

CHAPTER 533

THE ESTATE AGENTS ACT

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SCHEDULE

THE ESTATE AGENTS ACT

Commencement: 9th April 1985

An Act of Parliament to provide for the registration of persons who, by way of business negotiate for or otherwise act in relation to the selling, purchasing or letting of land and buildings erected thereon; for the regulation and control of the professional conduct of such persons and for connected purposes.

1. This Act may be cited as the Estate Agents Act.

2. (1) In this Act, unless the context otherwise requires "Board" means the Estate Agents Registration Board established by section 3.

"Minister" means the Minister for the time being responsible for matters relating to land;

"Practice as an estate agent" means the doing, in connection with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or other building forming part thereof, of any of the following acts

(a) bringing together, or taking steps to bring together, a prospective vendor, lessor or lender and a prospective purchaser, lessee or borrower; or

(b) negotiating the terms of sale, mortgage, charge or letting as an intermediary between or on behalf of either of the principals; "Register," means the registrar of the Board appointed under section 6.

(2) For the purposes of this Act, a person shall be treated as being a practicing estate agent if he or he or a partnership of which he is a member. -

(a) receives payment for acts done by way of practice as an estate agent by him, or by a partner of his, or by an employee of his or of the partnership or by any person acting on his behalf, or

(b) holds himself or itself out as being prepared, in return for payment, to undertake the doing by any such person of acts by way of practice as an estate agent:

Provided that in this subsection "payment" shall not include payment limited of the reimbursement of expenses or payment of salary by an employer to an employee.

(3) Nothing in this Act shall extend to the doing of any acts which would constitute practice as an estate agent

(a) by a corporation which is incorporated directly by an Act of Parliament,

(b) by a local authority;

- (c) by an advocate in the course of his practice;
- (d) by a newspaper, magazine or other periodic publication in the course of so much of its business as relates to the publishing of advertisements on behalf of others; or
- (e) by the owner of a right or interest in an immovable property in relation to that immovable property.

PART II - ESTABLISHMENT OF THE BOARD

3. (1) There shall be established a Board to be known as the Estate Agents Registration Board which shall by that name
- (a) be a body corporate with perpetual succession and a common seal;
 - (b) Be capable of suing and being sued.
 - (c) Be capable, for and in connection with the carrying out of the purposes of this Act, of acquiring, holding and disposing of movable and immovable property.
- (2) The provisions of the Schedule shall have effect in relation to the Board.
4. The Board shall be charged with the responsibility of registering estate agents and of ensuring that the competence and conduct of practicing estate agents are of a standard sufficiently high to ensure the protection of the public, and for that purpose may exercise the powers conferred, and shall perform the duties imposed, upon the Board by the provisions of this Act.
5. No member of the Board shall be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of carrying out the responsibilities and functions of, or exercising the powers conferred upon, the Board.

PART III - THE REGISTRAR AND THE REGISTER

6. The Minister shall appoint a public officer as the registrar of the Board who shall hold and vacate his office in accordance with the terms of his appointment.
7. (1) The registrar shall keep and maintain a register in which the name of every person Accepted by the Board for registration under this Act shall be entered showing
- (a) the date of the entry in the register;
 - (b) the address of the person registered;
 - (c) the qualifications of the person; and
 - (d) Such other particulars as the Board may from time to time direct.
- (2) All changes in the particulars registered under sub-section (1) shall be entered in the register by the registrar.
- (3) The registrar shall remove from the register any name, which is ordered to be removed from the register under section 15.
8. (1) Where the name of a person is entered in the register, the registrar shall

issue to Him a certificate of registration in such form as the Board may prescribe and the certificate shall remain the property of the Board.

(2) Where the name of a person is removed from the register the Board shall give notice to that person, or if he is dead, to his legal personal representative, requiring him to surrender the certificate of registration in such form as the Board may prescribe and the certificate shall remain the property of the Board.

(3) Any person who fails to comply with the requirements of a notice given under subsection (2) within twenty-one days after the receipt by him of the notice shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

(4) A certificate of registration issued by the registrar shall be valid and shall remain in force for one year, but shall be renewable on the payment of the prescribed fee; and if the prescribed fee has been paid before the renewal date and there is no order for the name of the holder of the certificate to be removed from the register, the certificate shall remain in force until it is renewed.

9. (1) The registrar shall cause to be published in the Gazette, as soon as may be Practicable after entry in the register, the name, address and qualification of each registered estate agent and, subject to the directions of the Board, he may cause to be so published any amendment to the register.

(2) The registrar shall cause to be published in the Gazette, at the beginning of each year, a list containing the names, addresses and qualifications of all registered estate agents then remaining on the register.

10. Publication under section 9 shall be prima facie evidence that the persons named therein are registered estate agents and the deletion from the register of the name of any person notified by the publication, or the absence of the name of any person from the publication, shall be prima facie evidence that the person is not registered.

11. Any person may, during normal office hours and on payment of the prescribed fee, inspect the register and any document relating to any entry therein and may obtain from the registrar a copy or extract from the register or of or from any such document.

12. (1) In any legal proceedings a document purporting to be a copy of an extract from The register or of or from any document kept or published by the registrar, and purporting to be certified by the registrar as a true copy or extract shall be admissible as prima facie evidence of the contents of the register or document.

(2) The registrar shall not, in any legal proceedings to which he is not a party, be compelled

(a) to produce the register or any document if its contents can be proved under sub-section (1);

(b) to appear as a witness to prove any entry in the register or the matters recorded in the register of any document. Unless the court for special cause so orders.

PART IV - REGISTRATION

13. (1) Subject to this Act, a person who is a citizen of Kenya shall be entitled, on making an application to the Board in the prescribed form and on payment to the Board of the prescribed fee, to be registered under this Act and to have his name entered in the register if he is

- (a) a member of the Institution of Surveyors of Kenya; or
- (b) a corporate member of the Royal Institution of Chartered Surveyors (in the General Practice or Land Agency or Agriculture sections) and he is qualified to be or is a member of the Institution of Surveyors of Kenya; or
- (c) the holder of a degree, diploma or license from any university or college or school which is recognized for the time being by the Board; or
- (d) A person who
 - (i) is the holder of a degree, diploma or license of a university or college or school or a member of an institution the membership of which is recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training for practice as an estate agent; and
 - (ii) has had, to the satisfaction of the Board, practical post-qualification experience in such practice of not less than two years of which not less than six months has been in Kenya; or
- (e) a person who is not qualified under paragraphs (a), (b), (c) or (d) but is of good character and satisfies the Board that he has not been convicted (whether in Kenya or elsewhere) of an offence involving fraud or dishonesty.

(2) Notwithstanding the fact that he has sufficient qualifications under subsection (1), the Board may require an applicant for registration as an estate agent under this Act to satisfy it that his professional and general conduct has been such that, in the opinion of the Board, he is a fit and proper person to be registered under this Act and the Board may direct the registrar to postpone the registration of an applicant until it is so satisfied.

14. (1) Upon application being made to the Board in the prescribed form by a person claiming to be qualified for registration under section 13 and upon payment of the prescribed fee the Board shall consider the application, and, if it is satisfied that the person is so qualified, it shall accept that person for registration and shall direct the registrar to enter his name on the register.

(2) The consideration of an application under this section shall be undertaken by the Board and shall not be delegated to any committee of the Board.

15. (1) The Board may, at any time after being satisfied that a registered person has

- a) Died; or
- b) failed to pay his renewal or registration fee, or
- c) requested his name to be removed from the register; or
- d) been found by the Board to be guilty of any act or omission contrary to the public interest or misconduct as described in section 21 or section 22;

- e) been convicted of an offence under this Act;
- f) had his name entered in the register by mistake or by reasons of false or misleading information; or
- g) had his qualification under section 13 withdrawn or cancelled by the body through which it was acquired or by which it was awarded; or
- h) Been adjudged bankrupt, direct that the name of that person be removed from the register.

(2) Except in the circumstances specified in subsection

(3) (a), the removal of a person's name from the register shall be notified by the registrar To the registered person by a registered letter addressed to the address appearing in the register against his name.

(4) Registrar shall cause to be published in the Gazette, as soon as may be practicable after the removal of the name under this section, the name, address and qualification of any person whose name is ordered to be removed from the register under subsection (1).

16. (1) Where the name of any person has been removed from the register under section 15, the name of that person shall not again be entered on the register except on the direction of the Board.

(2) Where the name of any person has been removed from the register or the registration of any person has been suspended under section 24, the Board may, either of its own motion or on the application of any person made in the prescribed form, and in either case after holding such inquiry as the Board considers necessary, direct that

- (a) the removal from the register be confirmed; or
- (b) the name of that person be restored on the register; or
- (c) The suspension of the effect of registration of that person is terminated.
- (3) A direction given by the Board under subsection (2) may include provision for the date upon which restoration on the register or the termination of a suspension of the effect of registration shall take effect and the payment by the person concerned of such fee as the Board may prescribe.

