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SCHEDULE

THE REAL ESTATE REGULATION BILL, 2023**A Bill for**

AN ACT of Parliament to provide for the regulation of the business of negotiating for or otherwise acting in relation to the selling, purchasing or letting of land and buildings; regulation and registration of real estate agents, land companies and developers; establishment of the Real Estate Board; and for connected purposes

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY

1. This Act may be cited as the Real Estate Regulation Act, 2023. Short title.

2. In this Act, unless the context otherwise requires — Interpretation.

“Board” means the Real Estate Board established under section 4;

“Board of Directors” means the Board of Directors of the Real Estate Board;

“developer” means —

- (a) a person who offers for sale built units in a real estate project; or
- (b) a person who offers for sale land in a real estate project; “Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to land;

“purchaser” means the buyer of real estate property;

“real estate agent” means a person who sells, offers for sale or offers for rent a piece of land, building or any part of a building;

“real estate project” means a project where —

- (a) land exceeding five acres is subdivided and offered for sale; or
- (b) more than ten built units are developed for sale;

“Registrar” means the Registrar of Real Estate Agents and Projects appointed section 16.

3. The regulation of the practice, registration and licensing of estate agents and real estate projects shall be guided by—

Values and principles.

- (a) the National values and principles provided under Chapter Six of the Constitution;
- (b) established code of conduct, standards and practice guidelines as prescribed by the Board; and
- (c) principles of openness, accountability, consultations, and due regard to the best interest of the real estate sector.

PART II—REAL ESTATE BOARD

4. (1) There is established the Real Estate Board which shall be a body corporate with perpetual succession, common seal and in its name, be capable of—

Establishment of the Board.

- (a) suing and being sued;
- (b) acquiring, holding and disposing of movable and immovable property;
- (c) entering into any contract or other transaction, and doing all such other acts and things which a body corporate may lawfully do; and
- (d) exercising the powers and performing the functions conferred to it under this Act.

5. (1) The functions of the Board shall be to—

Functions of the Board.

- (a) advise the National and county governments on the regulation and development of the real estate sector;
- (b) regulate real estate agents and real estate projects;
- (c) register real estate agents and real estate projects;
- (d) licence real estate agents;
- (e) maintain a public database with information on real estate agents and real estate projects registered under this Act with such details as may be prescribed;
- (f) maintain a public database with information on real estate agents and real estate projects whose

registration has been denied or revoked with such details as may be prescribed;

- (g) prescribe standard fees and charges to be levied by real estate agents and developers;
- (h) ensure developers, real estate agents and purchasers comply with this Act and the rules and regulations made under it;
- (i) ensure compliance of the orders or directions made in exercise of its powers under this Act; and
- (j) perform such other functions as may be necessary to carry out the provisions of this Act.

(2) The Board shall, in order to facilitate the growth and promotion of an efficient and competitive real estate sector, make recommendations, to the relevant government agency, on the —

- (a) protection of the interests of purchasers, real estate agents and developers;
- (b) creation of a single window system for processing time bound project approvals and clearances to ensure timely completion of projects;
- (c) creation of a transparent and robust grievance addressing mechanism against acts of omission and commission of competent authorities;
- (d) measures to encourage investment in the real estate sector;
- (e) measures to encourage construction of environmentally sustainable and affordable buildings;
- (f) measures to facilitate amicable conciliation of disputes between the developers and purchasers through dispute settlement forums set up by purchaser, real estate agent or developer associations; and
- (g) any other issue that the Board may consider necessary for the promotion of the real estate sector.

(3) The Board shall have all powers necessary for the performance of its functions under this Act.

6. The management of the Board shall vest in a Board of Directors consisting of—

Board of
Directors.

- (a) a Chairperson appointed by the Cabinet Secretary;
- (b) the Principal Secretary responsible for matters relating to land or a designated representative;
- (c) the Principal Secretary responsible for matters relating to housing or a designated representative;
- (d) the Principal Secretary responsible for the National Treasury or a designated representative;
- (e) one man and one woman nominated by the Council of County Governors;
- (f) one person nominated by the association representing the largest number of purchasers of land in Kenya;
- (g) one person nominated by the association representing the largest number of developers in Kenya;
- (h) one person nominated by the association representing the largest number of real estate agents in Kenya; and
- (i) the Registrar appointed in accordance with section 15 who shall be an *ex officio* member of the Board.

(2) The Cabinet Secretary shall appoint the Chairperson and members of the Board of Directors under subsection (1) (e), (f), (g) and (h) by a notice in the *Gazette*.

