

CHAPTER 27:17
ESTATE AGENTS ACT

Act 6/1999 (s. 29), 22/2001 (s. 4)

(The Estates Agents Act [Chapter 27:17] (No. 6 of 1999) will come into operation on a date to be fixed by the President)

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AN ACT to provide for the functions and powers of the Estate Agents Council; to provide for the registration of estate agents and the regulation of the practice of estate agents in Zimbabwe; to provide for the operation of the Estate Agents Compensation Fund; to regulate the keeping of money held by estate agents on behalf of other persons; to repeal the Estate Agents Act [Chapter 27:05]; and to provide for matters connected with or incidental to the foregoing.

PART I

PRELIMINARY

1 Short title and date of commencement

- (1) This Act may be cited as the Estate Agents Act, [*Chapter 27:17*].
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

2 Interpretation

- (1) In this Act—

“appointed member” means a member of the Council referred to in paragraph (b) subsection (1) of section *five*;

“board of examiners” means the board of examiners appointed in terms of section *twenty six*;

“certificate of registration” means a certificate issued in terms of paragraph (a) of subsection (3) of section *twenty-two*;

“Compensation Fund” means the Estate Agents Compensation Fund referred to in subsection (1) of section *thirty-seven*;

“compensation fund certificate” means a certificate issued in terms of subsection (2) of section *forty-one*;

“Council” means the Estate Agents Council referred to in section *three*;

“elected member” means a member of the Council referred to in paragraph (a) of subsection (1) of section *five*;

“employee” in relation to a body corporate includes a director of the body;

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date on which this Act shall come into operation;

“immovable property” includes any interest therein, but does not include mines, quarries or minerals;

“Mashonaland” means the area served by the deeds registry at Harare in terms of the Deeds Registries Act [*Chapter 20:05*];

“Matabeleland” means the area served by the deeds registry at Bulawayo in terms of the Deeds Registries Act [*Chapter 20:05*];

“member” means a member of the Council;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“payment or reward” does not include payment which is limited to the reimbursement of expenses;

“practise as an estate agent”, subject to subsection (2) and section *sixty-two*, means doing any of the following acts for payment or reward—

- (a) in connection with the sale or proposed sale of immovable property belonging to another person—
 - (i) bringing together the parties to the sale or proposed sale, or taking steps to bring them together;
 - (ii) negotiating the terms of the sale or proposed sale;
 - (iii) acting as auctioneer in connection with the sale or proposed sale;
 - (iv) providing an estimated market value of immovable property or any part thereof for the purpose of selling or leasing it;
- (b) receiving or collecting, for or on behalf of the person entitled to the moneys concerned—
 - (i) rents, deposits and other moneys payable in connection with a sale of immovable property; and
 - (ii) any moneys payable in connection with any transaction relating to immovable property, including owners’ association levies and mortgage payments;

“prescribed” means prescribed in regulations or rules made in terms of section *seventy*;

“Register” means the Register of Estate Agents established in terms of subsection (1) of section *twenty-two*;

“registered” means registered as an estate agent in terms of this Act;

“Registrar” means the Registrar of Estate Agents appointed in terms of section *twenty-one*;

“repealed Act” means the Estate Agents Act [*Chapter 27:05*];

“rules” means rules made by the Council in terms of subsection (3) of section *seventy*;

“sale of immovable property” includes—

- (a) any lease of immovable property; and
- (b) any disposal of immovable property or any interest in immovable property for valuable consideration; and
- (c) the sale or other disposition for valuable consideration of—

- (i) shares in a private company whose principal assets consist of immovable property; or
- (ii) any share in a private company which entitles the holder, by virtue of any agreement or arrangement, to occupy immovable property or any part thereof;

“shortfall”, in relation to a trust account, shall have such meaning as may be prescribed;

“trust account” means an account required to be kept in terms of section *fifty-one*.

(2) For the purposes of this Act, a person shall be treated as practising as an estate agent if he or a company or partnership referred to in section *sixty-three* with which he is associated—

- (a) receives payment or reward for any such practice by him or by any partner or employee of his; or
- (b) holds himself or itself out as prepared, in return for payment or reward, to practise as an estate agent.

PART II

ESTATE AGENTS COUNCIL

3 Continuation of former Council

The Estate Agents Council established by the repealed Act shall continue in existence as a body corporate capable of suing and being sued in its own name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

4 Functions of Council

The Council’s functions shall be—

- (a) to secure the registration of persons practising as estate agents in Zimbabwe and to exercise disciplinary powers over such persons; and
- (b) to administer the Compensation Fund; and
- (c) to do anything required to be done by the Council in terms of this Act or any other enactment; and
- (d) to do such other things as, in the Council’s opinion, are necessary or desirable for ensuring that the standards of competence and conduct of persons practising as estate agents in Zimbabwe are sufficiently high for the protection of the public.

5 Composition of Council

(1) The Council shall consist of—

- (a) six registered estate agents elected by registered estate agents in the manner prescribed; and
- (b) three persons appointed by the Minister, of whom at least two shall not be registered estate agents.

(2) Of the elected members at least one shall be ordinarily resident in Mashonaland and at least one shall be ordinarily resident in Matabeleland.

6 Chairman and vice-chairman of Council

(1) There shall be a chairman and a vice-chairman of the Council, who shall be elected by the Council from among its members and who shall hold office as such for so long as they remain members of the Council unless—

- (a) they resign their office as such; or
- (b) the Council resolves that they should cease to hold office as such.

(2) Whenever a vacancy occurs in the office of chairman or vice-chairman of the Council, the Council shall at its next meeting elect one of its members to fill the vacancy.

(3) Subject to any restrictions or conditions imposed by the Council, the chairman of the Council may, in cases of urgency or emergency, take such action or decision as he thinks appropriate on behalf of the Council:

Provided that the chairman shall report to the Council at its next meeting on any action or decision he has taken in terms of this subsection, and the Council may confirm, vary or revoke the action or decision concerned.

(4) If the office of chairman of the Council is vacant, or if the chairman is unable to exercise his functions through illness, absence from Zimbabwe or other cause, the vice-chairman shall exercise his functions.

7 Terms and conditions of office of members

(1) Subject to subsection (2), a member shall hold office for three years from the date of his election or appointment.

(2) On the expiry of a member’s term of office he shall continue to hold office as a member until he has been re-elected or re-appointed or his successor has been elected or appointed, as the case may be:

Provided that a member shall not continue to hold office in terms of this subsection for more than six months.

(3) A member shall—

- (a) hold office on such conditions; and
- (b) be paid out of the funds of the Council such remuneration and allowances, if any;

as the Minister, in consultation with the Council, may fix for members generally.

(4) A retiring member shall be eligible for re-election or re-appointment as a member.

8 Disqualifications for election or appointment as member

No person shall be elected or appointed as a member, and no person shall be qualified to hold office as a member, who—

- (a) has, in terms of the law in force in any country—
 - (i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or
 - (ii) made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside;
- or
- (b) has, within the period of five years immediately preceding the date of his proposed election or appointment, been convicted—
 - (i) within Zimbabwe of a criminal offence; or
 - (ii) outside Zimbabwe of an offence, by whatever name called, which if committed within Zimbabwe would constitute a criminal offence;and sentenced by a court to imprisonment for a term of six months or more, without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

9 Vacation of office by member

A member shall vacate his office and his office shall become vacant—

- (a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after such shorter period of notice as he and the Minister may agree; or
- (b) thirty days after the date he is sentenced by a court to the imprisonment referred to in paragraph (b) of section *eight* after conviction of an offence referred to in that paragraph:
Provided that if, during that period of thirty days, an application for a free pardon is made or an appeal is filed, the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside, his sentence is reduced to a term of imprisonment of less than six months or a punishment other than imprisonment is substituted;
- or
- (c) if he becomes disqualified in terms of paragraph (a) of section *eight* to hold office as a member; or
- (d) if he is required in terms of section *ten* to vacate his office; or
- (e) in the case of an elected member, if he ceases to be a registered estate agent; or
- (f) if he is absent without the permission of the Council from two consecutive meetings of the Council, of which he has been given at least seven days' notice to attend:

Provided that an appointed member shall vacate his office on this ground only if required to do so by the Minister acting on the advice of the Council.