17 (1) A person aggrieved by a decision of the Board

- (a) refusing to register his name; or
- (b) removing his name from the register; or
- (c) suspending his registration under this Act; or
- (d) refusing to restore his name on the register,

May within twenty-eight days of receiving the written decision of the Board appeal to the Minister against the decision of the Board.

(2) Minister may, on consideration of an appeal made under subsection (1), make such order as he deems proper and the order shall be final.

PART V - RESTRICTION ON PRACTICE

18. (1) After the expiration of six months from the commencement of this Act or such further period as the Minister may, by notice in the Gazette, allow either generally or in respect of any particular person or class of persons

(a) no individual shall practice as an estate agent unless he is a registered estate agent,

(b) no partnership shall practice as estate agents unless all the partners whose activities include the doing of acts by way of such practice are registered estate agents,

(c) No body corporate shall practice as an estate agent unless all the directors thereof whose duties include the doing of acts by way of such practice are registered estate agents.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings to imprisonment for a term not exceeding two years or to both.

19. Notwithstanding any other provision of this Act, where a person ceases to carry on a lawful practice as an estate agent by reason of his death or insolvency, or by reason of having been adjudicated as being of unsound mind, the practice may be carried on for the purpose of winding up or disposing of the practice by any person authorized by law to deal with the property of that person for a period not exceeding twelve months from the date of death or commencement of the disability.

PART VI - REGULATION OF PRACTICE

20. (1) The Board shall, with the approval of the Minister, publish a statement specifying acts or omissions which, if done or made by a practicing estate agent in his capacity as such would, in the opinion of the Board, be contrary to the public interest or amount to professional misconduct by the person so practicing.

(2) The statement published under this section

(a) shall serve as a guide to practicing estate agents but the mentioning or failure to mention in it of any particular act or omission shall not be taken as conclusive;

(b) May at any time be amended or replaced in like manner as it is made.

21. (1) The Minister may, after consultation with the Board, make rules

(a) prescribing the charges which may be made for services rendered by way of practice as an estate agent;

(b) relating to the keeping of accounts by practicing estate agents and to the opening of separate bank accounts for money held on behalf of clients;

(c) setting out the occasions on which a practicing estate agent is required to account for interest on the money so held and the manner of such accounting;

(d) providing for the methods, whether by check by accountants or auditors or otherwise, by which it can be ascertained that the rules are being complied with

by practicing estate agents;

(e) providing for the conduct of the business of the Board and the procedure to be followed by the Board at an inquiry under this Act;

(f) prescribing anything which may be prescribed under this Act, And may in like manner make such other rules for the regulation of practice as an estate agent as he may consider necessary.

(2) Notwithstanding any other provision of this Act, the breach by a practicing estate agent of any rules made under subsection (1) (a) to (c) (inclusive) shall constitute professional misconduct by that estate agent.

(3) The Minister may, by notice in the Gazette, amend the Schedule.

22. (1) An inquiry into any act or omission contrary to public interest or the Professional misconduct of a registered estate agent may be instituted by the Board either on its own initiative or upon receipt of a written complaint addressed to the Board by or on behalf of any other person alleging such act, omission or professional misconduct against the estate agent.

(2) Where the Board is of the opinion that an inquiry may be instituted it shall as soon as practicable proceed to hold the inquiry.

23. If a registered estate agent is convicted of an offence under this Act or is after due inquiry found to have been guilty of an act or omission contrary to the public interest or amounting to professional misconduct the Board may

(a) direct that during such period as the Board may specify, his registration under this Act shall be suspended,

(b) caution the person and may also order that such caution shall be entered on the register;

(c) impose a fine not exceeding five thousand shillings upon that person;

(d) Order that the name of the person shall be deleted from the register.

PART VII MISCELLANEOUS PROVISIONS

24. Any person who

(a) fraudulently makes or causes or permits to be made any false or incorrect entry in the register or any copy thereof, or

(b) fraudulently procures or attempts to procure the entry in the register of any name or other particulars whether on his own behalf or on behalf of any other person; or

(c) Knowingly and willfully makes any statement, oral or written, which is false in any material particular or which is misleading with a view to gaining any advantage or privilege under this Act, whether for himself or for any other person, shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding three years or to both.

25. Where an offence under this Act is committed by a body corporate with the consent or connivance of, or is attributable to any neglect on the part of, any

director, secretary or other similar officer of the body corporate, or any person purporting to act as any such officer, the director or that other person shall be guilty of the like offence and be punishable accordingly.

26. The Minister may, with the consent of the Treasury, out of moneys provided by Parliament

(a) make to the Board such grants as may be necessary to enable it to discharge its functions under this Act;

(b) pay remuneration and travelling and other allowances to the members of the Board other than members who are public officers in receipt of a salary;

(c) make such other payments as may be necessary to give effect to the provisions of this Act.

SCHEDULE

THE ESTATE AGENTS REGISTRATION BOARD

1. The Board shall consist of nine members appointed by the Minister as follows

(a) a chairman who shall be a member of the Institution of Surveyors of Kenya;

(b) two public officers who are members of the Institution of Surveyors of Kenya appointed by the Minister.

(c) two persons who are members of the Institution of Surveyors of Kenya appointed by the Minister from the names of persons recommended by the Institution of Surveyors of Kenya and who are in private practice;

(d) three persons appointed to represent the general public;

(e) one person who shall be an advocate appointed to represent the legal profession nominated by the Attorney-General.

2. (1) The office of a member appointed under paragraph (1) shall become vacant

(a) in the case of members appointed under paragraph 1(c) or (d) if such member ceases for any reason to be a registered estate agent;

(b) if he resigns his office by written notice addressed to the Minister;

(c) At the end of three years from the date of appointment. (2) Any casual vacancy shall be filled by appointment as it arises.

3. (1) The Minister shall appoint the chairman under paragraph 1 (a) and the Board shall Elect one of its members, other than the chairman, to be the vice-chairman of the Board.

(2) The chairman and vice-chairman shall hold office for a period of three years from the date of appointment or election. As the case may be, unless they cease to be members of the Board before the expiration of that period.

4. (1) The Chairman of the Board shall convene an ordinary meeting of the Board whenever it may be necessary or expedient, but at least once in every three months, for the transaction of its business and shall appoint a suitable time, place and date for holding the meeting.

(2) The chairman of the Board may convene a special meeting of the Board at any time, and shall cause a special meeting of the Board to be held within twenty days after receiving a written request to do so signed by not less than three members of the Board.

5. (1) The chairman or vice-chairman and three other members of the Board shall constitute a quorum at any meeting of the Board.

(2) All acts matters and things authorized to be done by the Board shall be decided by resolution at a meeting of the Board at which a quorum is present.

(3) A decision of the majority of the members present and voting at a meeting of the Board shall be deemed to be a decision of the Board.

(4) Every member of the Board shall have one vote, and in the event of an equality of Votes the person presiding shall have a second or casting vote in addition to his deliberative vote.

6. (1) Minutes in proper form of each meeting of the Board shall be kept, and shall be confirmed by the Board at the next meeting and signed by the person presiding at the meeting.

(2) The registrar shall be the secretary to the Board.

7. Subject to this Schedule, the Board may regulate its own procedure.

8. The seal of the Board shall not be affixed to any instrument except in the presence of The chairman of the vice-chairman and one other member of the Board.

LEGAL NOTICE NO. 34

THE ESTATE AGENTS ACT (Cap.533)

IN EXERCISE of the powers conferred by section 22 of the Estate Agents Act, the Minister for Lands and Settlement, after consultation with the Board, make the following Rules.

THE ESTATE AGENTS (DEPOSIT INTEREST) RULES, 1987

1. These Rules may be cited as the Estate Agents (Deposit Interest Rules, 1987).

2. In the Rules "separate designated account" means a deposit account in the name of the estate agent or his company in title of which the word "Client" appears as to the identity of the client or matter concerned.

3. Except as provided by these Rules an estate agent is not liable by virtue of the relation between the estate agent and the client to account to the client for the interest received by the estate agent on moneys deposited in a client account being moneys received or held for or on account of his clients generally.

4. When an estate agent holds or receives for or on account of a client money on which, having regard to all circumstances (including the amount and the length of time for which the money is likely to be held), interest ought in fairness to the

client to be earned for him, the investment of that money.

5. An estate agent is liable to account to a client for interest received on moneys deposited in a separate designated account.

