LAW REFORM COMMISSION

Paper

« Legislative Framework for the Regulation of the Activities of Real Estate Agents »

[February 2016]

13th Floor, SICOM Building II
Reverend Jean Lebrun Street
Port Louis, Republic of Mauritius

Tel: (230) 212-3816/212-4102
Fax: (230) 212-2132
E-Mail: lrc@govmu.org

URL http://lrc.govmu.org
About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of –

(a) a Chairperson, appointed by the Attorney-General;
(b) a representative of the Judiciary appointed by the Chief Justice;
(c) the Solicitor-General or his representative;
(d) the Director of Public Prosecutions or his representative;
(e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
(f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
(g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
(h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
(i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

The Commission may appoint staff on such terms and conditions as it may determine and it may resort to the services of persons with suitable qualifications and experience as consultants to the Commission.
LAW REFORM COMMISSION

Members

: Representative of Judiciary
 [Mr. Nicholas F. OHSAN BELLEPEAU]

Solicitor-General or his Representative
[Mr. Dinay REETOO]

Director of Public Prosecutions or his Representative
[Mr. Satyajit BOOLELL, SC]

Mr. Rishi PURSEM, SC [Barrister]

Mr. Narendra APPA JALA, SA [Attorney]

Mrs. Wenda SAWMYNADEN [Notary]

Mrs. Luvishka SEEJORE BILTOO [Law Academic (UoM)]

Chief Executive Officer

: Mr. Pierre Rosario DOMINGUE  [Barrister]

Secretary

: Mrs. Saroj BUNDHUN
Law Reform Cadre

Chief Executive Officer : Mr. Pierre Rosario DOMINGUE

Senior Law Reform Officer : Mr. Sabir M. KADEL

Law Reform Officer : Dr. Goran GEORGIJEVIC

Administrative Support Staff

Secretary : Mrs. Saroj BUNDHUN

Senior Office Management Assistant : Mrs. Marie Roselillette SOOBRAMANIA

Office Management Assistant : Mrs. Neelamani BANSRAM

: Mrs. Kajal RAMDUT

Senior Office Attendant/Technical Assistant : Mr. Subhas CHUMMUN

Driver/Office Attendant : Mr. Claude François JEAN-PIERRE

Mr. Naraindranathsingh JANKEE
Executive Summary

Paper on «Legislative Framework for the Regulation of the Activities of Real Estate Agents »
[February 2016]

In Mauritian law, the activities of estate agents are not regulated, though it is an activity whose financial scope is far-reaching. There is a pressing need to regulate their activities. The Commission recommends that this can be done either by the adoption of a new statute [the Real Estates Agents Act] or through an amendment to the Code de Commerce. The Real Estate Agents Bill is modelled on the New Zealand Real Estate Agents Act of 2008, whereas the amendment to the Code de Commerce is inspired by the French “Loi no. 70-9 du 2 Janvier 1970 réglementant les conditions d’exercice des activités relatives à certaines operations portant sur les immeubles et les fonds de commerce”.

Background Information

In Mauritian law, the activities of estate agents are not regulated, though it is an activity whose financial scope is far-reaching. In many jurisdictions (such as UK, Ireland, New Zealand, Australia, Singapore, South Africa, New Brunswick, and France), the activities of real estate agents are governed by statutes. There is thus a pressing need to regulate this sector. The Commission recommends that this can be done either by the adoption of a new statute [the Real Estates Agents Act] or through an amendment to the Code de Commerce. The Real Estate Agents Bill is modelled on the New Zealand Real Estate Agents Act of 2008, whereas the amendment to the Code de Commerce is inspired by the French “Loi no. 70-9 du 2 Janvier 1970 réglementant les conditions d’exercice des activités relatives à certaines operations portant sur les immeubles et les fonds de commerce”.

The overall objective of both statutory regimes is to promote integrity, honesty, transparency and professionalism in the real estate industry by regulating the activities of real estate agents, thereby protecting the interests of clients so that they can transact in confidence with real estate professionals. Both regimes provide, *inter alia*, for the definition of a real estate agent (“agent immobilier”) and requirements for the exercise of this profession, the establishment of a regulatory authority (a Real Estate Agents Authority or a “Commission de la Transaction et de la Gestion Immobilières”), the keeping up of a register of real estate agents, the legal obligations of real estate agents as well the elaboration of a Code of Conduct, disciplinary proceedings for breaches of legal and ethical obligations, as well as the remuneration of their activities.
Option 1: Regulation of Activities of Real Estate Agents through Enactment of a Real Estate Agents Act

NOTE TO THE REAL ESTATE AGENTS BILL

A real estate agent is a person who acts as an intermediary between sellers and buyers of real estate/real property and attempts to find sellers who wish to sell and buyers who wish to buy. Tasks performed by real estate agents include, *inter alia*, obtaining information about properties to be sold or leased, the circumstances of their owner and the needs of prospective buyers or tenants; showing properties to be sold or leased to prospective buyers or tenants and explaining terms of sale or conditions of rent or lease; facilitating negotiations with tenants and owners on rents and fees; arranging signing of lease agreements and transfer of property rights; collecting rent and bond monies on behalf of owner and inspecting properties before, during and after tenancies.

The Bill is intended to promote integrity, honesty, transparency and professionalism in the real estate industry. It will protect the public from unscrupulous operators, but without undue restrictions on the business of reputable operators. The Bill inserts provisions that will require estate agents to give potential clients specified consumer protection information and to undertake certain additional training or professional development activities. The Bill also has the benefit to require an estate agent to reveal if he has any vested interest in the transaction and it prescribes how to handle client’s money.

The Bill provides for the registration of real estate agents (Clause 3).
The Bill establishes a Real Estate Agents Authority which is vested with the power to approve or revoke applications for registration. It appoints the Registrar for the register of authorized agents, ensures that the aforementioned register is established and maintained in good condition, develops rules of conduct for members of the profession (clause 7), prescribes fees the Registrar may charge for performing the acts under the Bill (clause 12), develops consumer information on operations of real estate, etc. (clause 5). The Authority also provides continuing education for agents, whether general or more specialized (clause 8) and may, if necessary and for the causes provided by law, charge a fee for its services (clauses 13 and 14).

The Bill allows the Authority to intervene in diverse cases, such as inappropriate behaviour of the agent, involving money or other property belonging to others, stealing money or other property belonging to others committed by an employee or trustee of the agent, the inability of the agent, because of a physical or mental disability, to properly manage his trust account, the death of the agent, bankruptcy, liquidation and receivership of the agent, the cancellation or suspension of license, etc. (clause 16). In the cases provided by law, the Authority may, if it deems it necessary, require the surrender of documents belonging to or held by the trustee of the agent or any of his employees or trustees (clause 17) or appoint a person to manage the trust account of the agent (clause 18) or to act as interim administrator (clause 19).

The Authority has the power to inspect the financial documents of the real estate agent when it is reasonably believed that the money entrusted to the agent or person acting on behalf of the agent was stolen by the officer or employee or an officer of the legal person-estate agency, regardless of who holds these documents (clause 21).

The main functions of the Registrar are to establish and maintain in good condition the register, decide whether a particular applicant fulfils the necessary conditions to be given a real estate
license, issue, revoke or suspend licenses, etc. (clause 25). There is a possibility of delegation of powers of the Registrar that is carefully regulated in the Bill (clause 26).

A person wishing to become a real estate agent must fulfil the conditions which are set out: be an adult, to be the appropriate person to hold the license, be qualified, have experience in the work of real estate agency for 10 years before the license application, etc. (clause 27). Cannot act as estate agents persons convicted of a crime involving dishonesty for 10 years preceding the license application, those whose license has been cancelled during the previous five years or whose license has been suspended at the time of demand, people forbidden to practise as estate agent in a country other than Mauritius for five years preceding the license application, etc. (Clause 28 (1)).

The real estate agent’s demand for a license shall be addressed to the Registrar (clause 29) and should be made public in the prescribed manner (Clause 30). Interested parties may object in writing to the issuance of a real estate license for any of the reasons specified in the Bill (clause 31). The Bill regulates the procedure that the Registrar must follow to decide on the license application to which an objection has been opposed (clauses 33 and 34).

The real estate license lasts normally for 12 months and must be renewed for subsequent periods of 12 months (clause 37); it is not transferable (clause 38).

The real estate agent’s license may be cancelled in a series of cases such as the death of the agent, the written request of an officer, non-maintenance of the prescribed qualifications, false statements (intentionally or not) during the submission of the application, etc. (clause 45). The procedure for cancellation of licenses, managed by the Registrar, is laid down in the Bill (clause 46).
The real estate agent’s license may be suspended, and revived at the request of its holder (clause 49). The Bill contains very detailed rules on the holders of real estate licenses (clauses 53-59).

A real estate agent should at all time act fairly and honestly and to the best of the agent's knowledge and ability in the performance of the agent’s functions as an estate agent. In the event of unsatisfactory conduct (clause 61) or misconduct (clause 62) of the real estate agent, any interested person may complain to the Authority. The complaint will be forwarded to a Complaints Assessment Committee (clause 63), which will decide whether it is possible to reach an amicable solution (clause 67 (d)). The proceedings before the Complaints Assessment Committees are laid down in the Bill (clauses 68-85).

The Bill also institutes a Real Estate Agents Disciplinary Tribunal (clause 86), which hears and determines charges against licensees laid by a Complaints Assessment Committee of the Real Estate Agents Authority, appeals against decisions made by a Complaints Assessment Committee and reviews of decisions made by the Registrar of the Authority. The Tribunal will hear suspended license applications and other charges made by the Complaints Assessment Committee and appeals against decisions of the Committee (clause 88). Hearings before the Disciplinary Tribunal are generally public while the deliberations are not (clause 91). If it is proved to the Tribunal that the holder of a real estate license is guilty of misconduct, it may reprimand him, order him to apologize to the claimant or to undergo training or program education, instruct him to remove, reduce or return the fees agreed for his work, require payment of a fine and compensation for damage caused to third parties, cancel the agent or agency officer license, suspend him for a period not exceeding 24 months, etc. (clauses 82 and 93). In case of unsatisfactory conduct of the agent, the Tribunal may reprimand him, order him to apologize to the plaintiff or follow a training or education program, instruct him to remove, reduce or restore the fees agreed for work, require the payment of a fine, etc. (clauses 82 and 93).
Under the Bill, many legal obligations are incumbent on the real estate agent: the obligation to display name information (clause 103); the obligation to pay the money received during his agent activities to the authorized person or under his instructions (clause 104); the duty to pay money, unless exception, to no one for a period of 10 working days of receipt (Clause 105); the obligation to bear the audit of trust accounts, etc. (Clause 107); the obligation to give the client a copy of the contract document he signed previously (Clause 114).

As for the real estate agency contract, the agent is not entitled to compensation or expense unless he performed the work under a written contract delivered to the client within 48 hours (clause 108). A special rule is devoted to residential properties: the real estate agency contract cannot be signed before the agent or representative delivers to the other party a copy of a licensed guide and receives written confirmation that this formality has been completed. Violation of this rule shall not affect the validity of the contract. The contract should specify all commissions the agent would be entitled to (clause 110). The customer has a right to cancel the sole agency agreement (clause 112).

In order to prevent any conflict of interest, the Bill provides, and this is a rule of public order, that no licensee may, without the consent of the customer for whom he or she carries out real estate agency work in respect of a transaction, directly or indirectly, whether by himself or herself or through any partner, sub-agent, or nominee, acquire the land or business to which the transaction relates or any legal or beneficial interest in that land or business. Violation of this rule may result in the annihilation of the contract; in any case the agent will not be entitled to compensation (Clause 115 (1), (4), (5) and (8)). The real estate license holder must notify in writing each party to the transaction resulting from his activity of agent whether he will draw any benefit from this operation other than remuneration (clause 117).
The Bill also contains rules relating to offences committed by real estate agents (clause 119), civil law remedies (clause 133) and power to make regulations (clause 134).
REAL ESTATE AGENTS BILL

Explanatory Memorandum

The objects of the bill are to promote and protect the interests of consumers and other clients in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.

The Bill accordingly
(a) establishes a Real Estates Agent Authority;
(b) sets professional standards; and
(c) provides accountability through a disciplinary process that is independent, transparent, and effective.
# ARRANGEMENT OF CLAUSES

## PART I - Preliminary

1. Short Title ........................................................................................................... 16
2. Interpretation ......................................................................................................... 16
3. Persons may not carry out real estate agency work unless licensed or exempt .......... 20

## Part II

Real Estate Agents Authority .................................................................................. 21

4. Authority established ............................................................................................ 21
5. Authority’s functions .............................................................................................. 21
6. Membership of Authority ....................................................................................... 22
7. Code of professional conduct and client care ....................................................... 22
8. Continuing education ............................................................................................. 23
9. Consultation in relation to practice rules .............................................................. 23
10. Criteria in relation to approval of practice rules by Minister ......................... 24
11. Power of Minister to amend practice rules ......................................................... 24
12. Authority may prescribe fees .............................................................................. 25
13. Operational levy ................................................................................................... 25
14. Disciplinary levy .................................................................................................. 26
15. Payment of fees, levies, and fines ....................................................................... 26
16. Grounds for intervention ..................................................................................... 27
17. Power to take possession of documents ............................................................... 28
18. Administration of trust account in certain cases ............................................... 28
19. Appointment of interim administrator in certain cases ..................................... 29
20. Authority may direct audit of agent’s trust account .................................................. 29
21. Authority may inspect certain financial records .......................................................... 30
22. Judge in chambers may order Authority to return documents ..................................... 30
23. Judge in chambers may give directions to administrator of trust account or cancel appointment .................................................................................................................................................................................. 31
24. Authority to appoint Registrar ................................................................................. 32
25. Functions of Registrar .............................................................................................. 32
26. Power of Registrar to delegate .................................................................................. 32

