

THE REAL ESTATE (DEALERS AND DEVELOPERS) ACT

REGULATIONS
(*under section 25*)

The Real Estate (Dealers and Developers) Regulations, 1988

L.N. 71/88
45/89
29/92
38/96
89/2003
10G/2014

REGULATIONS
(*under section 43 (1) (h)*)

The Real Estate (Dealers and Developers) (Code of Ethics) Regulations, 1998 L.N. 98/98

THE REAL ESTATE (DEALERS AND DEVELOPERS) ACT

REGULATIONS
(under section 25)THE REAL ESTATE (DEALERS AND DEVELOPERS) REGULATIONS, 1988
(Made by the Minister on the 10th day of August, 1988)L.N. 71/88
Amdt:
L.N. 45/89
29/92
38/96
89/2003
10G/2014PART I — *Preliminary*

1. These Regulations may be cited as the Real Estate (Dealers and Developers) Regulations, 1988.

PART II — *Fees and Registration*

2. An application for registration as a real estate dealer or a real estate salesman, as the case may be, shall be made in writing in the form specified as Form A in the Schedule and a fee of—

Schedule
Form A.

- (a) two thousand dollars, as respects registration as a real estate salesman; and
- (b) five thousand dollars, as respects registration as a real estate dealer,

shall be paid in respect of such application.

3. In support of an application pursuant to regulation 2 the following documents shall be supplied—

- (a) original certificates or other similar documents evidencing qualifications;
- (b) character references from three persons of good standing in the community;
- (c) in the case of an application in respect of a body corporate or partnership—
 - (i) a certified copy of the memorandum, article of association and certificate of incorporation in respect thereof or as the case may be, any instrument constituting the body or partnership;
 - (ii) name and address of the secretary and each director, partner or senior officer thereof.
- (d) in the case of an application in respect of an individual two passport size photographs certified by a Justice of the Peace, Attorney-at-Law or Minister of Religion;
- (e) such other records or particulars as the Board may require.

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4. The fee payable in respect of a licence to engage in the practice of real estate business pursuant to section 20 of the Act shall—

- (a) as respects a licence to practise as a real estate dealer be fifteen thousand dollars; and
- (b) as respects a licence to practise as a real estate salesman be eight thousand dollars:

Provided that a real estate dealer or real estate salesman whose practice of real estate business is limited to auctioneering and who holds or is employed to the holder of a licence granted under the Licences on Trades and Business Act in connection with such auctioneering, shall, during the continuance in force of such licence, be deemed to have paid the fee prescribed under paragraph (a) or (b) as the case may be.

Form B

5.—(1) An application for registration as a developer shall be made in writing in the form specified as Form B in the Schedule.

(2) The following fees shall be payable in relation to this regulation—

(a) application fee: payable on registration—

- (i) a scheme of forty-one units or lots and over \$50,000.00
- (ii) a scheme of twenty-one units or lots but no more than forty units or lots ... \$30,000.00
- (iii) a scheme of six units or lots but no more than twenty units or lots ... \$20,000.00

Note: Where a developer maintains his registration by payment of the annual fee under sub-paragraph (c) a fresh application fee under this sub-paragraph will not be required as regards subsequent development schemes promoted by that developer.

- (b) development fee: payable in respect of each unit or lot of a development scheme promoted by the developer \$1,500.00
- (c) where a registered developer retains his registration from year to year the fee payable on the 1st day of April of each year shall be—
 - (i) a scheme of forty-one units or lots and over \$25,000.00

- (ii) a scheme of twenty-one units or lots but no more than forty units or lots \$15,000.00
- (iii) a scheme of six units or lots but no more than twenty units or lots... .. \$10,000.00

6. The statement to be lodged by a prospective developer of a development scheme pursuant to section 35 of the Act shall contain in addition to the particulars mentioned in that section the following particulars—

- (a) the approximate number and proposed use of the building units or lots, as the case may be, to be provided;
- (b) the prices, financing and payment plan proposed in respect of the building units or lots;
- (c) the time within which it is proposed to complete scheme, or where a scheme is to be undertaken in stages, each stage of the scheme;
- (d) in respect of a developer that is a body corporate, a certified copy of its certificate of incorporation.