Made on the 18th December, 1986

E.T.MWAMUNGA, Minister for Lands and Settlement

LEGAL NOTICE NO. 35

THE ESTATE AGENTS ACT (Cap.533)

IN EXERCISE of the powers conferred by section 22 of the Estate Agents Act, the Minister for Lands and Settlement, after consultation with the Board, makes following Rules: -

THE ESTATE AGENTS (DISCIPLINARY PROCEEDINGS) (PROCEDURE) RULES, 1987

PART 1 - PRELIMINARY

1. These Rules may be cited as the Estate Agents (Disciplinary Proceedings) (Procedure) Rules. 1987.

2. In these Rules, unless the context otherwise requires

"Complaint" means a case where it is alleged that a practicing estate agent has been convicted of an offence under the Act or under the Penal Code;

"Charge" means a charge or charges to be specified in a notice of inquiry;

"Complainant" means a person who makes a complaint to the Board; "Board's advocate" means an advocate appointed by the Board to assist in conducting an inquiry under these Rules;

"Professional misconduct" means serious misconduct judged by the statement published by the Board pursuant to section 21 (1) of the Act and all rules, which govern the practice of estate agency: "Inquiry" means a disciplinary inquiry into the conduct of an estate agent held by the Board sitting as a tribunal

"Notice of inquiry" means a written and signed notice from the Board which is sent to an estate agent specifying, in the form of a charge or charges, matters upon which the inquiry is to be held, and stating the date, time and place where the inquiry is to be held

PART II

PROCEEDINGS RELATING TO CONVICTION AND PROFESSIONAL MISCONDUCT

3. (1) There is hereby established a committee to be known as the Preliminary

Inquiry Committee which shall consist of the five members elected from the members of the Board.

(2) The Chairman of the Board shall also be the chairman of the Preliminary Inquiry Committee and shall convene the meeting of the Committee as and when necessary.

4. (1) The functions of the Preliminary Inquiry Committee shall be to receive and review complaints against an estate agent and to determine and report to the Board whether an inquiry should be held pursuant to sections 18(2) and 23(1) of the Act in respect of the estate agent.

(2) Subject to paragraph (1), the Preliminary Inquiry Committee after considering the complaint and making such inquiries with respect thereto as it may think fit, shall

a) if of the opinion that the complaint does not warrant reference to the Board for inquiry, reject the complaint and so inform the Board.

b) If of the opinion that the complaint does warrant reference to the Board, cause it to be referred to the Board, together with its findings and recommendations.

(3) For the purposes of enabling the Preliminary Inquiry Committee to carry out its functions under these Rules, the committee may correspond with persons, including the estate agents to whom the complaint relates, as it thinks fit and may peruse or inspect all documents relating to the complaint.

(4) (1) Whenever the chairman from a body or person receives a complaint or information and it appears to him that -

(a) an estate agent has been convicted of an offence under this Act or under the Penal Code; or

(b) that a question arises whether the conduct of an estate agent constitutes serious professional misconduct.

The chairman shall submit the matter to the Preliminary Inquiry Committee.

(2) When the Preliminary Inquiry Committee refers the complaint to the Board under rule 4 (2)(b), the chairman shall send to the estate agent whom the complaint relates a notice of inquiry which shall

(a) be in Form IV in the First Schedule to the Estate Agents (Form and Fees) Rules and shall, unless the Board otherwise directs, require the party to whom it is addressed to furnish the chairman and every other party a notice of all the documents which he intends to rely on at the hearing:

(b) set out, in general terms, the charge or charges of professional misconduct made against the estate agent, and

(c) specify the date and time and the place at which the inquiry is proposed to be held.

3) The notice of inquiry shall be sent to the estate agent by registered post Addressed to his last known address as notified to the registrar or by any other Means approved by the Board.

4) In any case where there is a complaint, a copy of the notice of inquiry shall be Sent to him.

5. (1)in cases relating to conviction, where the estate agent appears, the following Order of proceedings shall be observed as respect proof of convictions alleged In the charge or charges.

a) The complainant or if a complainant does not appear or there is no complainant, the Board's advocate shall adduce evident of the conviction and produce before the Board a certified copy of the court proceedings, which resulted in the conviction of the estate agent.

b) If, as regards a conviction, no evidence is adduced, the chairman shall thereupon announce that the conviction has not been approved.

c) the chairman shall ask the estate agent whether he admits each previous conviction of which evidence is so adduced.

d) if the estate agent does not admit all the convictions, he may, if he intends to adduce other oral evidence as respects any conviction which he does not admit either in person or by his advocate, open his case;

e) the estate agent or his advocate, as the case may be, may adduce evidence in respect of any conviction which he does not admit;

f) at the close of the evidence for the estate agent, the component or the Board's advocate, as the case may be, may with the leave of the Board, adduce evidence to rebut any evidence adduced by the estate agent;

g) The estate agent or his advocate may then address the Board and close his case.

(2) Where the estate agent does not appear and the Board has decided to proceed with the inquiry, subparagraphs (a) and (b) of paragraph (1) shall apply but the remainder of that paragraph shall not apply.

(3) On the conclusion of the proceedings under this rule the Board shall consider every conviction alleged in the charge or charges other than a conviction which has been admitted by the estate agent, and shall determine whether it has been proved and the chairman shall then announce its determination in such terms as the board may approve.

6) (1) In all cases relating to conduct where the estate agent appears the following order of proceedings shall apply.

a) If the complainant appears, he shall open the case against the estate agent or where the complainant does not appear or there is no complainant, the Board's advocate shall present all the facts on which the complainant or information is based;

b) the complainant or the Board's advocate , as the case may be, may address the Board and adduce evidence of the facts alleged in the charge or charges.

c) If as respects any charge no evidence is adduced, the Board shall announce a finding that the estate agent is not guilty of infamous or disgraceful conduct in a professional respect as alleged in the charge or charges:

d) at the close of the case against him the estate agent or his advocate may make either one or both of the following submissions as respects any charge which remains outstanding namely -

(i) that no sufficient evidence has been adduced upon which the Board could find that the facts alleged have been proved;

(ii) that the facts of which evidence has been adduced are insufficient to support a finding of infamous or disgraceful conduct in a professional respect;

And where any such submission is made, the complainant or the Board's advocate, as the case may be, may answer the submission and the estate agent or his advocate may reply thereto;

e) if a submission is made under paragraph (d), the Board shall consider and determine whether the submission should be upheld and if the Board determines to uphold such a submission as regards any charge, it shall record, and the chairman shall announce, that the estate agent is not guilty of infamous or disgraceful conduct in a professional respect in respect of the matters to which that charge relates;

f) the estate agent may then, if he intends to adduce oral evidence in addition to his own evidence, open his case upon any charge which remains outstanding

g) at the close of the evidence for the estate agent the complainant or the Board's advocate, as the case may be, may with leave of the Board, adduce evidence to rebut any evidence adduced by the estate agent;

h) the complainant, or the Board's advocate, as the case may be, may then address the Board and close his case.

(2) The estate agent or his advocate may then address the Board and close his case.

(3) Where in a case relating to conduct the estate agent does not appear and the Board decides to proceed with the inquiry only sub-paragraphs (a), (b) and (c) of paragraph (1) shall apply.

(4) On conclusion of the proceedings under paragraph (1) the Board shall consider and determine, as respects each charge which remains outstanding which, if any, of the facts alleged in the charge has been proved to their satisfaction.

(5) If under paragraph (3) the Board decides, as regards any charge, either that none of the facts alleged in the charge have been proved would be insufficient to support a finding of misconduct in a professional respect, the Board shall record a finding that the estate agent as the case may be, is not guilty of the misconduct alleged in the charge or charges.

(6) The chairman shall announce determination of the finding of the Board after the procedure prescribed under this rule has been complied with.

7) (1) Where in a case relating to conduct or conviction the estate agent admits at the opening of the inquiry all the facts alleged in any charge or charges against him, the chairman shall thereupon announce that the facts alleged in such charge

or charges have been proved.

(2) The complainant or the Board's advocate, as the case may be, shall address the Board and may adduce evidence as to the circumstance leading up to the charge or charges and the character and previous history of the estate agent.

(3) The Board shall then invite the estate agent or his advocate to address it by way of mitigation.

(4) The Board shall consider and determine the charge or charges and announce their determination or finding.

8) Where the estate agent is alleged to have been convicted of any offence under this Act or the Penal Code and also to have been guilty of misconduct in a professional respect, the Board shall first deal with the charge or charges relating to conviction before dealing with charge or charges relating to conduct; and in both cases the provisions of rules 6 and 7 shall apply respectively).

9) (1) Nothing in these Rules shall be construed as preventing an inquiry being held jointly into charges against two or more estate agents.

PART III

PROCEEDINGS RELATING TO APPLICATIONS FOR RESTORATION

10) (1) An application for restoration of the name of estate agent on the register or the restoration of a license after removal or cancellation pursuant to sections 16 and 23 of the Act shall be in Form V set out in the First Schedule, the Estate Agents (Forms and Fees) Rules

(2) All applications for restoration of the name on the register shall be accompanied by a certificate of identity and good character in Form V set out in the Schedule to the Estate Agents (Forms and fees) Rules and signed by an estate agent of at least ten years standing.

(3) The estate agent making an application under paragraph (1) shall give the names of three referees, two of whom shall be estate agents of at least ten years experience and of good repute and social status, to whom the Board can send a request for information about the character, habits and conduct of the applicant during the period of suspension.