(3) A person is qualified for appointment as the Chairperson or member of the Board of Directors under subsection (1) (e), (f), (g) and (h) if such person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least seven years' relevant professional experience;

(d) is a member in good standing of a relevant professional association; and

(e) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(4) The Chairperson and members of the Board of Directors appointed under section 6 (1) (e), (f), (g) and (h) shall be so appointed at different times so that the respective expiry dates of their terms of office shall fall at different times but no more than six months shall lapse between one appointment and another.

7. The Chairperson and members of the Board of Directors appointed under section 6 (1) (e), (f), (g) and (h) shall hold office for a period of three years and shall be eligible for reappointment for one further term.

Tenure of office.

8. The office of the chairperson or a member of the Board appointed under section 6 (1) (e), (f), (g) and (h) shall become vacant if the chairperson or member—

Vacation of office.

(a) is unable to perform the functions of office by reason of mental or physical infirmity;

(b) is otherwise unable or unfit to continue serving as the chairperson or member of the Board;

(c) is adjudged bankrupt;

(d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(e) is absent, without reasonable cause, from three consecutive meetings of the Board;

(f) resigns in writing addressed to the Cabinet Secretary;

(g) fails to declare their interest in any matter being considered by the Board; or

(h) dies.

9. There shall be paid to the members of the board, such remuneration, fees or allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Remuneration.

10. (1) The business and affairs of the Board of Directors shall be conducted in accordance with the Schedule.

Conduct of the affairs of the Board of Directors.

(2) Except as provided for in the Schedule, the Board of Directors may regulate its own procedure.

11. (1) The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Board under this Act.

Staff of the Board.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

12. (1) The common seal of the Board shall be kept in the custody of the Registrar or such other person as the Board may direct and shall not be used except on the order of the Board.

Seal of the Board.

(2) The common seal of the Board shall, when affixed to a document and authenticated, be judicially and officially noticed and unless the contrary is proved, any order or authorization by the Board under this section shall be presumed to have been duly given.

(3) The seal of the Board shall be authenticated by the signature of the Registrar and the chairperson of the Board of Directors or in the absence of either person, such other member of the Board of Directors who shall be designated by the Board of Directors for that purpose on their behalf.

13. This Act shall not relieve the Board of the liability to compensate or pay damages to any person for any injury to them, their property or any of their interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially of any works.

Liability of the Board for damages.

14. The Board of Directors may by resolution either generally or in any particular case, delegate to any committee of the Board of Directors or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions of the Board under this Act or under any other written law.

Delegation of powers or functions.

15. (1) For purpose of effective carrying out its functions under this Act, the Board of Directors may establish such number of committees as it may consider appropriate for the effective performance of its functions.

Committees of the Board of Directors.

(2) The Board of Directors may co-opt, to sit in its committees, such persons as it considers necessary as having the knowledge and skills for the effective performance of its functions.

PART III— THE REGISTRAR AND REGISTER

16. (1) There shall be a Registrar of Real Estate Agents and Projects who shall be appointed by the Board of Directors through a competitive recruitment process, on such terms and conditions of service as the Board of Directors may, in consultation with the Salaries and Remuneration Commission, determine.

Registrar.

(2) The functions of the Registrar shall be to—

- (a) maintain a register of real estate agents and real estate projects in accordance with this Act and in the manner prescribed by the Board of Directors;
- (b) receive applications for registration and, with the approval of the Board of Directors, register real estate agents and real estate projects;
- (c) on the recommendation of the Board of Directors, suspend or revoke the registration of a real estate agent or real estate project; and
- (d) perform such other functions as may from time to time be assigned by the Board of Directors.

(3) A person is qualified for appointment as the Registrar if such person—

- (a) is a citizen of Kenya;
- (b) has a degree in real estate or its equivalent from a university recognised in Kenya;
- (c) has at least ten years experience in the real estate sector;
- (d) has knowledge and experience in policy formulation, management and procedures of government;

- (e) is knowledgeable in, or has actively contributed to, the promotion of the real estate sector; and
 - (f) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.
- (4) The Registrar shall serve for a term of five years and shall not be eligible for re-appointment.
- (5) The Registrar may—
- (a) at any time resign from office by a notice in writing addressed to the Chairperson of the Board of Directors;
 - (b) be removed from office by the Board of Directors if the Registrar—
 - (i) breaches a term or condition of the employment contract;
 - (ii) is unable to perform the functions of the office by reason of a mental or physical infirmity;
 - (iii) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
 - (iv) is convicted of an offence that violates Chapter Six of the Constitution;
 - (v) is adjudged or admits in writing to being bankrupt; or
 - (vi) conducts herself or himself in a manner deemed to be inconsistent with this Act.
- (6) Before the removal of the Registrar under subsection (5)(b), the Board of Directors shall—
- (a) investigate the circumstances giving rise to the proposed removal;
 - (b) accord the Registrar an opportunity to be heard; and
 - (c) after complying with paragraphs (a) and (b), determine whether or not the Registrar is removed from office.

