

REAL ESTATE AGENCY BILL, 2020

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ENTITLED

REAL ESTATE AGENCY ACT, 2020

AN ACT to establish the Real Estate Agency Council to regulate real estate agency practice, commercial transactions in real estate including the sale, purchase, rental and leasing of real estate and related fixed assets and to provide for related matters.

PASSED by Parliament and assented to by the President:

Application

Application of this Act

1. (1) This Act applies to real estate transactions including a tenancy for a term of not less than one year.

(2) For the purpose of subsection (1), a tenancy agreement for a term of less than one year which provides for an extension of the tenancy either in the lease agreement or by verbal agreement which will result in the total term of tenancy extending over one year is deemed to be a lease for a term of more than one year.

(3) Despite subsection (1) and subject to section 38, this Act does not apply to a real estate transaction in which

(a) a person acts personally or an employee acts on behalf of the employer in the regular course of employment to

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- (i) acquire, lease or rent real estate for the use or investment of that person or employer; or
 - (ii) negotiate a loan secured or to be secured by a mortgage or other encumbrance on real estate for that person or employer;
- (b) a person acts as a licensed auctioneer;
- (c) a person buys, sells or otherwise deals in any stock, mortgage bond or any other security, or certificate of beneficial interest in any trust;
- (d) a public officer or an employee performs the official duties of that public officer or employee;
- (e) a receiver, a trustee in bankruptcy, executor, administrator, guardian or conservator is performing the function of that person;
- (f) a person sells real estate under an order of a court;
- (g) a trustee acts under a written instrument of trust, or deed or declaration of trust, or will, or a regular employee of a trustee acting in the course of the employment;
- (h) a bank under the laws of this country or an insurance company lawfully engages in business in this country or a regular employee of a bank or insurance company acts in the course of the employment, when that bank or insurance company is acting
 - (i) in the capacity of a fiduciary,
 - (ii) for itself in negotiating a loan secured or to be secured by a mortgage or other encumbrance on real estate, or
 - (iii) for itself with reference to real estate owned, mortgaged, leased or rented, by or to it or which it seeks to acquire, lease or rent for its own use; or
- (i) a credit union that operates under the laws of this country undertakes the transaction or the regular employees of that credit union act in the course of the employment.

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Real Estate Agency Council

Establishment of the Real Estate Agency Council

2. (1) There is established by this Act a Real Estate Agency Council as a body corporate with perpetual succession.

(2) The Council may, for the performance of the functions of the Council, acquire and hold property, dispose of property and enter into a contract or any other related transaction.

(3) Where there is a hindrance to the acquisition of land, the land may be acquired for the Council under the State Lands Act, 1962 (Act 125) and the cost of the acquisition shall be borne by the Council.

Object of the Council

3. The object of the Council is to promote and facilitate the development of real estate agency practice and regulate the provision of real estate agency services.

Functions of the Council

4. To achieve its object, the Council shall

- (a) regulate the practice of real estate agency practice;
- (b) prescribe or approve courses of study for real estate agency practice;
- (c) conduct and set standards for qualifying examinations for registration as a real estate broker;
- (d) license real estate brokers and agents;
- (e) provide forms for real estate transactions;
- (f) issue real estate transaction certificates;
- (g) maintain and publish a register of real estate brokers;
- (h) set performance standards for real estate agency practice;
- (i) facilitate and promote education which is necessary for the development and growth of real estate agency practice;
- (j) establish programmes of continuing education for real estate brokers and agents;
- (k) monitor and evaluate compliance with this Act and in furtherance of that, conduct inspections;
- (l) establish and enforce a code of conduct and ethics for real estate agency practice;
- (m) monitor the performance of real estate brokers;
- (n) monitor advertisements in both the print and electronic media including the world-wide web or the internet to ensure compliance with this Act;

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- (o) maintain a national database of real estate transactions;
- (p) prescribe the scale of fees for real estate transactions;
- (q) establish structures and mechanisms for
 - (i) resolving disputes between real estate brokers and their clients;
 - (ii) settling complaints made against real estate brokers and their clients; and
 - (iii) the discipline of real estate brokers who fall below the established standards or who breach the code of conduct and ethics;
- (r) enforce compliance with regulatory requirements on anti-money laundering and countering the financing of terrorism in the real estate agency practice; and
- (s) perform any other function connected with the object of the Council.

Governance of the Council

Governing body of the Council

5. (1) The governing body of the Council is a Board consisting of
- (a) a chairperson nominated by the Minister;
 - (b) one representative each of
 - (i) the Ghana Institution of Surveyors nominated by the Ghana Institution of Surveyors;
 - (ii) real estate brokers, nominated by recognised real estate brokers;
 - (iii) real estate developers, nominated by recognised real estate developers;
 - (iv) the Lands Commission who is not below the rank of a Director nominated by the Executive Secretary of the Lands Commission;
 - (v) the Ministry of Works and Housing who is not below the rank of a Director nominated by the Minister; and
 - (vi) the Financial Intelligence Centre who is not below the rank of a Deputy Chief Executive Officer nominated by the Chief Executive Officer of the Financial Intelligence Centre;
 - (c) the Registrar of the Collateral Registry of the Bank of Ghana;
 - (d) the Chief Executive Officer of the Council; and

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- (e) two other persons with knowledge in real estate matters nominated by the Minister at least one of whom is a woman.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

Duties and liabilities of members of the Board

6. (1) A member of the Board has the same fiduciary relationship with the Council and the same duties to act with loyalty and in good faith as a director of a company incorporated under the Companies Act, 2019 (Act 992).

(2) Without limiting subsection (1), a member of the Board has a duty

- (a) to act honestly in the performance of the functions of that member;
- (b) to exercise the degree of care and diligence in the performance of the functions of that member that a reasonable person in that position would reasonably be expected to exercise in the circumstances;
- (c) to avoid making improper use of information acquired by virtue of the position of that member for the benefit of that member or to the detriment of the Council; and
- (d) not to make improper use of the position of that member to benefit any other person or cause loss to the Council.