7. The Register of Real Estate Dealers and Real Estate Salesmen shall have entered therein the following particulars in respect of every person registered as a real estate dealer or a real estate salesman—

- (a) where the dealer is a body corporate or partnership, the address at which it carries on the practice of real estate business, and as respects each director, partner or senior officer, as the case may be, thereof—
 - (i) his full name;
 - (ii) his date of birth;
 - (iii) particulars of his academic and professional qualifications;
 - (iv) the branch of real estate business (if any) that he is authorized to practice;
- (b) in the case of a real estate salesman or a real estate dealer who is an individual—
 - (i) his full name;
 - (ii) his date of birth;
 - (iii) particulars of his academic and professional qualifications;
 - (iv) the branch of real estate business that he is authorized to practice;

- (v) his address;
- (vi) the address at which he carries on the practice of real estate business; and
- (c) in the case of a real estate salesman, the name and office address of the person to whom he is employed.

Form C

8. The certificate of registration to be issued to every person registered as a real estate dealer or a real estate salesman, as the case may be, shall be in the form specified as Form C in the Schedule.

Form D

9. A licence to practise real estate business issued pursuant to section 20 of the Act shall—

Form E

- (a) in respect of a real estate dealer be in the form specified as Form D in the Schedule; and
- (b) in respect of a real estate salesman be in form specified as Form E in the Schedule.

PART III — Qualifications

10. No person shall be qualified to be registered as a real estate dealer—

- (a) unless he—
 - (i) holds a degree or diploma in Land Economy and Valuation Surveying from the College of Arts, Science and Technology;
 - (ii) has passed the Royal Institution of Chartered Surveyors final examination in General Practice, Land Agency and Agriculture;
 - (iii) holds a degree or diploma in Estate Management, Land Economy or Land Management which would have entitled the holder to be exempted by the Royal Institution of Chartered Surveyors from the Institution's final examination;
 - (iv) has successfully completed the Real Estate Dealers Course of the College of Arts, Science and Technology;
 - (v) possesses such other qualification as may be approved by the Board; or
 - (vi) is registered as a chartered valuation surveyor by the Royal Institution of Chartered Surveyors; and

(b) has, except in relation to a person described in paragraph (a) (vi)—

- (i) completed a period of attachment of at least one year in the office of a real estate dealer who is in fulltime practice and who has been approved by the Board for the purpose;
- (ii) satisfied the Board in such oral examination as the Board may require of him, that he has gained the necessary practical experience in the practice of real estate business; and
- (iii) passed such written examination in local land law as the Board may require him to sit.

11. No person shall be qualified to be registered as a real estate salesman unless he—

- (a) has successfully completed the Real Estate Salesmen Course of the College of Arts, Science and Technology; or
- (b) possesses such other qualification as may be approved by the Board.

PART IV — *Accounts and Audit*

12. In this Part—

“accounting period” means a period not exceeding one calendar year in respect of which accounts required to be kept pursuant to regulation 15 are drawn up;

“client account” means an account maintained in accordance with section 25 of the Act;

“qualified auditor” means a registered public accountant as defined in section 2 of the Public Accountancy Act.

13. Money other than clients’ money may be paid into a client account—

- (a) if it is necessary for the purpose of satisfying the minimum requirements for opening or maintaining the account; or
- (b) in order to restore, in whole or in part, any money paid out of the account in contravention of these Regulations.

14.—(1) Money, other than Clients' money, held in a client account may be paid out in the following cases—

- (a) where money is paid into the account by virtue of paragraph (a) of regulation 13 is no longer required for the purpose referred to in that paragraph and is paid to the person entitled to it;
- (b) where money paid into the client account other than as permitted by regulation 13, is paid to the person entitled to it.

(2) Where money has been paid out pursuant to paragraph (1) (b) the person maintaining the account shall forthwith give written notice of such withdrawal and the circumstances thereof to the Board.

(3) Money held in a client account may, in the case of clients' money, be paid out—

- (a) where such money is paid to the person who is entitled to call for it to be paid over to him or on his direction or to have such money otherwise credited to him;
- (b) with the agreement of the person for whom the money is held, as remuneration for, or in reimbursement of, money expended in the practice of real estate business on behalf of that person;
- (c) where such money is transferred to another client account maintained by the person who is required to maintain the account from which the money is being transferred;
- (d) in the exercise of any lien on the money which the person maintaining the account is entitled to exercise; and
- (e) pursuant to an order of a court.