Part III .................................................................................................................................. 33
Licensing ................................................................................................................................ 33
27. Entitlement to licence ................................................................................................. 33
28. Persons prohibited from being licensed ...................................................................... 34
29. Application for licence ............................................................................................... 35
30. Applicant must advertise application .......................................................................... 35
31. Objections to issue of licence .................................................................................... 35
32. Written submission in response by applicant ............................................................. 36
33. Procedure in Registrar determining licence application and objection ....................... 36
34. Registrar to license applicant or decline application ................................................... 37
35. Special provisions in respect of partnerships and companies ..................................... 39
36. Duty to produce evidence of issue of licence .............................................................. 39
37. Term of licence ........................................................................................................... 39
38. Licence may not be transferred ................................................................................... 40
39. Agent’s licence .......................................................................................................... 40
<table>
<thead>
<tr>
<th>Section Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>40</td>
<td>Branch manager’s or salesperson’s licence</td>
</tr>
<tr>
<td>41</td>
<td>Salespersons must be supervised</td>
</tr>
<tr>
<td>42</td>
<td>Employment status of salesperson</td>
</tr>
<tr>
<td>43</td>
<td>Renewal of licence</td>
</tr>
<tr>
<td>44</td>
<td>Expiry of licence</td>
</tr>
<tr>
<td>45</td>
<td>Cancellation of licence</td>
</tr>
<tr>
<td>46</td>
<td>Process for cancellation</td>
</tr>
<tr>
<td>47</td>
<td>Effective date of cancellation</td>
</tr>
<tr>
<td>48</td>
<td>Recording of suspension of licence</td>
</tr>
<tr>
<td>49</td>
<td>Voluntary suspension of licence</td>
</tr>
<tr>
<td>50</td>
<td>Effect of suspension of licence</td>
</tr>
<tr>
<td>51</td>
<td>Effective date of suspension</td>
</tr>
<tr>
<td>52</td>
<td>Voluntary surrender of licence</td>
</tr>
<tr>
<td>53</td>
<td>Register of licensees</td>
</tr>
<tr>
<td>54</td>
<td>Form of register</td>
</tr>
<tr>
<td>55</td>
<td>Matters to be contained in register</td>
</tr>
<tr>
<td>56</td>
<td>Obligation to notify Registrar</td>
</tr>
<tr>
<td>57</td>
<td>Alterations to register</td>
</tr>
<tr>
<td>58</td>
<td>Purpose of register</td>
</tr>
<tr>
<td>59</td>
<td>Search of register</td>
</tr>
<tr>
<td></td>
<td><strong>Part IV</strong></td>
</tr>
<tr>
<td></td>
<td>Complaints and discipline</td>
</tr>
<tr>
<td>60</td>
<td>Meaning of licensee in this Part</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>-------</td>
</tr>
<tr>
<td>61.</td>
<td>Unsatisfactory conduct</td>
</tr>
<tr>
<td>62.</td>
<td>Misconduct</td>
</tr>
<tr>
<td>63.</td>
<td>Complaints about licensees</td>
</tr>
<tr>
<td>64.</td>
<td>Authority to appoint Complaints Assessment Committees</td>
</tr>
<tr>
<td>65.</td>
<td>Panel</td>
</tr>
<tr>
<td>66.</td>
<td>Constitution of Committees for consideration of matters before it</td>
</tr>
<tr>
<td>67.</td>
<td>Functions of Committees</td>
</tr>
<tr>
<td>68.</td>
<td>Procedure on receipt of complaint</td>
</tr>
<tr>
<td>69.</td>
<td>Decision to take no action on complaint</td>
</tr>
<tr>
<td>70.</td>
<td>Notice of decision</td>
</tr>
<tr>
<td>71.</td>
<td>Inquiry by Committee</td>
</tr>
<tr>
<td>72.</td>
<td>Notice to licensee</td>
</tr>
<tr>
<td>73.</td>
<td>Procedure of Committee</td>
</tr>
<tr>
<td>74.</td>
<td>Powers to call for information or documents</td>
</tr>
<tr>
<td>75.</td>
<td>Compliance with requirement to provide information or document</td>
</tr>
<tr>
<td>76.</td>
<td>Negotiation, conciliation, and mediation</td>
</tr>
<tr>
<td>77.</td>
<td>Evidence</td>
</tr>
<tr>
<td>78.</td>
<td>Power of Committee to determine complaint or allegation</td>
</tr>
<tr>
<td>79.</td>
<td>Hearings on papers</td>
</tr>
<tr>
<td>80.</td>
<td>Reference of complaint to Disciplinary Tribunal</td>
</tr>
<tr>
<td>81.</td>
<td>Application for suspension of licence</td>
</tr>
<tr>
<td>82.</td>
<td>Power of Committee to make orders</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>83. Notice of determination</td>
<td>63</td>
</tr>
<tr>
<td>84. Enforcement of orders</td>
<td>64</td>
</tr>
<tr>
<td>85. Non-payment of fines or costs</td>
<td>64</td>
</tr>
<tr>
<td>86. Real Estate Agents Disciplinary Tribunal established</td>
<td>64</td>
</tr>
<tr>
<td>87. Constitution of Tribunal for hearings</td>
<td>65</td>
</tr>
<tr>
<td>88. Functions of Tribunal</td>
<td>65</td>
</tr>
<tr>
<td>89. Proceeding before Tribunal</td>
<td>65</td>
</tr>
<tr>
<td>90. Representation before Disciplinary Tribunal</td>
<td>66</td>
</tr>
<tr>
<td>91. Hearings to be in public</td>
<td>66</td>
</tr>
<tr>
<td>92. Evidence</td>
<td>67</td>
</tr>
<tr>
<td>93. Determination of charges and orders that may be made if charge proved</td>
<td>67</td>
</tr>
<tr>
<td>94. Appeal to Tribunal against determination by Committee</td>
<td>69</td>
</tr>
<tr>
<td>95. Application to Tribunal to review determination by Registrar</td>
<td>69</td>
</tr>
<tr>
<td>96. Notification by Tribunal</td>
<td>70</td>
</tr>
<tr>
<td>97. Enforcement of order</td>
<td>70</td>
</tr>
<tr>
<td>98. Suspension of licence pending outcome of hearing</td>
<td>70</td>
</tr>
<tr>
<td>99. Right of appeal</td>
<td>72</td>
</tr>
<tr>
<td>100. Supreme Court may make interim order</td>
<td>72</td>
</tr>
<tr>
<td>101. Duties of Registrar if interim order made</td>
<td>72</td>
</tr>
<tr>
<td>102. Determination of appeal</td>
<td>73</td>
</tr>
<tr>
<td>Part V</td>
<td>73</td>
</tr>
<tr>
<td>Duties relating to real estate agency work</td>
<td>73</td>
</tr>
<tr>
<td>103. Agent to display required name information</td>
<td>73</td>
</tr>
</tbody>
</table>
104. Duty of agent with respect to money received in course of business ............................................. 74
105. Money to be held by agent for 10 working days ................................................................................. 75
106. Agent to furnish account to client ........................................................................................................ 75
107. Agents’ trust accounts to be audited ....................................................................................................... 76
108. No entitlement to commission or expenses without agency agreement ................................................. 76
109. Approved guide to be provided before agency agreement for residential property signed ................. 77
110. Agency agreement must disclose rebates, discounts, and commissions .................................................. 78
111. Regulations may make provisions in respect of agency agreements ....................................................... 79
112. Client may cancel sole agency agreement by 5 pm next working day .................................................... 79
113. Licensee to give copy of contractual document .................................................................................... 80
114. Approved guide to be provided when contractual document provided ................................................. 80
115. Contracts for acquisition by licensee or related person may be cancelled ......................................... 81
116. Client to be provided with valuation .................................................................................................... 82
117. Disclosure of other benefits that licensee stands to gain from transaction ......................................... 83
118. Meaning of licensee and person related to licensee in sections 115 to 117 ........................................... 84

Part VI ......................................................................................................................................................... 85

Miscellaneous provisions ............................................................................................................................ 85
119. General Penalty ...................................................................................................................................... 85

120. Offence to carry on business of agent, branch manager, or salesperson unless licensed or exempt ................................................................. 85
121. Offence of holding out as agent, branch manager, or salesperson unless licensed or exempt ......... 85
122. Offence of employing or contracting unlicensed or non-exempt person as agent, branch manager, or salesperson ........................................................................................................... 86
123. Offence to provide false or misleading information ............................................................................. 86
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>124</td>
<td>Offence to fail to notify change in circumstances</td>
<td>86</td>
</tr>
<tr>
<td>125</td>
<td>Offence to fail to comply with requirement to give possession of documents</td>
<td>87</td>
</tr>
<tr>
<td>126</td>
<td>Offence to fail to comply with requirement to produce financial records</td>
<td>87</td>
</tr>
<tr>
<td>127</td>
<td>Offence to fail to provide information or document</td>
<td>87</td>
</tr>
<tr>
<td>128</td>
<td>Offence to fail to pay person lawfully entitled to money received</td>
<td>87</td>
</tr>
<tr>
<td>129</td>
<td>Offence to fail to hold money</td>
<td>87</td>
</tr>
<tr>
<td>130</td>
<td>Offence to fail to disclose conflict of interest</td>
<td>88</td>
</tr>
<tr>
<td>131</td>
<td>Offence to render false accounts</td>
<td>88</td>
</tr>
<tr>
<td>132</td>
<td>Offence to resist, obstruct, etc.</td>
<td>88</td>
</tr>
<tr>
<td>133</td>
<td>Civil remedies not affected</td>
<td>88</td>
</tr>
<tr>
<td>134</td>
<td>Regulations</td>
<td>89</td>
</tr>
<tr>
<td>135</td>
<td>Commencement</td>
<td>90</td>
</tr>
</tbody>
</table>
PART I - Preliminary

1. Short Title

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

2. Interpretation

In this Act, unless the context otherwise requires,

“agency agreement” means an agreement under which an agent is authorised to undertake real estate agency work for a client in respect of a transaction;

“agent” means a real estate agent who holds, or is deemed to hold, a current licence as an agent under this Act;

“authority” means the Real Estate Agents Authority established by this Act;

“branch manager” means a person who holds, or is deemed to hold, a current licence as a branch manager under this Act;

“client” means the person on whose behalf an agent carries out real estate agency work;
“company” means a company within the meaning of the Companies Act, and includes a limited partnership registered under the Limited Partnerships Act;

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

“commission” means remuneration by way of commission, fee, gain, or reward for services provided by an agent in respect of a transaction;

“Complaints Assessment Committee” or “Committee” means a Complaints Assessment Committee established under this Act;

“Disciplinary Tribunal” or “Tribunal” means the Disciplinary Tribunal established under this Act;

“expenses” means any sum or reimbursement for expenses or charges incurred in connection with services provided by an agent in the capacity of agent;

“former licensee” means a person who was, but is no longer, a licensee, and includes a person who was a real estate agent, branch manager, or salesperson;
“land” includes all estates and interests, whether freehold or chattel, in real property, and includes any building and any part of a building and, in relation to any transaction relating to land that also relates to any goods, chattels, or other property, also includes those goods or chattels and that other property;

“law practitioner” has the same meaning as in the Law Practitioners Act;

“licence” means a licence granted under this Act to act as an agent, branch manager, or salesperson;

“licensee” means an agent, a branch manager, or a salesperson;

“Minister” means the Minister responsible for Lands and Housing;

“officer”, in relation to a licensee that is a company,—

(a) means every director, manager, or secretary of the company who, on behalf and in the name of the company, carries on the company’s business as a real estate agent; and
(b) includes any person, however designated, who is responsible for the management of the company and any person who is responsible for the management of any branch of the company, or (in relation to any company that carries on any other business in addition to its business as a real estate agent) the person responsible for the management of the company’s real estate agency work;
"real estate agency work" or "agency work"—

(a) means any work done or services provided, in trade, on behalf of another person for the purpose of bringing about a transaction; and
(b) includes any work done by a branch manager or salesperson under the direction of, or on behalf of an agent to enable the agent to do the work or provide the services described in paragraph (a); but
(c) does not include—
(i) the provision of general advice or materials to assist owners to locate and negotiate with potential buyers; or
(ii) the publication of newspapers, journals, magazines, or websites that include advertisements for the sale or other disposal of any land or business; or
(iii) the broadcasting of television or radio programmes that include advertisements for the sale or other disposal of any land or business; or
(iv) the lending of money on mortgage or otherwise; or
(v) the provision of investment advice;

"register" means the register required to be established by the Registrar under this Act;

"residential property" means any property used, or intended to be used, exclusively or principally for residential purposes;

"salesperson" means a person who holds, or is deemed to hold, a current licence as a salesperson under this Act;
“sole agency agreement” means an agreement between an agent and a client in which the client agrees not to instruct any other agent to act for the client in respect of the transaction to which the agreement relates;

“transaction” means any 1 or more of the following:

(a) the sale, purchase, or other disposal or acquisition of a freehold estate or interest in land;
(b) the grant, sale, purchase, or other disposal or acquisition of a leasehold estate or interest in land, including tenancy;
(c) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land).

3. Persons may not carry out real estate agency work unless licensed or exempt

(1) A person must not carry out any real estate agency work unless the person—

(a) is licensed under this Act and acts within the scope of that licence; or
(b) is exempt from the licensing requirement under this Act or under another enactment.

(2) No person may hold himself or herself out to the public as ready to carry out any agency work if that person is not licensed under this Act or exempt from the licensing requirement under this Act or under another enactment.

(3) For the purposes of this section, it is immaterial whether or not a person carries out any agency work as a business in its own right or as part of, or in connection with, any other business.
Part II

Real Estate Agents Authority

4. Authority established

This section establishes the Real Estate Agents Authority.

5. Authority’s functions

(1) The functions of the Authority are to—

(a) administer the licensing regime for agents, branch managers, and salespeople, including the granting and renewal of licence applications; and
(b) appoint a Registrar of the register of licensees; and
(c) ensure that the register of licensees is established, kept, and maintained; and
(d) develop practice rules for the Minister’s approval and maintain these rules for licensees, including ethical responsibilities; and
(e) set fees and levies; and
(f) appoint Complaints Assessment Committees and maintain a panel of persons suitable to serve as members of Complaints Assessment Committees; and
(g) develop consumer information on matters relating to real estate transactions, including approved guides on agency agreements and sale and purchase agreements; and
(h) develop and provide consumer information on matters relating to the provision of real estate services, including providing the public with information on how to make a complaint; and
(i) set professional standards for agents; and
(j) investigate and initiate proceedings in relation to offences under this Act and any other enactment; and
(k) investigate of its own motion any act, omission, allegation, practice, or other matter which indicates or appears to indicate unsatisfactory conduct or misconduct on the part of a licensee; and

(l) provide procedures for the lodging of complaints; and

(m) receive complaints relating to the conduct of licensees; and

(n) carry out any other function that the Minister may direct the Authority to perform; and

(o) carry out any other functions that may be conferred on the Authority by this Act or any other enactment.

(2) The Authority may, where it considers it appropriate to do so, consult with representatives of the real estate industry about any matter that relates to the functions of the Authority.