(3) A member of the Board who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of not less than one hundred penalty units and not more than two hundred and fifty penalty units.

(4) Where a court determines that the Council has suffered loss or damage as a consequence of the act or omission of a member, the court may, in addition to imposing a fine, order the person convicted to pay appropriate compensation to the Council.

Functions of the Board

7. (1) The Board shall ensure the proper and effective performance of the functions of the Council.

(2) The Board shall in the performance of functions be responsible to the Minister.

Tenure of office of members of the Board

8. (1) A member of the Board shall hold office for a period of four years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Chief Executive Officer of the Council.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, other than the Chief Executive Officer of the Council, who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Board.

(5) The President may by letter addressed to a member revoke the appointment of that member.

(6) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(7) Where there is a vacancy

(a) under subsection (3) or (4) or subsection (2) of section 10,

(b) as a result of a declaration under subsection (6), or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

Meetings of members of the Board

9. (1) The Board shall meet at least once every three months for the despatch of business at a time and place determined by the chairperson.

(2) The chairperson shall at the request in writing of not less than one-third of the membership of the Board convene an extra-ordinary meeting of the Board at a time and place determined by the chairperson.

(3) The quorum at a meeting of the Board is seven members.

(4) The chairperson shall preside at meetings of the Board and in the absence of the chairperson, a member of the Board, other than the Chief Executive Officer, elected by the members present from among their number shall preside.

(5) Matters before the Board shall be decided by a majority of the members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Board may co-opt a person to attend a meeting of the Board but that person shall not vote on a matter for decision at the meeting.

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Disclosure of interest

10. (1) A member of the Board who has an interest in a matter for consideration shall disclose in writing the nature of the interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) Where a member contravenes subsection (1), the chairperson shall notify the Minister who shall inform the President in writing to revoke the appointment of the member.

(3) Without limiting any further cause of action that may be instituted against the member, the Board shall recover the benefit derived by a member who contravenes subsection (1) in addition to the revocation of the appointment of the member.

Establishment of committees

11. (1) The Board may establish committees consisting of members of the Board and non-members to perform a function.

(2) Without limiting subsection (1), the Board shall establish

(a) an Examinations Committee; and

(b) an Appeals Committee.

(3) Section 10 applies to members of a committee of the Board.

Allowances

12. Members of the Board and members of a committee of the Board shall be paid allowances determined by the Minister in consultation with the Minister responsible for Finance.

Policy directives

13. The Minister may give directives to the Board on matters of policy and the Board shall comply.

Administrative Provisions

Appointment of Chief Executive Officer

14. (1) The President shall, in accordance with article 195 of the Constitution, appoint a Chief Executive Officer for the Council.

(2) The Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

Functions of the Chief Executive Officer

15. (1) The Chief Executive Officer is responsible for the day-to-day administration and operations of the Council and is answerable to the Board in the performance of the functions under this Act.

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(2) The Chief Executive Officer may delegate a function to an officer of the Council but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

Appointment of other staff

16. (1) The President shall, in accordance with article 195 of the Constitution, appoint other staff of the Council that are necessary for the proper and effective performance of the functions of the Council.

(2) The President may, in writing, delegate the power of appointment under subsection (1) to the Board.

(3) Other public officers may be transferred or seconded to the Council.

(4) The Council may engage the services of advisers on the recommendation of the Board.

Regional offices of the Council

17. (1) The Board may establish regional offices of the Council in each region.

(2) The regional office of the Council shall perform the functions of the Council in the region as the Board may direct.

Internal Audit Unit

18. (1) The Agency shall have an Internal Audit Unit in accordance with section 83 of the Public Financial Management Act, 2016 (Act 921).

(2) The Internal Audit Unit shall be headed by an Internal Auditor who shall be appointed in accordance with the Internal Audit Agency Act, 2003 (Act 658).

(3) The Internal Auditor is responsible for the internal audit of the Council.

(4) The Internal Auditor shall, subject to subsections (3) and (4) of section 16 of the Internal Audit Agency Act, 2003 (Act 658), at intervals of three months

- (a) prepare and submit to the Board, a report on the internal audit carried out during the period of three months immediately preceding the preparation of the report; and
- (b) make recommendations in each report with respect to matters which appear to the Internal Auditor as necessary for the conduct of the affairs of the Council.

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(5) The Internal Auditor shall in accordance with subsection (4) of section 16 of the Internal Audit Agency Act, 2003 (Act 658), submit a copy of each report prepared under this section to

- (a) the Minister; and
- (b) the chairperson of the Board.

Finances of the Council

Sources of money for the Council

19. The sources of money for the Council include

- (a) moneys approved by Parliament;
- (b) moneys from fees charged by the Council in the performance of functions of the Council under this Act; and
- (c) donations and grants.

Accounts and audit

20. (1) The Board shall keep books of account and proper records in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Council to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Council is the same as the financial year of the Government.

Annual report and other reports

21. (1) The Board shall, within one month after receipt of the audit report, submit to the Minister an annual report covering the activities and operations of the Council for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General and any other information that may be required by the Minister in accordance with the Public Financial Management Act, 2016 (Act 921).

(3) The Minister shall within one month after the receipt of the annual report from the Council submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall submit to the Minister any other report which the Minister may request in writing.

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Licensing and Related Matters

Requirement for licence

22. (1) A person shall not

- (a) provide real estate agency services,
- (b) provide services as a real estate agent,
- (c) engage in any business connected with the provision of real estate agency services, or
- (d) engage in a real estate transaction including the business of finding accommodation for a prospective tenant for a fee,

if that person is not a licensed real estate broker or a real estate agent under this Act.

(2) The Council shall submit an annual report to the Ghana Revenue Authority and the Financial Intelligence Centre of persons licensed in accordance with subsection (1).