17. (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 indicating—

Register of real estate agents.

- (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 under subsection (1) shall be entered in the register by the registrar.

(3) The registrar shall remove from the register any name which is ordered by the Board of Directors to be removed from the register under this Act.

18. (1) The Registrar shall cause to be published in the *Gazette*, as soon as may be practicable after registration, the name, address and qualifications of every person registered under this Act.

Publication of register and list.

(2) The Registrar shall, subject to the directions of the Board of Directors, cause to be published in the *Gazette* any amendment to, or deletion, from the register.

(3) 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 persons remaining on the register at the close of the previous year.

19. (1) A publication under section 17 shall be sufficient evidence that the persons named therein are registered under this Act.

Evidence of registration.

(2) The deletion from the register of the name of any person notified by such publication or the absence of the name of any person from such publication, shall be evidence that such person is not so registered.

20. A person may, during office hours and on payment of the prescribed fee, inspect the register or any document or entry in the register and may obtain from the Registrar a copy of, or an extract from, the register or any such document.

Inspection of register.

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

Proof of documents.

(2) No process for compelling the production of the register or any document kept by the Registrar shall issue from any court except with the leave of that court, and any such process which is so issued shall bear a statement that it was issued with the leave of the court.

(3) The Registrar shall not, in any legal proceedings to which he or she is not a party, be compelled to—

- (a) produce the register or any document if its contents can be proved under subsection (1); or
- (b) appear as a witness to prove any entry in the register, the matters recorded in the register or any such document, unless the court for special case so orders

22. (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.

Certificate of registration.

(2) 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.

23. (1) The Registrar shall establish and maintain an online digital real estate portal.

Real estate portal.

- (2) The real estate portal shall—
- (a) facilitate the registration of real estate agents;
 - (b) facilitate the registration of real estate projects;
 - (c) provide platform for interaction between real estate agents and developers with the National and county governments, private institutions, investors and other relevant institutions;
 - (d) provide access to finance, information, innovation and the global market for real estate agents and developers;

- (e) provide information on clearances, approvals and registration requirements for real estate agents and real estate projects;
- (f) receive complaints and comments from members of the public and other industry stakeholders;
- (g) serve as a gateway to all real estate services offered by the National and county governments; and
- (h) discharge any other duties as may be required by the Board.

24. (1) The Board of Directors may, if a real estate agent or a developer with a registered real estate project is convicted of an offence under this Act or if the Board of Directors determines that a real estate agent or developer is guilty of professional misconduct or undertaking activities contrary to public interest,—

Consequences of conviction, professional misconduct or undertaking activities contrary to public interest.

- (a) caution or censure the real estate agent or developer;
- (b) suspend the registration of the real estate agent or respective real estate project for such period as it may specify;
- (c) impose a fine not exceeding five hundred thousand shillings on real estate agent or developer; or
- (d) suspend or revoke the registration of the real estate agent or real estate project.

(2) The Board of Directors shall accord a real estate agent or developer, as the case may be, an opportunity to be heard before undertaking the actions set out under subsection (1) against the real estate agent or developer.

PART IV —REGISTRATION AND LICENSING OF REAL ESTATE AGENTS

25. A person who wishes to be registered as a real estate agent under this Act shall apply to the Board in the prescribed form and upon payment of the prescribed fee.

Application for registration.

26. A person qualifies for registration as a real estate agent if such person is—

Qualification for registration as a real estate agent.

- (a) is a citizen of Kenya; and
- (b) has a degree in real estate or equivalent from a university recognised in Kenya.

27. Every real estate agent registered under this Act shall—

Duties of a real estate agent.

- (a) maintain and preserve such books of account, records and documents in the prescribed manner;
- (b) not facilitate the sale or rent of any parcel of land, apartment or building in a real estate project which is not registered in accordance with this Act;
- (c) not be involved in any unfair trade practices, including—
 - (i) making any statement, whether orally, in writing or by visible representation, which—
 - (A) falsely represents that the services are of a particular standard or grade;
 - (B) represents that the real estate agent has approval or affiliation which another real estate agent or developer which they do not have;
 - (C) makes a false or misleading representation concerning the services rendered or offered; and
 - (ii) permitting the publication of any advertisement for property that is not intended to be offered;
- (d) facilitate the possession of all the information and documents that a purchaser is entitled to; and
- (e) discharge such other functions as may be prescribed.