15.—(1) It shall be the duty of a real estate dealer who receives clients' money—

- (a) to keep such accounts and records relating to clients' money received, held or paid out as are sufficient to show that he has discharged the duty imposed on him by subsection (1) of section 25 of the Act; and

- (b) to show and explain when called upon to do so all matters connected with that money, including—
- (i) the title of the client account into which it is paid;
 - (ii) the date of such payment;
 - (iii) the identity of the institution with which that account is held;
 - (iv) all dealings with any money which may have been dealt with through that account.

(2) Without prejudice to the generality of paragraph (1), the real estate dealer shall ensure that the accounts and records referred to in that paragraph—

- (a) show, in the case of clients' money received—
- (i) the amount;
 - (ii) the name and address of the payer;
 - (iii) the interest in land to which the money relates;
 - (iv) the identity of the person wishing to dispose of such an interest;
 - (v) the capacity (whether as agent, stakeholder, bailee or other) in which the money is received and, from time to time, held;
 - (vi) the identity of the person for whom the money has been received, and (where known) for whom the money is from time to time held;
 - (vii) the date of receipt of the money; and
 - (viii) whether the sum paid constitutes money paid, in whole or in part, as consideration for the disposition of any interest in land or as an earnest on the part of any person of his intention to acquire such an interest;
- (b) are kept in such manner as to show separately all clients' money held by reference to the interest in land to which it relates.

16.—(1) A real estate dealer who is required to keep accounts under regulation 15 shall draw them up in respect of consecutive accounting periods and have them audited by a qualified auditor within one hundred and eighty days after the end of each such accounting period.

(2) The auditor shall in respect of each accounting period, furnish to the real estate dealer a report stating whether in his opinion the requirements of the Act and of these Regulations as to the manner

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in which clients' money is to be dealt with have been substantially complied with.

(3) The auditor may report that the said requirements have been substantially complied with if in his opinion they have been complied with except so far as concerns certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery, and none of which in his opinion resulted in any loss to any person entitled to the clients' money.

(4) If the auditor reports that in his opinion the said requirements have not been complied with or substantially complied with, he shall specify in his report the matters in respect of which it appears to him that the said requirements have not been complied with or substantially complied with.

(5) If the auditor is unable to form an opinion as to whether or not the said requirements have been complied with or substantially complied with, he shall specify in his report the matters in respect of which he has been unable to satisfy himself and the reasons therefor.

(6) For the purposes of making his report under paragraph (2), the auditor shall—

- (a) ascertain from the real estate dealer to whom he is reporting under that paragraph particulars of all bank accounts kept, maintained or operated by him in the course of real estate business at any time during the accounting period to which the report relates; and
- (b) subject to paragraph (7), so examine the accounts and records of the dealer as to enable him to verify whether they comply with the requirements of regulation 15, for which purpose he may ask for such further information as he may consider necessary.

(7) Nothing in paragraph (6) shall require the auditor—

- (a) to extend his enquiries beyond the information contained in the relevant documents produced to him, supplemented by such information and explanations as he may have obtained from the person to whom he is making his report; or
- (b) to consider whether the accounts and records have been properly kept in accordance with regulation 15 at any time

other than the accounting period to which his examination of those accounts and records relates.

(8) The auditor shall forward to the Board a copy of the report referred to in paragraph (2).

PART V — *Miscellaneous*

17.—(1) Subject to paragraph (2), the report required pursuant to section 29 (2) of the Act upon every payment of moneys into a trust account shall contain in addition to the particulars referred to in that provision, the following particulars—

- (a) the development scheme to which the prepayment contract relates;
- (b) the name of the vendor under the contract;
- (c) the name of the financial institution with which the trust account is maintained and the number of the account;
- (d) the name and address of the purchaser under the contract;
- (e) number of the building and, if separate, the lot or strata lot in the development scheme;
- (f) the amount of money received from the purchaser;
- (g) the purchase price of the building and, if separate, of the lot or strata lot;
- (h) total payments to date into the account in respect of the development scheme.

(2) Particulars specified in sub-paragraphs (a), (b) (c) (d) and (e) of paragraph (1) need not be stated in the report if they are contained in any prepayment contract to which the payment relates, a copy of which has been forwarded to the Board pursuant to section 28 of the Act.

