

ASSOCIATION OF REAL ESTATE AGENTS
AREA-Uganda

Code of conduct

FOR

REAL ESTATE PRACTICE

Drafted by

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PART I

COMMENCEMENT

This regulation comes into operation on a date appointed by the Executive committee of the association.

1. Purpose of this Regulation

- (a) The purpose of this code of conduct is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work and to develop and maintain a cadre of professional Real Estate Agents.
- (b) The code of conduct achieves its purpose by:
 - (i) Regulating real estate agents of **Area-Uganda** and salespersons.
 - (ii) Raising industry standards
 - (iii) Providing accountability through a disciplinary process that is independent, transparent and effective.

2. Interpretation

In this code of conduct, unless the context otherwise requires;

"Real estate agent", hereinafter referred as agent means any person who acts for another person and at a fee, commission or other valuable consideration, or with the intention or with the expectation of upon the promise of receiving or collecting a fee, commission or other valuable consideration, does any of the following:-

Sell, exchange, purchases, rents or leases or negotiates, or offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of any real estate, or lists or offers, attempts or agrees to list any real estate, or buys or offers to buy, sells, or offers to sell or otherwise deals in opinions on real estate, or advertises or holds himself out as engaged in the business of selling, exchanging, purchasing, renting or

leasing real estate, or assists or directs in the procuring of prospects or the negotiation or completion of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, leasing or renting of any real estate.

"Real estate salesperson", hereinafter referred to as salesperson, an individual who performs any act or engages in any transaction included in the foregoing definition of an agent, except the completion of the negotiation of any agreement or transaction which results or is intended to result in the sale, exchange, purchase, renting or leasing of any real estate.

Client means a person who has given an estate agent a mandate, provided that should an estate agent have conflicting mandates in respect of a particular immovable property, the person whose mandate has first been accepted by the estate agent, is regarded as the client.

Mandate means an instruction or an authority given to and accepted by an estate agent to render an estate agency service.

Sole mandate means a mandate incorporating an undertaking on the part of the person giving the mandate, not to confer a similar mandate on another estate agent before the expiry of the determined or determinable period

Contractual document, in relation to a transaction, means a document that contains or records an agreement or a proposed agreement to enter into or effect the transaction, and includes a document that contains or records an offer that, on its acceptance, gives rise to such an agreement.

Commission includes fees charges, rewards or other remuneration whether monetary or otherwise,

Expenses mean any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent.

"Board", means the estate agency affairs board or executive committee as the case may be.

"Non-resident", shall include and deemed to apply to an individual whose principal place of abode is outside Uganda and to a company, society or partnership, organized, formed or existing under the laws of another country.

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3. Establishment of a Tribunal

- (i) There shall be a Real Estate Agents Tribunal which shall consist of six (6) persons suitable to serve as members of tribunal and whose function shall be;
 - (a) Supervise the professional conduct of agents belonging to the association,
 - (b) Provide procedures for the lodging of complaints; and
 - (c) Receive complaints relating to the conduct of real estate agents belonging to the association; and
 - (d) Investigate of its own motion or upon receiving a complaint, any act, omission, allegation, practice, or other matter which indicates unsatisfactory conduct or misconduct on the part of an association's agent, and
 - (e) Carry out any other function as shall be from time to time directed by the executive committee.
- (ii) **Disciplinary Levy**
The tribunal may from time to time impose a disciplinary levy of any amount that the tribunal thinks fit for the purpose of funding the costs arising from any proceeding of the tribunal and penalties.

- (iii) All fines imposed on a person by the Disciplinary Tribunal are payable to the Secretariat.