28. (1) A person shall not practice as a real estate agent unless that person has been issued a practicing licence by the Board of Directors and has complied with the requirements of this Act.

Practicing licence.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or to both.

(3) A person in breach of subsection (1) shall not be entitled to payment for any service rendered.

29. (1) A person who intends to practice as a real estate agent shall make an application for a practicing licence to the Board of Directors in the prescribed form.

Application for, and issuance of a practicing licence.

(2) An application under subsection (1) shall be accompanied by the prescribed fee and any other document prescribed by the Board of Directors.

(3) The Board of Directors shall, within twenty eight days from the receipt an application for a practicing licence, issue to the applicant a practicing licence in the prescribed form upon being satisfied that the applicant—

- (a) is registered in accordance with this Act;
- (b) has complied with any relevant continuing professional development standards for that year as prescribed by the Board; and
- (c) has complied with all other requirements prescribed by the Board.

(4) Despite subsection (3), the Board of Directors shall communicate to a relevant applicant its decision on the application for a practicing licence, by email, within twenty eight days from the date of receipt of the application.

(5) A practicing license issued under this section shall be valid from the day it is issued to the thirty first day of December of that same year.

(6) Despite subsection (5), a practicing licence issued during the first month of any practicing year shall be valid from the first day of that month.

30. (1) The Board of Directors may suspend a practicing license issued under this Act where—

Suspension of a practicing licence.

- (a) an offence under this Act in relation to the licensee is being investigated by relevant authorities;

- (b) allegations of misconduct have been investigated and proved against the licensee;
- (c) a false declaration was made in the application for the practicing licence; or
- (d) a licensee has contravened any provision of this Act.

(2) The Board of Directors shall accord the relevant licensee an opportunity to be heard before suspending a practicing licence.

(3) The Board of Directors shall communicate to the relevant licensee, by both email and prepaid registered mail, its decision to suspend a practicing licence within seven days from the decision.

31. (1) The Board of Directors shall cancel a practicing licence where a licensee—

Cancellation of a practicing licence.

- (a) is convicted of an offence under this Act or the rules made under it; or
- (b) ceases to be qualified for the issuance of a licence under this Act.

(2) The Board of Directors shall accord the relevant licensee an opportunity to be heard before canceling a licence.

(3) The Board of Directors shall communicate to the relevant person, by both email and prepaid registered mail, its decision to cancel a practicing licence within seven days from the decision.

PART V—REGISTRATION OF REAL ESTATE PROJECTS

32. (1) No developer shall advertise, market, book, sell, offer for sale or invite persons to purchase any plot, apartment or building in any real estate project that is not registered in accordance with this Act.

Prior registration of real estate project.

(2) Where a real estate project is to be developed in phases, every such phase shall be considered a separate real estate project and the developer shall obtain registration under this Act for each phase separately.

33. (1) a developer shall make an application to the Board for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed.

Application for registration of real estate projects.

(2) An application under sub-section (1) shall include—

- (a) a brief description of the developer including their name, registered address, the particulars of registration, the names and photograph of the developer;
- (b) a brief detail of the projects launched by the developer, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- (c) an authenticated copy of the approvals and commencement certificate from the relevant Board obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the relevant authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as approved by the relevant authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including firefighting facilities, drinking water facilities, emergency evacuation services and use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;

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- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the purchasers;
 - (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;
 - (i) the number and area of parking for sale in the project;
 - (j) the names and addresses of developer's real estate agents, if any, for the proposed project;
 - (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
 - (l) a statutory declaration signed by the developer or any person authorised by the developer, indicating—
 - (i) that the developer has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;
 - (ii) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
 - (iii) the time period within which the developer undertakes to complete the project or phase thereof, as the case may be;
 - (iv) that seventy per cent of the amounts realised for the real estate project from the purchasers, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose;

- (v) that the developer shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project;
- (vi) that the amounts from the separate account shall be withdrawn by the developer after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project;
- (vii) that the developer shall get their accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project;
- (viii) that the developer shall take all the pending approvals on time, from the competent authorities;
- (ix) that the developer has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and
- (x) such other information and documents as may be prescribed.

(3) The Board shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

34. (1) The Board shall, on receipt of the application under section 33, within fourteen days—

- (a) grant registration subject to the provisions of this Act; or

Grant of registration.

(b) reject the application for reasons to be recorded in writing after giving the applicant a fair hearing.

(2) The registration granted under this section shall be valid for a period declared by the developer for completion of the project.