Application for a licence

23. The application for a licence shall

- (a) be signed and supported with a statutory declaration by the applicant;
- (b) be made to the Board in the form determined by the Council;
- (c) in the case of a company, society, association or partnership be accompanied with an attestation that officers of the company, society, association or partnership do not have any criminal record;
- (d) where appropriate, be accompanied with the prescribed fee for examination; and
- (e) be accompanied with evidence that the applicant is a citizen.

Conditions for grant of a licence

24. The Board may issue a licence to a person if that person

- (a) is an individual who has passed a qualifying examination conducted by
 - (i) the Board, or
 - (ii) an independent testing service designated by the Board;
- (b) is an individual who has not been convicted of a crime involving fraud, dishonesty or moral turpitude;

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- (c) is a valuation and estate surveyor registered by the Ghana Institution of Surveyors or is a lawyer licensed by the General Legal Council to practise as a lawyer;
- (d) in the case of a person who is not resident in this country, is a licensed real estate broker or real estate agent in the country of residence of that person;
- (e) has a Tax Identification Number;
- (f) in the case of a company, society, association or partnership
 - (i) has submitted an application which is not an application for a licence as real estate agent;
 - (ii) has designated at least one of its officers or partners as its representative for the purpose of obtaining the licence; and
 - (iii) has for the purpose of the licence, designated an officer or partner who as an individual has a licence to practise as a real estate broker as the representative of that company, society, association or partnership;or
- (g) has executed and submitted to the Council a mortgage bond or has had executed and submitted to the Council on behalf of that person, by a surety company licensed to operate that business in this country, a mortgage bond in the sum specified and in the form approved by the Board and guaranteed by a surety approved by the Board.

Examinations

25. (1) The Council shall establish a committee of at least five members or appoint a competent institution to be responsible for the examinations required for an applicant under this Act.

(2) The committee or competent institution shall

- (a) design the curricula and programme of studies including the relevant subjects or courses and the duration of studies for the examinations; and
- (b) assess persons who apply to be examiners and make recommendations to the Board for the appointment of examiners.

(3) An examination conducted under this Act shall require the applicant being examined to demonstrate competence through a fair understanding of

- (a) the principles of real estate practice,

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- (b) real estate law,
 - (c) basic law of agency,
 - (d) rudimentary principles of economics,
 - (e) professional ethics of real estate agency,
 - (f) appraisal of real estate,
 - (g) any relevant subject determined by the Council, and
 - (h) the provisions of this Act.
- (4) The Board shall conduct examinations at least once in each year.
- (5) An individual applicant for a licence as a
- (a) real estate agent who is required to write an examination shall, as a condition for writing the examination, submit satisfactory proof to the Board that that applicant has successfully completed courses specified in subsection (3); and
 - (b) real estate broker, who is required to write an examination shall, as a condition for writing the examination, provide to the Board satisfactory proof that the applicant has
 - (i) been actively involved in real estate agency practice for a period of at least one year as a real estate agent; and
 - (ii) completed courses specified in subsection (3).
- (6) A person shall only be permitted to write an examination if that person has paid the required examination fee determined by the Board.

Grant of licence

26. (1) The Council shall, on receipt of an application, carry out background checks including investigation of criminal history and inspection of the facilities of the applicant that the Board considers necessary.

(2) The Council shall, within ninety days after the receipt of an application, if the Council determines that the applicant has satisfied the conditions of a licence, grant the applicant a licence.

- (3) A licence issued under subsection (2) shall
- (a) be in the form determined by the Council;

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- (b) bear the name and address of the licensee;
- (c) specify the nature of the licence by stating whether the licence is granted for a real estate broker or a real estate agent;
- (d) in the case of a licence for a real estate broker issued to a company, society, association or partnership, bear the name of each designated officer or partner to whom as an individual, a real estate broker's licence has been issued;
- (e) indicate the date of issue;
- (f) be valid for two years from the date of issue but be subject to renewal;
- (g) be subject to the terms and conditions determined by the Board; and
- (h) bear the seal of the Council.

Non-transferability of licence

27. A licence issued under this Act shall not be transferred.

Use of licence by a designated officer or partner

28. (1) A person who is designated as an officer or a partner for the purpose of obtaining a real estate broker's licence is entitled to perform the functions of a real estate broker, as a broker or officer of the company, society, association or partnership to which that person is a designated officer or partner.

(2) A person specified in subsection (1) shall not act as a real estate broker on that person's own behalf for as long as that person remains a designated officer or partner of the company, society, association or partnership.

Renewal of licence

29. A licence granted under section 26 may be renewed after the licence has expired, if

- (a) the application for renewal
 - (i) is made not later than thirty days before the licence expires;
 - (ii) is signed and accompanied with a statutory declaration by the applicant; and
 - (iii) is in the form determined by the Council; and

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- (b) the applicant
 - (i) is not in breach of any of the terms and conditions of the licence;
 - (ii) satisfies the requirements for the grant of the licence;
 - (iii) has a valid tax clearance certificate; and
 - (iv) has paid the prescribed fee for the renewal of the licence.

Suspension or revocation of a licence

30. (1) Except as otherwise provided in this Act, the Council shall revoke the real estate broker licence of a company, society, association or partnership, if that company, society, association or partnership ceases to have a licensed real estate broker as the designated officer or broker of that company, society, association or partnership.

(2) The Council shall revoke the licence of a real estate broker or agent if the Council discovers that the licence was obtained by fraud.

(3) Without limiting subsections (1) and (2), the Council may revoke the licence of a real estate broker or agent

- (a) where the agreement entered into by that real estate broker in relation to the licence of that real estate broker ceases to be effective;
- (b) if that broker or agent is convicted by a court of competent jurisdiction for a serious offence; or
- (c) if in the performance of a function authorised by the licence, the real estate broker or agent
 - (i) knowingly made a fraudulent misrepresentation;
 - (ii) acted in the dual capacity of broker and undisclosed principal in the same transaction;
 - (iii) acted for more than one party in the same transaction without the knowledge and consent of the parties that the licensee represented in the transaction;
 - (iv) accepted, gave or charged an undisclosed commission, rebate or profit on expenditures from a principal;
 - (v) commingled the money or other property of a property owner with those of the licensee;
 - (vi) failed to disclose information on a property which is the subject matter of a transaction; or
 - (vii) accepted from a prospective seller a net listing.