10 Minister may require member to vacate office

- (1) The Minister may require a member to vacate his office if the member—
 - (a) has been guilty of conduct which renders him unfit to be a member; or
 - (b) has ceased or failed to comply with the conditions of his office fixed by the Minister in terms of subsection (3) of section *seven*; or
 - (c) is mentally or physically incapable of efficiently performing his duties.
- (2) If at any time the Minister is satisfied that—
 - (a) an elected member was at the time of his election ordinarily resident in Mashonaland or Matabeleland, and has since ceased to be ordinarily resident therein; and
 - (b) by virtue of such elected member ceasing to be ordinarily resident in Mashonaland or Matabeleland, as the case may be, there is no elected member ordinarily resident in Mashonaland or Matabeleland, as the case may be;

he shall require that elected member to vacate his office.

11 Filling of vacancies on Council

(1) If the registered estate agents for any reason fail, neglect or refuse to elect any of the members referred to in paragraph (a) of subsection (1) of section *five* or paragraph (a) of subsection (3) of this section, the Minister may appoint such of those members as the registered estate agents fail, neglect or refuse to elect.

(2) A member appointed by the Minister in terms of subsection (1) shall be deemed, for the purposes of this Act, to have been duly elected to the Council in terms of paragraph (a) of subsection (1) of section *five*.

(3) On the death of or the vacation of office by a member—

- (a) who was an elected member, registered estate agents shall elect a registered estate agent in the manner prescribed;
- (b) who was appointed by the Minister, the Minister shall appoint a person;

to fill the vacancy for the remainder of the period during which the member would, but for his death or the vacation of his office, have continued in office:

Provided that, if the period during which a member referred to in paragraph (a) would, but for his death or the vacation of his office, have continued in office is less than six months, the Council may co-opt a registered estate agent to fill the vacancy.

(4) If an elected member is granted leave of absence by the Council, the Council may co-opt a registered estate agent to fill the vacancy during his absence.

12 Meetings and decisions of Council

(1) The Council shall meet for the despatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that the Council shall meet not less than four times in each calendar year.

(2) The chairman of the Council may himself at any time and shall, at the request in writing of not less than three members, convene a special meeting of the Council.

(3) A notice convening a special meeting of the Council shall state the purpose for which the meeting is to be convened.

(4) The chairman or, in his absence, the vice-chairman shall preside at any meeting of the Council:

Provided that, if both the chairman and the vice-chairman are absent from a meeting of the Council, the members present shall elect from their number an acting chairman who shall preside at that meeting.

(5) Five members shall form a quorum at a meeting of the Council.

(6) All acts, matters or things authorised or required to be done by the Council may be decided by a majority vote at a meeting of the Council at which a quorum is present.

(7) At all meetings of the Council each member present shall have one vote on any question before the Council and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to a deliberative vote.

(8) Any proposal circulated among all members and agreed to in writing by a majority of them shall be of the same effect as a resolution passed at a duly constituted meeting of the Council and shall be incorporated in the minutes of the next succeeding meeting of the Council:

Provided that, if a member requires the proposal to be placed before a meeting of the Council, this subsection shall not apply to that proposal.

13 Validity of decisions and acts of Council

No decision or act of the Council or act done under the authority of the Council shall be invalid only because—

- (a) the Council did not consist of the full number of members for which provision is made in section *five*; or
- (b) a disqualified person acted as a member of the Council at the time the decision was taken or the act was done or authorised.

14 Funds of Council

The funds of the Council shall consist of—

- (a) fees and other moneys payable to the Council in terms of this Act; and
- (b) such other moneys and assets as may vest in or accrue to the Council, whether in the exercise of its functions or otherwise.

15 Expenses of Council

Subject to this Act, the expenses incurred by the Council in the exercise of its functions under this Act shall be met out of the funds of the Council.

16 Accounts of Council

(1) The Council shall keep proper books of account and other records relating thereto.

(2) The accounts of the Council shall be audited at least once in each calendar year by a person who is registered as a public auditor in terms of the Public Accounts and Auditors Act [*Chapter 27:12*] and appointed by the Council.

17 General meetings of registered estate agents

(1) The Council shall, at least once in each calendar year, convene a general meeting of all registered estate agents.

(2) The Council shall ensure that at least fourteen days' written notice of a general meeting of registered estate agents is sent to each registered estate agent, which notice shall set out the matters to be dealt with at that general meeting:

Provided that an inadvertent failure to give a registered estate agent the notice required by this subsection shall not invalidate the meeting concerned.

(3) The Council shall submit to the annual general meeting called in terms of subsection (1) a report setting out the activities of the Council since the previous annual general meeting.

18 Inquiries by Council

(1) The Council shall have power to hold an inquiry—

- (a) to determine whether or not a person should be registered in terms of this Act; or
- (b) to determine whether or not a person's registration should be cancelled or suspended, or any other action in terms of Part V should be taken in respect of him; or
- (c) to ascertain whether a grant should be made from the Compensation Fund in terms of Part VII; or
- (d) for any other purpose for which the Council is required or permitted in terms of this Act to hold an inquiry or for such other purpose as the Minister may approve.

(2) For the purposes of an inquiry in terms of subsection (1), the Council shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and sections 15 and 16 of that Act shall apply, *mutatis mutandis*, in relation to an inquiry held in terms of subsection (1) and to any person summoned to give evidence at the inquiry.

(3) The Council shall have power—

- (a) if it is reasonably necessary for the prevention or detection of an offence in terms of this Act, through its employees or agents at all reasonable times to enter the business premises of any person practising or reasonably suspected to be practising as an estate agent and to conduct such investigation or search therein as may be necessary; and
- (b) to require any registered estate agent or person reasonably suspected of practising as an estate agent to provide the Council with such information as the Council may reasonably require in the exercise of its functions under this Act.

(4) For the purpose of an inquiry in terms of subsection (1), the Council may appoint in writing an investigator, approved either generally or specifically for the purpose by the Minister, with authority to—

- (a) enter any premises; and
- (b) question any persons employed on the premises; and
- (c) inspect, make copies of and take extracts from or remove any books, records or other documents;

connected with or related to the practice of the person investigated and report to the Council:

Provided that—

- (i) an investigator shall not enter any premises without the consent of the owner or occupier unless there are reasonable grounds for believing that the entry is necessary for the prevention, investigation or detection of an offence;
- (ii) if the person investigated is not a registered estate agent, the investigator shall notify the officer commanding the police district in which the premises of such person are situated of his intention to enter the premises, and shall be accompanied by a police officer.

(5) For the purposes of or following upon any inquiry in terms of subsection (1), the Council may, if it considers it necessary—

- (a) apply to the Master of the High Court for the appointment of a curator *bonis* to control and administer any estate agent's trust account, with such of the prescribed rights, duties and powers as the Master of the High Court may consider necessary;
- (b) apply to the High Court for an order prohibiting an estate agent from operating any account with a bank or building society for such period, not exceeding thirty days, as may be considered necessary for carrying out such investigations as may be required;

and the Master of the High Court or the High Court, as the case may be, may grant or dismiss the application as he or it thinks appropriate.

(6) Any person aggrieved by a decision of the Master of the High Court under subsection (5) may, within thirty days after the decision was made known to him, appeal against that decision to the High Court, and the High Court may confirm, vary or set aside the Master's decision or give such other decision as in its opinion the Master ought to have given.

(7) Nothing contained in subsection (5) shall be construed as preventing a registered estate agent who was practising in partnership with an estate agent referred to in that subsection from continuing to operate the trust account of that partnership.

(8) If any investigation conducted in terms of this section results in the person investigated being—

- (a) convicted of an offence in terms of the Act; or
- (b) disciplined in terms of Part V;

the Council shall be entitled to recover from such person all or any part of the costs of the investigation as it may determine.

