

# KENYA

## CONDUCTING A REAL ESTATE PRIVATE PRACTICES ASSESSMENT IN TRANSITIONAL MARKETS

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### Quantitative Analysis

1. Determine number of practitioners in the country.

*It appears that there are 250-300 registered estate agents but the most commonly quoted number in the field is approximately 1,000. Even those that are registered at one government official indicated that they came in and went out of being registered depending on how the market was moving.*

2. Assess the number of companies into which these practitioners are formed. Estimate the relative size of the companies.

*It appears there are 50-75 companies in the marketplace. Of these companies, six are larger having between 10-20 estate agents in companies that have 80 employees. Another 10 to 12 companies that are medium-sized and them having between 5 and 7 estate agents and lastly, the other remaining companies to be smaller with one or two estate agents per company.*

3. Estimate the “unprofessional” practitioners (i.e., those without phones, offices or any trapping of permanence, often called “black brokers” or “muckluckers.”)

*The “black brokers” number approximately 80% of those people in practice and 20% would be considered “legitimate.” That would mean approximately 800 are illegitimate.*

4. Determine the fee or commission practice in the country. Who pays (buyer/seller)? How much? Co-brokerage?

*The commission structure varies dramatically within the market. The law suggests that the buyer pay 3% and the seller pay 2% but it is only a recommendation. The large companies will only represent one side, normally the seller, and they charge 3%-4%.*

5. Estimate the volume of business the average company does in dollar terms.

*It appears that the bulk of the work of the larger companies is in valuation and property management as core services. Estate agency income represents less than 1/3 of the normal company's income.*

6. What percent of the transactions are broker assisted?

*There is a large informal market that carries out transactions particularly in the secondary market. We were unable to get a determination as to what percentage were broker assisted.*

7. What is the incidence of home ownership by percent and by numerical count in the country?

*There are 7.7 million housing units in Kenya. In the major urban areas, only 20%-30% of those are owner occupied, the remainder is rental units. The incidence of home ownership is much higher in the rural areas.*

8. Is there adequate legal/regulatory structure to allow the business to grow? Does a "secondary sale market" exist? If so, how large and active is it?

*There is a limited secondary market for real estate in Kenya as most agencies focus on new construction and working with developers. Because of the enlarged "informal" market, more secondary product*

*is sold through this mechanism. It appears there is sufficient regulatory structure to allow the business to grow.*

9. How are the transactions completed?

- Contracts involved?

*Yes, the companies provide contracts that their own attorneys have drafted initially.*

- Legal work?

*Buyers and sellers each have their own attorneys and legal work is accomplished by those attorneys.*

- Recordation systems in place?

*Yes there is a recordation system but it is extremely clumsy and time-consuming. It is cumbersome because there is a 4% transfer tax and a re-evaluation of each parcel done by the government. It is not uncommon that to complete registration after the transaction is concluded requires approximately 6 months and is reasonably expensive.*

- Actual closings and documentation?

*Yes, the closing takes place before the recordation which again could take an additional 6 months.*

- Taxation policies

*There is a 4% transfer fee payable by the purchaser, which is unconscionable. There was a capital gains tax which has been repealed.*

- Financing involved

*Yes, financing is involved but it is expensive (14% to 15.7%) 30%-50% down-payment and amortization 5-20 years. In rare circumstances lenders will consider a 90% loan-to-value.*

10. Is there information sharing through multiple listing or other network sources?

*There is no Multiple Listing or any network sharing between and among firms.*

11. Are there real estate associations that have evolved? How many practitioners belong? What is their dues structure?

*Yes, the ISK supplies Association services to the estate agents. It seems that the main focus was on other surveying activities and valuation rather than estate agency. (See “Background” in Valuation Section Page 1.)*

12. Does any training exist in the companies or associations to enhance productivity?

*Occasional training, but by and large, the training focuses on areas of greater concern to the Institute, such as valuation, land surveying and property management.*

13. Are there forms of real estate finance?

- Costs - terms of loans

*Again mortgages can be amortized up to 20 years but more frequently in the 5-10 year range. The largest mortgage lender did 5 billion shillings in 2008 (about \$63 million) and hopes to do 9 billion (about \$112 million) in 2009. The rates again are 14% to 17 <sup>3</sup>/<sub>4</sub>%. There is a special program of 5% loans for civil servants – this is important because there are a lot of Kenyans in the civil service and they are major players in the “middle income” market.*