(4) At the hearing of the application the following procedure shall be followed.

(a) the registrar shall state to the Board the circumstances in which the applicant's name was removed or erased from the register and shall adduce evidence as to the conduct of the estate agent since that time;

(b) the chairman shall then invite the applicant to address the Board if he so wishes, and adduce evidence as to his conduct since his name was erased from the register;

(c) the Board may, if it thinks fit, receive oral or written observation on the applicant from any body or person whose complaint resulted in the applicant's name being erased from the register.

(5) At the close of the proceedings under this rule the Board shall record and the

chairman shall pronounce the finding or determination of the Board.

(6) Subject to the provision of this rule, the proceedings of the Board in connection with applications for restoration of the name of an estate agent on the register, shall be such as the Board may determine.

11) The Board may at any state during an inquiry under these Rules adjourn its proceedings as it thinks fit.

12) The proceedings of the Board shall be held in camera.

13) (1) The Board may issue a summons, in Form 1 set out in the Schedule to any person to attend as a witness or to produce any documents.

(2) Any person who fails when summoned by the Board to attend as a witness or to produce any books or documents which he is required to produce shall be guilty of an offence and liable to a fine of two thousand shillings or to imprisonment for one month or to both such fine and imprisonment.

14) Any party to the proceedings shall, on application, be furnished with a transcript of the shorthand notes or a certified copy of the proceedings or determination or finding of the Board on the payment of a fee for every page of the shorthand notes or certified proceedings or determination or finding of the Board.

15) Meetings of the Board for purposes of an inquiry under these rules, except in so far as the chairman may otherwise direct, shall be held at the offices of the Board and may be held as regularly as circumstances require.

16) The service of a summons or documents shall be by post or by any means approved by the Board as being the most convenient in the circumstances.

17) (1) For the purpose of these Rules, the Board may receive oral, documentary or other evidence of any fact or matter, which appears to it to be relevant to the inquiry into any matter before it.

(2) The Board may, if satisfied that the interests of justice will not be prejudiced, admit in evidence without strict proof, copies of documents which are themselves admissible, maps, plans, recorded tapes, photographs, certificates or conviction and sentence, certificates of birth and marriage and death, the records including records of the Lands and Settlement and other Government Ministries, records of estate agents and any other relevant sources, the notes and minutes of proceedings before the Board and before other tribunals and courts, and the Board may take note without strict proof thereof of the professional qualifications, the address and the identity of the estate agent.

LEGAL NOTICE No. 36

THE ESTATE AGENTS ACT (Cap.533)

IN EXERCISE of the powers conferred by section 22 (1) (a) of the estate Agents Acts,

The Minister for Lands and Settlement, after consultation with the Board, makes the Following rules: -

THE ESTATE AGENTS (REMUNERATION) RULES, 1987

1. These rules may be cited as the Estate Agents (Remuneration) Rules, 1987.
2. The estate agents remuneration shall be calculated in accordance with the scale of fees set out in the schedule.

SCHEDULE

SCALE OF FEES

Fees	Except where otherwise stated, the fees and commission set Out in the scales are exclusive of disbursements, plans, Copies of documents, lithography, travelling and other Expenses.
Fees payable after withdrawal	In the event of non-scale at the withdrawal of instructions after the agent has incurred various expenses, a fee, the Amount of which is a percentage of arrangement is payable.
Where scale is effected after withdrawal	If a sale of property, whether arranged or not, after effected after is within three months withdrawal of instructions but to a party originally introduced by the agent, commission on price Realized shall be payable to the agent on the appropriate scale, in which any fee for non-scale shall merge in the then payable.
Scale of letting Commission	A sale or letting commission becomes payable on the appropriate scale in the event of an agent being instrumental in introducing a party, able and willing to proceed to Transaction or any terms authorized, by the vendor or lessor for acceptance.
Special fees	A special fee or commission may be agreed for sole agency instructions in numerous transactions in one estate or Building.
Sole estate agency	Sole estate agency entitle the appointed agent to commission on the down scale for all or sole agency or at any time Effected as the result of introductions made recorded during the sole agency. A sole agency shall apply for a period of three months unless agreement is made for a definite period.
Disputes	In the event of a dispute the Board will determine the issue Having regard to the procedures laid down under the Act.

SCALE 1

SALES

On the first Sh.30, 000/-...5%

On the next Sh.600, 000/-... 2.5% On the residue... 1.25%

Plus 5% on any payment for goodwill, chattel, fixtures, fittings and stock etc.

NOTES

(a) In cases where two agents are co-operating at the request of the owner, the commission shall be at the rate of scale and a half.

(b) When instructions are given for a sale by auction the expenses payable by the client include in addition to other disbursements the costs of advertising, printing, bill posting, preparation of catalogues, lotting, posers and removal of goods.

When instructions are given for a sale by private treaty it is a matter for arrangement with the client at the time how the expenses, including any advertising, should be borne.

SCALE IA

ON SALES OF PLANT AND MACHINERY Five per cent on the amount realized.

SCALE 1B

PURCHASES

For seeking and negotiating the purchase of a property: On the first Sh.30,000/-...5%

On the next Sh.600,000/-...1.25% On the residue ...0.625% (Minimum fees Sh.2,500)

SCALE 1C

SALES AND PURCHASES EFFECTED BY A TRANSFER OF SHARES

If a transaction, which is essentially a sale or purchase of immovable property or of any House, shop or of House, shop or other building forming part thereof, if effected by a Transfer of shares in a company, the commission shall be ascertained by applying the Immediately foregoing scales or purchase (as may be appropriate) undiminished by any Loan or other charges secure upon the property or the company's assets.

SCALE 2

LETTINGS

RESIDENTIAL

Five per cent of the annual rent for any letting for up to one year and one month's rent for more than a year.

COMMERCIAL

Sole Agency 7.5% General Agency 10%

Fees by arrangement if management services involved but not less than half scale.

NOTES

(a) Should the rent be a progressive one, the commission is based on the average rent for the period up to the first possible break of tenancy.

(b) When a property, which an agent has been instructed to let or sell with an

option to purchase and the tenant afterwards exercises his option, the commission for sell less the commission already paid on the letting, will them become payable.

(c) For the purposes of these scales "rent" means (except where otherwise expressly stated) the rent reserved by the letting plus any payment (such as a service charge) to the landlord for which the tenant is made responsible under the letting irrespective of the purpose to which the payment is sub.

(d) In cases where two agents are co-operating at the request of the owner, the commission shall be at the rate of scale and a half.

SCALE 3

For negotiating a tenancy or lease when acting on behalf of the tenant or lessee.

For seeking and negotiating the tenancy or lease of a property to suit a client's requirements:

The fees payable for a letting of the same property under the appropriate letting scale.

For abortive work under this part of this scale a fee to be fixed by arrangement.

For negotiating the tenancy or lease of a particular property named by the client:

Three quarters of the fee payable for a letting of the same property under the appropriate scale.

When no tenancy or lease is effected, the scale for rental opinions to be charged at half of one month's rent but not less than a minimum of Kshs. 500.

NOTE

The fees prescribed by this scale include advice on rent if required but not a structural Survey.

SCALE 4

MANAGEMENT

For the management of property, including the collection of rents.

RESIDENTIAL

7.5% of the Gross Rents or less according to the circumstances but not less than 3.5%.

COMMERCIAL

5% gross rents or by arrangements but not less than 2.5%. NOTE

"Gross Rental" means the rents reserved by the leases or lettings plus any incidental Receipts collected and/or accounted for in the course of management.

PROJECT MANAGEMENT

Fees by arrangement.

SCALE 5

MORTGAGES

For negotiating the terms of mortgages or charges as an intermediary between or on Behalf of either of the principals.

(a) Where this leads to a sale in which the agent is entitled to commission. No fee payable.

(b) Where agent... to fund and... mortgage in case where sale is not handled by the... Fees to be not more than 0.25% of the capital value of the mortgage.

NB. Estate Agents fees are now Vatable so the prevailing VAT rate should be Applied.

APPENDIX TO ESTATE AGENTS FEES

The current estate agent's fees were reviewed in 1987 and are therefore Outdated in view of the changes in the economy and property market. The I. S.K Council made recommendations on 12/08/99 to the Registrar of Estate Agents Registration Board (EARB). Response on these recommendations is expected **Statute Law**

Statute Law (Miscellaneous Amendments) (No. 2) 1990

The Estate Agents Act (Cap. 5333) s. 8A

Insert the words "in his professional capacity" immediately after the words" to practise"

***** Appearing in section (1).

Insert the following new subsections immediately after section (5)-(6) For the purposes of this section, a person shall be deemed to practise in his Professional capacity if he engages exclusively in his profession

(i) On his own account and is entitled to receive the entire amount of all fees and charges earned for his own financial benefit.