6. Membership of Authority

(1) There shall be an authority which consists of:

(2) a chairperson who shall be a law practitioner of not less than 10 years’ standing;

(3) at least 2 members who are licensees or former licensees; and

(4) such other members who represent the views of a broad range of interests, including consumer and industry interests.

7. Code of professional conduct and client care

(1) The Authority may, by notice in the Gazette, make any practice rules to enable it to discharge the duty imposed on it by subsection (2).
(2) The Authority must have rules that include or provide for a code of professional conduct and client care, which will be a reference point for discipline and which will focus on, but need not be limited to, the duties of agents to their clients.

8. Continuing education

The Authority may, by notice in the *Gazette*, make practice rules that—

(a) provide for the times or frequencies at which continuing education must be undertaken and the topics to be addressed;
(b) require that particular continuing education be undertaken, or (in addition or as an alternative) require that the continuing education comply with specified requirements:
(c) exempt, or provide for the exemption of, any agent, branch manager, or salesperson from all or any practice rules made under paragraph (b).

9. Consultation in relation to practice rules

Practice rules are made by the Authority with the approval of the Minister and after consultation with—

(a) agents, branch managers, and salespersons that the Authority considers to be representative of the real estate industry; and
(b) any other persons or groups that the Minister may direct.
10. Criteria in relation to approval of practice rules by Minister

The Minister must, in deciding whether to approve any practice rules, have regard, among other things, to—

(a) the principle that it may be necessary or expedient to impose duties or restrictions on agents, branch managers, or salespersons in order to protect the interests of consumers;
(b) the principle that the burden of a duty or restriction should be proportionate to the benefits that are expected to result from the imposition of the duty or restriction;
(c) the consistency of the rules with Mauritius’ international obligations;
(d) the provisions of this Act and all rights and obligations of agents under the law.

11. Power of Minister to amend practice rules

(1) If the Minister considers any practice rules to be deficient in any respect, the Minister may, by notice in the Gazette and subject to subsections (2) and (3), make any amendments to those rules that are necessary to remedy the deficiency.

(2) Amendments made under subsection (1) to practice rules may relate only to matters in respect of which practice rules may be made.

(3) The Minister, in deciding whether to make amendments under subsection (1) to any practice rules,—

(a) must consult the Authority; and
(b) may consult with agents, branch managers, and salespersons that the Minister considers to be representative of the real estate industry; and
12. Authority may prescribe fees

(1) The Authority may from time to time, by notice in the *Gazette*, prescribe the fees payable for any action that a person wishes the Registrar to perform under this Act.

(2) Different fees may be prescribed under this section for different kinds of action and for different classes of person, depending on the kind of licence that they have, or wish to obtain or renew.

(3) Any notice prescribing any fee under this section may exempt any class or classes of person from liability to pay any such fee, and may provide for the waiver or refund of any such fee.

13. Operational levy

(1) The Authority may from time to time, by notice in the *Gazette*, impose on every licensee an operational levy of any amount that the Authority thinks fit for the purpose of funding the costs arising from any or all of the following:

(a) the performance of the functions of the Authority;
(b) the performance of the functions of the Registrar;
(c) any investigation by, or proceeding of, a Complaints Assessment Committee.

(2) Any notice imposing any levy under this section may do either or both of the following:

(a) prescribe different amounts as the levy payable by different classes of licensee;
14. Disciplinary levy

(1) The Authority may from time to time, by notice in the Gazette, impose on every licensee a disciplinary levy of any amount that the Authority thinks fit for the purpose of funding the costs arising from any proceeding of the Tribunal.

(2) Any notice imposing any levy under this section may do either or both of the following:

(a) prescribe different amounts as the levy, in whole or in part, payable by different classes of licensee;
(b) exempt from liability to pay that levy, in whole or in part, any class or classes of licensee, and may provide for the waiver or refund of the whole or part of that levy.

15. Payment of fees, levies, and fines

(1) All fees and levies required to be paid under this Act are payable to the Registrar or the Authority.

(2) All fines imposed on a person by a Complaints Assessment Committee or by the Disciplinary Tribunal are payable to the Registrar.
16. Grounds for intervention

The grounds for exercising a power conferred by this Act in respect of any agent are—

(a) that there are reasonable grounds to believe that the agent, or, if the agent is a company, any officer of the company, has been guilty of larceny, theft or of any improper conduct in relation to the money or other property of any other person; or
(b) that there are reasonable grounds to believe that any money or other property entrusted to the agent has been stolen by his or her employee, salesperson, or person acting on behalf of the agent, or, if the agent is a company, by any officer, employee, salesperson, or person acting on behalf of the company; or
(c) that the agent is, owing to physical or mental disability, unable to properly administer the agent’s trust account; or
(d) that the agent has died; or
(e) that the agent has been adjudicated a bankrupt or has been placed in receivership or liquidation under the Insolvency Act; or
(f) that the licence of the agent has been cancelled or suspended; or
(g) that there are reasonable grounds to believe that the agent has ceased to carry on business and has neglected to wind up the agent’s trust account after reasonable notice has been given to the agent by the Authority requiring the agent to do so; or
(h) that there are reasonable grounds to believe that the agent has not administered the trust account in accordance with this Act and any regulations made under it; or
(i) that there are reasonable grounds to believe that the agent operates a trust account that has been administered fraudulently or recklessly.
17. Power to take possession of documents

(1) In this section, **documents** includes financial records and deeds.

(2) If the Authority is satisfied that 1 or more of the grounds specified in section 16 apply to an agent, the Authority may, if in its opinion it is appropriate to do so, by notice, require any person to give the Authority possession of any documents that—

(a) belong to the agent; or

(b) in the course of the agent’s business, are, or have been, in the possession or control of

(i) the agent; or

(ii) if the agent is a company, any officer, employee, or person acting on behalf of the company.

18. Administration of trust account in certain cases

(1) If the Authority is satisfied that 1 or more grounds specified in section 16 apply to an agent, the Authority may, if in its opinion it is appropriate to do so, make an order appointing a suitable person as the administrator of the agent’s trust account for a period specified by the Authority.

(2) A copy of every order made by the Authority under this section must be served on the banker, and on receipt of that copy the bank in which the trust account is kept must allow the person appointed by the order to administer the trust account.
19. Appointment of interim administrator in certain cases

(1) The Authority may make an order appointing an appropriate person as an interim administrator of an agent’s trust account if the Authority—

(a) reasonably suspects that any money entrusted to the agent may be at risk; and
(b) is satisfied that 1 or more of the grounds specified in section 16 apply to that agent.

(2) The function of the interim administrator is to preserve the assets until the termination of the order under subsection (1).

(3) An order under subsection (1) is terminated when—
(a) the Authority notifies the agent concerned that the Authority no longer considers that money entrusted to the agent is at risk; or
(b) an order is made under section 18.

(4) Section 18(2) applies, with all necessary modifications, to an order made under this section.

20. Authority may direct audit of agent’s trust account

(1) The Authority may direct an audit of an agent’s trust account at any time and appoint an auditor to carry out that audit.
(2) No person is qualified for appointment as an auditor of the trust account unless the person is a qualified auditor.
21. Authority may inspect certain financial records

(1) This section applies if the Authority has reasonable grounds to believe that any money entrusted to an agent or to any person acting on behalf of the agent has been stolen by any of the following persons:

(a) by the agent or by a person who is, or has been, employed or engaged by the agent;
(b) in the case of a company that is an agent, by a person who is, or has been, an officer of the company or who is, or has been, employed or engaged by the company.

(2) The Authority may, by notice, require any person (including, without limitation, any banker) who has possession or control of financial records or other records that relate to any money received by any person specified in subsection (1) to produce those records to a person authorised by the Authority and to permit that person to inspect and copy those records.

22. Judge in chambers may order Authority to return documents

(1) Upon taking possession of any document under section 19, the Authority must, without delay, serve on the agent concerned a notice giving particulars of the document and the date on which it was taken into the Authority’s possession.

(2) Within 14 days after the notice has been served, the agent, or any of his or her partners, may apply to a Judge in chambers for an order directing the Authority to return any document specified in the order to the person from whom it was received, or for any other order that the Judge in chambers thinks fit.
23. Judge in chambers may give directions to administrator of trust account or cancel appointment

(1) If the Authority makes an order, under section 18 or 19, appointing an administrator or interim administrator, the Authority must, without delay, serve a copy of the order on—

(a) the agent concerned; and
(b) if the agent carries out agency work in partnership, any partner in the partnership; and
(c) any person who, to the knowledge of the Authority, is or may be entitled to any money held in the trust account administered by the administrator.

(2) A person on whom a copy of the order is served may, within 14 days after service of the order, apply to the Judge in chambers for an order under subsection (4).

(3) The following persons may, at any time while an order under section 18 or 19 is in force, apply for an order under subsection (4):

(a) the administrator or interim administrator;
(b) the banker with whom the trust account is kept;
(c) a person who claims to be entitled to any money held in the trust account, but who has not been served under subsection (1)(c).

(4) On an application under this section, a Judge in chambers may, by order—

(a) direct the administrator, interim administrator, or the banker on the action to be taken in relation to the administration of the trust account (including the winding-up of that account);
(b) rescind or vary the order of the Authority by which the administrator or interim administrator was appointed.
24. Authority to appoint Registrar

The Authority must appoint one of its employees as Registrar of the register of licensees.

25. Functions of Registrar

The functions of the Registrar are to—

(a) establish, keep, and maintain the register according to this Act; and
(b) make decisions about whether persons meet the requirements for licensing or continued licensing; and
(c) issue, cancel, and suspend licences, and to perform the other functions relating to licensing under this act; and
(d) provide administrative support for the board of the Authority sufficient to enable the board to perform its functions efficiently and effectively; and
(e) perform any other function conferred on the Registrar by this Act or any other enactment.

26. Power of Registrar to delegate

(1) Except as provided in subsection (2), the Registrar may delegate to any person, either generally or particularly, any of the Registrar’s functions, duties, and powers.

(2) The Registrar must not delegate the Registrar’s general power of delegation and must not, without the prior approval of the Authority, delegate any of the Registrar’s functions, duties, and powers set out in section 25(b) or (c).

(3) A delegation—
(a) must be in writing; and
(b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
(c) is revocable at any time, in writing; and
(d) does not prevent the performance or exercise of a function or duty or exercise of any power by the Registrar.

(4) A person to whom any functions, duties, or powers are delegated may perform those functions and duties and exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(5) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Part III
Licensing

Sub-Part A - How to become licensed

27. Entitlement to licence

(1) An individual may be licensed as an agent or branch manager if the individual satisfies the Registrar that he or she—

(a) has attained the age of 18 years; and
(b) is not prohibited from holding a licence under this Act; and
(c) has obtained 3 years’ experience in real estate agency work within the 10 years preceding the application to be licensed as an agent or branch manager under this Act.

(2) An individual may be licensed as a salesperson if the individual satisfies the Registrar that he or she—

(a) has attained the age of 18 years; and
(b) is not prohibited from holding a licence under this Act.

28. Persons prohibited from being licensed

(1) The following persons are not eligible to hold a licence:

(a) a person who has been convicted, whether in Mauritius or another country, of an offence involving dishonesty within the 10 years preceding the application for a licence;
(b) a person—
(i) whose licence has, within the preceding 5 years, been cancelled under this Act; or
(ii) whose licence is currently suspended under this Act;
(c) a person subject to an order made, or a notice given, under the law of a country outside Mauritius, within the preceding 5 years who is prohibited from acting as an agent, branch manager, or salesperson (or equivalent) in that country;
(d) a person who is an officer of a licensee company, a chief executive officer of a licensee company, or a branch manager and who has been disqualified from holding a licence or whose licence has been suspended;

(2) A person is not eligible to hold an agent’s licence if he or she is an undischarged bankrupt according to the Insolvency Act.
29. Application for licence

An application for a licence under this Part must—

(a) be made to the Registrar in the prescribed form; and
(b) be accompanied by a declaration made in the form prescribed by law or regulation that the person is eligible to obtain a licence by virtue of section 27 and is not prohibited from being licensed under section 28; and
(c) be accompanied by the prescribed fee (if any).

30. Applicant must advertise application

The applicant must advertise the application for a licence in the prescribed manner.

31. Objections to issue of licence

(1) A person may, within the prescribed time and in the prescribed manner, give the Registrar written notice of his or her desire to object to the issue of a licence to the applicant.

(2) No objection may be made under subsection (1) except on 1 or more of the following grounds:

(a) that the applicant is not eligible to obtain a licence by virtue of section 27 or 28:
(b) if the applicant is a company, that any person who will be an officer of the company if the application is granted is not, by reason of his or her personal character or financial position, a proper person to be an officer of a licensee company.
(3) The notice of objection must include a statement of the grounds relied on and any prescribed matters.

(3A) The notice of objection may include a request for a hearing.

(4) The Registrar must send a copy of the notice to the applicant.

32. Written submission in response by applicant

(1) An applicant to whom a notice of objection has been sent may, within the prescribed time, send to the Registrar a written submission in response to the notice of objection.

(2) If an applicant sends a written response to the Registrar, the Registrar must send a copy of it to the person who gave notice of an objection.

(3) A written response to the Registrar may include a request for a hearing.

33. Procedure in Registrar determining licence application and objection

(1) This section applies if notice of an objection to an application is made under section 31.

(2) Unless subsection (4) applies, the Registrar may consider the application and notice of objection to that application on the papers or by a hearing in accordance with subsection (5).
(3) If the Registrar considers the application and notice of objection to that application on the papers, he or she must consider any written submission in response that is provided by the applicant under section 32.

(4) If the Registrar has received a request for a hearing under section 31(3A) or 32(3), the Registrar must hold a hearing in accordance with subsection (5).

(5) If the Registrar elects to hold a hearing under subsection (2) or is required to hold a hearing under subsection (4), the Registrar must,—

(a) as soon as practicable, fix a time and place for hearing the application and objection; and
(b) give at least 14 days’ notice of the hearing to the applicant and to any person objecting to the issue of the licence; and
(c) hear the applicant and any person objecting to the issue of the licence; and
(d) consider the evidence put before him or her, including any written submission in response that is provided by the applicant under section 32.

34. Registrar to license applicant or decline application

(1) The Registrar must grant a licence to the applicant if, after considering or hearing any objection to the issue of a licence, the Registrar is satisfied that the applicant—

(a) is entitled to be licensed as an agent, branch manager, or salesperson under section 27; and
(b) is not prohibited from being licensed as an agent, branch manager, or salesperson under section 28; and
(c) if the applicant is a company, any person who will be an officer of the company if the application is granted is, by reason of both his or her personal character and his or her financial position, a proper person to be an officer of a licensee company.