- Availability

*Yes, mortgages are available, but again expensive.*

- Usage by the buying public

*It appears that 30%-40% of those that are buying properties are using mortgages.*

14. Is there a “code of ethics” or standards that practitioners follow?

*None could be determined.*

## Qualitative Analysis

1. Do practitioners follow ethical practice standards? If a code of ethics exists, how well is it enforced?

*It appears that the large and medium sized companies do have some quality standards of practice. Since their practice includes not only estate agency but valuation and property management, they have a tendency to be larger and more skillful.*

2. What is the sophistication of the practice in the country?

*The large companies are relatively sophisticated. The sophistication falls off on the second and third tier companies.*

- Amount and quality of computerization  
*In every firm that we visited there were computers at every single desk. They do maintain their own data base but there is no networking with other companies nor sharing of that data base.*
- Existing training and training capacity  
*Most of this is internal within the companies. It appears that there is very little from the ISK.*
- Quality of the offices  
*The quality of the offices was average at best even in the large companies the décor was old and somewhat tattered. Knight-Frank had by far the nicest office.*
- General deportment of the agents  
*The agents observed were well-dressed and carried themselves professionally.*
- Do they have effective company policies  
*Because companies are multi-tiered, they do have rational company policies. As the quality of the companies decline the likelihood of having a company policy dissipates.*
- To what extent are contracts enforceable

*Most brokers reported that the courts are very unreliable and time-consuming. As a consequence, if there is a conflict, every attempt is made to negotiate out the problem rather than take it to court.*

- Do they have appropriate compensation structures  
*Only one firm that we discovered actually pays brokers' commissions, the rest are all paying salaries and in some instances they are salaries with a modest additional commission structure if they are highly productive. That "bonus" would be 10% to 20% of the commission received by the company. Since the amount of salaries is proprietary it is difficult to get actual salaries that they were paying.*

3. How sophisticated is their computerization (MLS's) and networking opportunities?

*There is no MLS and no networking opportunities. As a consequence, there is no sophistication here.*

4. Leading Broker Analysis

- Do they determine market share?  
*No firm had an actual count on market share. This is probably due to the fact that they don't co-report their activities with other brokers.*
- Are there broad advertising approaches?  
*Yes, especially the larger companies that have "exclusive mandates" with developers. They will advertise widely in all media including broadcast, print, magazines and signage. Some firms lay off the advertising cost to the client because they only get a 3% commission from the seller.*
- Have they developed data bases?  
*Only internally.*
- Are there any evaluation methodologies?  
*Since anyone that is registered as a valuer also does estate agency and vice versa, there is an easy interchange between the two. As a consequence, the average registered broker understands valuation methodology reasonably well.*

- What is their organizational structure?  
*For the top 10 or 12 companies, they are reasonably tiered firms based on divisions and work activities. As the organizations get smaller, they become very flat in their organizational structure.*
- Do they do commercial brokerage as well as residential?  
*Yes, the firms do not delineate between residential and commercial.*

5. Association Development

*The section under Appraisal covers the Association Development in reasonable detail.*

- How well is the industry viewed by government officials and the society in general?

*By and large members that are registered and are part of ISK are viewed as reasonably competent. Since there is at least 6 years of preparation required to get registered and be in the business, those 500-600 that are registered appear to be reasonably competent and well-respected. However, the large number of unprofessional briefcase brokers operating in the market tends to tarnish the image of the industry.*

6. What deficiencies in the practice are noted? What meaningful corrective action can or will be taken?

*It is clear that the Estate Agency (brokerage) segment of the industry is the least developed in Kenya. Compared to the valuation which has more rigorous standards of governmental enforcement and more academic preparation, Estate Agency appears to be a “step-child” to the Institute. There is no code of ethics nor is there an enforcement mechanism that would enforce a code of ethics. In addition, there is little effort made to recruit those that have not gone through a full registration process. As a consequence, there is little training for the industry. There is no sharing of information nor is there an open and transparent market. Some consideration ought to be made as to development of a Multiple Listing Service. In addition, there is*

*considerable training that can be brought to Kenya that would improve the Estate Agent's practice. The industry would profit from a brokerage office management course which would detail other means of compensation than the salaries that they are currently paying. That would allow them to grow their estate agent staffs without financially limiting the company. The practice is sophisticated enough however that when programming could be brought to Kenya coupled with a training the trainer capacity building, one would be able to take Kenyan Estate Agents and have them teach in surrounding countries quite easily.*