(ii) in a partnership with others and is entitled to receive a share of the profits earned by such partnership for his own financial benefit and is liable to bear a share of any losses incurred by such partnership, but no person shall be deemed to practise in his professional capacity where he is employed

(a) by the Government or any other public body; or

(b) by any state corporation as defined in State Corporation Act, (cap 446) or

***** (c) As an employee of any person or partnership engaged in his profession where all fees earned by him in his professional capacity ensure to the benefit of the employer; notwithstanding that he is employed in his professional capacity.

(d) New Section

Insert the following new section- Licensing of dual Occupation

8B (1) Where any person to whom section 8A applies carries on more than one professional occupation at the same time such person shall elect in writing which of such occupations shall be deemed to be his primary occupation.

(2) A person to whom subsection (1) applies shall only be required to obtain an annual license in respect of his primary occupation to the intent that such person shall obtain more than one annual license in any one year. s.13 (1)

*****Delete paragraph (a) and insert the following:

(a) A full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors.

Delete the expression "a member of the Institution of Surveyors of Kenya" appearing in paragraph b) and insert " a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors".

s. 17 Repeal and insert the following new section -

Appeals. 17. Any person aggrieved by a decision of the Board - a) refusing to register his name; or

b) removing his name from register; or

c) suspending his registration under this Act; or

d) refusing to restore his name on the register, may, within twentyeight days of receiving the written decision of the Board, appeal to the High Court against the decision of the Board and in the case of that appeal -

(i) the appeal shall be treated as an appeal to the High Court from a subordinate court

(ii) exercising civil jurisdiction; The High Court may give such decision as it deems fit; and the decision of the High Court shall be final. Schedule - Paragraph 1.

Delete subparagraphs (a), (b) and (c) and insert the following:

(a) A chairman, who shall be a full member of any of the following chapters of the Institution of Surveyors of Kenya namely Valuation Surveyors and Land Management;

(b) Two public officers who are full members of any of the chapters of the Institution of Surveyors of Kenya referred to in paragraph (b); Two persons who are full members of any of the chapters of the

Institution Surveyors of Kenya referred to in paragraph (a) appointed by the Minister from the names of persons recommended by the Institution who are in private practice.

APPENDICES

The Valuation terminology

The valuation terminology used here in Kenya by the professional valuers are similar to those used by other valuers world wide who subscribe to the International Valuation Standards Committee. Institution of Surveyors of Kenya does subscribe to this.

1. Current Market Value:

The definition is that settled by the International Valuation Standards Committee (IVSC). It means the basis of all the valuation concepts discussed here below.

Definition:

The estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.

`**The estimated amount**' refers to a price expressed in terms of money (normally in the local currency) payable for the asset in an arm's -length market transaction. Market value is measured as at the date of valuation. It is the best price reasonably obtainable by the buyer. This estimate specifically excludes an estimated price inflated or deflated by special terms or circumstances such as a typical financing, sale and leaseback arrangements, special considerations or concessions granted by anyone associated with the sale, or any element of special value.

`**An asset should exchange**' refers to the fact that the value of an asset is an estimated amount rather than a predetermined or actual sale price. It is the price at which the market expects a transaction be completed on the date valuation.

`**On the date of valuation**' requires that the estimated market value is time-specific as of a given date. As markets and market conditions may change. The valuation amount will reflect the actual market-state and circumstances as of the effective valuation date, not as of either a past or future date. The variation in price that might otherwise be made in a market value transaction.

`**A willing buyer**' refers to one who is motivated, but not compelled to buy. This buyer is neither over-eager nor determined to buy at any price. This buyer is also one who purchases in accordance with the realities of the current market and with current market expectations, rather than on an imaginary or hypothetical that cannot be demonstrated or anticipated to exist.

`**A willing seller**' is neither an over-eager nor a forced seller prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing whatever price may be.

`In an arm's-length transaction' is one between parties who do not have a particular or special relationship (for example, parent and subsidiary company or landlord and tenant) which may make the price level uncharacteristic of the market or inflated because of an element of special value. The market value transaction is presumed to be between unrelated parties each acting independently.

`After proper marketing' means that the asset would be exposed to the market in the most appropriate manner to dance with the market conditions.

`Wherein the parties had each acted knowledgeably and prudently' presumes that both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the asset, its actual and potential uses and the state of the market as of the date of valuation. Each is further presumed to act for self-interest with that knowledge and prudently to seek the best price for their respective positions in the transaction. Referring to the state of the market at some later date may assess Prudence.

`And without compulsion' establishes that each party is motivated to undertake the transaction, but neither is forced or unduly coerced to complete it.

Open Market Value is the valuer's opinion of the best price that would have been obtained in the market on the date of valuation. This is, however, subject to the exclusion of any additional bid by a prospective purchaser with a special interest; not a `fair' price, or an average price or the price that the vendor thinks ought to be achieved.

Evidence of open market transactions:

Generally, open market valuations are based on evidence of open market transaction in similar property. A valuation, however, is an exercise in judgement and should represent the valuer's opinion of the price that would have been obtained if the property had been sold at the valuation date on the terms of the definition of Open Market Value. The Valuer may not be bound to follow evidence of market transactions unquestioningly. He/she takes account of trends in value and the information available to him/her, whether or not of directly comparable transactions, adjusting such evidence to reflect the OMV definition and attaching more weight to some pieces of evidence than others, according to his/her judgement do.

In a poor or falling market it is sometimes said that there are few `willing sellers', that most transactions in the market are the result of forced sales' and that prices paid in such a market are not truly representative of Open Market Value.

The art of valuation often involves subjective adjustments to evidence of transactions that are not wholly comparable together with interpretation of trends in value. A valuer must exercise skill, experience and judgement in valuing and in making an open market valuation (or a property for which it is thought there would have been a market) in absence of any direct transaction evidence.

2. The current market value for mortgage purposes:

In the past a term `mortgage value' has been loosely used which to the best of our

understanding does not represent a value per se but instead denotes a purpose. The definition of an open market value understood under these terms is a basis for use only when valuing for lending purposes presupposes a value returned with the interest of the lender anticipating a sale in the event of default in the repayment schedules or covenants. It is usually below the current open market value for the very reasons of the likely risk in default and the difficulties involved in the eventual sale of the properties held as security.

At times a value for this purposes is calculated at less than 50% of the current market value depending on the estimated degree and extent of the risks anticipated. In Kenya, real estate is governed by several intricate, sometimes un-quantifiable factors as opposed to economic sense, laws or traditions. Certain properties in the rural areas though may have open market values; that is, they can sell or can be sold. However, due to the complex land tenures and underlying traditional practices/beliefs, these properties may not in fact possess a value attribute for mortgage purposes and may be considered altogether to be irrelevant for banking purposes that is where a forced sale is envisaged.

Here valuers may recommend an open market value considering all that is said above but the actual base figure that the lenders may opt to grant their clients may be solely determined by the lenders themselves in accordance to their lending criteria.

3. The estimated market value for forced sale purposes:

Again this is defined in exactly the same way as for an open market valuation except that the vendor has imposed specific terms for the disposal of the security held. Similarly to (2) above, this is a valuation for a purpose rather than a basis considered as a pessimistic opinion. This commences on similar principles (OMV) but the value is determined from a certain margin equivalent to the estimated price at which a property may be expected to be sold at an ideal auction which derives such sale the benefits of a current market value as discussed above. The vendor (auctioneer) is determined to sell the property at a restricted time, sometimes price (reserve) regardless of the nature of the property or state of the market as per the client's (lender) instructions. The vendor determines when to sell, where to sell it, or even at times whom to sell it to (private treaty).

Here the valuer recommends an estimated price that the property should sell based on the prevailing market conditions.

4. The estimated reserve price:

Under this the other terms used but understood to imply the same include estimated realization and restricted. The concept adopted here is similar to (2&3) above except that the lender has determined the minimum price at which the property should be sold at an auction as a safe guide to auctioneers and as a yardstick for fairness for the parties involved.

In both last incidents, the valuer only estimates what may be a fair price based on the prevailing market conditions occasioned by past evidence, experience, etc.

5. Investment value:

This denotes a valuation carried out on the Open Market Valuation basis as

described above where the emphasis is on the series of incomes' that the property may generate over a period of time. This may be applied where valuation is being carried out on a commercial or residential property where the investor sole concern is the income (rent) that the property is expected to yield. This may similarly be applied while valuing cinema halls, commercial schools or colleges, etc. Where there is no likelihood of any income being generated like a 'lavish rural home' in Kenya, the investment value in terms of economics is negligible.

6. Insurance value or re-instatement cost:

The valuation for insurance purposes is predicated upon the actual cost estimate of putting up a similar/comparable development in the event of a partial or complete property loss or to the cost of restoring the same to the original condition or status. This concept disregards the open market value concepts (forces of demand and supply) but also relates to the rental compensation during the reconstruction period or the opportunity cost of hiring alternative premises. The basis is carried out on the Depreciated Current Replacement Cost (DCRC) approach discussed below.

