewal of a licence is provided for in *clause 26*. The application for renewal, is among others, required to be made within thirty days after the licence has expired and it is to be signed by the applicant and accompanied with a statutory declaration by the applicant.

Clause 27 provides for the power of the Authority to suspend, revoke and refuse to renew a licence and the conditions or circumstances for these.

Real Estate Authority Bill, 2014

Clause 28 establishes a five member Appeals Committee to be responsible for the conduct of hearings in relation to persons aggrieved by the conduct of real estate agents or salespersons or a decision of the Board. The powers of the Appeals Committee are spelt out in *clause 29*. In *clause 30*, provision is made for the submission of the decision of the Appeals Committee to the Authority. The actions that can be taken in relation to the decision of the Appeals Committee are given in *clause 31*.

The Bill creates an avenue for the settlement of dispute by alternative dispute resolution where a party is not satisfied with a decision of the Appeals Committee in *clause 32*. Review of the decision by the High Court is provided for in *clause 33*.

Clause 34 makes provision for the appointment of inspectors by the Authority and *clause 35* empowers the inspectors appointed to carry out inspections in relation to real estate transactions and premises affected by real estate transactions. This provision creates a control and monitoring mechanism by which the Authority can verify real estate transactions.

Clause 36 to 48 provides for real estate operation and practice. *Clause 36* requires the Authority to keep and maintain a register of agents and salespersons, publish in the *Gazette* at six month intervals an alphabetical list of real estate agents and salespersons and establish and maintain a national database on real estate transactions.

Clause 37 places an obligation on a licensed real estate agent or real estate salesperson to maintain a place of business in this country and to conspicuously display in that place of business the licence of that agent or salesperson or a certified copy of that licence. It also requires a licensed real estate agent or real estate salesperson to notify the Authority of a change in the place of business.

The use of forms for real estate transaction is provided for in *clause 38*. A person is required to use real estate transaction forms issued by the Authority for real estate transactions. A real estate transaction in which forms issued by the Authority are not used is void.

Real Estate Authority Bill, 2014

Provision is made for the affiliation of a licensed real estate salesperson to a licensed real estate agent in *clause 39*.

In *clause 40*, an obligation is imposed on a real estate agent to prepare and give to the seller and buyer or the lessor and the lessee involved in each real estate transaction a sale, purchase or a lease agreement as appropriate.

Clause 41 requires payments in real estate transactions to be made by cheque or bank draft. This provision is intended to assist in creating a financial record trail in relation to real estate transactions. A real estate agent or salesperson is required in *clause 42* to open and maintain separate accounts for the clients of that real estate agent or salesperson and to pay moneys due to clients into that account.

Clause 43 makes a Real Estate Transfer Certificate issued by the Authority a mandatory requirement for the completion of a real estate transaction. This provision seeks to create a record trail for real estate transactions.

General rules of conduct for real estate practice are set out in *clause 44*. Those rules, among others, prohibit a licensed real estate agent or salesperson from acting in a dual capacity of a real estate agent and undisclosed principal in the same transaction and from acting for more than one party in the same transaction without the knowledge and consent of all the parties involved in the transaction.

Provision is made for transaction reports in *clause 45*. The reports are to be submitted to the Authority quarterly in hard copy and electronic format and monthly in electronic format only. The reports are expected to form the basis and be a constant source of input for the national database for real estate transactions.

Books of account and records to be kept by a real estate agent or salesperson and auditing of the accounts of a real estate agent or salesperson are provided for in *clause 46*. *Clauses 47* and *48* provide for other records to be kept by a real estate agent or a salesperson and the submission of an annual report to the Authority.

Real Estate Authority Bill, 2014

Clause 49 provides for Regulations to be made by the Minister for, amongst others, the effective implementation of the Act whilst *clause 50* provides for offences under the Act.

Interpretation of words used in the Act is provided for in *clause 51*. *Clause 52* repeals section 3 of the Conveyancing Act, 1973 (N.R.C.D.175). Transitional provisions are dealt with in *clause 53*. *Clause 54* makes the Anti-Money Laundering Act, 2008 (Act 749) applicable to the Act.

HON. (ALHAJI) COLLINS DAUDA
Minister for Water Resources Works and Housing

Date: 15th September, 2014.