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- (4) The Council may suspend the licence of a real estate broker or agent, where the Council discovers that the real estate broker or agent in the performance of a function authorised by the licence
- (a) fails to use the real estate forms required for that function, where the function is a real estate transaction;
 - (b) accepts cash in payment for the function, where the function is a real estate transaction;
 - (c) fails, within reasonable time which shall not exceed one month, to pay out money received into the client account, to the person entitled to that money;
 - (d) paid a commission or fees, or divided commission or fees to a person who is not a licensed real estate broker or agent; or
 - (e) fails to give a copy of the sale and purchase agreement to both the seller and purchaser of real property.
- (5) The Council shall only suspend or revoke a licence, if the Council
- (a) gives at least ten days' notice to the person whose licence the Council intends to suspend or revoke;
 - (b) states in the notice the grounds of the suspension or revocation, where appropriate;
 - (c) serves on the affected licensee a copy of any complaint or charges which the Agency proposes to consider; and
 - (d) gives the licensee affected, the opportunity to
 - (i) appear personally for a hearing or be represented by a lawyer; and
 - (ii) examine and cross-examine witnesses and present documents and other evidence in support of the case of that affected licensee.

Appeals to the Council

Appeals Committee

31. (1) The Council shall establish, for the purpose of hearing grievances under this Act, an Appeals Committee comprising
- (a) three members of the Board; and
 - (b) two real estate brokers, one of whom is a lawyer.
- (2) A person aggrieved by the conduct of a real estate broker or agent or by a decision of the Council relating to a licence may make a complaint to the Board.

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(3) The Board shall refer the complaint to the Appeals Committee for a hearing within seven days after receipt of the complaint.

(4) The decisions of the Appeals Committee shall be by simple majority and shall

(a) contain a statement of the reasons for the decision, including a determination of each issue of fact or law;

(b) be signed by each member of the Appeals Committee; and

(c) be submitted to the Board.

Powers of the Appeals Committee

32. (1) The Appeals Committee shall determine the time and place for hearings of the Appeals Committee.

(2) The Appeals Committee may by summons require the attendance and testimony of witnesses and the production of documents.

(3) Where a witness fails to appear or testify before the Appeals Committee or to produce a document required by the Appeals Committee, the Appeals Committee may apply to the High Court for an order to compel the attendance of the witness or the production of the document.

Submission of decision to the Board

33. (1) The Board shall approve the decision or refer the decision back to the Appeals Committee for reconsideration within fourteen days after receipt of the decision of the Appeals Committee in relation to a hearing.

(2) Where the Board refers the decision back to the Appeals Committee for reconsideration, the Board shall attach to the decision the reasons for the reference for reconsideration.

(3) Where the Board approves the decision of the Appeals Committee, the Board shall within fourteen days after the approval serve on the affected licensee a copy of the decision and the reasons for the decision.

Action of Council in relation to a decision

34. (1) Where the Board approves the decision of the Appeals Committee, the Council shall

(a) suspend or revoke a licence; or

(b) take any other action as appropriate.

(2) In addition to subsection (1), where the Council suspends a licence, the Council may by notice in writing, request a licensee to take the remedial action specified in the notice and within the time specified in the notice.

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(3) The Council shall revoke the licence of a person who after being given notice fails to take the required remedial action within the specified time.

Settlement by alternative dispute resolution

35. (1) Parties to a transaction under this Act may agree to resolve a dispute that arises in relation to a transaction in accordance with the Alternative Dispute Resolution Act, 2009 (Act 798) but the agreement shall not oust the jurisdiction of the court.

(2) Where parties agree under subsection (1), the Alternative Dispute Resolution Practitioner shall, within fourteen days after the referral of the dispute, initiate action to resolve the dispute.

Review of decision

36. (1) A person who is not satisfied with a decision in relation to a hearing may within one month after being informed of the decision, apply to the High Court for a review of that decision.

(2) An application for a review of a decision shall not, unless otherwise determined by the court, operate as a stay of execution of the decision.

Inspection

Appointment of inspectors

37. (1) The Council shall appoint inspectors for the effective implementation of the functions of the Council under this Act.

(2) An inspector shall be issued with a certificate of appointment by the Council.

(3) An inspector shall produce the certificate whenever required in the discharge of the duties of the inspector under this Act.

Inspection by Council

38. (1) An officer of the Council or any other person authorised by the Council may at a reasonable time during the day for the purpose of inspection, enter the premises

- (a) of a real estate broker or real estate agent; or
- (b) which the officer has reasonable grounds to believe relate to a real estate transaction
 - (i) including a transaction otherwise exempted from the application of this Act in subsection (3) of section 1; or
 - (ii) involving money laundering and terrorist financing.

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(2) An officer or an authorised person may only enter premises for inspection after that officer or authorised person has produced for the inspection of the occupier of the premises, the identification and authority of that officer or authorised person.

(3) The officer or authorised person may, in furtherance of an inspection, request, among others, for

- (a) copies of real estate agreements;
- (b) information and records on real estate transactions; and
- (c) the real estate transfer certificate for any completed real estate transaction.

Real Estate Brokerage and Agency Practice

Register of real estate brokers and agents

39. (1) The Council shall keep and maintain a register of real estate brokers and agents in which the Council shall record the personal and business details of licensed real estate brokers and agents.

(2) The register shall be open for inspection during working hours and a copy of or an extract from the register may be made by any interested person on the payment of the fee determined by the Board.

(3) The Council shall at intervals of six months publish in the *Gazette* and a daily newspaper of nationwide circulation that the Council may determine, an alphabetical list of licensed real estate brokers and agents who are in good standing.