7. Depreciated Replacement Cost:

A method of valuation which is based on an estimate of the current market value of land for its existing use plays the current gross replacement (or reproduction) costs of improvements less allowances for physical deterioration and all relevant forms of obsolescence and optimization. The result, which is non-market value but is referred to as the Depreciated Replacement cost estimate.

8. Capital cost/capital value:

Occasionally, a valuer is requested to provide a value for properties that are rarely offered in the market for sale considerations, for example public utility, unique buildings or development in rural set ups. The concept adopted here is the Gross Current Replacement Cost approach as described under 7 above.

9. General Recommendations:

In their seminar held on October 16, 1999, the valuers appreciate the banks concern on the day today valuation terminology which they have become accustomed to while receiving instructions from the banks requesting for open market, mortgage, forced sale and reserve prices.

As discussed above the basic approach in virtually all valuations that a valuer encounters the open market valuation is the basic concept from where other estimates like the estimated reserve (restricted) prices/forced sale values are based on. The valuers have therefore appealed to the banks to in future adopt the two concepts; open market value and the estimated reserve/restricted/forced sale prices while issuing instructions for valuations. The valuers will then in future provide two valuation figures in their reports as discussed here.

THE SCOPE OF A VALUER'S WORK

A professional valuer/property manager in the Kenyan context is qualified and competent to offer the following services:

1. VALUATION CONSULTANCY

A valuer may be called upon to carry out valuations of both moveable and Immovable assets or various purposes which include Sale, Purchase, Mortgage, Auction, Accounting, Insurance, House allowance, Rent determination, Stamp Duty, Rating, Reversionary Interest, wayleaves & Easements, compulsory acquisition and Damage assessment.

Valuation can be done for these purposes on: -

- a) Land
- b) Buildings
- c) Plant and machinery
- d) Motor vehicles
- e) Business ventures
- f) Petrol stations
- g) Furniture & Fittings
- h) Livestock, marine & wildlife
- i) Crops
- j) Farms works
- k) Shares & stocks
- l) Minerals including quarries, sandpits, etc
- m) Forests
- n) Goodwill
- o) Trade stock
- p) Antiques

II. OTHER SERVICES

Besides the above main areas of specialization, a valuer may also offer the following services:

- i) Preparation of feasibility studies/Investment appraisal
- ii) Consultancy on real estate/business investments
- iii) Resolution of real estate related disputes
- iv) Pursuance of extension of leases with either Commissioner of Lands or the local Authorities
- v) Property receivership on behalf of creditors/chargees.
- vi) Property maintenance services such as minor repairs and redecoration works.

Advisory role in the building design team on matters related to marketability of premises and expected rentals.

Environmental Impact Assessment

- ix) Negotiation for mortgage finance on behalf of clients
- x) Representation of clients in courts/tribunals to give expert evidence.
- xi) Project management.

THE CONTENTS OF A STANDARD VALUATION REPORT

The following is a detailed content that most valuers include in their reports regardless of the order, manner or the extent. The Institution of surveyors of Kenya has considered these details essential and has recommended them to its members for future observation as a matter of principle.

1. Addressee:

The report must be addressed to the client by personal or corporate name unless the circumstances dictate otherwise. The source of the instructions and the indemnity from the addressee should be given including the postal address for future reference.

2. Instructions/terms of reference:

Any instructions given to the valuer, special or unusual assumptions must be stated.

3. Purpose of valuation:

The purpose of valuation as agreed or understood from the client must be stated clearly and unambiguously (e.g. for company account, loan, stock exchange prospectus, lending, etc.) or that the client did not wish to disclose the purpose of the valuation. In this latter event, the valuer is even more careful in setting out the criteria to adopt.

4. Assumed date of inspection/valuation:

This may be the same date as the date of the report, or an earlier date, but may not be a future date. If there has been a material change in market conditions or the circumstances of a property portfolio between the date of valuation and the date of the report, the valuer is expected to draw attention to this.

5. Basis of valuation and its definition:

1) The basis of valuation should be defined. If for some special reason another basis, special assumptions or qualifying words are adopted, these must be given with adequate and careful explanation. Any assumptions that depart from the actual position must be stated.

2) The definition of the basis of valuation must be provided in full. Should the valuer decide to quote the definition in a client's standard report from this must be provide the whole definition. Where the

basis of valuation adopted is market value a further statement that the interpretative commentary has been applied must also be made.

3) Where it is considered that circumstances exist which justify the provision of

an additional valuation making special assumption must be set out in full. An example would be the assumption of a sale to a special purchaser.

6. Valuers limiting conditions:

These would usually state in part or whole the following either as limiting conditions or in the body of the report:

1. Assumption as to title and encumbrances:
2. Assumption as to matters which would be revealed by a local search, replies to usual inquiries or by any statutory notice:
3. That the inspection and report do not purport to be a building survey and any assumptions made regarding inaccessible parts and latent defects, including rot and inherently dangerous or unsuitable materials and techniques.

If there are reports from other professional advisers on these subjects, a statement to this effect and reference to any significant matters must be made.

4. Assumptions as to the presence or absence of deleterious or hazardous substances or about latent defects where no detailed investigations have been carried out by the valuer, or provided, a statement must be made accordingly.
5. Assumption as to the period required obtaining vacant possession of a property or that a certain piece of land could be acquired to complete a development site. If such assumptions do not accord with those likely to be made prospective purchasers in the open market, they are 'special assumption';
6. Whether the presence of contamination has been investigated or whether it is assumed not to be present.
7. Assumptions as to the planning position, e.g. present lawful user, planning permissions and adverse conditions therein, personal planning consent, possible presence of any adverse planning proposals, with a statement as to the extent of investigations made and whether oral or in writing.
8. Where a calculation of worth is being provided, the derivation and pattern of change of benefits and cost, and the basis of discounting, must be stated and any criteria for the assessment which are derived from the client identified.
9. The liability to which the report is made being limited to the addressee.
10. The conditions of a valid report limited to signature and sealing by the authorized persons.
11. The sources, responsibility for and nature of information relied upon, such as details of tenure, tenancies, planning consents, planning proposals, contravention of any statutory requirements, outstanding statutory notices and building and site areas.

The valuer must make it clear if the valuation has been carried out without the definition information normally available when carrying out a valuation.

12. The valuer must indicate in the report if (where practicable) verifications needed of any information or assumptions on which the valuation is based, or if information considered to be material has not been provided to him/her. If any such information or assumption is material to the amount of the valuation, the

valuer must make clear that this valuation should not be relied on pending verification.

13. Plant and machinery (if any is present at the property) or any items which would normally be included, but which have been excluded, this require to be stated.

If no technical survey of condition of plant and machinery has been undertaken or commissioned, a statement to this effect identification of any items where physical inspection was impossible.

7. The Land Registered Number/s:

Where the report relates to a number of properties, the valuer will probably find it convenient to show them, and that schedules may be appended to the report but whichever adoption, the property identify must be indicated in terms of the Land Register or Title Numbers.

8. Situation:

Concise description of the property's geographical location with distances or comp [ass directions from a notable landmark and administrative location and preferably accompanied by a survey map, deed plan, or any other acceptable site plan.

9. Title details:

- 1) The tenure of each property indicates whether freehold or leasehold and the term granted.
- 2) Description of Owners and addressees.
- 3) Any unusual rights, obligations, restrictions/covenants, caveats, cautions, inhibitions, Charges or mortgages, etc;
- 4) Area of the parcel stated in hectares or acres.

10. Statutory taxes/levies:

Each property may bear certain statutory taxes or charges whichever is appropriate. Leasehold properties may bear ground rent charges while freehold may not. However, both bear council rating charges. The valuer is expected to verify both.

Detailed description of the property be it land or building, topography, soils, etc., site works, construction, age, apparent state of repair, facilities, accommodation, services, building site areas, a site plan, etc. Only the word `description' in this term applies in the case of valuation of plant and machinery, in respect of which the valuer must therefore consider whether it is appropriate to include inventories and schedules. The following information relative to each major item of plant and machinery, so far ads the information is obtainable and relevant to the value taking into account the basis of valuation:

- 1) Description
- 2) Mode, serial number and maker's name,
- 3) Clients own plant reference number

- 4) Size of capacity
 - 5) Age and;
 - 6) Reference to any special foundations and service connections, etc.
- Exclusions from the valuation should be noted where appropriate.

12. Tenancies:

This may need to include a basic statement appertaining to the tenancies. 13.-
Observations/Recommendations/Commentaries:

The date and extent of the inspection, including reference to any part thereof number of properties is the subject of the valuation, a generalized statement of these aspects is acceptable provided that it is not misleading. The valuer must make it clear if the valuation has been made without there being the opportunity to carry out an adequate inspection or foreseen through experience that may be of material consideration by the client.