(9) Any person who hinders, obstructs or makes any false representation to the Council or an investigator in the exercise of its or his powers under subsection (3) or (4) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

19 Committees of Council

(1) For the better exercise of its functions, the Council may establish committees to which it may appoint as members such registered estate agents as it considers expedient.

(2) The Council may assign to a committee referred to in subsection (1) such of the Council's functions under this Act as the Council considers expedient.

(3) By assigning any function to a committee in terms of subsection (2), the Council shall not be treated as having divested itself of that function, and the Council may vary or revoke any decision of a committee made in the exercise of that function.

20 Recovery by Council of costs and fees

The Council may by proceedings in a competent court recover—

(a) any expenses, costs or penalties ordered to be paid by any person or registered estate agent in terms of subsection (8) of section *eighteen* or section *thirty-one*;

[Paragraph amended by section 4 of Act 22 of 2001]

(b) any fee referred to in paragraph (a) or (b) of subsection (2) of section *seventy* or contribution referred to in paragraph (b) of subsection (2) of section *forty-one* or surcharge referred to in subsection (8) of that section;

which is not paid to the Council within the prescribed time.

PART III

REGISTRAR AND REGISTER OF ESTATE AGENTS

21 Registrar of Estate Agents

(1) The Minister, in consultation with the Council, shall appoint a person to be known as the Registrar of Estate Agents, who shall exercise the functions conferred or imposed on the Registrar by or in terms of this Act.

(2) The Registrar shall—

(a) hold office on such conditions; and

(b) be paid out of the funds of the Council such remuneration and allowances, if any, as the Minister may fix in consultation with the Council.

22 Register of Estate Agents and certificates of registration

(1) Subject to this Part, the Registrar shall establish and maintain a Register of Estate Agents.

(2) It shall be the duty of the Registrar—

(a) to enter in the Register the names and addresses and such other particulars as may be prescribed of each person whom the Council directs, in terms of subsection (1) of section *twenty-nine*, shall be registered; and

(b) to make in the Register any necessary alterations in the name, address and prescribed particulars of a registered estate agent; and

(c) to delete from the Register the name of a registered estate agent—

(i) who dies or ceases to practise as an estate agent; or

(ii) who ceases to be ordinarily resident in Zimbabwe;

and

(d) when required to do so by or under this Act or in pursuance of a lawful direction of the Council or an order of the Administrative Court—

(i) to enter in the Register the registration of an applicant or, as the case may be, the suspension from practice of a registered estate agent; or

(ii) to cancel in the Register the registration of a registered estate agent;

and generally, in connection with the Register, to comply with this Act and any lawful direction of the Council or order by the Administrative Court.

(3) If, in the performance of the duties imposed upon him by or under this Act, the Registrar—

(a) registers an applicant, he shall issue to him a certificate of registration;

(b) cancels the registration of a registered estate agent or marks in the Register the suspension from practice of a registered estate agent, he shall notify him in writing accordingly.

23 Offences in connection with Register, etc.

A person who—

(a) without lawful authority, makes or causes to be made an entry in or alteration of or deletion from—

(i) the Register; or

- (ii) a certified copy of or extract from the Register; or
- (iii) a certificate of registration;

or

- (b) procures or attempts to procure for himself or another person registration or a certificate of registration by means of fraud, a false representation or the concealment of a material fact; or
- (c) makes or causes to be made in connection with an application for registration a false declaration in a document used for the purpose of establishing his identity; or
- (d) wilfully destroys or defaces or renders illegible or causes to be destroyed, defaced or rendered illegible an entry in the Register; or
- (e) without the permission of the holder, wilfully destroys, injures or renders illegible or causes to be destroyed, injured or rendered illegible a certificate of registration; or
- (f) forges a document purporting to be a certificate of registration, or utters such a document knowing it to be forged;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

24 Register and certificates of Registrar to be evidence

(1) The Register shall be prima facie proof of all matters directed or authorised by this Act to be noted therein.

(2) A certificate purporting to be signed by the Registrar to the effect that—

- (a) the name of a person appears in the Register, shall be prima facie proof that the person is a registered estate agent;
- (b) the name of a person has been deleted or removed from or does not appear in the Register, shall be prima facie proof that the person is not a registered estate agent;
- (c) a registered estate agent has been suspended from practice for a period specified in the certificate, shall be prima facie proof that the estate agent concerned has been suspended from practice for that period;

and shall be admitted in evidence in all courts upon its production by any person.

(3) A copy of an entry in the Register or of a document in the custody of the Registrar, or an extract from the Register or such document, shall, if it purports to be certified by the Registrar, be admitted in evidence in all courts upon its production by any person, without further proof or production of the original.

PART IV

REGISTRATION

25 Qualifications for registration

For the purposes of this Part, a person shall be qualified to be registered as an estate agent if—

- (a) he has attained the age of majority; and
- (b) he—
 - (i) has passed such examination conducted or recognised by the board of examiners in terms of section *twenty-six*; and additionally, or alternatively
 - (ii) holds such qualification recognised by the board of examiners in terms of that section; as, in the opinion of the board of examiners, is sufficient for registration; and
- (c) he meets the requirements relating to practical experience specified in the Schedule; and
- (d) he has not, during the period of five years immediately preceding his application, been found guilty of any offence involving dishonesty.

26 Board of examiners and recognition of examinations and qualifications

(1) The Minister, in consultation with the Council shall appoint a board of examiners consisting of—

- (a) three members of the Council, one of whom shall be chairman; and
- (b) one member who shall be nominated by the Real Estate Institute of Zimbabwe and who is not a member of the Council; and
- (c) one member from the teaching staff of the University of Zimbabwe who lectures on any of the subjects prescribed for examination in rules referred to in paragraph (c) of subsection (3) of section *seventy*.

(2) The functions of the board of examiners shall be—

- (a) to conduct examinations; and
- (b) to recognise examinations and qualifications;

for the purpose of qualifying persons for registration in terms of this Act.

(3) The procedure at meetings of the board of examiners shall be as prescribed in rules or, in respect of any matter that is not so prescribed, as may be determined by the board.

(4) Any applicant for registration who is aggrieved by a refusal by the board of examiners to recognise any examination or qualification may appeal to the Council.

27 Application for registration

(1) An application for registration shall be made to the Registrar and shall be accompanied by such documents and information, including evidence of identity, and such fee, as may be prescribed.

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

28 Application for registration to be referred to Council

(1) The Registrar shall refer every application for registration, together with the documents and information mentioned in subsection (1) of section *twenty-seven* and any report he may wish to make on the application, to the Council.

(2) Subsection (1) shall not be construed as precluding the Registrar from registering an applicant provisionally in accordance with section *thirty*.

29 Procedure by Council in connection with application for registration

(1) If an applicant for registration—

(a) is qualified in terms of section *twenty-five*; and

(b) in the Council's opinion, is otherwise a suitable person for registration;

the Council shall direct the Registrar to register the applicant.

(2) If the Council decides that an applicant for registration is not a suitable person to be registered by reason of—

(a) his physical or mental health; or

(b) the fact that he is not of good character or reputation; or

(c) any conduct of his which, if he had been registered, would have constituted unprofessional, dishonourable or unworthy conduct;

the Council shall give written notice to the Registrar and the applicant of its decision and of the reasons for its decision.

(3) If an applicant who has been notified by the Council of a decision of the Council referred to in subsection (2) fails, within the period specified in subsection (2) of section *thirty-six*, to lodge with the Registrar notice of his intention to appeal against the decision to the Administrative Court in terms of Part VI or, having lodged such a notice, withdraws the notice or abandons his appeal, the Registrar shall reject his application for registration and notify him in writing accordingly.

30 Provisional registration

(1) Notwithstanding any other provision of this Part, if an application for registration has been made to the Registrar in terms of section *twenty-seven* and the Registrar considers that—

(a) the Council is unlikely to meet to consider the application within the next three months; and

(b) when it does consider the application, the Council is likely to direct him to register the applicant;

the Registrar, after consultation with the chairman of the Council, may register the applicant provisionally on such terms and conditions as may be prescribed or as the Registrar may fix.