(4) The Council shall establish and maintain a national database on real estate transactions which shall contain the transaction records of each licensed real estate broker or agent.

(5) The Council shall keep the transaction records of real estate brokers or agents for a period of at least five years.

(6) The national database on real estate transactions shall, on request made in writing to the Council, be made accessible to the

- (a) Economic and Organised Crime Office;
- (b) Financial Intelligence Centre; and
- (c) Ghana Revenue Authority.

Place of business of licensed real estate broker or agent

40. (1) A licensed real estate broker or real estate agent shall maintain a place of business in this country and conspicuously display in that place of business

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- (a) the licence of that broker or agent or a certified true copy of that licence; and
- (b) the fees to be charged by the real estate broker or real estate agent.

(2) A licensed real estate broker or real estate agent shall give written notice of a change of business location to the Council before the change and the Council shall effect the change in the register and in any subsequent publication of the list of real estate brokers and agents.

(3) Failure of a licensed real estate broker or agent to give notice of a change in business location to the Council is a ground for suspension of the licence of that real estate broker or real estate agent.

Use of forms for real estate transaction

41. (1) Only real estate transaction forms issued by the Council shall be used for real estate transactions including a transaction otherwise exempted from the application of this Act in subsection (3) of section 1.

(2) The application for a real estate transaction form shall be made to the Council and the Council shall on the payment of the required fee,

- (a) record the personal details and the business details of the applicant, and
- (b) issue real estate transaction forms to the applicant.

(3) A real estate transaction in which forms issued by the Council are not used is void.

(4) For the purpose of this section, real estate transaction forms include purchase agreements, sales agreement forms and disclosure of defect or health hazard forms.

Affiliation of real estate agent

42. (1) A real estate agent shall not undertake any real estate transaction unless that agent is affiliated to a licensed real estate broker.

(2) A real estate agent who is not licensed shall not be affiliated to a real estate broker.

(3) A licensed real estate agent who is affiliated to a licensed real estate broker shall not

- (a) act as a real estate agent for any other real estate broker; or
- (b) accept valuable consideration for the performance of any act as a real estate agent from a person other than the real estate broker to whom that agent is affiliated.

Sales and purchase agreement

43. A real estate broker shall, in relation to each real estate transaction prepare as appropriate, a sales and purchase agreement or a lease agreement and give the seller and the buyer or the lessor and the lessee a copy each of the agreement.

Mode of payment for real estate transaction

44. (1) Payment for each real estate transaction shall be by bank draft, cheque, bank transfer or electronic money transfer.

(2) A real estate broker or a real estate agent shall not accept cash in payment of any real estate transaction.

Client account

45. A real estate broker or agent shall open and operate a separate account for the property of a client into which moneys due in relation to the property shall be recorded.

Real Estate Transaction Certificate

46. (1) A real estate transaction including a transaction otherwise exempted from the application of this Act under subsection (3) of section 1, is not complete until the parties to the transaction have been issued with a Real Estate Transaction Certificate by the Council.

(2) A person who engages in a real estate transaction shall apply for a Real Estate Transaction Certificate and accompany the application with the fee determined by the Council.

(3) The application shall contain, among others,

(a) the personal details of the applicant,

(b) the particulars of the real estate transaction to which the Real Estate Transaction Certificate is intended to relate including

(i) personal details of the parties to the transaction,

(ii) details of the property which is the subject of the transaction,

(iii) the nature of the transaction,

(iv) the valuation report, if any, on the property which is the subject of the transaction,

(v) the sums of money payable in the transaction,

(vi) details of the mode of payment used for payment of the transaction, and

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- (vii) details of receipts issued to cover payment of taxes payable for the transaction including receipts from the Ghana Revenue Authority, and
- (c) copies of the purchase and sales agreement on the transaction.
- (4) The Council shall issue the Real Estate Transaction Certificate to an applicant within thirty days after receipt of the application.
- (5) Where the Council has reasonable grounds to believe that there has been any misrepresentation in respect of a real estate transaction, payments made in relation to the real estate transaction which is the subject of the application have been under-declared or far exceeds the value of the property, the Council may
 - (a) conduct an investigation into the transaction,
 - (b) cause an independent valuation of the property to be made, or
 - (c) refer the transaction to the Economic and Organised Crime Office, the Ghana Revenue Authority and the Financial Intelligence Centre for investigation.
- (6) Despite any provision in any other enactment to the contrary, the Lands Commission shall not register any real property or interest in real property which has been the subject of real estate transaction, including a transaction otherwise exempted from the application of this Act under subsection (3) of section 1, if the application for registration is not accompanied with a Real Estate Transaction Certificate issued by the Council.
- (7) Registration of real property or interest in real property by the Lands Commission contrary to subsection (6) is void.

General rules of conduct in real estate agency practice

47. (1) A licensed real estate broker or agent shall not in relation to real estate agency practice do any of the following:
- (a) make any misrepresentation
 - (i) for the purpose of obtaining a licence; or
 - (ii) in any report that the real estate broker or agent submits to the Council;
 - (b) act in the dual capacity of broker and undisclosed principal in the same transaction;
 - (c) act for more than one party in the same transaction without the knowledge and consent of all the parties involved in the transaction;

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- (d) pay commission or fees to or share commission or fees with a person who is not a licensed broker or agent;
- (e) accept, give or charge any undisclosed commission, rebate or profit on expenditures for a principal;
- (f) commingle the money or property of a client or principal with the money or property of the real estate broker or agent;
- (g) fail to give the seller and the buyer a copy of the sales and purchase agreement; or
- (h) accept from a prospective seller a net listing.

(2) A licensed real estate broker or agent shall disclose to the seller any defect with the property that the real estate broker or agent is dealing with.

Transaction report

48. (1) A real estate broker or agent shall, in addition to the reporting obligation under the Anti-Money Laundering Act, 2008 (Act 749), submit to the Council quarterly reports in hard copy and electronic format covering each real estate transaction undertaken by that real estate broker or agent within the quarter to which the report relates.