(2) The Registrar, on granting the licence, must—

(a) issue to the applicant 1 of the following classes of licence:
   (i) an agent’s licence; or
   (ii) a branch manager’s licence; or
   (iii) a salesperson’s licence; and
(b) send to the applicant evidence of the issue of that licence, in the prescribed form; and
(c) enter the applicant’s name in the register; and
(d) issue a registration number to the applicant and notify the applicant as to what the registration number is.

(3) If the Registrar is not satisfied that the applicant is entitled to be licensed as an agent, branch manager, or salesperson, the Registrar must—

(a) decline the application; and
(b) notify the applicant of the Registrar’s decision and the reasons for it; and
(c) notify the applicant of his or her right of review by the Tribunal against the decision.
35. Special provisions in respect of partnerships and companies

(1) A person must not, after the issue to him or her of an agent’s licence, enter into partnership with any person in respect of his or her business as an agent without the prior approval of the Authority; and the Authority must refuse to grant its approval unless it is satisfied that the proposed partner holds an agent’s licence.

(2) If a company is the holder of an agent’s licence, at least 1 officer of the company must, at any given time, hold an agent’s licence.

36. Duty to produce evidence of issue of licence

A licensee must, if asked by any person, produce for inspection by that person either—

(a) the evidence of the issue of a licence sent to that person under this Act; or
(b) a copy of that evidence.

37. Term of licence

(1) A licence continues in force for a period of 12 months commencing on the date that the Registrar enters the applicant’s name in the register, unless—
(a) the licence is cancelled according to this Act; or
(b) the licensee is suspended according to this Act;
(c) the licence is surrendered according to this Act.
(2) A licence may be renewed for further periods of 12 months in accordance with this Act.

38. Licence may not be transferred

A licence may not be transferred and may not vest by operation of law in any person other than the person to whom the licence was granted.

Sub-Part C - Effect of licences and status of licensees

39. Agent’s licence

An agent’s licence authorises the licensee to carry out real estate agency work on his or her own account, whether in partnership or otherwise.

40. Branch manager’s or salesperson’s licence

A branch manager’s licence or a salesperson’s licence authorizes the licensee to carry out real estate agency work for or on behalf of an agent.

41. Salespersons must be supervised

(1) A salesperson must, in carrying out any agency work, be properly supervised and managed by an agent or a branch manager.

(2) In this section properly supervised and managed means that the agency work is carried out under such direction and control of either a branch manager or an agent as is sufficient to ensure—
(a) that the work is performed competently; and  
(b) that the work complies with the requirements of this Act.

42. Employment status of salesperson

(1) A salesperson may be employed by an agent as an employee or may be engaged by an agent as an independent contractor.

(2) Any written agreement between an agent and a salesperson is conclusive so far as it expressly states that the relationship between the agent and the salesperson is that of employer and independent contractor.

(3) An agent who engages a salesperson as an independent contractor is liable for the acts and omissions of the salesperson in the same manner, and to the same extent, as if the agent had employed the salesperson as an employee.

Sub-Part D - Renewal of licence

43. Renewal of licence

(1) An application for renewal of a licence must, before the date on which the licence expires,—

(a) be made to the Registrar in the prescribed form; and
(b) be accompanied by the prescribed fee (if any).

(2) Subject to subsection (3), sections 27, 28, and 34 apply, with any necessary modifications, to an application for renewal of a licence.
(3) The Registrar must, in addition to the matters specified in section 34(1), be satisfied that the applicant for renewal of a licence has completed any continuing education required by practice rules made by the Authority according to this Act.

(4) If an application for renewal of a licence has been made but not determined before the date on which the licence is due to expire, the licence continues in force until the application is determined.

(5) The grant of a renewal of a licence takes effect from the date of expiry of the previous licence.

44. Expiry of licence

If no application for the renewal of a licence is made on or before the date on which the licence would otherwise expire, the Registrar must record the expiry of the licence in the register as soon as practicable after that date.

45. Cancellation of licence

The Registrar must cancel a person’s licence and remove that person’s name from the register,—

(a) in the case of an individual, if the person dies; or
(b) if the person gives written notice to the Registrar requesting that the Registrar cancel his or her licence; or
(c) if the person has failed to complete any continuing education required by practice rules made by the Authority according to this Act; or
(d) if the licence was granted on the basis of any false or fraudulent representation or declaration made orally or in writing; or
(e) if the person has failed to pay any prescribed fees or levies, or payment of the fee or levy has subsequently been dishonoured; or
(f) in accordance with other provisions of this Act.

46. Process for cancellation

(1) The process for cancellation of a licence, other than by determination of the Tribunal according to this Act or at the request of the licensee under section 45(b), is as follows:

(a) the Registrar must give the licensee written notice of the Registrar’s intention to cancel the licence; and
(b) the notice must—
   (i) contain or be accompanied by a statement of the Registrar’s reasons for the cancellation; and
   (ii) state that the licensee has 10 working days within which to make written representations to the Registrar as to why the licence should not be cancelled; and
(c) if any written representations are made by the licensee in accordance with paragraph (b)(ii), the Registrar must take those representations into account when deciding whether to cancel the licence; and
(d) the Registrar must then decide whether to cancel the licence and notify the licensee of the Registrar’s decision as soon as practicable.
(2) If the Registrar decides to cancel the licence, the Registrar must—

(a) include in the notice referred to in subsection (1)(d) the grounds for the decision and the date on which the cancellation takes effect; and

(b) specify in the notice that the licensee has a right of appeal to the Tribunal according to this Act; and

(c) record the cancellation on the register as soon as practicable.

47. Effective date of cancellation

The cancellation takes effect on the date specified by the Registrar in the notice given to the licensee under section 46(1)(d), which must be a date after the date of that notice.

Sub-Part F - Suspension of licence

48. Recording of suspension of licence

The Registrar must, on receiving notice from the Tribunal that the licence of a licensee has been suspended according to this Act, record that suspension on the register for the period specified in the notice.

49. Voluntary suspension of licence

(1) A licensee may, by written notice to the Registrar, request that the Registrar suspend his or her or its licence for a period specified in the notice.
(2) The Registrar must suspend the person’s licence and record the suspension in the register for that specified period.

(3) A person whose licence is suspended under this section may, by written notice to the Registrar, request that the Registrar revive that person’s licence.

(4) The Registrar must then revive that person’s licence unless there is some other ground for cancellation or suspension of that person’s licence according to this Act.

50. Effect of suspension of licence

(1) A person is not a licensed agent, branch manager, or salesperson for the purposes of this Act for the period during which his or her licence is suspended.

(2) At the end of the period of suspension the person’s licence is immediately revived unless there is some other ground for cancellation or suspension of that person’s licence according to this Act.

51. Effective date of suspension

The suspension of a licence takes effect, depending on the circumstances, either on the date notified in the Tribunal’s decision communicated according to this Act or on the date the suspension is recorded in the register.

52. Voluntary surrender of licence

(1) A licensee may, by written notice to the Registrar, surrender his or her licence.
(2) A written notice under subsection (1) must be accompanied by the licence.

(3) The Registrar must cancel the person’s licence and record the cancellation in the register.

(4) The cancellation takes effect on the date the cancellation is recorded in the register.

(5) The surrender of a licence under this section does not affect the licensee’s liability—

(a) to pay any fees or other money payable or to be payable in accordance with this Act on or before the date on which the licence would, but for its surrender, expire;
(b) to perform any obligation required to be performed by him or her by or under this Act on or before that date;
(c) for any act done or default made before the date on which the licence ceased to have effect.

Sub-Part G - Register of licensees

53. Register of licensees

(1) The Registrar must establish, keep, and maintain, in accordance with this Act, a register of licensees.

(2) The Registrar must enter in the register—

(a) the name of every licensee; and
(b) the information about that licensee that is specified in section 55, to the extent that the information is relevant to that person.
(3) The Registrar must make any other entries in the register that may be required, permitted, or directed to be entered by or under this Act or the regulations.

54. Form of register

(1) The register may be kept—

(a) as an electronic register (for example, on the Authority’s website); or
(b) in any other manner that the Registrar thinks fit.

(2) The register must be operated at all times, unless the Registrar suspends the operation of the register, in whole or in part, in accordance with subsection (3).

(3) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practicable to provide access to the register.

55. Matters to be contained in register

(1) The register must contain all of the following information for each licensee whose name is entered in the register:

(a) the full name and business address or, in the case of a company, registered office address;
(b) any aliases;
(c) the registration number issued by the Registrar;
(d) the address for communications under this Act;
(e) the name of any company, body corporate, or other agent that is associated with the licensee;
(f) any information about the status and history of the person’s licence, particularly—
   (i) the class of licence held by the person; and
   (ii) the date on which the person’s name was entered in the register; and
   (iii) the date of expiry of the person’s licence, or as the case may be, the date of renewal of the
   licence; and
   (iv) the date on which the term of renewal of the licence expires; and
   (v) any action taken on a disciplinary matter in respect of the person in the last 3 years;
   (g) whether the licensee has completed any continuing education required by practice rules made
   by the Authority according to this Act;
   (h) any other information that the Registrar considers necessary for the purposes of the register.

(2) The register must also show—

   (a) whether a licence was suspended in the last 3 years; and
   (b) if paragraph (a) applies,—
      (i) the ground under this Act for the suspension; and
      (ii) the period of the suspension; and
      (iii) any conditions for termination of the suspension.

56. Obligation to notify Registrar

(1) Each applicant for a licence, and each licensee, must give written notice to the Registrar of
   any change in circumstances within 10 working days after the change.

(2) In this section, change of circumstances means—
   (a) any change in the information recorded in the register; and
(b) any change in the real estate business for which the agent, branch manager, or salesperson works (if any); and
(c) any change that may be prescribed.

57. Alterations to register

The Registrar may at any time make any amendments to the register as are necessary to—

(a) reflect any changes in the name of the licensee or the information specified in section 55; or
(b) correct a mistake caused by any error or omission on the part of the Registrar or any person to whom the Registrar has delegated his or her functions, duties, or powers.

58. Purpose of register

The purpose of the register is—

(a) to enable the public to—
(i) determine whether a person is a licensed agent, branch manager, or salesperson and, if so, the status and history of that person’s licence; and
(ii) choose a suitable agent or salesperson from a list of agents and salespersons; and
(iii) know how to contact the agent or salesperson; and
(iv) know which licensees have been disciplined within the last 3 years; and
(b) to facilitate the administrative, disciplinary, and other functions of the Authority, Registrar, and Disciplinary Tribunal under this Act.
(1) A person may search the register, on payment of the prescribed fee (if any), for a purpose set out in section 58.

(2) The Registrar must make the register available for public inspection—
(a) during the hours when the office of the Registrar is open to the public for the transaction of business on a working day; and
(b) at any other time that the Registrar allows.

(3) The Registrar must supply copies of all or part of the register on request and on payment of a reasonable charge for the production of the copy if the provision of those copies is consistent with the register’s purposes.

Part IV
Complaints and discipline

Sub-Part A - Interpretation

60. Meaning of licensee in this Part

In this Part, unless the context otherwise requires, licensee has the meaning given to it by section 3 and includes—

(a) a former licensee; and
(b) a person who is or has been an officer of a company that is, or has been, a licensee.

Sub-Part B - Unsatisfactory conduct and misconduct

61. Unsatisfactory conduct

For the purposes of this Act, a licensee is guilty of unsatisfactory conduct if the licensee carries out real estate agency work that—

(a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee; or
(b) contravenes a provision of this Act or of any regulations or rules made under this Act; or
(c) is incompetent or negligent; or
(d) would reasonably be regarded by agents of good standing as being unacceptable.

62. Misconduct

For the purposes of this Act, a licensee is guilty of misconduct if the licensee’s conduct—

(a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
(b) constitutes seriously incompetent or seriously negligent real estate agency work; or
(c) consists of a wilful or reckless contravention of—
   (i) this Act; or
   (ii) other Acts that apply to the conduct of licensees; or
   (iii) regulations or rules made under this Act; or
(d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee’s fitness to be a licensee.

63. Complaints about licensees

(1) Any person may, in accordance with regulations made under this Act, complain in writing to the Authority about the conduct of a licensee.

(2) When the Authority receives a complaint under this section, the Authority must refer the complaint to a Committee and notify the person complained about of the reference.

Sub-Part C - Complaints Assessment Committees

64. Authority to appoint Complaints Assessment Committees

(1) The Authority must appoint as many Complaints Assessment Committees as, in its opinion, are required to deal effectively with complaints and allegations about licensees.

(2) Each Committee consists of 3 members appointed from the panel maintained under section 65.

(3) One of the members of each Committee must be a law practitioner of not less than 10 years’ standing.

(4) The Authority must designate one of the members as the chairperson of the Committee, and another member as the deputy chairperson.
65. Panel

(1) The Authority must maintain a panel of up to 20 persons who are suitable to serve as members of Complaints Assessment Committees.

(2) In considering the suitability of any person for inclusion on the panel, the Authority must have regard not only to the person’s personal attributes but also to the person’s knowledge and experience of matters likely to come before a Committee.

(3) The knowledge and experience referred to in subsection (2) includes, without limitation, experience and knowledge of—

(a) law,
(b) the real estate industry, or
(c) consumer affairs.

(4) The name of a person must be removed from the panel when 5 years have elapsed since the Authority approved the inclusion of the person’s name on the panel or if the person resigns from the panel.

(5) If subsection (4) applies, the name of the person must not be removed from the panel until any current matters that the person is considering, as a member of a Committee, have been disposed of by the Committee.
66. Constitution of Committees for consideration of matters before it

For the purposes of considering any matter before it, each Committee consists of—

(a) the Chairperson of the Committee or, if the chairperson is absent from duty for any reason, the Deputy Chairperson of the Committee; and

(b) 1 other member or, if the Chairperson or Deputy Chairperson so directs, 2 members.