(2) Where the Registrar has provisionally registered an applicant in terms of subsection (1), he shall refer the application to the Council and sections *twenty-eight* and *twenty-nine* shall apply in relation thereto.

(3) Provisional registration in terms of subsection (1) shall terminate upon the applicant's registration pursuant to a direction by the Council in terms of subsection (1) of section *twenty-nine* or upon the Council's refusal to give such a direction, as the case may be.

(4) A person who is provisionally registered in terms of subsection (1) may practise as an estate agent, subject to this Act and the terms and conditions of his provisional registration.

PART V

CANCELLATION AND SUSPENSION OF REGISTRATION AND DISCIPLINARY POWERS OF COUNCIL

31 Disciplinary powers of Council

(1) If, after due inquiry, the Council decides that a registered estate agent—

(a) is not a suitable person to remain registered; or

(b) has been guilty of unprofessional, dishonourable or unworthy conduct or negligence in his capacity as an estate agent; or

(c) without derogation from the generality of paragraph (a) or (b), has contravened section 4 of the Prevention of Discrimination Act [*Chapter 8:16*];

or where a registered estate agent has been convicted of any offence involving dishonesty, the Council may do one or more of the following—

(i) direct that his registration be cancelled or that he be suspended from practice as an estate agent for a period determined by the Council;

- (ii) order him to pay the expenses incurred in holding the inquiry and expenses incidental to the inquiry or any part of those expenses;
- (iii) order him to reimburse the injured party for the direct or indirect loss suffered by such party as a result of the conduct of the registered estate agent;
- (iv) impose a penalty, not exceeding an amount equivalent to a fine of level six, which penalty shall be payable to the Council;

[Paragraph amended by section 4 of Act 22 of 2001]

- (v) censure him;
- (vi) caution him;

and the Council shall give notice thereof and the reasons for its decision to the Registrar and the registered estate agent concerned.

(2) If a registered estate agent who has been notified by the Council of a direction referred to in paragraph (i) of subsection (1) fails, within the period specified in subsection (2) of section *thirty-six*, to lodge notice with the Registrar of his intention to appeal to the Administrative Court in terms of Part VI or, having lodged such notice, withdraws the notice or abandons his appeal, the Registrar shall cancel his registration or, as the case may be, mark his suspension from practice in the Register for the period determined by the Council.

(3) Where the Council makes a direction in terms of subparagraph (i) of subsection (1), it may further direct that the estate agent or former estate agent concerned, as the case may be, shall not, for such period as it shall specify—

- (a) be employed in any capacity by any registered estate agent or by any company or partnership referred to in section *sixty-three*; or
- (b) hold, or attempt to obtain, any financial interest in any company or partnership referred to in section *sixty-three*.

(4) Any registered estate agent or other person who, during the period in which a direction in terms of subsection (3) is in force—

- (a) employs, except with the written consent of the Council which may be given for such period and subject to such conditions as the Council may think fit, in any capacity the person in respect of whom the direction was made; or
- (b) permits the person in respect of whom the direction was made to obtain or hold any financial interest in a company or partnership referred to in section *sixty-three*;

shall be guilty of an offence unless he shows that he was not aware of the existence of the direction or that the direction referred to the person who was employed by him or who was permitted to obtain or hold the financial interest, as the case may be.

(4a) A person guilty of an offence in terms of subsection (4) shall be liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(5) The noting of an appeal in terms of Part VI against a direction of the Council made in terms of subparagraph (i) of subsection (1) shall not suspend the decision appealed against, unless—

- (a) the council, by written notice to the registered estate agent concerned, agrees otherwise; or
- (b) the High Court on application directs otherwise

32 Persons employed by estate agents

(1) If, after due inquiry, the Council decides that a person who is not a registered estate agent but who acts as a director of a company or a partner in a partnership referred to in section *sixty-three*, or who is employed by such a company or partnership—

- (a) is not a suitable person to perform the work of an estate agent or to be associated with a company or partnership which is practising as an estate agent; or
- (b) has been guilty of conduct which would have constituted unprofessional dishonourable or unworthy conduct or negligence if he had been a registered estate agent; or
- (c) has contravened section 4 of the Prevention of Discrimination Act [*Chapter 8:16*];

the Council may do one or more of the following—

- (i) order that he shall not in any capacity participate in or have any financial interest in any company or partnership referred to in section *sixty-three* or be employed by any such company or partnership for such period as the Council may determine;
- (ii) censure him;
- (iii) caution him;

and the Council shall give notice thereof and the reasons for its decision to the Registrar, the person concerned and the estate agent or company or partnership, as the case may be, by whom the person was employed or with whom he was associated at the time of the order.

(2) No person in respect of whom an order has been made in terms of paragraph (i) of subsection (1) shall, unless the Council otherwise directs, during the period in which the order is in force—

- (a) be employed in any capacity by any registered estate agent or by any company or partnership referred to in section *sixty-three*; or
- (b) hold, or attempt to obtain, any financial interest in any company or partnership referred to in section *sixty-three*.

(3) Any registered estate agent or other person who, during the period in which an order in terms of paragraph (i) of subsection (1) is in force—

- (a) employs in any capacity the person in respect of whom the direction was made; or
- (b) permits the person in respect of whom the direction was made to obtain or hold any financial interest in a company or partnership referred to in section *sixty-three*;

shall be guilty of an offence unless he shows that he was not aware of the existence of the direction or that the direction referred to the person who was employed by him or who was permitted to obtain or hold the financial interest, as the case may be.

(4) A person guilty of an offence in terms of subsection (3) shall be liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

33 Exercise of disciplinary powers by Council on conviction of offence: court to forward evidence

(1) A registered estate agent, or any person referred to in subsection (1) of section *thirty-two*, who has been convicted of an offence inside or outside Zimbabwe shall be liable to be dealt with by the Council in accordance with this Part if—

- (a) the Council is of the opinion that the offence constitutes unprofessional, dishonourable or unworthy conduct or negligence; or
- (b) the offence consists of a contravention of section 4 the Prevention of Discrimination Act [*Chapter 8:16*].

(2) The Council may, if it thinks fit, on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with this Part:

Provided that the convicted person shall be afforded an opportunity of tendering in writing or in person, as he may elect, an explanation to the Council in extenuation of his conduct.

(3) Whenever, after the termination of proceedings before a court in Zimbabwe, it appears to the court that there is *prima facie* evidence of unprofessional, dishonourable or unworthy conduct on the part of a registered estate agent or any person referred to in subsection (1) of section *thirty-two*, the court shall direct that a copy of the record of the proceedings or a copy of such portion of the proceedings as is material to the issue shall be transmitted to the Council.

34 Failure to pay contributions and fees

(1) If a registered estate agent fails to pay—

- (a) any contribution due to the compensation fund in terms of paragraph (b) of subsection (2) of section *forty-one* by the 31st January of the year in which it becomes due and payable; or
- (b) any surcharge levied in terms of subsection (8) of section *forty-one* within three months from the date on which it became due and payable by him; or
- (c) any annual fee referred to in paragraph (a) of subsection (2) of section *seventy* by the 31st March of the year in which it becomes due and payable;

his registration shall be suspended as from the date such contribution, surcharge or fee became due and payable, until it is paid.

(2) Except on good cause shown to the Council in writing by the person concerned, the Registrar shall cancel the registration of an estate agent when his suspension in terms of subsection (1) has lasted for twelve months.

35 Suspension because of sequestration or liquidation of company

(1) Whenever the estate of registered estate agent is sequestrated or assigned, his registration shall be suspended until the Council, for good cause shown, orders the removal of the suspension.

(2) Whenever an order is made for the compulsory winding up of a company which practises as an estate agent in terms of section *sixty-three*, the registration of every registered estate agent who is a member, director or employee of the company shall be suspended unless the Council, for good cause shown, orders otherwise.

PART VI

APPEALS

36 Appeals against decisions of Council

(1) Subject to this section, any person who is aggrieved by—

- (a) a decision of the Council on an appeal in terms of subsection (4) of section *twenty-six*; or
- (b) any decision, direction, order or action of the Council in terms of section *twenty-nine*, *thirty*, *thirty-one* or *thirty-two*;

may appeal to the Administrative Court against the decision, direction, order or action.