35. (1) The Board may, due to force majeure, extend the registration granted under section 34 for not more than one year on an application made by the developer in such form and on payment of such fee as may be prescribed.

Extension of registration.

(2) For the purpose of this section, the term “force majeure” means a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

36. (1) The Board may, on receipt of a complaint or on its own volition or on the recommendation of a competent authority, revoke the registration granted under section 34, after being satisfied that—

Revocation of registration.

- (a) the developer has defaulted in doing anything required by or under this Act;
- (b) the developer has violated any of the terms or conditions of the approval given by the competent authority;
- (c) the developer is involved in any kind of unfair practice or irregularities including—
 - (i) falsely representing that the services are of a particular standard or grade;
 - (ii) representing that the developer has approval or affiliation which such developer does not have;
 - (iii) making a false or misleading representation concerning the services;
 - (iv) permitting the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;
- (d) the developer has indulged in any fraudulent practices.

(2) The Board shall not revoke the registration granted to the developer under section 33 unless the Board has given to the developer not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the developer within the period of that notice against the proposed revocation.

(3) The Board may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the purchasers, and any such terms and conditions so imposed shall be binding upon the developer.

(4) The Board, upon the revocation of the registration,

- (a) shall debar the developer from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other government entities about such revocation or registration;
- (b) shall facilitate the remaining development works to be carried out;
- (c) shall direct the bank holding the project bank account to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works; and
- (d) may, to protect the interest of purchasers or in the public interest, issue such directions as it may consider necessary.

37. (1) Upon lapse of the registration or on revocation of the registration under this Act, the Board, may consult the appropriate level of government to take such action as it may consider fit including the carrying out of the remaining development works by a government entity or by the association of purchasers or in any other manner, as may be determined by the Board.

Effect of lapse or revocation of registration.

(2) A direction, decision or order under this section shall not take effect until the expiry of the period of appeal provided under the provisions of this Act.

(3) In case of revocation of registration of a project under this Act, the association of purchasers shall have the first right of refusal for carrying out of the remaining development works.

PART VI—DUTIES OF DEVELOPERS

38. (1) A developer shall, upon registration of a relevant real estate project, ensure all details of the proposed project entered in the Board online public portal, including—

Functions and duties of developer.

- (a) details of the registration granted by the Board;
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- (c) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- (d) quarterly up-to-date status of the project; and
- (e) such other information and documents as may be specified by the regulations made by the Board.

(2) The advertisement or prospectus issued or published by the developer shall mention prominently the online public portal of the Board, wherein all details of the registered project have been entered and include the registration number obtained from the Board and such other matters incidental thereto.

(3) The developer, at the time of the booking and issue of allotment letter shall make available to the purchaser, the following information, namely—

- (a) approved plans, layout plans, along with specifications, approved by the relevant authority, by display at the site or such other place as may be specified by the regulations made by the Board; and
- (b) the time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

- (4) The developer shall—
- (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or to the purchasers as per the agreement for sale, or to the association of purchasers, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the purchasers, or the common areas to the association of purchasers or the relevant authority, as the case may be;
 - (b) be responsible, with respect to the structural defect or any other defect even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the purchasers are executed;
 - (c) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant authority and make it available to the purchasers individually or to the association of purchasers, as the case may be;
 - (d) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the purchasers;
 - (e) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the purchasers;
 - (f) enable the formation of an association of the purchasers;
 - (g) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the purchasers along with the undivided proportionate title in the common areas to the association of purchasers or relevant authority, as the case may be, as provided under this Act;
 - (h) pay all service charges until they transfer the physical possession of the real estate project to the purchasers or the association of purchasers, as the

case may be, collected from the purchasers, for the payment of service charges;

- (i) after they execute an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the purchasers who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The developer may cancel an allotment only in terms of the agreement for sale provided that an purchasers may approach the Board for relief, if they are aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

39. (1) Where a person makes an advance or a deposit on the basis of the information contained in a notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, they shall be compensated by the developer in the manner as provided under this Act,

Obligations of developers on the veracity of the advertisement or prospectus.

(2) If the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, they shall be compensated their entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act

40. (1) A developer shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under the applicable law.

No deposit without first entering into an agreement for sale.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall

specify the particulars of development of the project including—

- (a) the construction of building and apartments;
- (b) specifications and internal development works and external development works;
- (c) the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the purchasers;
- (d) the date on which the possession of the apartment, plot or building is to be handed over;
- (e) the rates of interest payable by the developer to the purchaser and the purchaser to the developer in case of default; and
- (f) such other particulars, as may be prescribed.