14. The opinion of value in words and figures:

If the identification of individual properties and their values are consigned to a schedule(s) appended to the report, a summary of values, divided into their individual categories must be included within the body of the report. Any aggregated presentation of valuation must always for properties of different tenures and between more than one body of the report that the opinion of value in words, as well as figure, is required. Occasionally a valuer is requested to provide separate figures for land, cash crops, buildings, site-works, etc. In valuing a property, a valuer may adopt several valuation concepts to arrive at a recommended value. It is sometimes professionally impossible to give a breakdown of the values as indicated above. The value of a vacant site may not be the same as that of a neighbouring property at the same time. A vacant site has flexible usage while the latter is restricted to the building above it unless the building is demolished.

15. The Valuer or his/her organization and signature:

The name, address and qualifications of the valuer and/or his/her organization should be indicated somewhere in the report.

The report should be signed by at least a designated valuer who is a Full Member of the Institution of Surveyors of Kenya as well as being a registered valuer by the Valuers Registration Board of Kenya.

All Full Members of the Institution of Surveyors of Kenya should adopt officially title of 'Valuer' abbreviated as Vlr. before their names.

VALUATION INSTRUCTIONS FORM

(In duplicate)

CLIENT'S NAME:

CONTACT ADDRESS.....

TELEPHONE NO. OFFICE.....RESIDENCE.....

IDENTIFICATION NO.....

LAND REFERENCE NO IR/NO.....

SITUATION:

..... DISTRICT.....

LOCATION/ESTATE

AREA:

DEVELOPMENTS:

.....

REGISTERED OWNER.....

PERSON (S) IN OCCUPATION OF THE PROPERTY AND RELATIONSHIP WITH THE REGISTERED OWNERS:

PURPOSE OF VALUATION:

.....

DECLARATION

I/We the undersigned confirm that the information above is true and take full responsibility for it and undertake to pay your full professional fees and disbursements in accordance with the Valuers Act Schedule of Fee on or before the collection of the Report.

I/We also hereby pay a mandatory deposit of Kshs.....

NAME AND USUAL SIGNATURE.....

DATE:.....

INSTRUCTIONS TAKEN BY ...

PROPERTY MANAGER/ESTATE AGENT CONSULTANCY

A property manager or an estate agent surveyor may offer the following services: -

- a) Assessment of rent and service charge
- b) Selection of tenants
- c) Allocation of space
- d) Letting of premises
- e) Collection of rents and service charge
- f) Negotiation of leases
- g) Drawing of lease agreements
- h) Re-letting premises
- i) Management of premises on behalf of owners
- j) Supervise maintenance, partitioning,
- k) Removal of protected tenants
- l) Prepare budgets
- m) Make regular reports to landlords
- n) Property sales/purchase
- o) Negotiation for property/business ventures on behalf of purchasers
- p) Registration of property documents e.g. leases, easements, etc.

INSTRUCTIONS FOR LETTING/ MANAGEMENT

I/We..... of P.O. Box and Telephone Nos. Office.... House..... Hereby instruct you ...to let and manage my/our property(s), the particulars of which I/We have given below

until the appointment is terminated by either party giving a notice of not less than 2 months. Residential/Business/Agricultural

LRNO..... Location..... City/Town...

Brief Description of the Property (is).....

To be let for Kshs.....

Mode of payment (monthly/quarterly/yearly) Rent deposit Kshs.....

I/We agree to pay the usual letting and management commission based on the Estate Remuneration Rules 1987 schedule of fees.

Letting fees...

Management commission... Renegotiations of rent... Disbursements...

I/We also understand that the following conditions shall also apply: - Except where otherwise stated, the fees and commission set out in the above scale are exclusive of disbursements, plans, copies of the document, advertising, lithography, travelling and other expenses.

In the event of non-sale at the withdrawal of instructions after the Estate Agents have incurred various expenses, such costs and a fee, the amount of which is a matter of arrangement, is payable.

Declaration

I/We declare solemnly that to the best of my/our knowledge and belief the above particulars of my/our property (is) are correct.

I/We hereby appoint ... as the Sole Agents to let and manage my/our property (is) above mentioned on my/our behalf and to bind me to a contract of letting and management.

Signed Date...

MANAGEMENT AGREEMENT

CLIENT

PROPERTY

LR. NO.

MANAGING FIRM

DATE

This Agreement is made on the... day of.. Two thousand between: 1) The client: in the Republic of Kenya and of P.O. Box..... Here-in after called "the landlord" which

shall where the context so admits include its successors and assigns of one part, and.
2) The Management Firmincorporated in the Republic of Kenya and of P.O. Box after called "the Manager" which expression shall where the context so admits include its successors and assigns of the other part.

Interpretation:

In this Agreement the following expressions shall, where the context so admits, be deemed to have the following meanings:

- 1 "Accounting Reference Date: means in each year of the Term;
2. "Amenity Areas" means the common parts halls landings staircases roofs walls balconies gardens garages parking areas storage and refuse disposal areas in the Property not comprised in the letting of any unit;
3. "Commencement Date" means ...
4. "Fees" means the remuneration payable for the Manager's services set out under clause;
5. "Management" means the business of the Manager in managing the Property;
6. "Management Information" means details of leases and tenancies and agreements entered into by the Manager in connection with the Management of the Property and all information including accounts the Property register records of tenants and computer records maintained by the Manager on behalf of the Owner;
7. "Plant" means the lifts automatic doors, fire escape, fire extinguishes, lighting and any other plant or equipment installed in the Property. 8. "Property" means premises situated in..... and known as Land Reference Number comprising an office and shopping block known as..... ("The property") and includes any part or parts of the Property.
9. "Term" means five years from including the Commencement Date unless earlier determined as provided by this Agreement;
10. "Unit" means any shop, office, restaurant, cafeteria or other premises for letting forming part of the Property.

Whereas

- (A) The Owner is registered as proprietor as ... of the Property.
- (B) The Manager has specialized knowledge and experience and experts and other personnel qualified and capable of carrying out operation, letting and management of the Property and Units.
- (C) The owner wishes the Manager to manage and operate on its behalf the Property in the manner set out in this agreement.
- (D) The Manager has agreed to undertake such management and the parties have agreed to record the terms and conditions as set out in this agreement.

Now it is agreed as follows:

1. Appointment:

- (a) The owner hereby appoints the Manager and the Manager hereby accepts such appointment as manager and letting agent of the Property for a term of... years with effect from ... of £ .. Year... to manage and operate the property and all activities in connection therewith as are necessary in and usual to similar establishments.
- (b) The Owner shall in consultation with the Manager determine the policy to be followed in connection with the management of the Property and shall have ultimate control and discretion in the operation of the Property throughout the term of Agreement.
- (c) It is understood and agreed that nothing herein contained shall constitute or be construed to be or create a partnership or joint venture between the Owner and the

Manager its successors or assigns.

2. Particular Powers and Duties:

The Manager shall have, during the continuance of this Agreement, the general day to day management to the Property. Accordingly, the Manager shall have power to do all such things on behalf of the Owner which are reasonably required for in any way concerned with or necessary for the sound and efficient management of the Property other than the power to borrow money in the name of the Owner or pledge any assets of the Owner or spend money above a limit as shall be authorized by the Owner from time to time without the prior written consent of the Owner and other than those matters which are by virtue of the provisions of the Laws of Kenya and expressly required to be done by the Owner. In furthered of and without prejudice to the general power and authority herein before conferred the Manager shall have "inter ail" the following powers, authorities, discretion's, and duties:

- (a) To diligently and prudently manage the affairs of the property and to protect and promote the interests of the Owner;
- (b) To maintain and keep the Property in good repair renewing and/or replacing any plant machinery equipment furniture furnishings fixtures and other items and effects of the Property as the Owner agrees and to keep the Amenity Area in a neat and tidy condition and the Plant in good working order;
- (c) To repair, renew, and replace any plant machinery equipment furniture furnishings fixtures and other items and effects as the Manager may deem necessary from time to time provided that such repair renewal or replacement shall not exceed sum of ... and in any other case to submit competitive estimates for the Owner's approval. (d) To prepare statements, of demand, receive and collect on behalf of the Owner all monies from time to time falling due for payment to the Owner in respect of rent and all other charges levied on tenants of the Property;
- (e) To account to the Owner promptly but in any event within ... days of the end of each month for all taxes, rates, rents, insurance premiums, expenses and outgoing notified to the Manager shall promptly pay on behalf of the Owner from monies collected by the Manager.
- (f) (i) to maintain an event diary and a Property register containing details of each lease or tenancy within the Property or equivalent computer records;
- (ii) To ensure that all tenants of the Property effect all payments payable under their respective leases or tenancies;
- (g) To carry out with the written approval of the Owner promotion and advertising of the Property;
- (h) Not to make any profit or commission out of the Management of the Property except as hereinafter provided,
- (i) Not to describe itself as agent or representative of the Owner except as expressly authorized by this Agreement;
- (j) Not at any time during or after the Term divulge or allow to be divulged to any person any of the Management information other than to persons approved in writing by the Owner.