67. Functions of Committees

The functions of each Committee are—

(a) to inquire into and investigate complaints made under section 63;
(b) on its own initiative, to inquire into and investigate allegations about any licensee;
(c) to promote, in appropriate cases, the resolution of complaints by negotiation, conciliation, or mediation;
(d) to make final determinations in relation to complaints, inquiries, or investigations;
(e) to lay, and prosecute, charges before the Disciplinary Tribunal;
(f) in appropriate cases, to refer the complaint to another agency;
(g) to inform the complainant and the person complained about of its decision, reasons for the decision, and appeal rights;
(h) to publish its decisions.
68. Procedure on receipt of complaint

(1) As soon as practicable after receiving a complaint concerning a licensee, a Committee must consider the complaint and determine whether to inquire into it.

(2) The Committee may—

(a) determine that the complaint alleges neither unsatisfactory conduct nor misconduct and dismiss it accordingly;
(b) determine that the complaint discloses only an inconsequential matter, and for this reason need not be pursued;
(c) determine that the complaint is frivolous or vexatious and not made in good faith, and for this reason need not be pursued;
(d) determine that the complaint should be referred to another agency, and refer it accordingly;
(e) determine to inquire into the complaint.

69. Decision to take no action on complaint

(1) A Committee may, in its discretion, decide to take no action or, as the case may require, no further action on any complaint if, in the opinion of the Committee,—

(a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
(b) the subject matter of the complaint is inconsequential.
(2) Despite anything in subsection (1), the Committee may, in its discretion, decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Committee that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

70. Notice of decision

(1) In any case where a Committee decides to take no action on a complaint, the Committee must promptly give written notice of that decision to—

(a) the complainant; and

(b) the person complained about.

(2) The notice must—

(a) state the decision and the reasons for it; and

(b) describe the right of appeal conferred by this Act.

71. Inquiry by Committee

(1) If a Committee decides to inquire into a complaint or into matters raised by allegations about a licensee, it must inquire into the complaint or those matters as soon as practicable.

(2) The Committee may authorise any person to assist it with its inquiry.
72. Notice to licensee

A Committee—

(a) must send particulars to the licensee, and invite the licensee to make a written explanation in relation to the complaint (if any);
(b) may require the licensee to appear before it to make an explanation in relation to the inquiry;
(c) may, by written notice served on the licensee, request that specified information be supplied to the Committee in writing.

73. Procedure of Committee

(1) A Committee must exercise its powers and perform its duties and functions in a way that is consistent with the rules of natural justice.

(2) The Committee may regulate its procedure in any manner that it thinks fit as long as it is consistent with this Act and any regulations made under it.

74. Powers to call for information or documents

(1) If the conditions stated in subsection (2) are satisfied, a Committee may, by notice in writing, require any person to produce to the Committee any papers, documents, records, or things.

(2) The conditions referred to in subsection (1) are that—
(a) the members of the Committee believe, on reasonable grounds, that the exercise of the powers conferred by that subsection is necessary to enable the Committee to carry out its inquiry; and

(b) the members of the Committee believe, on reasonable grounds, that—

(i) it is not reasonably practicable to obtain the information required by the Committee from another source; or

(ii) for the purposes of the investigation, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source.

75. Compliance with requirement to provide information or document

(1) A person who receives a notice under section 74 must, without charge, comply with the requirement stated in the notice in the manner and within the period (being not less than 10 working days after the notice is given to the person) specified in the notice.

(2) Subsection (1) does not require a person to provide any information or produce any document that would be privileged in a court of law.

(3) No person is required to produce to the Committee any papers, records, documents, or things if compliance with that requirement would be in breach of an obligation of secrecy or nondisclosure imposed on the person by law.
76. Negotiation, conciliation, and mediation

(1) A Committee may give, in relation to any complaint received by it, a direction that, within a time or before a date fixed by the Committee, the parties both—

(a) explore the possibility of resolving, by negotiation, conciliation, or mediation,—
   (i) the complaint; or
   (ii) any issues relating to the complaint as the Committee specifies; and
(b) report to the Committee.

(2) The Committee must not give a direction under subsection (1) if it considers that such a direction—

(a) would not contribute constructively to resolving the complaint; or
(b) would not, in all the circumstances, be in the public interest; or
(c) would undermine the urgent nature of the complaint.

(3) If the parties reach an agreed settlement in relation to the complaint or any issue involved in the complaint, the Committee—

(a) may record the terms of the settlement; and
(b) may, by consent of the parties, declare all or some of the terms of the settlement to be all or part of a final determination of the complaint by the Committee.

(4) No evidence is admissible in any court or before any person acting judicially or before the Committee or before the Disciplinary Tribunal of any information, statement, or admission disclosed or made to any person in the course of any negotiation, conciliation, or mediation
conducted, in accordance with a direction given under subsection (1), for the purpose of resolving a complaint or any issue involved in a complaint.

(5) Nothing in this section prevents the discovery or affects the admissibility of any evidence (being evidence which is otherwise discoverable or admissible and which existed independently of any negotiation, conciliation, or mediation conducted under a direction given under subsection (1) for the purpose of resolving a complaint or any issue involved in a complaint) merely because the evidence was presented in the course of the negotiation, conciliation, or mediation.

77. Evidence

(1) A Committee may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not the statement, document, information, or matter would be admissible in a court of law.

(2) The Committee may take evidence on oath or solemn affirmation, and for that purpose, any member or officer of the Committee may administer an oath or solemn affirmation.

(3) The Committee may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Committee thinks fit, verifying that statement by oath or solemn affirmation.

(4) The general and special rules of evidence in Mauritian Law apply (subject to subsections (1) to (3)) to the Committee in the same manner as if it were a court within the usual meaning of it Mauritian Law.

(5) This section is subject to sections 73(1) and 76(4).
78. Power of Committee to determine complaint or allegation

(1) A Committee may make 1 or more of the determinations described in subsection (2) after both inquiring into a complaint or allegation and conducting a hearing with regard to that complaint or allegation.

(2) The determinations that the Committee may make are as follows:

(a) a determination that the complaint or allegation be considered by the Disciplinary Tribunal;
(b) a determination that it has been proved, on the balance of probabilities, that the licensee has engaged in unsatisfactory conduct;
(c) a determination that the Committee take no further action with regard to the complaint or allegation or any issue involved in the complaint or allegation.

(3) Nothing in this section limits the power of the Committee to make, at any time, a decision under section 69 with regard to a complaint.

79. Hearings on papers

(1) A hearing conducted under section 78(1) by a Committee is to be a hearing on the papers, unless the Committee otherwise directs.

(2) If the Committee conducts the hearing on the papers, the Committee must make its determination on the basis of the written material before it.

(3) Consideration of the written material may be undertaken in whatever manner the Committee thinks fit.
80. Reference of complaint to Disciplinary Tribunal

If a Committee makes a determination that the complaint or allegation be determined by the Disciplinary Tribunal, the Committee must—

(a) frame an appropriate charge and lay it before the Disciplinary Tribunal by submitting it in writing to the Tribunal; and

(b) give written notice of that determination and a copy of the charge to the person to whom the charge relates and to the complainant.

81. Application for suspension of licence

If, under section 80(a), a Committee lays before the Disciplinary Tribunal a charge against a licensee, the Committee may apply to the Tribunal for an order that, pending the determination of the charge, the licence of the licensee be suspended.

82. Power of Committee to make orders

(1) If a Committee makes a determination under section 78(2)(b), the Committee may do 1 or more of the following:

(a) make an order censuring or reprimanding the licensee;

(b) order that all or some of the terms of an agreed settlement between the licensee and the complainant are to have effect, by consent, as all or part of a final determination of the complaint;

(c) order that the licensee apologise to the complainant;

(d) order that the licensee undergo training or education;
(e) order the licensee to reduce, cancel, or refund fees charged for work where that work is the subject of the complaint;

(f) order the licensee—

(i) to rectify, at his or her or its own expense, any error or omission; or

(ii) where it is not practicable to rectify the error or omission, to take steps to provide, at his or her or its own expense, relief, in whole or in part, from the consequences of the error or omission;

(g) sue the licensee for damages;

(h) order the licensee, or the agent for whom the person complained about works, to make his or her business available for inspection or take advice in relation to management from persons specified in the order;

(i) order the licensee to pay the complainant any costs or expenses incurred in respect of the inquiry, investigation, or hearing by the Committee.

(2) An order under this section may be made on and subject to any terms and conditions that the Committee thinks fit.

83. Notice of determination

(1) When a Committee makes a determination under section 78, the Committee must promptly give written notice of that determination to the complainant and to the licensee.

(2) The notice must—

(a) state the determination and the reasons for it; and

(b) specify any orders made under section 82 and be accompanied by copies of those orders; and

(c) describe the right of appeal conferred by this Act.
84. Enforcement of orders

An order made by a Committee may be enforced in all respects as if it were an order of a court.

85. Non-payment of fines or costs

If money payable by a person under an order by a Committee or by the Disciplinary Tribunal remains unpaid for 60 days or longer after the date of the order, the Committee may suspend the person’s licence until the person pays the money and, if he or she does not do so within 12 months, cancel his or her licence and direct the Registrar to remove the person’s name from the register.

Sub-Part D - Real Estate Agents Disciplinary Tribunal

86. Real Estate Agents Disciplinary Tribunal established

(1) This section establishes a body to be known as the Real Estate Agents Disciplinary Tribunal.

(2) The Tribunal consists of—
(a) a person to act as Chair of the Tribunal, who must be a law practitioner with not less than 10 years’ standing; and
(b) up to 5 other members, at least one of whom must be a licensee.

(3) The members of the Tribunal are appointed by the Minister.

(4) One of the members referred to in subsection (2)(b) shall act as the Deputy Chairperson of the Tribunal.
87. Constitution of Tribunal for hearings

For the purposes of each hearing, the Tribunal consists of—

(a) the Chairperson of the Tribunal or, if the Chairperson is absent from duty for any reason, a member designated by the Minister to be the Deputy Chairperson; and
(b) 2 other members.

88. Functions of Tribunal

The functions of the Tribunal are—

(a) to hear and determine any application made by a Complaints Assessment Committee for the suspension of the licence of a licensee pending the determination of a charge that the Committee has laid against the licensee;
(b) to hear and determine any charge against a licensee brought by the Committee;
(c) to hear any appeal against a determination by the Committee (including a determination to take no action);
(d) to conduct any review of a decision of the Registrar.

89. Proceeding before Tribunal

(1) The Tribunal may regulate its procedures as it thinks fit.

(2) Subsection (1) is subject to the rules of natural justice and to this Act and any regulations made under this Act.
90. Representation before Disciplinary Tribunal

(1) Every person whose rights may be affected by a proceeding of the Disciplinary Tribunal (other than a review) is entitled to appear and be heard at the hearing of that proceeding and to be represented by counsel.

(2) A charge made by the Committee against a licensee is, at the hearing, to be prosecuted by the Committee, which, for that purpose, may be represented by counsel.

91. Hearings to be in public

(1) Every hearing of the Disciplinary Tribunal must be held in public.

(2) Subsection (1)—
(a) does not apply to reviews regulated by this Act; and
(b) is subject to other restrictions imposed by this Act.

(3) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may hold a hearing or part of a hearing in private.

(4) The Disciplinary Tribunal may, in any case, deliberate in private on its decision or on any question arising in the course of a hearing.
92. Evidence

(1) Subject to section 89, the Disciplinary Tribunal may receive as evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the matters before it, whether or not that statement, document, information, or matter would be admissible in a court of law.

(2) The Disciplinary Tribunal may take evidence on oath and, for that purpose, any member of the Disciplinary Tribunal may administer an oath or solemn affirmation.

(3) The Disciplinary Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath or solemn affirmation.

(4) The general and special rules of evidence in Mauritian Law apply (subject to subsections (1) to (3)) to the Disciplinary Tribunal in the same manner as if it were a court within the usual meaning of it Mauritian Law.

93. Determination of charges and orders that may be made if charge proved

(1) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that it has been proved on the balance of probabilities that the licensee has been guilty of misconduct, it may, if it thinks fit, make 1 or more of the orders specified in subsection (2).

(2) The orders are as follows:
(a) 1 or more of the orders that can be made by a Committee under section 82;
(b) an order cancelling the licence of the licensee and, in the case of a licensee that is a company, also cancelling the licence of any officer of the company;

(c) an order suspending the licence of the licensee for a period not exceeding 24 months and, in the case of a licensee that is a company, also suspending the licence of any officer of the company for a period not exceeding 24 months;

(d) an order that a licensee not perform any supervisory functions until authorised by the Board to do so;

(e) an order, in the case of a licensee who is an employee or independent contractor, or former employee or former independent contractor, that any current employment or engagement of that person by a licensee be terminated and that no agent employ or engage that person in connection with real estate agency work.

(3) The making of an order under this section for the payment of compensation to any person does not affect the right (if any) of that person to recover damages in respect of the same loss, but any sum ordered to be paid under this section, and the effect of any order made under this section for the reduction, cancellation, or refund of fees, must be taken into account in assessing any such damages.

(4) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that the licensee, although not guilty of misconduct, has engaged in unsatisfactory conduct, the Tribunal may make any of the orders that a Complaints Assessment Committee may make under section 82.
94. Appeal to Tribunal against determination by Committee

(1) A person affected by a determination of a Committee may appeal to the Tribunal against a determination of the Committee within 20 working days after the date of the notice given according to this Act.

(2) The appeal is by way of written notice to the Tribunal of the appellant’s intention to appeal, accompanied by any information that the appellant wishes the Tribunal to consider in relation to the appeal.

(3) The appeal is by way of rehearing.

(4) After considering the appeal, the Tribunal may confirm, reverse, or modify the determination of the Committee.

(5) If the Tribunal reverses or modifies a determination of the Committee, it may exercise any of the powers that the Committee could have exercised.

95. Application to Tribunal to review determination by Registrar

(1) An applicant may apply to the Tribunal against a determination of the Registrar that adversely affects the applicant within 20 working days after the date the applicant is notified of the determination.

(2) The application must be made by way of written notice to the Tribunal of the applicant’s intention to apply, accompanied by any information that the applicant wishes the Tribunal to consider in relation to the appeal.
(3) The review must be conducted on the papers unless the applicant requests to be heard in his or her application.

(4) After conducting the review, the Tribunal may confirm, reverse, or modify the decision of the Registrar.

(5) If the Tribunal reverses or modifies a determination of the Registrar, it may exercise any of the powers that the Registrar could have exercised.

96. Notification by Tribunal

When the Tribunal determines a matter in a proceeding, the Tribunal must notify every person involved in the proceeding, the Authority, and the Registrar of the determination in writing, setting out the reasons for the decision and the right of appeal to the Supreme Court.

97. Enforcement of order

Any order made by the Tribunal under section 93 may be enforced in all respects as if it were an order of a court.