41. (1) A developer shall develop and complete a proposed project in accordance with the approved plans, layout plans and specifications as approved by the relevant authorities.

Adherence to approved plans and project specifications by the developers.

(2) A developer shall not make any additions and alterations in the approved plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of an purchaser.

(3) A developer shall not make any other alterations or additions in the approved plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the purchasers, other than the developer, who have agreed to take apartments in such a building.

(4) In case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the developer as per the agreement for sale relating to such development is brought to the notice of the developer within a period of five years by the purchaser from the date of handing over possession, it shall be the duty of the developer to rectify such defects without further charge, within thirty days.

(5) In the event of a developer's failure to rectify defects under (4), the aggrieved purchasers shall be entitled to receive appropriate compensation in the manner provided under this Act.

42. (1) The developer shall not transfer or assign their majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two thirds of the purchasers and without the prior written approval of the Board.

Obligations of developer in case of transfer of a real estate project to a third party.

(2) A transfer or assignment under subsection (1) shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the developer.

(3) On the transfer or assignment being permitted by the purchasers and the Board under sub-section (1), the third party shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile developer with the purchaser.

43. (1) A developer shall obtain all insurances as may be required by the Board, including but not limited to insurance in respect of —

Insurance of real estate projects.

(a) title of the land and building as a part of the real estate project; and

(b) construction of the real estate project.

(2) The developer shall be liable to pay the premium and charges in respect of the insurance specified in subsection (1) and shall pay the same before transferring the insurance to the association of the purchasers.

(3) The insurance as specified under subsection (1) shall stand transferred to the benefit of the purchaser or the association of purchasers, as the case may be, at the time of developer entering into an agreement for sale with the purchaser.

(4) On formation of the association of the purchasers, all documents relating to the insurance specified under subsection (1) shall be handed over to the association of the purchasers.

44. (1) The developer shall execute a transfer in favour of the purchaser along with the undivided proportionate title in the common areas to the association of the purchasers or the relevant authority and hand over the physical possession of the plot, apartment or building, as the case may be, to the purchasers and the common areas to the association of the purchasers or the competent authority, in a real estate project, and the other title documents pertaining thereto within specified period as per approved plans as provided under the relevant laws.

Transfer of title.

(2) Transfer in favour of the purchaser or the association of the purchasers or the relevant authority, as the case may be, under this section shall be carried out by the developer within three months from date of issue of occupancy certificate.

(3) After obtaining the occupancy certificate and handing over physical possession to the purchasers under sub-section (1), it shall be the responsibility of the developer to handover the necessary documents and plans, including common areas, to the association of the purchasers or the competent authority, as the case may be, as per the relevant laws.

(4) The developer shall handover the necessary documents and plans, including common areas, to the association of the purchasers or the relevant authority, as the case may be, within thirty days after obtaining the completion certificate

45. (1) If the developer fails to complete or is unable to give possession of an apartment, plot or building,—

Compensation.

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
- (c) the developer shall be liable on demand to the purchaser, in case the purchaser wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount

received by the developer in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in their behalf including compensation in the manner as provided under this Act.

(2) Where a purchaser does not intend to withdraw from the project, they shall be paid, by the developer, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed by the Board.

(3) The developer shall compensate purchasers in case of any loss caused to them due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act.

(4) Claims for compensation under this section shall not be barred by limitation provided under any law for the time being in force.

(5) If the developer fails to discharge any other obligations imposed on them under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, they shall be liable to pay such compensation to the purchasers, in the manner as provided under this Act.

PART VII— RIGHTS AND DUTIES OF PURCHASERS

46. (1) The purchasers shall be entitled to—

Rights and duties of purchasers.

- (a) obtain the information relating to approved plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the developer.
- (b) know the time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the developer and the purchaser in accordance with the terms and conditions of the agreement for sale.

- (c) claim the possession of apartment, plot or building and the association of purchasers shall be entitled to claim the possession of the common areas, as per the declaration given by the developer under this Act.
- (d) the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the developer, if the developer fails to comply or is unable to give possession of the apartment, plot or building, in accordance with the terms of agreement for sale or due to discontinuance of their business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.
- (e) have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the developer.

(2) Every purchaser, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(3) The purchaser shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (2).

(4) The obligations of the purchaser under sub-section (2) and the liability towards interest under sub-section (3) may be reduced when mutually agreed to between the developer and such purchaser.

(5) Every purchaser of the apartment, plot or building as the case may be, shall participate towards the formation of an of the purchasers.

(6) Every purchaser shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building.

(7) Every purchaser shall participate towards registration of the conveyance deed of the apartment, plot or building, as provided under this Act.