(2) A notice of appeal in terms of this section—

- (a) shall be in writing, specifying in detail the grounds of the appeal; and
- (b) shall be lodged with the Registrar of the Administrative Court and the Registrar within thirty days from the date on which the appellant was given notice of the decision, direction, order or action appealed against.

(3) The Registrar shall furnish the Council and the Minister with copies of a notice of appeal lodged with him in terms of this section.

(4) On an appeal in terms of this section, the Administrative Court may confirm, vary or set aside the decision, direction, order or action appealed against or give such other decision as in its opinion the Council ought to have given, and may make such order as to costs as it thinks fit:

Provided that—

- (i) a decision, direction, order or action of the Council following an inquiry in terms of section *thirty-one* or *thirty-two* shall not be set aside solely because of an irregularity which did not embarrass or prejudice the appellant in answering a charge or in the conduct of his defence;
- (ii) the Administrative Court shall not substitute a penalty more severe than the penalty imposed by the Council.

(5) The Council and the Registrar shall comply with any decision of the Administrative Court made in terms of this section.

(6) The Administrative Court Act [*Chapter 7:07*] shall apply in relation to the composition, procedure and powers of the Administrative Court on an appeal in terms of this section.

PART VII

ESTATE AGENTS COMPENSATION FUND

37 Continuation of Estate Agents Compensation Fund and vesting thereof

(1) The Estate Agents Compensation Fund established under the repealed Act shall continue in existence under the same name in terms of this Act.

(2) The Compensation Fund shall be vested in the Council, which shall be responsible for administering it in accordance with this Act.

38 Composition of Compensation Fund

The Compensation Fund shall consist of—

- (a) all moneys vested in the Compensation Fund immediately before the fixed date; and
- (b) all contributions paid to the Compensation Fund under section *forty-one*; and
- (c) all income accruing from the investment of moneys in the Compensation Fund; and
- (d) all moneys borrowed for the purposes of the Compensation Fund; and
- (e) all moneys received by the Compensation Fund under any insurance effected on behalf of the Compensation Fund; and
- (f) all moneys received by the Compensation Fund under section *forty*; and
- (g) any other moneys which may vest in or accrue to the to the Compensation Fund, whether in terms of this Act or otherwise.

39 Compensation for loss due to estate agent's dishonesty

(1) Subject to this Part, on application by a person who has lost money that was deposited in a trust account in terms of section *fifty-one* or that was required to be so deposited, the Council shall make a grant out of the Compensation Fund for the purpose of making good the loss, if it is proved to the Council's satisfaction that the loss was caused by theft on the part of—

- (a) a registered estate agent or an agent or employee of a registered estate agent; or
- (b) a company or partnership permitted to practise as an estate agent by virtue of section *sixty-three*, or by an agent, employee, director or partner of such a company or partnership.

(2) Before considering an application for a grant under this section, the Council may in its discretion require the applicant to exhaust all legal remedies available to him in respect of the loss to which the application relates.

(3) A grant shall be made under this section whether or not any estate agent concerned was in possession of a valid compensation fund certificate when the theft was committed and notwithstanding that, subsequent to the theft, any estate agent concerned has died or ceased to practise or has been suspended from practice or has ceased to be registered.

(4) No grant shall be made under this section in respect of any loss unless notice of that loss has been given by the claimant in such manner and at such time after the loss first came to his knowledge as may be prescribed in rules.

(5) No grant shall be made under this section in respect of an act of dishonesty which was committed by an employee, partner or director of the claimant.

(6) If, during any financial year of the Compensation Fund, the Council becomes liable in terms of subsection (1) to pay any single or aggregate amount exceeding such amount as may be prescribed in rules, the Council may pay pro rata the amount of any grants thereafter in such instalments and at such intervals as it thinks fit:

Provided that the period within which any individual loss is to be made good shall not, without the approval of the Minister, exceed five years.

40 Assignment of rights when Council makes grant from Compensation Fund

- (1) On the making of a grant under section *thirty-nine* to a person in respect of a loss—
- (a) the Council shall, to the amount of the grant, be subrogated to any rights and remedies in respect of that loss which are vested in or available to—
 - (i) the person to whom the grant is made; and
 - (ii) the estate agent, company, partnership, agent, employee, director or partner that committed the theft;
 - (b) the person to whom the grant is made shall have no right, whether under insolvency or through legal proceedings or otherwise, to receive, out of the assets of the estate agent, company, partnership, agent, employee, director or partner that committed the theft, any sum in respect of the loss until the Council has been reimbursed the full amount of the grant.

(2) Any reference in subsection (1) to the person to whom the grant is made or to the estate agent, company, partnership, agent, employee, director or partner that committed the theft shall include, in the event of his or its death, winding up, insolvency, liquidation or other disability, a reference to his or its personal representative or any other person having authority to administer his or its estate.

41 Compensation fund certificates and contributions to Compensation Fund

(1) An application for a compensation fund certificate shall be made to the Council in the form prescribed in rules—

- (a) if the applicant intends to practise as an estate agent, before he commences to practise as such;
- (b) if the applicant is practising as an estate agent and is in possession of a valid compensation fund certificate, before that certificate ceases to be valid.

(2) Subject to subsection (6), upon receipt of—

- (a) an application in terms of subsection (1); and
- (b) such contribution to the Compensation Fund as may be prescribed in rules;

the Council shall issue to the applicant a compensation fund certificate in the form prescribed in rules.

(3) A compensation fund certificate shall be valid until the 31st December of the year for which it is issued.

(4) A person practising as an estate agent shall submit to the Council at such time or times as may be prescribed in rules a certificate relating to his practice and shall submit any additional certificate required by the Council relating to any matter affecting his practice.

(5) A certificate in terms of subsection (4) shall be in such form as may be prescribed in rules.

(6) No compensation fund certificate shall be issued in terms of subsection (2) unless—

- (a) subsection (1) has been complied with; and
- (b) any certificate required in terms of subsection (4) has been submitted and discloses no unremedied shortfall; and
- (c) in the case of an applicant who purports to be a principal in terms of section *sixty-three*, the Council is satisfied that he is a principal;

and any compensation fund certificate issued in contravention of this subsection shall be invalid.

(7) Whenever the holder of a compensation fund certificate changes his name, the Registrar may amend the certificate accordingly.

(8) If at the end of any financial year of the Compensation Fund the aggregate sum of the grants paid during the year in terms of section *thirty-nine* exceeds an amount prescribed for the purposes of subsection (6) of that section, the Council may levy a surcharge on each contribution payable to the Compensation Fund in terms of this section:

Provided that no such surcharge shall exceed three times the contribution concerned.

42 Practising without compensation fund certificate

(1) No person shall—

- (a) practise as an estate agent; or
- (b) describe himself or hold himself out or allow himself to be held out as an estate agent;

unless he is in possession of a valid compensation fund certificate.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five.

(3) A conviction for a contravention of subsection (1) shall not be a bar to a further prosecution or prosecutions for a continuance of the offence.

43 Failure to produce compensation fund certificate

If any person practising as an estate agent fails without just cause to produce on demand a valid compensation fund certificate to—

- (a) an investigator appointed in terms of subsection (4) of section *eighteen*; or
- (b) a police officer;

he shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

44 Insurance to indemnify Compensation Fund

The Council may enter into a contract with an insurer registered under the Insurance Act [*Chapter 24:07*] whereby the Compensation Fund will be indemnified to the extent and in the manner provided by such contract against the making of grants under this Part.

45 Investment of moneys in Compensation Fund

Any moneys in the Compensation Fund which are not immediately required for the purposes of the Compensation Fund shall be invested in such securities as the Council may determine.

46 Borrowing for purposes of Compensation Fund

The Council may borrow moneys for the purposes of the Compensation Fund and may charge any investment of the Compensation Fund by way of security for such loan:

Provided that the aggregate sum owing at any one time in respect of any such loan or loans shall not exceed such limit as may be prescribed in regulations.