(2) The report shall be in the form and contain the matters determined by the Council.

(3) A real estate broker or agent who fails to submit to the Council quarterly reports covering each real estate transaction undertaken by that real estate broker or agent contrary to subsection (1) is liable to pay to the Council an administrative penalty of one thousand penalty units.

Books of account and audit of real estate broker or agent

49. (1) A real estate broker or agent shall keep books of account and proper records in relation to the account.

(2) The books of account and the records shall be in conformity with the national accounting standards and shall on request by the Council be opened by the real estate broker or agent for inspection by the Council.

(3) The books of account and records shall among others contain the financial details of each real estate transaction undertaken by the real estate broker or agent.

(4) A real estate broker shall, within one month after the end of the calendar year, appoint a qualified auditor to audit the accounts of that real estate broker and the auditor shall submit the audit report to that real estate broker within one month after the appointment.

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(5) A real estate broker or agent shall keep the transaction records of real estate brokers or agents for a period of at least five years.

Other records to be kept by real estate broker

50. A real estate broker shall keep records which contain among others, details of

- (a) the parties to each real estate transaction;
- (b) the date of the real estate transaction;
- (c) each mode of payment issued for the payment of a real estate transaction;
- (d) each property which is the subject of a real estate transaction;
- (e) the nature of each transaction;
- (f) the valuation report on each property which is the subject of a real estate transaction; and
- (g) the sums of money payable in respect of each real estate transaction.

Annual report of real estate broker

51. (1) A real estate broker shall within three months after the end of each calendar year submit to the Council a report covering the real estate transactions undertaken by that real estate broker and the agents of that real estate broker in the previous year.

(2) The report shall include the audit report of that real estate broker.

Miscellaneous Matters

Administrative sanctions

52. A person who

- (a) fails to conspicuously display the licence issued in accordance with this Act,
- (b) fails to use forms issued by the Council for a real estate transaction contrary to section 41, or
- (c) fails to submit annual reports to the Council contrary to section 51,

is liable to pay to the Council an administrative penalty of one thousand penalty units.

Offences

53. A person who

- (a) advertises as a real estate broker or agent without a licence issued under this Act;

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- (b) engages in a real estate transaction without a licence contrary to section 22,
 - (c) transfers a licence issued under this Act contrary to section 27,
 - (d) falsifies a document under this Act,
 - (e) obstructs an authorised officer in the performance of the duties of that officer under section 38, or
 - (f) fails to submit transaction reports contrary to section 48,
- commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units and not more than ten thousand penalty units or to a term of imprisonment of not less than five years and not more than ten years, or to both.

Regulations

54. (1) The Minister may, on the advice of the Board, by legislative instrument make Regulations to prescribe for

- (a) facilities to be provided by a real estate agency practitioner for the practice;
- (b) the conduct of hearings by the Council;
- (c) the conduct of examinations;
- (d) the content of an examination for the licensing of a real estate broker and a real estate agent;
- (e) the form and content of reports to be submitted by real estate agency practitioners to the Council;
- (f) the effective monitoring, assessment and improvement of real estate agency practice; and
- (g) the effective implementation of this Act.

(2) The Minister may, in consultation with the Minister responsible for Finance, by Regulations prescribe the following fees to be paid to the Council:

- (a) examination fees,
- (b) grant of licence and renewal of licence fees,
- (c) processing and recording of transactions fees, and
- (d) any other fees chargeable under this Act.

Guidelines

55. The Council may issue guidelines on anti-money laundering and countering the financing of terrorism in the real estate agency practice.

Interpretation

56. In this Act, unless the context otherwise requires,

“Alternative Dispute Resolution Practitioner” means a mediator, arbitrator or any other person involved in alternative dispute resolution under the Alternative Dispute Resolution Act, 2009 (Act 798);

“Council” means the Real Estate Agency Council established under section 2;

“Economic and Organised Crime Office” means the Office established under section 1 of the Economic and Organised Crime Office Act, 2010 (Act 804);

“Financial Intelligence Centre” means the Centre established under section 4 of the Anti-Money Laundering Act, 2008 (Act 749);

“Ghana Revenue Authority” means the body established under section 1 of the Ghana Revenue Authority Act, 2009 (Act 791);

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

“mortgage bond” means a housing bond which is secured with the property of the issuer of the bond;

“net listing” means an agreement to sell or lease real estate for a stated price that authorises the licensed real estate broker or agent to keep money in excess of the stated price received from the sale or lease;

“quarter” means a period of three months;

“real estate” means an estate or interest in land and the improvement on the estate or interest, whether corporeal or incorporeal, whether absolute, freehold or non-freehold and whether or not the estate or land is situated in this country;

“real estate agent” means an individual who

(a) is affiliated to a real estate broker and who performs any act or engages in any transaction which results or is intended to result in

(i) the sale, exchange, purchase, renting or leasing of real estate;

(ii) a loan secured or to be secured by mortgage or other encumbrance on real estate; or

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(b) undertakes any of the other activities stated in the interpretation of real estate broker;

“real estate broker” means a person who on behalf of another person and for a fee, commission or any other valuable consideration, or with the intention or in the expectation of or on the promise of being paid or given a fee, commission or any other valuable consideration, acts as a broker and

(a) sells, exchanges, purchases, rents or leases real estate;

(b) lists or offers, attempts or agrees to list any real estate;

(c) buys, offers to buy, sells, offers to sell or otherwise deals in an option on real estate;

(d) advertises or is portrayed through conduct as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate;

(e) assists or directs in the procurement of prospectus, negotiation or completion of an agreement or transaction which results or is intended to result in the sale, exchange, purchase, leasing or renting of real estate; or

(f) negotiates, or offers, attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance on real estate;

“real estate practice” means the lawful operation of a real estate agency;

“real estate transaction” means the process by which a right in a unit of real property is transferred between two or more parties and in the case of conveyance involves one party being the seller and the other being the buyer; and

“serious offence” means an offence for which the maximum penalty is death or imprisonment for a period of not less than twelve months.

