

ALEXANDER & PARTNER

Ghana's real estate agency act - what you must know

The real estate sector in Ghana has proven to be very dynamic and has evolved to become a real boomer in the growing Ghanaian economy over the last few years.

In the last decade, marketing and sales in the sector has grown exponentially, due to the constantly rising housing deficit that plagues the country. According to *Broll Ghana*, an average of about 85,000 property transactions takes place in a year for both sales and rentals. A lot of structures are being put up to meet the housing deficit and these structures naturally need to be occupied.

This has seen the influx of many self-styled real estate agents, some definitely being charlatans and crooks (expectedly so), as well as some fairly well established Real estate brokers.

The Real Estate Agency Act could therefore not have come at a better time. The introduction of the Act will help streamline the operations of real estate agents and brokers for better organization and accountability and will also serve to protect the innocent person who needs property for whatever purpose.

A careful scrutiny of the Act reveals that it may be divided into 2 major parts. The first part relates to the establishment and operations of the regulating Council and Board of the real estate sector. The second part speaks to the regulations pertaining to real estate brokers and agents and their operations and activities.

This article will however concentrate on the second part of the Act which deals with the operation of real estate agents and brokers because this is the part that greatly affects the ordinary citizen and the players in the real estate market.

Licensing

The Act introduces a licensing regime which requires *only licensed* real estate brokers or agents to provide real estate agency services, perform any form of business connected with the provision of real estate agency services or engage in real estate transactions.

Any one can apply to be licensed as an agent or a broker as the case may be. The Board will grant licenses to three types of persons who apply to it.

First are persons who are valuation and estate surveyors registered by the Ghana Institute of Surveyors or lawyers licensed by the General Legal Council to practice in Ghana.

The second category are persons not resident in Ghana but are licensed real estate brokers or agents in their country of residence. The third, and probably the largest group, are any

persons not mentioned above who have passed a qualifying examination conducted by the Board. For existing practitioners at the introduction of the Act, the Council may, on the application of such persons who have practiced as insurance brokers for at least five (5) years before the coming into force of the Act, register such persons as real estate brokers or agent provided they have no criminal record and have met all tax obligations.

All applicants must have Tax Identification Numbers (TIN). The Board shall refuse the application of any person who has been convicted of an offence involving the security of the state, fraud, dishonesty or moral turpitude. Another very interesting introduction by the Act is that all of the applicants must have professional indemnity insurance cover. When applications for licenses are made to the Board the Council shall carry out background checks and criminal history checks as well as inspection of the facilities of the applicants. If the Council is satisfied with the application received, the Council will within 60 days grant the applicants a license which license shall be valid for one (1) year and is renewable. The license granted is not transferable.

Suspension and Revocation of License

The Council may suspend or revoke a license that has been issued for a number of reasons which include:

- i. Accepting cash payment for the real estate transaction.
- ii. Failing to pay out monies received on behalf of clients within a month at most
- iii. Paying or dividing commission or fees with a person who is not a licensed real estate agent or broker.
- iv. Where a company, society, association or partnership ceases to have a licensed real estate broker as its designated officer or broker, the real estate broker license of that company, society, association or partnership shall be revoked.
- v. A license will also be revoked where it is established that the license was obtained by fraud.
- vi. The license will also be revoked where an agent or broker is convicted for a serious offence.
- vii. Where a broker or agent knowingly makes fraudulent misrepresentations, acts in a dual capacity as broker and undisclosed principal in the same transaction, acts for more than one party in the same transaction without their knowledge and consent, commingling money or property of a property owner with that of theirs, failing to disclose information on a property which is the subject matter of a transaction, among other grounds.

The Real Estate Practice

The Council shall keep and maintain a register of all licensed real estate brokers and agents which shall be open for inspection and extracts of same made available to interested persons at a fee. The Council shall publish in the Gazette a list of all licensed real estate brokers and agents who are in good standing annually.

The Council shall establish and maintain a national database on all real estate transactions which shall contain the transaction records of each licensed real estate broker or agent for a period of at least five (5) years. This database shall be made available on request in writing to the Economic and Organized Crime Office (EOCO), the Financial Intelligence Centre (FIC), the Ghana Revenue Authority (GRA) and any other relevant institution.

Every licensed real estate broker or agent must maintain a place of business in Ghana and conspicuously display in the office his/her license or a certified true copy of it as well as the fees to be charged. Whenever there is a change in the place of business, notification of same must be made in writing to the Council, failure of which is a ground for suspension of license. Where a Real estate agent alone opens an office, he/she shall be affiliated to a licensed real estate broker and act for no other real estate broker.

Forms

The Council shall introduce real estate transaction forms which shall be used for real estate transactions. A transaction in which forms issued by the Council is not used is voidable. Besides the forms, the real estate broker shall prepare or caused to be prepared sales and purchase or lease agreements and give the parties involved copies.

Payment

All payments for real estate transactions shall have to go through the bank. No real estate broker or agent shall accept cash in payment for any transaction. The brokers and agents shall open and operate a separate client's account through which transactions shall be made.

Transaction Certificates

The Council has introduced a Real Estate Transaction Certificate which shall be issued to the parties at the completion of every transaction within 30 days of application. Without this transaction certificate, the Lands Commission shall not register any acquired interest arising out of a real estate transaction.

Reporting

Real estate brokers or agents shall submit quarterly reports to the Council, covering each real estate transaction undertaken by the broker or agent, in addition to their reporting obligation under the Anti-Money Laundering Act. Failure to submit the report to the Council will attract a liability of one thousand (1,000) penalty units (a penalty unit is currently GHC 12).

Books

A real estate broker or agent is required to keep books of account, records, returns and other documents containing the financial details of transactions. They must appoint an auditor in the second month of each calendar year who shall submit its report within a month after its appointment. The real estate broker or agent shall keep its records for a period of at least 5 years. Aside the books that must be kept by the real estate broker or agent, he/she must keep the details of all transactions including the names of parties, description of property involved, valuation report on each property, amount and mode of payment for property, and any other relevant information.

Offences

Any person who advertises as a real estate broker or agent without a license or engages in a real estate transaction without a license; a person with license who transfers same; any person who falsifies a document under this Act, obstructs an officer or authorized person of the Council in performing his/her duties or fails to submit transaction reports, commits an offence and is liable on summary conviction to a fine of between five thousand (5,000) and

ten thousand (10,000) penalty units or a term of imprisonment of between five (5) and ten (10) years or both the fine and term of imprisonment.

Cephas Tettey Omenyo
Alexander & Partner Ghana
co@alexander-partner.com

<https://www.alexander-partner.com>