47 Audit of Compensation Fund

The accounts of the Compensation Fund shall be audited at least once in each year by a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] and appointed by the Council.

48 Expenditure from Compensation Fund

Subject to this Act, there shall be paid from the Compensation Fund all or any of the following—

- (a) any costs, charges and expenses incurred in establishing, maintaining, administering and applying the Compensation Fund;
- (b) any grant made under section *thirty-nine*;
- (c) any costs, charges and expenses incurred by the Council in an inquiry for the purposes of this Part;
- (d) premiums on any insurance effected on behalf of the Compensation Fund;
- (e) moneys repayable under any loan effected for the purposes of the Compensation Fund, together with any interest thereon;
- (f) payments in respect of any other matter approved by the Minister.

49 Fidelity cover

(1) If at any time the moneys in the Compensation Fund fall below a level that the Council considers to be sufficient for the purposes of the Compensation Fund, the Council shall inform the Minister in writing of that fact and the Minister may, by notice in the *Gazette*, declare that no person shall, after three months from the date specified in the notice, practise as an estate agent unless he is in possession of—

- (a) a valid fidelity bond in the form prescribed in rules; or
- (b) a valid fidelity insurance policy issued by a person approved by the Council;

for such amount as may be specified in the notice.

(2) The Minister shall revoke any notice in terms of subsection (1) if at any time after its publication the Council informs him in writing that it considers the moneys in the Compensation Fund to be sufficient for the Fund's purposes.

(3) Section *forty-two* shall apply, *mutatis mutandis*, in relation to any fidelity bond or fidelity insurance policy required to be held in accordance with a notice published in terms of subsection (1).

50 Rules in respect of Compensation Fund

Rules made by the Council in terms of subsection (3) of section *seventy* may provide for the administration of the Compensation Fund and all matters incidental thereto, including—

- (a) the forms to be used and the procedure to be adopted in applications for the payments of grants in terms of section *thirty-nine*;
- (b) the payment of contributions to the Compensation Fund and surcharges on such contributions;
- (c) the classes of persons that the Council may approve for the purpose of issuing fidelity bonds and other forms of fidelity insurance required in terms of section *forty-nine*;
- (d) any other matter which, under this Part, is required or permitted to be so prescribed.

PART VIII
TRUST ACCOUNTS

51 Opening of trust accounts

(1) Every person practising as an estate agent shall open and keep separate a trust account at a commercial bank registered in terms of the Banking Act [*Chapter 24:01*] in which he shall, within six days of receiving them, deposit all moneys held or received by him on account of any person in the course of his practice as an estate agent.

(2) In addition to any trust account referred to in subsection (1), a person practising as an estate agent may open and keep a trust account bearing interest at a bank or building society or with an institution approved by the Council for the purposes of this subsection in which he may, unless otherwise instructed by the person for whom or on whose account the money is held, deposit any such moneys as are not immediately required for any purpose.

(3) Where a trust account is opened in terms of subsection (1) or (2)—

- (a) that account shall indicate that it is an account opened in terms of subsection (1) or (2), as the case may be;
- (b) any interest on the moneys deposited in that account shall be paid by the person practising as an estate agent to the Compensation Fund at such times and in such manner as may be prescribed, less such portion thereof as the Council may from time to time direct, which may be retained by the person concerned towards the costs of operating and auditing his trust accounts.

52 Books of account and audit of accounts

(1) A person who has opened a trust account shall keep proper books of account and other records in relation thereto, containing particulars and information as to—

- (a) moneys received, held or paid by him for or on account of any person; and
- (b) moneys deposited by him in the trust account; and
- (c) interest paid on moneys in the trust account.

(2) A person who has opened a trust account shall, at such times and in such form as may be prescribed—

- (a) cause the account and the books and records kept in terms of subsection (1) to be examined by person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; and
- (b) submit to the Council a report from the auditor in relation to the trust account.

(3) The Council may at any time and at its own expense appoint a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] to inspect the books of account kept by any person in terms of subsection (1) in order to ascertain that the provisions of this Act are being observed in relation thereto.

(4) An auditor appointed in terms of subsection (3) may, if it is necessary for the purposes of his inspection, make copies of, take extracts from or remove any books, records or other documents from the premises of the person whose books of account he is inspecting.

(5) An auditor appointed in terms of subsection (3) shall report to the Council in such general terms as not to disclose confidential information entrusted to the person whose books of account he has inspected.

(6) If it is found from an inspection by an auditor appointed in terms of subsection (3) that the person whose books of account were inspected has not complied with the provisions of this Act in relation to his accounts or any funds kept in or required to be paid into a trust account, the Council shall be entitled to recover the cost of the inspection from that person.

(7) Where an auditor referred to in subsection (2) or (3) finds from an inspection that a trust account of the person who is the subject of the inspection has—

- (a) a shortfall; or
- (b) not been maintained in accordance with this Act;

or that the person who is the subject of the inspection has in any way misapplied any funds or contravened this Part, the Council shall forthwith direct that an inquiry in terms of Part V be held, and section *fifty-four* shall apply, *mutatis mutandis*, in respect of such trust account.

53 Trust moneys excluded from insolvency or attachment

No amount standing to the credit of a trust account shall form part of the assets of the person required to keep it, and no such amount shall be liable attachment at the instance of any creditor of that person:

Provided that any excess remaining after payment of the claims of all persons whose moneys have or should have been deposited in the trust account shall be deemed to form part of that person's assets.

54 Control of operation of trust account

(1) In the event of—

- (a) the death or insolvency of a person practising as an estate agent; or
- (b) the assignment of his estate by a person practising as an estate agent; or

- (c) the name of a person being deleted from the Register or a person being suspended from practice as an estate agent; or
- (d) a person practising as an estate agent being declared by a court to be incapable of managing his own affairs; or
- (e) a person practising as an estate agent abandoning his practice; or
- (f) an auditor finding from an inspection that the trust account of a person practising as an estate agent has a shortfall or has not been maintained in accordance with this Act;

the Master of the High Court may, on application by the Council or by anyone having an interest in that person's trust account, appoint a *curator bonis* to control and administer that trust account with such of the prescribed rights, duties and powers as the Master may consider necessary.

(2) A person aggrieved by a decision of the Master of the High Court under subsection (1) may, within thirty days after the decision becomes known to him, appeal against that decision to the High Court, and the High Court may confirm or vary the Master's decision or give such other decision as in its opinion the Master ought to have given.

(3) Nothing contained in subsection (1) shall be construed as preventing a registered estate agent who was practising in partnership with an estate agent referred to in that subsection from continuing to operate the trust account of that partnership.

55 Bank or financial institution not deemed to know that funds are held in trust

A bank or other institution at which a person keeps a trust account shall not, by reason only of the name or style by which the account is distinguished, be deemed to have knowledge that that person is not entitled absolutely to all moneys paid or credited to the account:

Provided that nothing contained in this section shall relieve a bank or other institution from any liability or obligation under which it would be apart from this Act.

56 Limitation of set-off, etc., against trust account

Notwithstanding anything contained in section *fifty-five*, a bank or other institution at which a person keeps a trust account shall not, in respect of any liability of that person to the bank or other institution, not being a liability arising out of or in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against moneys standing to the credit of that account.

57 Saving of estate agent's rights against moneys in trust account

Nothing contained in this Part shall be construed so as to take away or affect any just claim, lien, counterclaim, right or set-off or charge of any kind which an estate agent may have under any law against or upon any moneys held or received by him on account of any person.

58 Partnership or group trust accounts

(1) Nothing contained in this Part shall be construed as preventing two or more registered estate agents who have formed a partnership for the purpose of their practice as estate agents from opening a single trust account for their partnership.

(2) Where a company and another company which is a wholly-owned subsidiary of that company, as determined in terms of section 120 of the Companies Act [*Chapter 24:03*], are both practising as estate agents—

- (a) it shall not be necessary for the subsidiary company to open and keep a separate trust account from that opened and kept by the first-mentioned company; and
- (b) if the subsidiary company does not open and keep a separate trust account, the trust account opened and kept by the first-mentioned company shall be regarded for the purposes of this Part as though it were being kept also by the subsidiary company.