Repeal

57. Paragraph (f) of subsection (1) of section 3 of the Conveyancing Act, 1973 (N.R.C.D. 175) is repealed.

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Transitional provisions

58. (1) Despite any other provision to the contrary in this Act, the Council may on application by an individual who has continuously practised as a real estate broker for at least five years before the commencement of this Act, register that individual as a real estate broker or agent, if that individual has no criminal record and has satisfied the tax obligations of that individual.

(2) The registration of a person by the Council as a real estate broker or agent shall only be for a period of one year, after which the person registered shall apply for a renewal of the registration.

Application of the Anti-Money Laundering Act, 2008 (Act 749)

59. This Act shall be read as one with the Anti-Money Laundering Act, 2008 (Act 749) and where there is any conflict, the provisions of Act 749 shall prevail.

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Date of *Gazette* notification: 24th April, 2020.

REAL ESTATE AGENCY BILL, 2020

MEMORANDUM

The purpose of the Bill is to regulate real estate agency practice, the conduct of real estate practitioners, commercial transactions in real estate including the sale, purchase, rental and leasing of real estate, as well as other real estate transactions.

The real estate sector is of great importance to the economy of every country and particularly to the financial market because of the large monetary transaction involved. Ghana, like all other economies, has had the practice of real estate agency also referred to as estate agency in existence for a considerable length of time. The practice has grown considerably in recent years as the property market has become more active with the buying, selling and leasing of property for investment.

The role of the real estate broker has traditionally been as an intermediary between the purchaser and vendor of property. One result of the increase in activities in the property market has been the influx into the real estate agency trade of persons who have introduced fraud into the trade. Many real estate brokers do not have any particular training in real estate agency and many others have no identifiable office accommodation. Investors in property who deal with real estate brokers have no guarantee against fraud and many have been swindled out of their investment funds.

Furthermore, a glance at the real estate business shows the lack or inadequacy of appropriate internal control mechanisms, policies, training and audit systems among other things which makes the sector attractive to criminals. Real estate transactions by their nature involve huge sums of money and because of this, there is a need to ensure that real estate practitioners and parties to real estate transactions keep records of their transactions for tax purposes. The lack of record keeping by most real estate practitioners and parties to real estate transactions results in failure to pay tax on the incomes earned from the transactions. This denies the Government the necessary income for developmental purposes.

Another downside to the current state of real estate agency practice is the promotion of unhealthy competition between legitimate and criminal businesses because investment in the real estate sector offers advantages for legitimate law-abiding individuals and businesses and criminals who abuse the system. The socio-economic impact is significant though not readily measurable.

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There is therefore the need to regulate real estate agency services to rid the industry of fraud, laundering of illegal income and tax evasion so as to minimise the effect of these vices on the national economy and the international image of the country.

Additionally, Ghana, as a signatory to international conventions on corruption, including the African Union Convention on Preventing and Combatting Corruption and the United Nations Convention against Corruption, needs to adhere to international standards for the prevention of money laundering. In this regard, the International Action Group against Money-Laundering in West Africa, a specialised institution of the Economic Community of West African States which is responsible for the prevention and control of money laundering and terrorist financing in the West African region in a typology report published after Ghana's assessment for compliance with the Financial Action Task Force 40+9 recommendations in 2009, identified the real estate transactions as an avenue to launder money. The study revealed the diverse ways in which money is laundered through the real estate sector including direct cash purchase of properties, use of fictitious names to purchase property and the use of third parties or front men to purchase property. Thus in the country's quest to adhere to international best practices, the Bill seeks to plug the avenues in which real estate transactions are used to launder money including the prohibition of the use of cash for real estate transactions. This will ensure that there is a detailed tracking of the transactions and the persons involved in the transaction.

The passage of the Bill will go a long way to strengthen the anti-corruption initiatives in the country and curb money laundering and other financial malpractices in the sector. It will also be in the interest of good governance and will give the country an improved standing in subsequent assessments by the International Action Group against Money-Laundering in West Africa.

Clause 1 provides for the application of the Act in relation to real estate transactions and provides for real estate transactions which are exempted from the application of the Act. The exemptions are intended to take care of the situations in which a person does not require a licence to engage in real estate transactions and in which that person is not bound by the rules that govern real estate practice.

Clauses 2 to 12 provide for the establishment of the Real Estate Agency Council. *Clause 2* establishes the Real Estate Agency Council as a

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body corporate. The object of the Council as specified in *clause 3* is to promote and facilitate the development of real estate agency practice and regulate the provision of real estate agency services.

Clause 4 specifies the functions of the Council. The functions include regulating the practice of real estate agency, prescribing courses of study for real estate agency practice, licensing of real estate brokers, issuing of real estate transfer certificates, setting of performance standards for real estate agency practice and monitoring the performance of real estate brokers.

Clause 5 provides for the governing body of the Council which is a Board, comprising eleven members appointed by the President. The duties and liabilities of members of the Board are specified in *clause 6*. *Clause 7* states the functions of the Board. It is the responsibility of the Board to ensure the proper and effective performance of the functions of the Council.

Clauses 8 to 12 set out the standard provisions on the tenure of office of members of the Board, meetings of the Board, disclosure of interest by members of the Board, establishment of committees of the Board and allowances payable to members of the Board and committees of the Board, whilst *clause 13* provides for Ministerial directives.

Clauses 14 to 17 make provision for the administration of the Council. *Clause 14* provides for the appointment of a Chief Executive Officer of the Council whilst *clause 15* provides for the functions of the Chief Executive Officer. Appointment of other staff is provided for in *clause 16*. *Clause 17* enables the Council to establish regional offices in the regions that the Board determines. The Council is to have an Internal Audit Unit in accordance with section 83 of the Public Financial Management Act, 2016 (Act 921), *clause 18*.