PART VIII – FINANCIAL PROVISIONS

47. The funds of the Board shall comprise of—

Funds of the Board.

- (a) such moneys as may accrue to, or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) such moneys as may be payable to the Board pursuant to this Act or any other written law;
- (c) such gifts as may be donated to the Board;
- (d) such money as may be appropriated by Parliament for the purposes of the Board; and
- (e) money from any other source granted, donated, or lent to the Board.

48. (1) The Board may invest any of its funds in securities in which for the time being trustees may by law invest in trust funds, or in any other securities which the Treasury may, from time to time, approve for that purpose.

Investment of funds.

(2) The Board may place or deposit with such bank or banks as it may determine, any moneys not immediately required for the purposes of the Board.

49. The financial year of the Board shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

50. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

Annual Estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year concerned.

(3) The annual estimates prepared by the Board under subsection (2) shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

51. The Board shall, within a period of three months after the end of each financial year, submit—

Annual Report.

(a) to the Auditor-General, the accounts of the Board in respect of that year together with—

(i) a statement of the income and expenditure of the Board during that year; and

(ii) a statement of the assets and liabilities of the Board on the last day of that financial year; and

(b) to the Cabinet Secretary, an annual report in respect of that year containing—

(i) the accounts of the Board and statements referred to under paragraph (a);

(ii) the Board performance indicators and any other related information;

(iii) a report on the operations of the Board during that year; and

(iv) such other information as the Cabinet Secretary may request.

52. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Board.

Accounts and Audit.

(2) The annual accounts of the Board shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act.

No. 34 of 2015.

PART IX—OFFENCES AND PENALTIES

53. A person who undertakes a real estate project that is not registered in accordance with this Act commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding three years or to a fine of not less than five million shillings, or to both.

Non-registration of real estate projects.

54. A person who provides false information to the Board commits an offence and shall, upon conviction, be

Giving false information.

liable to pay a penalty of five per cent of the estimated cost of the real estate project, as determined by the Board.

55. A person, who fails to comply with, or contravenes any of the orders or directions of the Board under this Act, shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to twenty million shillings or ten per cent of the estimated cost of the real estate project, whichever is higher, as determined by the Board.

Failure to comply with orders of the Board.

56. A person who fails to comply with, or contravenes any of the orders or directions of the court issued under this Act commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding ten million shillings, or to both.

Failure to comply with orders of court.

57. A developer convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one million shillings.

General Penalty.

PART X—MISCELLANEOUS PROVISIONS

58. (1) The Board may, where appropriate and in writing, delegate any power or assign any duty conferred on him or her under this Act to a member of the Board.

Delegation.

(2) A delegation or assignment under subsection (1) shall not prevent the Board from exercising the power in question.

(3) A delegation under this Act—

- (a) shall be in writing;
- (b) shall be subject to any conditions the Board may impose;
- (c) shall not divest the Board of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (d) may be withdrawn, and any decision made by the person so delegated may be withdrawn or amended by the Board.

59. (1) The Cabinet Secretary may, on the recommendation of the Board and in consultation with the

Regulations.

Council of County Governors, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary shall make regulations to provide for—

- (a) the issue of certificates of registration and annual licences;
- (b) the fees to be paid for anything which may be done under this Act;
- (c) the forms to be used under this Act;
- (d) the keeping of accounts by practising estate agents and to the opening of separate bank accounts for money held on behalf of clients;
- (e) setting out the occasions on which a practising real estate agent is required to account for interest on the money held on behalf of clients and the manner of such accounting;
- (f) providing for the methods by which it can be ascertained that the rules are being complied with by practising real estate agents; and
- (g) prescribing anything which under this Act may be prescribed.

PART XI—REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

60. The Estate Agents Act is repealed.

61. (1) The term of the Estate Agents Registration Board shall cease immediately on the appointment of the Board.

(2) The Board of Directors shall be appointed within three months of the commencement of this Act.

(3) Every person who immediately before the commencement of this Act, was a member of staff or employee of the Estate Agents Registration Board not under notice of dismissal shall, at the commencement of this Act, be deemed to be an employee of the Board under this Act.

Repeal of Estate
Agents Act, Cap.
533.
Transitional
provisions.

(4) Anything done, any regulation made, directive or instruction issued or other administrative measure taken or any contract entered into or any obligation incurred by the Estate Agents Registration Board immediately before the commencement of this Act, shall remain in force and shall be deemed to have been made, issued, taken, entered into or incurred, as the case may be, under this Act.