4. General duty to protect the public's interest.

In terms of an estate agent's general duty to members of the public and other persons or bodies,

- (i) An estate agent shall not in pursuance to the conduct of his business do or omit to do any act which is or maybe contrary to the integrity of the estate agents in general.
- (ii) An estate agent shall protect the interest of the client at all times to the best of his ability, with due regard to the interest of all other parties concerned.
- (iii) An estate agent shall not in his capacity as an estate agent, willfully or negligently fail to perform any work or duties with such degree of care and skill as might reasonably be expected of an estate agent
- (iv) An estate agent shall not through the medium of a company or third party or by using such company or third party as a front or nominee, do anything which would not be permissible for him to do if he were operating as an agent.

5. Mandates

No estate agent shall:

- (i) Offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass, undertake or offer to canvass a purchaser or lessee thereof, unless he has been given mandate to do so by the seller or the lessor of the property or his duly authorized agent.
- (ii) On behalf of a prospective purchaser or lessee, offer, purport or attempt to offer to purchase or lease any immovable property or negotiate in connection therewith or canvass or undertake to offer to canvass a seller or lessor thereof, unless he has been given mandate to do so by such prospective purchaser or lessee, as the case maybe, or his duly authorized agent.
- (iii) Accept a sole mandate which also confers upon him a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document embodying the sole mandate.
- (iv) Include or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let the said immovable property at any time after the conclusion of the said contract.

- (v) Accept any mandate or instructions for work in respect of immovable property if his interest therein would compete with his obligation towards an existing client in respect of the same immovable property without first disclosing such interest to the client in writing.
- (vi) Knowingly or negligently make a material misrepresentation concerning the likely market value or rental income of immovable property to a seller or lessor thereof, in order to obtain a mandate in respect of such property.
- (vii) Accept a mandate in respect of an immovable property if the performance of the mandate requires specialized skill or knowledge falling outside his field of competence, unless he will in performance of the mandate be assisted by a person who has the required skill or knowledge and this fact is disclosed in writing to the client.
- (viii) Accept a sole mandate to sell or let immovable property, unless he has explained in writing to the client;
 - (a) The legal implications should the client during the pendency of the sole mandate or thereafter sell or let the property without the assistance of the estate agent, or through the intervention of another estate agent: and
 - (b) What specific obligations in respect of the marketing of the property will be assumed by the estate agent in his endeavor to perform the mandate,

Provided that such explanations if contained in a standard pre-printed or typed sole mandate document, shall be in lettering not smaller than that generally used in the remainder of the document.

6. Duty to disclose.

An estate agent shall;

- (i) Convey to a purchaser or lessee or a prospective purchaser or lessee of immovable property in respect of which a mandate has been given to him to sell, let, buy or hire, all facts concerning such property as are, or should reasonably in the circumstances be, within his personal knowledge and which are or could be material to a prospective purchaser or lessee thereof;
- (ii) If he conducts his business in terms of a franchise, disclose clearly and unambiguously in all his correspondence circulars, advertisements and other written documentation, that he operates in terms of a franchise and state thereon his name, and the name of the franchisor;
- (iii) If he conducts his business under a trade name or style other than his own name, clearly disclose his full name in correspondence, circulars and other written documentation.

- (iv) Not perform or attempt to perform any mandate in respect of a particular property if a current prior mandate which conflicts with the aforesaid mandate, has been accepted by him, unless he has disclosed to the person he has given the later mandate the existence of such prior mandate.
- (v) No estate agent shall purchase directly or indirectly for himself or acquire any interest in ,or conclude a lease in respect of any immovable property of which he has a mandate, without the full knowledge and consent of the person who conferred the mandate, or sell or let his own immovable property or any immovable property in which he has any direct or indirect interest, to any prospective purchaser or lessee who has retained his services, without that purchaser or lessee having full knowledge of his ownership of interest in such immovable property.