The finances of the Council are provided for in *clauses 19 to 21*. *Clause 19* makes provision for the sources of moneys of the Council which include moneys approved by Parliament and moneys received from fees charged by the Council in the performance of its functions under the Act. *Clause 20* provides for the accounts and audit of the Council whilst *clause 21* provides for annual reports and other reports.

Licensing and related matters are to be found in *clauses 22 to 30*. In *clause 22*, provision is made for a person licensed by the Council to provide

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real estate agency or agent services among others. This *clause* also prohibits unlicensed persons other than those authorised or exempted under the Act, from engaging in real estate transactions.

Clause 23 provides for the application for a licence. The application which is to be made to the Council is, among others, required to be signed and supported with a statutory declaration by the applicant and to be in the form prescribed in the Regulations. *Clause 24* specifies the conditions for the grant of a licence.

In *clause 25*, provision is made for examinations which is one of the conditions that needs to be satisfied by persons who are not surveyors or lawyers for the grant of a licence. *Clause 26* provides for the procedure for the grant of a licence and specifies the form and contents of the licence. A licence granted under the Act is, by *clause 27*, not transferable.

Clause 28 provides for the use of a licence by a designated officer or partner and restricts the use of a licence by a designated officer or partner to the functions of the designation. Renewal of a licence is provided for in *clause 29*. The application for renewal, is among others, required to be made within thirty days after the licence has expired and it is to be signed by the applicant and accompanied with a statutory declaration by the applicant. *Clause 30* provides for the power of the Council to suspend or revoke a licence and the conditions or circumstances for the revocation or suspension.

Appeals to the Council are dealt with under *clauses 31 to 35*. *Clause 31* establishes a five-member Appeals Committee to be responsible for the conduct of hearings in relation to persons aggrieved by the conduct of real estate brokers or agents or a decision of the Board. The Appeals Committee, in *clause 32*, has the power to, among others, require the attendance and testimony of witnesses and the production of documents. In *clause 33*, provision is made for the submission of the decision of the Appeals Committee to the Council. The actions that can be taken in relation to the decision of the Appeals Committee are given in *clause 34*. These include the suspension of a licence, revocation of a licence or refusal to renew a licence.

The Bill creates an avenue for the settlement of dispute by alternative dispute resolution where a party is not satisfied with a decision of the Appeals Committee in *clause 35*. Review of the decision by the High Court is provided for in *clause 36*.

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Matters related to inspection are dealt with in *clauses 37 and 38*. *Clause 37* provides for the appointment of inspectors by the Council and *clause 38* empowers the inspectors appointed to carry out inspections in relation to real estate transactions and premises affected by real estate transactions. This provision creates a control and monitoring mechanism by which the Council can verify real estate transactions.

Clauses 39 to 51 provide for real estate brokerage and agency practice. *Clause 39* requires the Council to keep and maintain a register of brokers and agents, publish in the *Gazette* at six-month intervals an alphabetical list of real estate brokers and agents and establish and maintain a national database on real estate transactions.

Clause 40 places an obligation on a licensed real estate broker or real estate agent to maintain a place of business in this country and to conspicuously display in that place of business the licence of that broker or agent or a certified copy of that licence. The *clause* also requires a licensed real estate broker or real estate agent to notify the Council of a change in the place of business.

The use of forms for real estate transaction is provided for in *clause 41*. A person is required to use real estate transaction forms issued by the Council for real estate transactions. A real estate transaction in which forms issued by the Council are not used is void.

Clause 42 makes provision for the affiliation of a licensed real estate agent to a licensed real estate broker.

In *clause 43*, an obligation is imposed on a real estate broker to prepare and give to the seller and buyer or the lessor and the lessee involved in each real estate transaction a sale, purchase or a lease agreement as appropriate.

Clause 44 requires payments in real estate transactions to be made by cheque, bank draft or electronic money transfer. This provision is intended to assist in creating a financial record trail in relation to real estate transactions. A real estate broker or agent is required in *clause 45* to open and maintain separate accounts for the clients of that real estate broker or agent and to pay moneys due to clients into that account.

Clause 46 makes a Real Estate Transfer Certificate issued by the Council a mandatory requirement for the completion of a real estate transaction. This provision seeks to create a record trail for real estate transactions.

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General rules of conduct for real estate practice are set out in *clause 47*. Those rules, among others, prohibit a licensed real estate broker or agent from acting in a dual capacity of a real estate broker and undisclosed principal in the same transaction and from acting for more than one party in the same transaction without the knowledge and consent of all the parties involved in the transaction.

Clause 48 deals with transaction reports. The reports are to be submitted to the Council quarterly in hard copy and electronic format. The reports are expected to form the basis and be a constant source of input for the national database for real estate transactions.

Books of account and records to be kept by a real estate broker or agent and auditing of the accounts of a real estate broker or agent are provided for in *clause 49*. *Clauses 50* and *51* provide for other records to be kept by a real estate broker or agent and the submission of an annual report to the Council.

Clauses 52 to *58* provide for miscellaneous matters. *Clause 52* provides for administrative sanctions whilst *clause 53* provides for offences under the Bill. *Clause 54* provides for Regulations to be made by the Minister for, amongst others, the conduct of examinations, the conduct of hearings and generally for the effective implementation of the Act. *Clause 55* provides for the issuance by the Council of guidelines on anti-money laundering and countering the financing of terrorism in the real estate agency practice.

Interpretation of words used in the Act is provided for in *clause 56*. *Clause 57* repeals section 3 of the Conveyancing Act, 1973 (N.R.C.D.175). Transitional provisions are dealt with in *clause 58*. Finally, *clause 59* makes the Anti-Money Laundering Act, 2008 (Act 749) applicable to the Bill and where there is any conflict between the Bill and Act 749, the provisions of Act 749 are to prevail.

HON. SAMUEL ATTA AKYEA, M.P.
Minister responsible for Works and Housing

Date: 21ST April, 2020