(3) In the case of a company or partnership which is employing a principal in the circumstances referred to in subsection (1) of section *sixty-three*—

- (a) the management and operation of the trust account shall be under the control of that principal; and
- (b) it shall be the duty of that principal to ensure that this Part is complied with by the company or partnership:

Provided that, where the principal ceases to be employed by the company or partnership and his place is taken by another person in terms of subsection (2) of section *sixty-three*—

- (a) the management and operation of the trust account shall be placed under the control of, and the duty referred to in paragraph (b) of this subsection shall devolve upon, that other person; and
- (b) the company or partnership concerned shall, immediately on appointing such other person, notify the Council of his appointment and the fact that the trust account has been placed under his control.

59 Council may require certified balance of trust account

A bank or other institution at which a trust account is kept shall, whenever so requested by the Council, furnish the Council with a signed certificate of balance certifying the amount, if any, standing to the credit or debit of that trust account in that bank or institution as at such date or dates as may be specified by the Council.

PART IX

GENERAL

60 Offences by or in respect of unregistered persons

(1) Subject to this Act, any—

- (a) person who, not being registered, practises as an estate agent, or describes himself or allows himself to be described or holds himself out as an estate agent; or
- (b) company or partnership which, without the written permission of the Council, practises as an estate agent under any personal name which is not the name of a registered estate agent who is or was a principal, assistant or working partner of the company or partnership concerned;

shall be guilty of an offence and liable to—

(i) a fine not exceeding—

A three times the amount of any commission or remuneration paid or accruing to the convicted person in respect of any transaction which was the subject of the charge or any conduct which constituted the offence; or

B level eight;

[Subparagraph amended by section 4 of Act 22 of 2001]

whichever is the greater ; or

(ii) imprisonment for a period not exceeding one year; or

[Paragraph amended by section 4 of Act 22 of 2001]

(iii) both the fine referred to in paragraph (i) and the imprisonment referred to in paragraph (ii).

(2) Any magistrate shall have jurisdiction to impose any penalty referred to in subsection (1).

(3) A conviction for a contravention of subsection (1) shall not be a bar to a further prosecution or prosecutions for a continuance of the offence.

61 Incorporated estate agents

(1) No person shall describe himself or hold himself out or allow himself to be held out as an “incorporated estate agent” or use a name, title, addition or description or letters indicating that he is an “incorporated estate agent” unless he is a member or fellow of—

- (a) the Real Estate Institute of Zimbabwe; or
- (b) such other institute, association or organisation as may be prescribed.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level three.

[Subsection substituted by section 4 of Act 22 of 2001]

62 Persons who may perform estate agents' work without being registered

(1) For the purposes of this Act, the following persons shall not be regarded as practising as estate agents—

- (a) a person employed by the State or a local authority whilst he is working under the direction and control of a registered estate agent in the service of the State or that local authority;
- (b) a person in the *bona fide* employment of a registered estate agent whilst he is working under the direction and control of a registered estate agent who is employed full-time in that capacity;
- (c) a person in the *bona fide* employment of a company or partnership referred to in section *sixty-three* whilst he is working under the direction of a principal or an assistant referred to in paragraph (a) or (b), respectively, of subsection (1) of that section or a person taking the place of such principal or assistant, as the case may be, in terms of subsection (2) of that section, who is employed full-time in that capacity at the premises where that first-mentioned person works;
- (d) a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*] or a public accountant or auditor registered in terms of the Public Accountants and Auditors Act [*Chapter 27:12*], in the course of his practice as such;
- (e) the Corporation as defined in section 2 of the Agricultural Finance Act [*Chapter 18:02*], or any employee or agent of the Corporation whilst carrying out his official duties;

[Paragraph amended by section 29 of Act 14 of 1999]

- (f) a building society or any employee or agent of a building society, whilst carrying out his official duties;
- (g) the Sheriff or a deputy Sheriff of the High Court or a messenger or deputy messenger of a magistrates court, whilst carrying out his official duties;
- (h) an executor of a deceased estate or a trustee, liquidator or judicial manager, whilst exercising any powers conferred upon him by the law relating to deceased estates, insolvency or companies, as the case may be;
- (i) any person whilst doing an act which is regarded as constituting “practice as an estate agent” in connection with immovable property belonging to himself or his employer or which is to be purchased by himself or his employer.

(2) For the purposes of this Act, a member of the Institute of Chartered Secretaries and Administrators in Zimbabwe shall not be regarded as practising as an estate agent whilst—

- (a) bringing together or taking steps to bring together the parties to a lease or proposed lease of immovable property; or
 - (b) negotiating the terms of a lease or proposed lease of immovable property;
- in the course of his practice as such.

63 Special provisions relating to companies and partnerships

(1) Notwithstanding section *sixty*, a company or partnership may practise as or describe itself or hold itself out or allow itself to be held out as an estate agent if—

- (a) the business of the company or partnership, in so far as it relates to the practice of an estate agent, is under the direct control and management of a principal who—
 - (i) is a registered estate agent; and
 - (ii) does not act at the same time in a similar capacity for any other company or partnership or on his own behalf; and
 - (iii) is an executive director, in the case of a company, or a working partner, in the case of a partnership;

and

- (b) in every premises where the business referred to in paragraph (a) is conducted, it is conducted either personally by the principal referred to in paragraph (a) or, under that principal's direction, by an assistant who is a registered estate agent.

(2) If any principal referred to in paragraph (a) of subsection (1) ceases to be employed by the company or partnership concerned, his place may be taken by a person who is—

- (a) not a registered estate agent for a period of forty-five days; or
- (b) a registered estate agent but not an executive director, in the case of a company, or a working partner, in the case of a partnership, for a period of six months;

or such longer period, not exceeding twelve months, as the Council may for good cause permit and subject to such conditions as the Council may impose.

(3) If for any reason whatsoever any principal or assistant referred to in paragraph (a) or (b) of subsection (1) is or intends to be absent for a continuous period of forty-five days from the premises where he ordinarily works, the company or partnership concerned shall notify the Council immediately of such absence or intended absence, and subsection (2) shall apply in respect of that company or partnership as if the absentee principal or assistant had ceased to be an executive director or working partner or had ceased to be employed, as the case may be, for the period of his absence.

(4) Where a company practises as an estate agent, every principal or assistant referred to in paragraph (a) or (b) of subsection (1) or person referred to in paragraph (a) or (b) of subsection (2) who is employed by or is a director of the company shall be personally liable for any loss sustained by any person in consequence of any dishonesty or negligence on his part or on the part of any other such principal, assistant or employee in the course of the company's practice.

64 Supervision of employees

(1) Subject to subsections (2) and (3), a registered estate agent—

- (a) who employs any person who is not a registered estate agent in the work of an estate agent; or
- (b) under whose direction and control an employee referred to in paragraph (a) or (b), of subsection (1) of section *sixty-two* is working;

shall supervise the work of that employee and, if an order in terms of subsection (1) of section *thirty-two* is made in respect of that employee, the registered estate agent concerned shall be deemed to be guilty of negligence in his capacity as an estate agent unless he proves that—

- (i) he did not know of the unsuitability of the employee; or
- (ii) he took all reasonable steps to prevent the conduct of the employee;

as the case may be, in respect of which the order was made.

(2) If a registered estate agent referred to in subsection (1) dies or for any reason ceases to practise as an estate agent and it is proposed to continue the services he previously rendered to the public, his place may be taken by a person who is not a registered estate agent for such period, not exceeding twelve months, as the Council may for good cause permit and subject to such conditions as the Council may impose.

(3) If for any reason whatsoever a registered estate agent referred to in subsection (1) intends to be absent for a continuous period of forty-five days from the premises where he ordinarily works, he shall notify the Council as soon as possible before such absence, and subsection (2) shall apply as if the estate agent concerned had ceased to practise as such for the period of the absence.