98. Suspension of licence pending outcome of hearing

(1) The Tribunal may suspend the licence of a licensee where—

(a) a licensee has been charged in accordance with this Act; and
(b) the Tribunal considers that it is necessary or desirable to suspend the licence having regard to the interests of the public.

(2) The process for suspending a licence under this section is as follows:

(a) the Tribunal must give a licensee written notice of its intention to suspend the licence; and (b) the notice must—

(i) contain the Tribunal’s reasons for the intended suspension; and

(ii) state that the licensee has 10 working days within which to make written representations to the Tribunal as to why the licence should not be suspended; and

(iii) state the proposed period, or otherwise describe the proposed duration, of the suspension; and

(c) if any written representations are made by the licensee within the period referred to in paragraph (b)(ii), the Tribunal must take those representations into account in deciding whether to suspend the licence and the period or duration of any suspension; and

(d) the Tribunal must then decide whether to suspend the licence, and notify the licensee accordingly, as soon as practicable.

(3) If the Tribunal decides to suspend the licence, the Tribunal must give the licensee and the Registrar written notice of its decision and—

(a) include in the notice the grounds for the decision, the date on which the suspension takes effect, and the period or duration of the suspension; and

(b) specify in the notice the right of the licensee to appeal to the Supreme Court in accordance with this Act.
99. Right of appeal

A person who is affected by a decision of the Tribunal may appeal to the Supreme Court against the decision.

100. Supreme Court may make interim order

(1) At any time before the final determination of an appeal, the Supreme Court may make an interim order allowing an appellant who is a licensee to carry out real estate agency work until the close of the day on which the Supreme Court finally determines the appeal.

(2) An interim order may be subject to any conditions that the Supreme Court thinks fit.

101. Duties of Registrar if interim order made

(1) If an interim order is made allowing a licensee to engage in agency work,—

(a) that person is to be treated for the purposes of this Act as if he or she were licensed; and
(b) the Registrar must, as appropriate, enter, retain, or restore the person’s name on the register and enter any conditions contained in the interim order.

(2) To enable the Registrar to fulfil the duties imposed by this section, the Registrar of the court in which the interim order is made must send a copy of the order to the Registrar as soon as practicable.
102. Determination of appeal

The Supreme Court’s decision in the determination of an appeal is final.

Part V

Duties relating to real estate agency work

Sub-Part A - Business to be identified

103. Agent to display required name information

(1) In this section,—

business, in relation to an agent, means the agent’s business as a real estate agent;

required name information, in relation to an agent, means—
(a) the name of the agent and the fact that the agent is licensed under this Act; and
(b) if the agent’s business as a real estate agent is not carried on in the agent’s name, the name or style under which that business is carried on.

(2) Every agent must ensure that the required name information is displayed in a prominent place—

(a) at each office or shop maintained by the agent for the purposes of the business; and
(b) on every website maintained by the agent for the purposes of the business; and
(c) on all notices, advertisements, and other material published by or on behalf of the agent in the course of the business; and

(d) on all letters, accounts, contractual documents, agreements, and other documents sent or handed out, entered into, or published by or on behalf of the agent in the course of the business.

(3) The required name information must be capable of being easily read from outside each office or shop maintained by the agent for the purposes of the business.

Sub-Part B - Receipt of money and audit of accounts

104. Duty of agent with respect to money received in course of business

(1) All money received by an agent in respect of any transaction in his or her capacity as an agent must be paid to the person lawfully entitled to that money or in accordance with that person’s directions.

(2) Despite subsection (1), if an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to the money, he or she must take all reasonable steps to ascertain as soon as practicable the person who is entitled and may retain the money in his or her trust account until that person has been ascertained.

(3) Pending the payment of any such money, the money must be paid by the agent into a general or separate trust account at any bank carrying on business in Mauritius under the authority of any Act and may not be drawn upon except for the purpose of paying it to the person entitled or as that person may in writing direct.
(4) No money to which this section applies is available for payment of the agent’s debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent’s creditors.

(5) Nothing in this section takes away or affects any just lien or claim that an agent who holds money to which this section applies has against the money.

105. Money to be held by agent for 10 working days

(1) When an agent receives any money in respect of any transaction in his or her capacity as an agent, he or she must not pay that money to any person for a period of 10 working days after the date on which he or she received it.

(2) Despite subsection (1), a court order or an authority signed by all the parties to the transaction may require the agent to pay the money before the expiry of the period specified in that subsection.

(3) If at any time while holding any money on behalf of any party to the transaction, the agent receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, the agent must not at any time pay that money to any person except in accordance with a court order or an authority signed by all the parties to the transaction.

106. Agent to furnish account to client

(1) As soon as an agent is asked by his or her client to do so, and in any case not later than 28 days after the agent receives any money in respect of the transaction in his or her capacity as an
agent, the agent must render to the person lawfully entitled to the money an account in writing, setting out particulars of all such money, and its application.

(2) If an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to any money, the agent must take all reasonable steps to ascertain as soon as practicable the person who is entitled and is not required to render an account under this section until the person lawfully entitled has been ascertained.

107. Agents’ trust accounts to be audited

(1) Every general or separate trust account of an agent must be audited at the times and in the manner prescribed by regulations made under this Act.

(2) All information obtained by an auditor in the course of the audit of any trust account under this Act must be treated as confidential.

(3) Subsection (2) is subject to any rights of disclosure that may be prescribed for the purposes of the audit.

Sub-Part C - Agency agreements

108. No entitlement to commission or expenses without agency agreement

(1) An agent is not entitled to any commission or expenses from a client for or in connection with any real estate agency work carried out by the agent for the client unless—

(a) the work is performed under a written agency agreement signed by or on behalf of—
(i) the client; and
(ii) the agent; and
(b) the agency agreement complies with any applicable requirements of any regulations made under this Act; and
(c) a copy of the agency agreement signed by or on behalf of the agent was given by or on behalf of the agent to the client within 48 hours after the agreement was signed by or on behalf of the client.

(2) A court before which proceedings are taken by an agent for the recovery of any commission or expenses from a client may order that the commission or expenses concerned are wholly or partly recoverable despite a failure by the agent to give a copy of the relevant agency agreement to the client within 48 hours after it was signed by or on behalf of the client.

(3) A court may not make an order described in subsection (2) unless satisfied that—

(a) the failure to give a copy of the agreement within the required time was occasioned by inadvertence or other cause beyond the control of the agent; and
(b) the commission or expenses that will be recoverable if the order is made are fair and reasonable in all the circumstances; and
(c) failure to make the order would be unjust.

109. Approved guide to be provided before agency agreement for residential property signed

(1) An agent must not enter into an agency agreement with a person for the sale of residential property unless the agent or a licensee on the agent’s behalf—
(a) has provided the person with a copy of the approved guide before the agreement is signed by or on behalf of the person; and
(b) has received a signed acknowledgment from the person that the person has been given the approved guide.

(2) In this section **approved guide** means a guide that—

(a) is about the sale of residential property;
(b) has been approved by the Authority for the purposes of this section;

(3) A contravention of this section does not affect the validity of the agency agreement.

110. Agency agreement must disclose rebates, discounts, and commissions

An agent is not entitled to any expenses from a client for or in connection with any real estate agency work carried out by the agent for the client in connection with a transaction unless the agency agreement under which the agent performs that work contains a statement that—

(a) identifies the source of all rebates, discounts, or commissions that the agent will or is eligible to receive in respect of those expenses; and

(b) specifies the estimated amount of those rebates, discounts, or commissions (to the extent that the amount can reasonably be estimated).
111. Regulations may make provisions in respect of agency agreements

Regulations made in accordance with this Act may provide for 1 or more standard forms of agency agreement.

112. Client may cancel sole agency agreement by 5 pm next working day

(1) A client who is party to a sole agency agreement with an agent may, by 5 pm on the first working day after the day on which a copy of the agreement is given to the client under section 108(1)(c), cancel the agreement by written notice to the agent.

(2) A notice under subsection (1) may be served by fax or email.

(3) Subsection (1) has effect despite any provision to the contrary in any agreement.

(4) Even though a sole agency agreement has been cancelled, an agent may rely on that agreement if, before that cancellation,—

(a) the agent carries out any agency work in accordance with the agreement; and
(b) that agency work enables the conclusion of a contract that effects a transaction to which the agreement relates.
113. Licensee to give copy of contractual document

As soon as practicable after a person signs a contractual document and gives that document to a licensee carrying out real estate agency work in connection with the document, the licensee must give the person an accurate copy of the document.

114. Approved guide to be provided when contractual document provided

(1) An agent must ensure that subsection (2) is complied with before a person signs a contractual document if the contractual document—

(a) relates to the proposed sale of a residential property in respect of which the agent is carrying out real estate work; and

(b) was provided to the person by the agent or by a licensee on behalf of the agent.

(2) The agent or a licensee on the agent’s behalf must have—

(a) provided the person with a copy of the approved guide; and

(b) received a signed acknowledgment from the person that the person has been given the approved guide.

(3) In this section—approved guide means a guide that—

(a) is about the sale of residential property:

(b) has been approved by the Authority for the purposes of this section.
(4) A contravention of this section does not affect the validity of any contract.

115. Contracts for acquisition by licensee or related person may be cancelled

(1) No licensee may, without the consent of the client for whom he or she carries out real estate agency work in respect of a transaction, directly or indirectly, whether by himself or herself or through any partner, sub-agent, or nominee, acquire the land or business to which the transaction relates or any legal or beneficial interest in that land or business.

(2) No licensee may, without the consent of the client, carry out or continue to carry out any agency work in respect of a transaction if the licensee knows or should know that the transaction will, or is likely to, result in a person related to the licensee acquiring the land or business to which the transaction relates or any legal or beneficial interest in that land or business.

(3) The client’s consent is effective only if—

(a) given in the prescribed form; and
(b) the client is provided with a valuation in accordance with this Act.

(4) The client may cancel any contract—

(a) made in contravention of subsection (1); or
(b) brought about by agency work carried out in contravention of subsection (2).

(5) No commission is payable in respect of any contract of the kind described in subsection (4), regardless of whether the client cancels the contract.
(6) The client may recover any commission paid in respect of any contract of the kind described in subsection (4) as a debt.

(7) For the purposes of this section, a person who is the client of an agent in respect of a transaction is also the client of any branch manager or salesperson whose work enables the agent to carry out real estate agency work for that client.

(8) This section and section 116 have effect despite any provision to the contrary in any agreement.

116. Client to be provided with valuation

(1) For the purposes of section 115(3), the licensee must give the client a valuation made at the licensee’s expense.

(2) The valuation must have been made by—

(a) an independent valuer; or
(b) in the case of a business, by an independent chartered accountant.

(3) The licensee must give the client the valuation either—

(a) before seeking the consent of the client; or
(b) with the agreement of the client, within 14 days after obtaining that consent.
(4) Every consent given under section 115 without the valuation being supplied to the client in accordance with subsection (3) is ineffective.

(5) Any contract to which the client is a party and to which the consent relates is voidable at the option of the client if—

(a) the client gives his or her consent in accordance with subsection (3)(b); and
(b) the valuation, when supplied, is greater than the valuation specified in the prescribed form of consent as the provisional valuation.

117. Disclosure of other benefits that licensee stands to gain from transaction

(1) A licensee who carries out real estate agency work in respect of a transaction must disclose in writing to every prospective party to the transaction whether or not the licensee, or any person related to the licensee, may benefit financially from the transaction.

(2) The licensee must make the disclosure required by subsection (1) before or at the time that the licensee provides the prospective party with any contractual documents that relate to the transaction.

(3) For the purposes of this section, an agent does not benefit financially from a transaction merely because of any commission payable to the agent under an agency agreement in respect of the transaction.

(4) A contract entered into in contravention of this section may not be cancelled merely because of that contravention.
118. Meaning of licensee and person related to licensee in sections 115 to 117

(1) In sections 115 to 117, **licensee** includes, in the case of an agent that is a company, every officer and shareholder of the company.

(2) For the purposes of sections 115 to 117, a person is related to a licensee if the person is—

(a) a partner of the licensee under a partnership agreement;
(b) an employee of the licensee;
(c) a branch manager or salesperson engaged by the licensee;
(d) the licensee’s spouse;
(e) the licensee’s de facto partner;
(f) a child, grandchild, brother, sister, nephew, or niece of the licensee or of any person referred to in paragraphs (d) or (e);
(g) any other child who is being, or is to be, cared for on a continuous basis by the licensee or any person referred to in paragraph (d) or (e);
(h) a grandparent, parent, uncle, or aunt of the licensee or of any person referred to in paragraph (d) or (e).
Part VI

Miscellaneous provisions

Sub-Part A - Offences and penalties

119. General Penalty

Every person who commits an offence against this Act is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding 1 000 000 rupees; or
(b) in the case of a company, to a fine not exceeding 2 000 000 rupees.

120. Offence to carry on business of agent, branch manager, or salesperson unless licensed or exempt

A person commits an offence if the person carries out any real estate agency work without—

(a) being licensed to do so under this Act; or
(b) being exempt from the requirement to be licensed.

121. Offence of holding out as agent, branch manager, or salesperson unless licensed or exempt

A person commits an offence who holds out that any person (including the person himself or herself) who is neither licensed under this Act or exempt from the requirement to be licensed, is an agent, branch manager, or salesperson.
A person commits an offence who employs or contracts, or continues to employ or contract, as an agent, branch manager, or salesperson a person—

(a) who is not licensed or exempt from the requirement to be licensed under this Act; or
(b) whose licence has been suspended under this Act; or
(c) whose licence has been cancelled under this Act; or
(d) who is prohibited from working for an agent in a real estate business in accordance with an order made under this Act.

123. Offence to provide false or misleading information

(1) A person commits an offence who, for the purposes of any application for a licence or for renewal of a licence under this Act, supplies to the Registrar any false or misleading information.

(2) It is a defence to a charge under subsection (1) that the person to whom the charge relates did not know that he or she was providing false or misleading information and had exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading.

124. Offence to fail to notify change in circumstances

A licensee or applicant for a licence commits an offence who, without reasonable excuse, fails to notify the Registrar of any change in circumstances as required by this Act.
125. Offence to fail to comply with requirement to give possession of documents

A person commits an offence who, without reasonable excuse, fails to comply with a requirement to give the Authority possession of documents in accordance with a notice given under this Act.