(5) All assets and liabilities of the Estate Agents Registration Board which immediately before the commencement of this Act were in place shall be deemed to have been carried out under this Act by the Board.

(6) All actions, suits or legal proceedings by or against the Estate Agents Registration Board subsisting immediately before the commencement of this Act shall be carried out on, prosecuted by, or against the Board, and no such suits, actions or legal proceedings shall abate or be affected by the coming into operation of this Act.

(7) A direction, notice, order, permit or any other document that was granted, issued or made under the repealed Act, and that was valid immediately before the coming into force of this Act, shall be given effect as if granted, issued or made under this Act.

SCHEDULE*(S.10)***PROVISIONS AS TO THE CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD OF DIRECTORS**

1. The Board of Directors shall meet at least four times in every year, and not more than three months shall pass between one meeting of the Board of Directors and the next.

2. Despite paragraph (1), the Chairperson may, on her or his own motion, and shall, upon the request of a member of the Board of Directors, convene a special meeting of the Board of Directors at any time when it is deemed expedient for the transaction of the business if the Board.

3. Except in the case of a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board of Directors shall be given to every member of the Board of Directors by the Registrar.

4. The quorum at a meeting of the Board of Directors shall be at least two thirds of all the members of the Board of Directors.

5. The Chairperson shall preside over all meetings of the Board of Directors at which he or she is present, and in the absence the chairperson, the members of the Board of Directors present shall elect from amongst themselves a person to preside over the meetings of the Board of Directors.

6. The decisions of the Board of Directors shall be decided by a majority of the members present and voting, and in the event of equality of votes, the chairperson or person presiding shall have a casting vote.

7. The proceedings of the Board of Directors shall not be invalidated by reason only of a vacancy among the members or a defect in the appointment or qualification of a member.

8. Subject to this Schedule, the Board of Directors may determine its own procedure and the procedure for any committee of the Board of Directors and for attendance of any other persons at the meetings and may make standing orders in respect thereof.

9. (1) A member of the Board of Directors who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board of Directors shall—

- (a) as soon as reasonably practicable, disclose, in writing, to the Board of Directors the full and accurate details of the interest;
- (b) not participate in any discussion by the Board of Directors relating to that matter;

- (c) not vote in relation to that matter; and
- (d) be absent from the meeting room when any such discussion or voting is taking place.

10. If a member of the Board of Directors makes a disclosure of interest and complies with requirements of subsection (1) in respect of a proposed contract—

- (a) the contract shall not be voided; and
- (b) the member is not liable to account to the entity for any losses that may be incurred upon entering into the contract.

11. If a member of the Board of Directors fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the Board shall void the contract.

12. Where a member of the Board of Directors has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that makes it reasonably foreseeable that a conflict might arise with her or his duties as member of the Board of Directors, the member shall as soon as is reasonably practicable, disclose to the Board of Directors, in writing, of the full and accurate nature of the interest.

13. A disclosure under this schedule shall be recorded in the minutes of the Board of Directors.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal purpose of the Bill is to put in place mechanisms for the regulation of real estate agents and real estate projects. The Kenyan economy is the largest economy in East Africa with a real estate market turnover of over one hundred billion shillings annually. The real estate sector has witnessed a lot of fraud in the recent past hence the need for a regulatory regime as the current regulatory regime has been ineffective in regulating the sector.

The Bill establishes a Real Estate Board to, among others regulate and register real estate agents and real estate projects. It also provides for the annual licensing of real estate agents and further provides timelines for registration and sanctions for failure to register.

The Bill further provides for the functions and duties of developers, obligations of developers on the veracity of an advertisement or prospectus, entering into agreements for sale, adherence to approved plans and project specifications by developers, obligations of developers in case of transfer of a real estate projects to third parties, insurance of real estate projects, transfer of title and compensation for loss on behalf of purchasers.

The Bill also deals with rights and duties of purchasers. Under the Bill, the purchasers are entitled to obtain the information relating to approved plans, layout plans along with the specifications, approved by the competent authority and such other information and to know time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the developer and the purchaser in accordance with the terms and conditions of the agreement for sale.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill, once enacted, would confer on the Cabinet Secretary responsible for public works the power to make regulations for the purpose of bringing into effect the provisions contained in the Bill. It therefore delegates limited and conditional legislative powers.

The Bill does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill regulates real estate agents and real estate projects. Paragraph 8(d) of Part 2 of the Fourth Schedule to the Constitution

designates housing as a function of county governments. The provisions of the Bill will therefore have an impact on the discharge of devolved function by county governments.

The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 29th June, 2023.

CHESANG ALLAN KIPROTICH,
Senator.