3. Termination

Notwithstanding anything herein contained this Agreement may be determined on ... months' written notice given by one party to the other in any of the following events without prejudice to any existing rights which may have accrued to either party

hereunder and as a remedy either additional or alternative to any claim for damages:

- (a) If either party fails to comply with any of the terms and conditions of this Agreement and such failure if capable of remedy is not remedied within... month after a notice in writing has been served upon it requiring the same to be rectified;
- (b) If a distress or execution either by Court Order decree or process or otherwise is levied or enforced upon or against any party of the property and assets of the other party or if the other party commits any act or fault by reason of which any such distress or action might be levied;
- (c) If an effective resolution shall be passed for the winding up of the other party (other than for the purpose of reconstruction or amalgamation) or a Receiver appointed of the undertaking of assets of the other party or any part thereof;
- (d) If the other party shall cease or threaten to cease to carry on business,
- (e) If any payment due hereunder shall remain unpaid for a period of... days after the same becomes due for payment;
- (f) If the other party enters into a deed or arrangement or composition or suspends payments to its creditors;
- (g) If the Government or other competent authority nationalizes seizes or otherwise expropriates or assumes custody or control of all or any part of the share capital, property, Assets or business of the other;
- (h) If the Manager engages in any conduct prejudicial to the Property or the Management of the Property generally;
- (i) If any material change occurs in the Management or control of the Manager and in particular any change of directors or partners of the Manager dealing with the Management of the Property save where agreed by the Owner in writing prior to the change.

4. Termination Consequences:

- (a) On expiration or other termination of this Agreement the Manager undertakes:
 - (i) To return to the Owner all originals and copies of documents comprised in the Management information; and
 - (ii) Forthwith to cease carrying on the Management
- (b) days prior to the expiry of the Term or... days after the receipt of notice Terminating this Agreement the Manager shall furnish to the Owner a complete and Accurate up-to-date account of all transactions subsequent to those shown in accounts last submitted with estimates of turnover of the Management to such expiry or termination date not later than... days such date pay to the Owner any sums due under this part for achieving the same.

5. Leases

From time to time if so required by the Owner and for the remuneration detailed hereafter the Manager shall negotiate leases and renewals on behalf of the Owner in respect of the Unites within the Property That the level of rental and terms and conditions of such leases shall have been agreed in principle by the Owner and any departure therefrom has been approved by the Owner in writing prior to any lease being finalized.

6. Remuneration:

- (a) (i) The Manager shall be entitled to management fee of 5% for the Management of the Property per month or per annum (exclusive of Value Added Tax) for the number of Years of the management term and to be reviewed annually.
- (ii) The Manager shall be entitled to a letting fee for every unit let or 7.5% of the annual rent and service charge payable within thirty (30) days of the commencement of the

lease.

(b) The receipt of money by either of the parties shall not prevent either of them from questioning the correctness of any statement in respect of any money.

(c) In the event of any dispute between the parties concerning the amount of any monies due or payable by either party to the other under this Agreement or the calculation of any amounts pursuant hereto a certificate signed by any reputable firm independent public accountants agreed by the parties hereto shall be conclusive and binding between the parties hereto as to the facts therein stated;

(d) In default of agreement as to the said independent accountants the parties shall procure that the auditors of each of them shall agree and prepare a joint certificate which shall be conclusive and binding between the parties hereto as to the facts therein stated;

7. Accounts

(a) The Manager will maintain up-to-date Management Information accurately reflecting all transactions in the Management of the Property and to make the Management Information available to the Owner and to permit the Owner and the owner's accountant and auditors and representatives at all reasonable times to inspect and to take copies of all things material to the Management and for this purpose to enter any premises used in connection with the Management;

(b) The Manager will keep accounts in accordance with good accountancy custom;

(c) The Manager will have the accounts audited by qualified auditors once a year during the period of this Agreement as detailed in the standard leases for premises on the Property;

(d) The Manager will submit copies of the accounts certified by such auditors to the Owner within sixty (60) days of the Accounting Reference Date;

(e) The Manager will render monthly statements to the Owner of all rents and other sums collected and if required to produce to the Owner receipts or vouchers in respect of any payments;

(f) The Manager will maintain a separate bank account in respect of the Management of the Property in the name of the Owner and if required by the Owner a separate account for any reserve funds for non-recurring expenses in connection with the Property and to ensure that any interest accruing to any account is credited or paid for the benefit of the Owner.

8. Insurance

Throughout the term of this Agreement, the Owner shall procure and maintain adequate insurance coverage of the property and all other of the Owner's assets in the Property and all other of the Owner's assets in the Property against loss or damage by fire, flood, impact, storm, tempest and other insurable risks usual or desirable for enterprises of a similar character to the Property with a note of any third party interest as shall be required and against loss of rent and the Owner shall further insure the plant and Amenity Areas against public liability.

9. Staff:

(a) The Manager shall be the employer of all members of staff on the Property and shall be entirely responsible for the wages retirement severance and any other benefits due to such members of staff,

(b) The Manager shall employ all future staff engaged for work on the Property after the date of commencement hereof and shall be responsible for the control of such staff including their engagement and dismissal and terms of service.

10. Repairs and Maintenance and Capital Improvements:

(a) Subject to the conditions imposed by Clause 2(c) and 2(d) the Manager shall make such expenditure for repairs and maintenance as it deems necessary to keep the Property in good operating condition; (b) The Owner may from time to time as its own discretion and sole expense make such alterations additions or improvements in or to the property as the Manager shall recommend all of which will be made with as little hindrance to the operation of the Property as possible. (c) If structural repairs or changes to the Property or extraordinary repairs to or replacement of any equipment therein shall be required at any time during the term of this Agreement to maintain the Property in good operating condition or by reason of any laws or regulations now or hereafter in force or by order of any governmental or municipal or otherwise or because the Manager and the Owner jointly agree upon the desirability thereof then in such event all such repairs changes or replacements shall be made with as little hindrance to the operation of the Property as possible. The owner shall have the right to contest the need for any such repairs changes or replacements required and may postpone compliance therewith if so permitted by the law but in each such event the Owner shall protect the Manager inform satisfactory to the Manager and agreed upon by the Owner from any loss which may result therefrom.

11. Reporting:

In the third year of the Term the Manager will submit a report to the Owner on the basic state of the building, the adequacy of the insurance policies and the continuing prospect of appreciation and if considered necessary by the Owner to arrange for a full inspection and report of the structural state of the building to be carried out by a duly qualified structural engineer at the Owner's cost.

12. Taxes:

The Manager shall with the Owners prior written consent pay on the Owner's behalf promptly or ensure prompt payment (as the case applies) when due all bona fide Property costs and rates whatsoever levied against the Property or any part thereof and shall charge the same as an operating expenses of the Property.

13. Assignment:

Neither party hereto shall assign this Agreement or its interest herein in whole or in part without first having obtained the other's written consent such consent not to be unreasonably withheld.

14. Indemnification:

(a) The Owner will indemnify and keep indemnified the Manager from and against any and all loss damage of liability whether criminal or civil suffered by the Manager in the course of conducting the Management of the Property and, resulting from any act of neglect or default of the Owner or its agent, employees license.

(b) The Manager will indemnify and keep indemnified the Owner from and against any and all loss, damage or liability (whether criminal or civil) suffered by the Owner on breach of this Agreement by the Manager in respect of any matter arising from the Management of the Property.

15. Notices:

All notices to be sent by either party to the other shall be sent by post telex cable or telegram or delivered by hand to the principal registered office of the party served. Any notice given by post shall be deemed to have been served ... days after posting. Any notice given by telex cable or telegram shall be deemed to have been served ... hours after it shall be dispatched.

In providing such service it shall be sufficient to prove that the letter, telex or telegram (as the case may be) containing the notice was properly addressed and posted or (as the

case may be) transmitted. Any notice given by hand shall be deemed to have been served at the time of delivery.

16. Force Majeure:

Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive, government regulations, or any other cause beyond the reasonable control of the parties renders performance of the Agreement impossible whereupon:

(a) All money due to the Owners shall be paid immediately and

(b) The Manager shall forthwith cease carrying on the Management of the Property.

17. Miscellaneous:

(a) The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall be deemed a waiver of such terms and conditions on any further occasion.

(b) Any dispute or difference other, than that dealt with by Clause 6(d) and (e) arising between the parties in relation to anything or matter arising under, as a result of or in connection with this Agreement shall be referred to arbitration under the Arbitration Rules of the Chartered Institute of Arbitrators.

(c) The headings of Clauses of this Agreement are inserted for convenience only and are not intended to affect the meaning of any of the provisions hereof.

(d) This Agreement constitutes the entire Agreement between the parties relating to the subject matter hereof superseding all prior arrangements between the parties whether oral or written and any such prior agreements are cancelled as at the Commencement date but without prejudice to any rights which have already accrued to either of the parties.

(e) The Manager shall bear the costs of drawing this Agreement. In witness whereof which Agreement has been duly executed.

Signed/Sealed with the common seal) Of the Owner) In the presence of)

Signed/Sealed with the common seal)

Of the Manager)

In the Presence of)