126. Offence to fail to comply with requirement to produce financial records

A person commits an offence who, without reasonable excuse, fails to comply with a requirement stated in a notice given under this Act to produce financial records and to permit a person authorised by the Authority to inspect and copy those records.

127. Offence to fail to provide information or document

A person commits an offence who, without reasonable excuse, fails to comply with a requirement to produce any papers, documents, records, or things in accordance with a notice given under section 74.

128. Offence to fail to pay person lawfully entitled to money received

An agent commits an offence if that agent fails to pay a person lawfully entitled to money received in respect of any transaction in accordance with this Act.

129. Offence to fail to hold money

An agent commits an offence who fails to hold money required to be held by this Act for the period required also by this Act.
130. Offence to fail to disclose conflict of interest

A person commits an offence who fails to disclose information in accordance with this Act.

131. Offence to render false accounts

A person who renders an account purporting to be an account for any money received by him or her in his or her capacity as a licensee, knowing the account to be false in a material particular, shall commit an offence.

132. Offence to resist, obstruct, etc.

A person commits an offence who, without reasonable excuse,—

(a) resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or perform any function under this Act; or

(b) gives to any person who is exercising or attempting to exercise any power or perform any function under this Act any particulars knowing those particulars are false or misleading in any material respect.

Sub-part B - Civil remedies

133. Civil remedies not affected

(1) Nothing in this Act affects any civil remedy that a person may have against an agent, branch manager, or salesperson.
Law Reform Commission of Mauritius [LRC]
Paper on “Legislative Framework for the Regulation of the Activities of Real Estate Agents”
[February 2016]

(2) Subsection (1) is subject to section 94(3).

Sub-Part C - Regulations

134. Regulations

The Minister may make regulations for all or any of the following purposes:

(a) exempting any person or class of persons from the requirement to be licensed under this Act and prescribing any terms and conditions of such an exemption;
(b) prescribing the qualifications necessary before a person is entitled to be licensed as an agent, a branch manager, or salesperson;
(c) prescribing the form, manner, or content of applications, notices, or any other documentation or information required under this Act;
(d) prescribing search criteria for the register;
(e) prescribing changes of circumstance that must be notified to the Registrar;
(f) prescribing the manner and form in which complaints may be made to the Authority about licensees or former licensees;
(g) prescribing any act or thing necessary to supplement or render more effectual the provisions of this Act as to the conduct of proceedings before the Disciplinary Tribunal;
(h) prescribing for the appointment of auditors, auditing requirements, and conferring such powers, including the power of inspection of documents and records, as may be necessary or desirable for the purposes of carrying out an audit; and
(i) prescribing the form in which a client’s consent must be given when this Act requires such a consent;
(j) prescribing periods of time for the purposes of giving notice, making submissions, and other matters;

89
(k) prescribing the manner for giving notice under this Act;

(l) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

135. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
(II) Option 2: Regulation of Activities of Real Estate Agents through Amendment to Code de Commerce

Agents Immobiliers

EXPOSE DES MOTIFS

1. Les agents immobiliers exercent une profession dans un domaine qui intéresse tous les citoyens, en l’occurrence, celui du logement. Un domaine important, un domaine sensible. Il n’est donc pas étonnant que, dans la plupart des États, cette profession ait fait l’objet d’une réglementation particulière en vue d’éviter les actes ou les agissements susceptibles de porter atteinte aux intérêts légitimes des clients, c’est-à-dire notamment des acheteurs ou des locataires d’immeubles d’habitation.

Mais ce domaine intéresse aussi les investissements que doivent nécessairement effectuer les agriculteurs, les industriels ou les commerçants. Qu’il s’agisse d’une exploitation agricole, d’une usine ou d’un fonds de commerce, le support fondamental est, presque toujours immobilier.

Compte tenu de son importance, tant sociale qu’économique, l’avant-projet propose donc de soumettre la profession d’agent immobilier à certaines règles concernant les conditions d’exercice, les obligations spécifiques et le contrôle de cette activité.

2. *En ce qui concerne, tout d’abord, les conditions d’exercice* de la profession d’agent immobilier, l’avant-projet prévoit la délivrance d’une carte professionnelle par le
Président de la Chambre de commerce et d’industrie. Pour obtenir cette carte professionnelle, permettant l’exercice des activités d’intermédiaire dans les transactions immobilières, l’agent immobilier devra justifier de ses aptitudes professionnelles et d’une garantie financière et contracter une assurance couvrant sa responsivité civile. En outre, il ne devra pas être frappé de l’incapacité professionnelle résultant de certaines condamnations pénales.

3. *En ce qui concerne, ensuite, les obligations spécifiques de l’agent immobilier,* elles ont principalement pour objet d’assurer la protection des clients. C’est dans ce but que l’avant-projet impose aux agents immobiliers certaines obligations d’information préalables à la signature des contrats conclues avec la clientèle. Ainsi, dans toute publicité, l’intermédiaire devra notamment informer les destinataires sur les honoraires qu’il pratique et sur la qualité en vertu de laquelle il intervient dans les transactions. Ces obligations se traduisent aussi, dans la rédaction des conventions, par la nécessité, à peine de nullité, de l’insertion de certaines mentions, précisant notamment les termes relatifs aux conditions d’exécution. De même, toujours en vue de protéger la clientèle, l’avant-projet prévoit que les agents immobiliers seront tenus d’une obligation de confidentialité leur interdisant de divulguer les données dont ils auront connaissance.

4. *En ce qui concerne, enfin, le contrôle de l’exercice de l’activité d’agent immobilier,* l’avant-projet propose de confier cette mission à un organisme spécialement créé à cet effet, en l’occurrence, la *Commission de la transaction et de la gestion immobilières.* Cette Commission sera présidée par un *law practitioner* de plus de 10 ans d’expérience et sera composée de deux représentants de l’Etat, de trois représentants des agents immobiliers et de trois représentants des consommateurs. Elle pourra être consultée pour avis sur l’ensemble des projets de textes législatifs ou réglementaires relatifs à l’exercice des activités d’agents immobiliers, elle prendra des décisions disciplinaires à l’encontre
des agents qui auront commis tout manquement aux lois et aux règlements et toute faute ou toute négligence grave, dans l'exercice de ses activités, et elle statuera sur les recours intentés par les clients, lorsque les honoraires des agents immobiliers seront excessifs.

5. Quant aux honoraires, en effet, l’avant-projet prévoit la possibilité de les réduire lorsqu’ils seront manifestement excessifs eu égard aux services ou aux prestations fournies par l’agent immobilier. Sur ce point, le texte proposé n’innove pas : il ne fait qu’introduire dans la législation les termes employés et les solutions adoptées par la Cour de cassation française. C’est ainsi qu’une jurisprudence constante et parfaitement établie admet, depuis longtemps, à la réduction des honoraires excessifs des mandataires lorsque les mandants saisissent la justice à cette fin. Un récent arrêt de la Cour de cassation (du 6 juin 2012) le rappelle en ces termes : il faut que les juges recherchent « si, nonobstant la réalité des démarches accomplies, les honoraires réclamés par le (mandataire) n’étaient pas excessifs au regard du service rendu ». Et la Cour d’appel de Paris dans un arrêt du 31 mars 2011 en fait une application : elle reconnaît au juge un pouvoir modérateur lui permettant de réduire les honoraires des intermédiaires « lorsque la rémunération paraît excessive par rapport aux services rendus ». L’avant-projet propose donc, pour éviter le contentieux judiciaire et pour exercer un effet préventif, d’introduire dans la loi les termes de la jurisprudence et de confier à la Commission de la transaction et de la gestion immobilières le pouvoir de statuer – sous réserve d’un recours ultérieur à la justice – la mission de réduire, s’il y a lieu, les honoraires excessifs.
Il est ajouté à la section deuxième du chapitre deuxième du titre premier du livre premier du Code de commerce les dispositions suivantes :

Paragraphe 5 : Des agents immobiliers

Article 7-47 – Au sens du présent paragraphe, un agent immobilier est un intermédiaire dans les transactions portant sur des biens immobiliers ou des fonds de commerce. L’exercice de la profession d’agent immobilier est régi par les dispositions générales qui sont applicables aux commerçants et aux activités d’intermédiaires et par les dispositions particulières du présent paragraphe.

A – Domaine d’application

Article 7-48 – Les dispositions du présent paragraphe s'appliquent aux personnes physiques ou morales qui, d'une manière habituelle, se livrent ou prêtent leur concours, même à titre accessoire, aux opérations portant sur les biens d'autrui et relatives à :

1° L'achat, la vente, la recherche, l'échange, la location ou sous-location, saisonnière ou non, en nu ou en meublé, d'immeubles bâtis ou non bâtis ;
2° L'achat, la vente ou la location-gérance de fonds de commerce ;
3° La cession d'un cheptel mort ou vif ;
4° La souscription, l'achat, la vente d'actions ou de parts de sociétés immobilières ou de sociétés d'habitat participatif donnant vocation à une attribution de locaux en jouissance ou en propriété ;
5° L'achat, la vente de parts sociales non négociables lorsque l'actif social comprend un immeuble ou un fonds de commerce ;
6° La gestion immobilière ;
7° A l'exclusion des publications par voie de presse, la vente de listes ou de fichiers relatifs à l'achat, la vente, la location ou sous-location en nu ou en meublé d'immeubles bâtis ou non bâtis, ou à la vente de fonds de commerce ;
8° La conclusion de tout contrat de jouissance d'immeuble à temps partagé ;
9° L'exercice des fonctions de syndic de copropriété.

**Article 7-49** – Pour l'application du présent paragraphe :

Est considérée comme relevant de l'activité de gestion immobilière la location ou la sous-location, saisonnière ou non, en nu ou en meublé, d'immeubles bâtis ou non bâtis lorsqu'elle constitue l'accessoire d'un mandat de gestion ;

Est considérée comme une location saisonnière pour l'application de la présente loi la location d'un immeuble conclue pour une durée maximale et non renouvelable de quatre-vingt-dix jours consécutifs.

**Article 7-50** – Les dispositions de la présente loi ne sont pas applicables :

Aux membres des professions réglementées qui sont soumis à des contrôles et qui sont tenus d'offrir des garanties financières pour l'exercice de leur activité ;

Aux personnes ou à leur conjoint qui, à titre non professionnel, se livrent ou prêtent leur concours à des opérations relatives à des biens sur lesquels elles ont des droits réels divis ou indivis ;

Aux personnes agissant pour le compte de leur conjoint, de parents en ordre successible, ou pour le compte de majeurs protégés ou de mineurs dans les conditions prévues aux titres X et XI du livre premier du Code civil ;

Aux représentants légaux ou statutaires de sociétés de construction pour la réalisation des premières cessions des parts ou actions ;

Aux agents de voyages, pour la conclusion de tout contrat de jouissance d'immeuble à temps partagé, procédant de l'exercice normal de leur activité ;

Aux organismes de placement collectif immobilier, organismes professionnels de placement collectif immobilier, sociétés civiles de placement immobilier et à leurs sociétés de gestion, sauf lorsqu'elles gèrent des actifs immobiliers faisant l'objet de mandats de gestion spécifiques.
Law Reform Commission of Mauritius [LRC]

Paper on “Legislative Framework for the Regulation of the Activities of Real Estate Agents”
[February 2016]

B – Délivrance d’une carte professionnelle

Article 7-51 – Les activités visées à l'article 7-48 ne peuvent être exercées que par les personnes physiques ou morales titulaires d'une carte professionnelle, délivrée, pour une durée de dix ans renouvelable, par le Président de la Chambre de commerce et d'industrie, précisant celles des opérations qu'elles peuvent accomplir. Lorsque le Président de la chambre de commerce et d'industrie exerce une activité mentionnée à l'article 7-48, la carte est délivrée par le Vice-Président.
La Chambre de commerce et d'industrie établit et tient à jour un fichier des personnes titulaires de la carte professionnelle.
Cette carte ne peut être délivrée qu'aux personnes physiques qui satisfont aux conditions suivantes :

1° Justifier de leur aptitude professionnelle ;
2° Justifier d'une garantie financière permettant le remboursement des fonds, effets ou valeurs déposés et spécialement affectée à ce remboursement, y compris des sommes versées par les copropriétaires au fonds de travaux géré par le syndic, à l'exception toutefois des personnes déclarant leur intention de ne détenir aucun fonds, effet ou valeur, pour les activités mentionnées à l'article 7-48 ;
3° Contracter une assurance contre les conséquences pécuniaires de leur responsabilité civile professionnelle ;
4° Ne pas être frappées d'une des incapacités ou interdictions d'exercer définies aux articles 7-75 et suivants.

La garantie mentionnée au 2° ci-dessus résulte d'un engagement écrit fourni par une entreprise d'assurance spécialement agréée, par un établissement de crédit ou une société de financement.
La carte n'est délivrée aux personnes morales que si lesdites personnes satisfont aux conditions prévues aux 2° et 3° ci-dessus et que si leurs représentants légaux et statutaires satisfont aux conditions prévues aux 1° et 4° ci-dessus.
Il doit être procédé à une déclaration préalable d'activité pour chaque établissement, succursale, agence ou bureau par la personne qui en assure la direction. Cette personne doit, en outre, satisfaire aux conditions posées par les 1° et 4° ci-dessus.

Article 7-52 – Toute personne habilitée par un titulaire de la carte professionnelle à négocier,
s'entremettre ou s'engager pour le compte de ce dernier doit justifier d'une compétence professionnelle, de sa qualité et de l'étendue de ses pouvoirs. Les dispositions du présent paragraphe relatives aux incapacités lui sont applicables.

Les dispositions des articles 7-8 à 7-26 relatives aux agents commerciaux sont applicables aux personnes visées au premier alinéa lorsqu'elles ne sont pas salariées. Ces personnes doivent contracter une assurance contre les conséquences pécuniaires de leur responsabilité civile professionnelle.

Ces personnes ne peuvent pas :
1° Recevoir ou détenir, directement ou indirectement, des sommes d'argent, des biens, des effets ou des valeurs ou en disposer à l'occasion des activités mentionnées à l'article 7-48 du présent paragraphe ;
2° Donner des consultations juridiques ni rédiger des actes sous seing privé, à l'exception de mandats conclus au profit du titulaire de la carte professionnelle mentionnée à l'article 7-51 ;
3° Assurer la direction d'un établissement, d'une succursale, d'une agence ou d'un bureau.

**Article 7-53** – Les agences de voyages qui ont une activité de location saisonnière de meublés hors forfait touristique, sont dispensées de la carte professionnelle prévue à l'article 7-51 du présent paragraphe lorsque cette activité est accessoire à leur activité principale.