7. Duty not to make misrepresentations or false statements or to use harmful marketing techniques.

No estate agent shall

- (i) In his capacity as an estate agent publish or cause to be published any advertisement which could cause an impression that it was published by the owner, seller or lessor of immovable property, or by a prospective purchaser or lessee of immovable property;
- (ii) Willfully or negligently, in relation to his activities as an estate agent, prepare, make or assist any other person to prepare or make any false statement, whether orally or in writing or sign a false statement in relation thereto knowing it to be false, or knowingly or recklessly prepare or maintain any false books of accounts or other records;
- (iii) Claim to be an expert or to have specialized knowledge in respect of any estate agency service if, in fact, he is not such an expert or does not have such special knowledge;
- (iv) Advertise or otherwise market immovable property in respect of which he has been given a mandate to sell or let, at a price or rental other than that agreed upon with the seller or lessor of the property;
- (v) without derogating from the generality of the foregoing;
 - (a) Willfully or negligently mislead or misrepresent in regard to any matter pertaining to the immovable property in respect of which he has a mandate;
 - (b) Use any harmful or misleading marketing technique or method to influence any person to confer upon him a mandate to render any estate agency service or to sell,

purchase, let or hire immovable property, having regard to the circumstances surrounding the transaction or proposed transaction;

- vi. Use any firm or trading name in respect of his business if such name may give rise to confusion on the part of the public in respect of the nature of the business carried on by him;
- vii. Inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from a purchaser or the seller (as the case may be), unless such offer;
 - (a) Is in writing and
 - (b) Has been signed by the offeror and
 - (c) Is in the knowledge of the estate agent concerned, a bonafide offer.
- viii. Affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let, unless;
 - (a) The seller or lessor, as the case maybe, has given his written consent to do so;
 - (b) The estate agent concerned in fact has a mandate to sell or let the property, or in fact has sold or let the property as the case maybe.

8. Duties in respect of offers and contracts

No estate agent:

- i. Who has a mandate to sell or purchase immovable property shall willfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a contract of sale in respect of such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;
- ii. Who has a mandate to sell immovable property, may present competing offers to purchase the property in such a manner as to induce the seller to accept any particular offer without regard to the advantages and/or disadvantages of each offer for the seller;

- iii. Shall amend any provision of a signed offer or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.

An estate agent shall:

- iv. Explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signing by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he is unable to do so, refer such party to a person who can do so;
- v. If he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted by the expiry date thereof, forthwith notify the offeror of such fact;
- vi. without undue delay furnish every contracting party with a copy of an agreement of sale, lease or mandate with which he is concerned as an estate agent, provided that the afore going shall also apply in respect of an offer to purchase or lease if the offeror specifically requests a copy thereof.

9. Prohibition against undue influence

No estate agent shall without good and sufficient cause, directly or indirectly, in any manner whatsoever, solicit, encourage, persuade or influence any party or potential party to a pending or a completed transaction to utilize or refrain from utilizing:

- (i) The services of any particular attorney, conveyancer or firm of attorneys;
- (ii) The services of any financial institution to members of the public in general; or
- (iii) The financial assistance offered to such party by any person.

10. Remuneration

No estate agent shall:

- (i) Demand or receive directly or indirectly any remuneration, commission, benefit or gain arising from or connected with any completed, pending or proposed contract of sale or lease which is

subject to a condition, until such time as that condition has been fulfilled;

Provided that the foregoing shall not apply if good cause exists; and the party liable for the payment of the remuneration, commission, benefit or gain has expressly consented in a written document executed independently of the contract in question, to such payment at any time, notwithstanding the fact that the said contract is subject to a condition, as the case may be; and such document contains an explanation of the implications and financial risks for such party to such payment; and such document is signed by such party and the estate agent in question;

(ii) Convey to his client or any other party to a completed or proposed transaction in which he acted or acts as an estate agent, that he is precluded by law from charging less than a particular commission or fee, or that such commission or fee is prescribed by law, the board or any institute or association of estate agents or any other body;

(iii) Introduce a prospective purchaser or lessee to any immovable property or to the seller or lessor thereof, if he knows, or has reason to believe, that such person has already been introduced to such property or the seller or lessor thereof by another estate agent and that there is a likelihood that his client may have to pay commission to such other, or to more than one, estate agent should the sale or lease be concluded through his intervention:

Provided that the foregoing shall not apply if the estate agent has informed his client of such likelihood and obtained his written consent to introduce such party to the property or the seller or lessor thereof;

(iv) Include, or cause to be included, or accept the benefit of, any clause in a mandate or in a contract of sale or lease of immovable property, providing for payment to him by such client of immovable property, of any remuneration, commission, benefit or gain arising from or connected with a contract of sale or lease, regardless of the fact whether such client is financially able to fulfill his obligations in terms of the said contract:

Provided that the foregoing shall not apply if good cause exists; and the seller or lessor has, prior to his signature of the contract or mandate (as the case may be) consented in writing in a document executed independently of the said mandate and contract, to such payment; and such document contains an explanation of the implications and financial risks for the seller or lessor of such payment; and such document is signed by both the estate agent and the seller or lessor;

- (v) Include, or cause to be included, or accept the benefit of, any clause in a contract of sale or lease of immovable property negotiated by him, entitling him to deduct from any money entrusted to him in terms of the contract, any remuneration, commission, benefit or gain arising from or connected with such contract:

Provided that the afore going shall not be so construed so as to prohibit an estate agent from making such deduction when such money is actually paid over by him to the party entitled thereto and such party is in terms of the said contract liable for the payment of such remuneration, commission, benefit or gain

11. Trust money and interest

An estate agent:

- (i) Shall not solicit or influence any person entitled to trust funds in the agent's possession or under his control to make over or
- (ii) pay to the estate agent directly or indirectly any interest on monies deposited or invested;
- (iii) Shall, before he receives any money in trust in respect of a contract of sale or lease, disclose to the parties concerned that unless they agree in writing to whom interest earned on such money must be paid, the interest shall accrue to the Estate Agency Fund;
- (iv) Shall, if any money is invested by him pursuant to an instruction by the party entitled to the interest on money held in trust by the estate agent:
 - (a) Invest such money at the best interest rate available in the circumstances at the bank or building society where he normally keeps his trust account or accounts, and
 - (b) Pay the full amount of the interest which accrued on the investment to the party entitled to such interest, or the board, as the case may be, subject to any written agreement in this regard between him and such party;
- (v) Shall not include, or cause to be included, or accept the benefit of, any clause in a contract of sale of immovable property negotiated by him, providing for payment to the seller, prior to registration of transfer of the property in the purchaser's name, of any portion of the purchase price entrusted to the estate agent by the purchaser:

Provided that the foregoing shall not apply if good cause exists; and the purchaser has prior to his signature of the contract in question, consented in writing in a document executed independently of the said contract, to such payment; and such document contains an explanation of the implications and financial risks of such payment for the purchaser; and such document is signed by both the seller and the purchaser and the estate agent in question.

12. Confidentiality

No estate agent shall, without just cause, divulge to any third party any confidential information obtained by him concerning the business affairs, trade secrets or technical methods or processes of a client or any party to a transaction in respect of which he acted as an estate agent.

13. Vicarious responsibility

Every estate agent who is the sole proprietor of an estate agency business or a partner in a partnership or a director of a company or a member of a close corporation contemplated in paragraph (b) of the definition of "estate agent" in section 1 of the Act carrying on the business of an estate agent, shall be held responsible for any contravention of or failure to comply with this code of conduct by any other partner, director, or member or by any estate agent in the service of such sole proprietorship, partnership, company or close corporation, unless he has prior to such contravention or failure to comply taken all reasonable steps to prevent the same and could not in the circumstances have prevented such contravention .or failure to comply.

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14. Penalties

A member of the association who contravenes the provisions of this code commits an offence and shall be liable to;

- (a) Cancellation of membership from the association or
- (b) Payment of a fine the amount of which shall be decided by the tribunal or
- (c) Both (a) and (b) as the case may be.

END