65 Estimation of sale price not to constitute valuation

A registered estate agent who, in connection with a sale, proposed sale, lease or proposed lease of immovable property, gives the seller, purchaser, lessor or lessee an estimate of the price at which the property or any part of it may be sold or leased, shall not thereby be regarded as practising or carrying on business as a valuer in contravention of the Valuers Act [*Chapter 27:18*].

66 Notice of registration, order, cancellation, suspension, etc.

(1) Subject to subsection (3), the Council shall cause notice to be published in the *Gazette* and in such newspaper as the Council may determine and may give notice to all registered estate agents of—

- (a) the registration of any estate agent; or
- (b) the cancellation or suspension of any person's registration as an estate agent.

(2) Subject to subsection (3), the Council shall give notice to all registered estate agents of any order made in terms of subsection (1) of section *thirty-two*.

(3) No notice in terms of subsection (1) or (2) shall be given of any cancellation, suspension or order until the time for noting an appeal against any such cancellation, suspension or order has elapsed or, if any such appeal has been lodged, until it is withdrawn or abandoned or the cancellation, suspension or order has been confirmed on appeal or review.

67 Information to be notified to Registrar

(1) Any person practising as an estate agent shall, in accordance with subsection (2), give notice to the Registrar in writing—

- (a) of the fact that he is doing so; and
- (b) of the name or style under which such practice is being conducted; and
- (c) of the address or addresses, as the case may be, at which such practice is being conducted; and
- (d) in the case of a company, of the names and residential addresses of all directors; and
- (e) of the names and residential addresses of all registered estate agents who are directors, partners or employees of the practice and the names and residential addresses of such class of employees of the practice as may be prescribed.

(2) The notification required by subsection (1) shall be made to the Registrar within thirty days of any person commencing practice, and thereafter annually at the time when the annual registration fee payable in terms of regulations referred to in paragraph (a) of subsection (2) of section *seventy* becomes due.

(3) A person referred to in subsection (1) shall give notice to the Registrar in writing of any change in the information which has been given to the Registrar in terms of subsection (1) within fourteen days of such change.

68 Commission or remuneration not recoverable in certain cases

No commission or remuneration shall be recoverable in any court in respect of any act pertaining to the practice of an estate agent when performed by a person—

- (a) who was required in terms of this Act to be registered and who was not registered at the time; or
- (b) whose employment was prohibited in terms of this Act at the time; or
- (c) who, being a registered estate agent, was not in possession of a valid compensation fund certificate at the time.

69 Certain terms and conditions in sales of immovable property to be void

No term or condition in any contract for the sale of immovable property shall be of any effect to the extent that it purports to—

- (a) enable a person practising as an estate agent to choose which of the parties to the contract shall be liable for the payment of commission; or
- (b) bind the principal or a third party to pay commission to a person practising as an estate agent regardless of whether that person has fulfilled his mandate or not; or
- (c) create a presumption that the mandate of a person practising as an estate agent has been fulfilled on the happening of a specified event, when in fact the mandate has not been fulfilled.

70 Regulations and rules

(1) The Minister may by regulation prescribe all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the fees payable to the Council by applicants for registration, the fees payable to the Council on registration and annual fees payable to the Council by persons so long as they remain registered estate agents;
- (b) the issue of certificates and duplicate certificates of registration and the fees payable to the Council in connection therewith;

- (c) the cancellation of certificates of registration of persons who are no longer registered and the delivery of such certificates and any compensation fund certificates held by such persons to the Registrar for that purpose;
- (d) the provisional registration of persons before their applications for registration are referred to the Council and the cancellation of such registration;
- (e) the deletion from the Register of entries made in error or through fraudulent representations or concealment of material facts or in circumstances not authorised by law;
- (f) the notification to the Registrar of changes of address and prescribed particulars of registered estate agents;
- (g) the powers, rights and privileges of the Council in connection with any matter which is not the subject of an inquiry;
- (h) the method by which members shall be elected for the purposes of section *five*;
- (i) the rights, duties and powers of a curator *bonis* in the discharge of his functions in terms of this Act.
- (j) penalties for contraventions of the regulations:

Provided that no such penalty shall exceed a fine of level four or imprisonment for a period of three months or both such fine and such imprisonment.

[Paragraph inserted by section 4 of Act 22 of 2001]

- (3) Subject to subsection (5), the Council may make rules providing for—
 - (a) the rules of conduct to be observed by registered estate agents, including the acts or omissions by a registered estate agent which shall be treated as unprofessional, dishonourable or unworthy conduct or negligence;
 - (b) a minimum scale of fees to be charged by registered estate agents in their practice as such;
 - (c) the procedure to be followed by the board of examiners, the subjects to be set for examination by the board, the syllabuses for such examinations and the fees payable in connection with the sitting of such examinations.
- (4) Nothing in any rules providing for matters referred to in paragraph (a) of subsection (3) shall be construed as precluding the Council from—
 - (a) holding an inquiry into an allegation of unprofessional, dishonourable or unworthy conduct which is not an act or omission specified in those rules; and
 - (b) exercising the powers conferred upon the Council by subsection (1) of section *thirty-one* or subsection (1) of section *thirty-two* in relation to a person found guilty by the Council of such unprofessional, dishonourable or unworthy conduct as is referred to in paragraph (a); or
 - (c) exercising its discretion in terms of subsection (1) of section *twenty-nine* in deciding whether an applicant is a suitable person for registration.
- (5) Rules referred to in subsection (3) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

71 Alteration of Schedule

The Minister, with the approval of the Council, may at any time, by statutory instrument, amend the Schedule.

72

[Section repealed by section 4 of Act 22 of 2001]

73 Prosecution not to preclude other proceedings

The prosecution or conviction of any person for an offence in terms of this Act shall not be a bar to any other proceedings that may be taken against him in respect of the act or omission which formed the subject of the charge.

74 Repeal and savings

- (1) The Estate Agents Act [*Chapter 27:05*] is repealed.
- (2) Notwithstanding subsection (1)—
 - (a) the person appointed as Registrar under the repealed Act shall continue in office as Registrar as if he had been appointed in terms of section *twenty-one*;
 - (b) the register established under section 21 of the repealed Act shall be deemed to have been established under section *twenty-two* and shall be maintained as the Register for the purposes of this Act.
 - (c) every person who, immediately before the fixed date, was registered as an estate agent in terms of the repealed Act shall be deemed to have been registered in terms of this Act;
 - (d) any person who was a member of the Council immediately before the fixed date shall continue to hold office as a member, subject to this Act, for the remainder of the period for which he was elected or appointed to the Council as if he had been elected or appointed, as the case may be, in terms of this Act;

- (e) any statutory instrument or notice which, immediately before the fixed date, was in force under the repealed Act shall continue in force, *mutatis mutandis*, as if it had been made under the appropriate provision of this Act and may be amended or repealed accordingly;
- (f) any direction given or decision, order or other thing whatsoever made, done or commenced which, immediately before the fixed date, had or was capable of acquiring effect in terms of the repealed Act shall continue to have or, as the case may be, to be capable of acquiring effect as if it had been given, made, done or commenced, as the case may be, in terms of this Act.

SCHEDULE (Sections 25(2)(c) and 71)

PRACTICAL EXPERIENCE REQUIRED FOR REGISTRATION

1. (1) Employment in Zimbabwe for a period of not less than three years—
 - (a) in the office of a registered estate agent, on functions related to practice as an estate agent, including any period of employment as a property sales negotiator on commission; or
 - (b) in a valuation and estates department of the Government, a statutory body or a local authority or in any other employment acceptable to the Council that requires the performance of functions related to practice as an estate agent.
- (2) In subparagraph (a) of subparagraph (1)—
“property sales negotiator” means any person who, not being—
 - (a) a registered estate agent; or
 - (b) a person wholly employed to bring together parties to any lease of immovable property or to negotiate the terms of lease of immovable property;is employed full-time or part-time, whether on a salaried or commission basis, to negotiate sales or to interest clients or the public generally in the purchase or sale of immovable property.
2. Employment outside Zimbabwe in any occupation and for a period considered by the Council to provide substantially similar experience to that required within Zimbabwe, and at least six months’ experience in Zimbabwe in any of the occupations specified in paragraph 1.

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