Elles doivent souscrire, pour l'exercice de cette activité, une garantie financière permettant le remboursement des fonds, effets ou valeurs déposés et une assurance garantissant les conséquences pécuniaires de la responsabilité civile professionnelle qu'elles encourtent en raison de cette activité.

L'exercice de cette activité est régi par les dispositions du présent paragraphe.

**C – Obligations des agents immobiliers**

**Article 7-54** – Lorsque les agents immobiliers proposent à leurs clients les services d'une entreprise, elles sont tenues de les informer, avant la conclusion de tout contrat avec ladite entreprise, des éventuels liens directs de nature capitaliste ou des liens de nature juridique qu'elles ont ou que les personnes mentionnées au dernier alinéa de l'article 7-51 et à l'article 7-52, intervenant pour ces clients, ont avec cette entreprise.

Cette obligation s'applique également lorsque les agents immobiliers proposent à leurs clients les services d'un établissement bancaire ou d'une société financière.
Les personnes mentionnées au dernier alinéa du même article 7-51 et les personnes habilitées par un titulaire de la carte professionnelle conformément au même article 7-52 sont tenues d'informer celui-ci des liens mentionnés aux premier et deuxième alinéas du présent article qu'elles ont avec une entreprise, un établissement bancaire ou une société financière dont le titulaire de la carte professionnelle propose les services à ses clients.

**Article 7-55** – Sous réserve des dispositions leur imposant la divulgation de certaines informations, les agents immobiliers respectent la confidentialité des données dont elles ont connaissance dans l'exercice de leurs activités. Ce principe ne fait pas obstacle à la communication aux copropriétaires de tout élément nécessaire au bon fonctionnement du syndicat.

**Article 7-56** – Les agents immobiliers qui reçoivent, détiennent des sommes d'argent ne constituant ni une rémunération, ni des honoraires, des biens, des effets ou des valeurs, ou en disposent, à quelque titre et de quelque manière que ce soit, à l'occasion des opérations spécifiées à l'article 7-48, doivent le mentionner sur des registres ouverts à cet effet et procéder à la délivrance des reçus. Ils doivent, en outre, respecter toutes les obligations découlant de leur mandat.

**Article 7-57** – Les conventions conclues avec les personnes visées à l'article 7-48 ci-dessus et relatives aux opérations qu'il mentionne en ses 1° à 6°, doivent être rédigées par écrit et préciser :
- Les conditions dans lesquelles ces personnes sont autorisées à recevoir, verser ou remettre des sommes d'argent, biens, effets ou valeurs à l'occasion de l'opération dont il s'agit ;
- Les modalités de la reddition de compte ;
- Les conditions de détermination de la rémunération, ainsi que l'indication de la partie qui en aura la charge.
- Les moyens employés par ces personnes et, le cas échéant, par le réseau auquel elles appartiennent pour diffuser auprès du public les annonces commerciales afférentes aux opérations mentionnées au 1° du même article 7-48.
- En outre, lorsqu'une convention comporte une clause d'exclusivité, elle précise les actions que le mandataire s'engage à réaliser pour exécuter la prestation qui lui a été confiée ainsi que les modalités selon lesquelles il rend compte au mandant des actions effectuées pour son compte, selon une périodicité déterminée par les parties.
Les dispositions de l’article 1325 du Code civil leur sont applicables.

**Article 7-58** – A peine de nullité, les promesses et les conventions de toute nature relatives aux opérations visées à l’article 7-48 doivent prévoir une limitation de leurs effets dans le temps.

**Article 7-59** – La convention conclue entre la personne qui se livre à l’activité mentionnée au 7° de l’article 7-48 et le propriétaire du bien inscrit sur la liste ou le fichier, ou le titulaire de droits sur ce bien, comporte une clause d’exclusivité d’une durée limitée aux termes de laquelle ce dernier s’engage, d’une part, à ne pas confier la location ou la vente de son bien à une autre personne exerçant une activité mentionnée à l’article 7-48 et, d’autre part, à ne pas publier d’annonce par voie de presse.

Entre la personne qui se livre à l’activité mentionnée au 7° de l’article 7-48 et son client, une convention est établie par écrit. Cette convention dont, conformément à l’article 1325 du Code civil, un original est remis au client précise les caractéristiques du bien recherché, l’ensemble des obligations professionnelles qui incombent au professionnel mentionné au présent alinéa, la nature de la prestation promise au client et le montant de la rémunération incombant à ce dernier. Elle précise également les conditions de remboursement de tout ou partie de la rémunération lorsque la prestation fournie au client n’est pas conforme à la nature promise dans ladite convention.

**D – Honoraires et frais**

**Article 7-60** – Les honoraires des agents immobiliers doivent être justifiés par les prestations ou les services qu’ils accomplissent.

Le montant de ces honoraires ne doit pas être établi en considération de la valeur des biens qui font l’objet des transactions immobilières. Est nulle et de nul effet la convention qui fixe des honoraires proportionnellement à la valeur de ces biens.

**Article 7-61** – Si, malgré la réalité des démarches accomplies, les honoraires réclamés par un agent immobilier paraissent excessifs au regard du service rendu, le client de celui-ci peut saisir la Commission de la transaction et la gestion immobilières, mentionnée aux articles 7-67 et suivants du présent paragraphe, afin d’obtenir la juste réduction de ces honoraires.

La décision de cette Commission est immédiatement exécutoire, nonobstant un
éventuel recours de l’agent immobilier devant le juge compétent. A la suite de cette décision, l’agent devra procéder, s’il y a lieu, au remboursement des sommes excessives déjà perçues.

La décision de la Commission peut être aussi contestée en justice par le client afin d’obtenir une réduction ou une plus juste réduction des honoraires qu’il doit ou qu’il a déjà versés.

**Article 7-62** – Aucun bien, effet, valeur, somme d’argent, représentatif d'honoraires, de frais de recherche, de démarche, de publicité ou d'entremise quelconque, n'est dû aux personnes indiquées à l'article 7-48 ou ne peut être exigé ou accepté par elles, avant qu'une des opérations visées audit article ait été effectivement conclue et constatée dans un seul acte écrit contenant l'engagement des parties.

Toutefois, lorsqu'un mandat est assorti d'une clause d'exclusivité ou d'une clause pénale ou lorsqu'il comporte une clause aux termes de laquelle des honoraires sont dus par le mandant, même si l'opération est conclue sans les soins de l'intermédiaire, le mandant est tenu de verser la somme qui est prévue dans cette clause, dans la mesure où cette somme est dans la limite de ce montant et n’excède pas cent mille roupies.

**Article 7-63** – Lorsque le mandant agit dans le cadre de ses activités professionnelles, tout ou partie des sommes d'argent visées ci-dessus qui sont à sa charge peuvent être exigées par les agents immobiliers avant qu'une opération visée au même article n'ait été effectivement conclue et constatée.

**Article 7-64** – Aucune somme d'argent ou rémunération de quelque nature que ce soit n'est due à une personne qui se livre à l'activité mentionnée au 7° de l'article 7-48 ou ne peut être exigée par elle, préalablement à la parfaite exécution de son obligation de fournir effectivement des listes ou des fichiers, que cette exécution soit instantanée ou successive.

**E – Publicité**

**Article 7-65** – Toute publicité effectuée par une personne mentionnée à l'article 7-48 et relative aux opérations prévues au 1° de ce même article mentionne, quel que soit le support utilisé, le montant toutes taxes comprises de ses honoraires exprimé, pour ce qui concerne les opérations de vente, en pourcentage du prix, lorsqu'ils sont à la charge du locataire ou de
l'acquéreur.

**Article 7-66** – Toute publicité relative à des opérations mentionnées au 1° de l'article 7-48 et proposées par une personne habilitée par un titulaire de la carte professionnelle à négocier, s'entremettre ou s'engager pour le compte de ce dernier, et non salariée, mentionne que cette personne exerce sous le statut d'agent commercial.
Cette obligation de mentionner le statut d'agent commercial est étendue au mandat de vente ou de recherche et à tous les documents d'une transaction immobilière à laquelle la personne habilitée mentionnée au premier alinéa participe.

_F – Commission de la transaction et de la gestion immobilières_

**Article 7-67** – La Commission de la transaction et de la gestion immobilières a pour mission de veiller au maintien et à la promotion des principes de moralité, de probité et de compétence nécessaires au bon accomplissement, par les agents immobiliers, des activités mentionnées à l'article 7-48.

**Article 7-68** – La Commission est présidée par un _law practitioner_ de plus de 10 ans d’expérience et est composée de deux représentants de l’Etat, de trois représentants des personnes mentionnées à l'article 7-48 et de trois représentants des consommateurs. Le Président de la Commission de la transaction et de la gestion immobilières, ainsi que les membres, sont nommés par le ministre chargé du logement, en respectant la diversité de la profession d’agent immobilier et la représentativité des associations de défense des consommateurs. Ils sont nommés pour trois ans renouvelables sans limitation.

**Article 7-69** – La Commission établit son règlement intérieur qui prévoit notamment la périodicité des délibérations.
Cependant, nonobstant le calendrier de ce règlement, la Commission est tenue de siéger dans un délai raisonnable lorsqu’elle est saisie d’une plainte ou d’un recours ou lorsqu’elle est consultée pour avis par le Gouvernement.

**Article 7-70** – La Commission est consultée pour avis sur l'ensemble des projets de textes législatifs ou réglementaires relatifs à l'exercice des activités mentionnées à l'article 7-48.
Elle statue sur les recours intentés par les clients, conformément à l’article 7-61, lorsque les honoraires des agents immobiliers paraissent excessifs. 

Elle connaît de l’action disciplinaire régie par les articles 7-71 et suivants, à raison de faits commis par un agent immobilier.

**Article 7-71** — Tout manquement aux lois et aux règlements et toute faute ou toute négligence grave, commis par une personne mentionnée à l’article 7-48 dans l’exercice de ses activités, l’expose à des poursuites disciplinaires devant la Commission de la transaction et de la gestion immobilières.

La cessation des activités des agents immobiliers ne fait pas obstacle aux poursuites disciplinaires pour des faits commis pendant l’exercice de leurs fonctions. L’action disciplinaire se prescrit par cinq ans à compter de la commission des faits.

**Article 7-72** — La Commission statue par décision motivée. Avant toute décision, la Commission informe la personne mise en cause de la sanction envisagée à son encontre, en lui indiquant qu’elle peut prendre connaissance des pièces du dossier et se faire assister par le conseil de son choix et en l’invitant à présenter, dans le délai de soixante jours, ses observations écrites ou orales.

**Article 7-73** — Les sanctions disciplinaires sont, compte tenu de la gravité des faits reprochés :
1° L’avertissement ;
2° Le blâme ;
3° L’interdiction temporaire d’exercer tout ou partie des activités mentionnées à l’article 7-48, pour une durée n’excédant pas trois ans ;
4° L’interdiction définitive d’exercer tout ou partie des activités mentionnées au même article 7-48.

En cas d’urgence, et à titre conservatoire, le Président de la Commission peut prononcer la suspension provisoire de l’exercice de tout ou partie des activités d’une personne mentionnée à l’article 7-48. Le Président en informe sans délai la Commission. Cette mesure peut être ordonnée pour une durée qui ne peut excéder un mois, sauf prolongation décidée par la Commission pour une durée qui ne peut excéder trois mois. La suspension ne peut être prononcée sans que les griefs aient été communiqués à la personne, qu’elle ait été mise à même de prendre connaissance du dossier et qu’elle ait été entendue ou dûment appelée par
le Président de la Commission.
L'interdiction temporaire et l'interdiction définitive peuvent être assorties du sursis. Si, dans le délai de cinq ans à compter du prononcé de la sanction disciplinaire, la personne sanctionnée a commis une infraction ou une faute ayant entraîné le prononcé d'une nouvelle sanction disciplinaire, celle-ci entraîne, sauf décision motivée de la part de la Commission, l'exécution de la première peine sans confusion possible avec la seconde.
La Commission communique ses décisions à la Chambre de commerce.
Elle peut publier ses décisions dans les journaux ou supports qu'elle détermine. Les frais de publication sont à la charge de la personne sanctionnée.
Les décisions de la Commission sont susceptibles de recours devant la Cour suprême.
La Commission tient à jour un répertoire des personnes sanctionnées, avec l'indication des sanctions devenues définitives.

Article 7-74 – La commission établit chaque année un rapport d'activité.

  

G – Incapacité d’exercer des activités d’agent immobilier

Article 7-75 – Outre l’incapacité d’exercice prévue par les dispositions de l’article 7, nul ne peut, d’une manière habituelle, se livrer ou prêter son concours, même à titre accessoire, aux opérations portant sur les biens d’autrui mentionnées à l’article 7-48 s’il a fait l’objet depuis moins de dix ans d’une condamnation définitive :

1° - Pour crime ;
2° - A une peine d’au moins un an d’emprisonnement sans sursis pour l’une des infractions visées à l’article 7 (2°) ;
3° - A la destitution des fonctions d’officier public ou ministériel.

Article 7-76 – En cas de condamnation prononcée par une juridiction étrangère et passée en force de chose jugée pour une infraction constituant, selon la loi mauricienne, un crime ou un délit mentionné à l’article 7-75, la Cour Suprême, à la requête du ministère public, déclare, après constatation de la régularité et de la légalité de la condamnation et l’intéressé dûment appelé, qu’il y a lieu d’appliquer l’incapacité d’exercer.

Article 7-77 – Les personnes auxquelles l’exercice d’une activité professionnelle est interdit par
le présent paragraphe ne peuvent ni exercer cette activité sous le couvert d'un tiers ni être employées à un titre quelconque, soit par l'établissement qu'elles exploitaient, soit par la société qu'elles dirigeaient, géraient, administraient ou dont elles avaient la signature, ni gérer, diriger, administrer une personne morale quelconque exerçant cette activité. Elles ne peuvent davantage être employées au service de l'acquéreur, du gérant ou du locataire de leur ancienne entreprise.

Article 7-78 – Toute personne à laquelle l'exercice de l'activité d'agent immobilier est interdit par le présent paragraphe peut saisir le Juge en Chambre, en respectant la procédure établie par l’alinéa 2 de l’article 7, afin d’obtenir le levée de cette interdiction.

Article 7-79 – Est passible de deux ans d'emprisonnement la personne frappée d'incapacité qui exerce l’activité d’agent immobilier en violation des dispositions des articles 7-75 à 7-78.