18.—(1) An advertisement for sale of land in a development scheme shall contain in addition to the information required pursuant to section 27 (2) of the Act the following particulars—

- (a) the name and address of the advertiser;
- (b) the dimensions and gross covered floor area of each type of building unit in the scheme;
- (c) the composition of the walls, flooring and roof of each building;
- (d) the sale price of each type of building unit;
- (e) whether the contract includes an escalation clause;
- (f) the estimated time of commencement and completion of the scheme;

(2) No vendor or prospective vendor of any land or building in a development scheme shall for the purpose of inducing any person to enter into a prepayment contract for the sale of such land or building make or cause to be made any statement, promise or forecast that is false, misleading or deceptive or is likely to create an erroneous impression regarding the character or value of the land or building.

18A. A vendor under any prepayment contract relating to land which is, or is intended to be, the subject of a development scheme, consisting of a strata plan under the Registration (Strata Titles) Act, shall, in writing, provide to prospective purchasers—

- (a) a list of common facilities to be provided in the complex;
- (b) an estimate of the unit entitlement of the strata lots;
- (c) the proposed by-laws;
- (d) an estimate of the projected maintenance charge applicable to the strata lots;
- (e) a list of the specific items covered by the charge referred to in paragraph (d); and
- (f) a list of any other payments that may be applicable.

19. A vendor who pursuant to section 31 of the Act has withdrawn money from a trust account and deposited it in another trust account shall, within seven days from such withdrawal, furnish the Board with a report containing particulars of such withdrawal and deposit.

20. The form of and terms of the charge referred to in subsection (4) of section 31 of the Act shall be as set out in Form F of the Schedule.

Form F.

Form A REAL ESTATE (DEALERS AND DEVELOPERS) ACT
APPLICATION FOR:
REGISTRATION AS A REAL ESTATE DEALER
OR
REGISTRATION AS A REAL ESTATE SALESMAN

SECTION 1: REAL ESTATE DEALER

Section 1 must be complete by an individual or a body corporate or partnership applying to practice the business of real estate as a real estate dealer.

If applicant is an individual, give name and date of birth and attach certified passport-sized photograph.

If applicant is a body corporate or partnership, attach certified copy of certificate of incorporation or instrument constituting the body or partnership.

1.1. Name:.....
Surname or Business Name *Christian Name*

1.2. Date of Birth
or
Date of Registration of Body Corporate or Partnership:.....

1.3. Address:.....Tel. Number:.....

1.4. If applicant is a body corporate or partnership, list names and addresses of directors or partners:

NAME	ADDRESS
.....
.....
.....

1.5. Name and address of Secretary if body corporate:
.....
Name *Address*

SECTION 2: REAL ESTATE SALESMAN

Section 2 must be completed by an individual applying to practice the business of real estate as a real estate salesman. Attach certified passport-sized photograph.

2.1. Name:.....2.2. Date of Birth:.....

2.3. Home Address:..... Tel. Number:.....

- 2.4. Name and Address of Dealer to whom employed:
.....
.....
- 2.5. Details of qualifications and experience (for example, number of years practicing as a real estate salesman, name(s) of employer(s), etc.)
.....
.....
.....

SECTION 3: REAL ESTATE DEALER AND REAL ESTATE SALESMAN

(Section 3 must be completed by any person (i.e. individual, body corporate or partnership) applying to practice the business of real estate either as a real estate dealer or a real estate salesman).

- 3.1. Names and addresses of three (3) persons of good standing in the community who can support this application:

NAME	ADDRESS
.....
.....
.....

- 3.2. Details of training and qualification. Attach certificates, diplomas etc., awarded to individual, or in the case of a body corporate or partnership attach certificates or diplomas of qualifying directors or partners:
.....
.....
.....

- | | |
|--|---|
| <ul style="list-style-type: none"> 3.3. Have you previously applied to be registered as a real estate dealer or real estate salesman?
Tick which applicable:

Yes <input type="checkbox"/>

No <input type="checkbox"/> | <ul style="list-style-type: none"> 3.4. If yes, give date(s) of application (s) and results:
.....
.....
..... |
|--|---|

- | | |
|--|--|
| <ul style="list-style-type: none"> 3.5. Are you connected directly or indirectly with business other than real estate? Tick which applicable:
Yes <input type="checkbox"/> No <input type="checkbox"/> | <ul style="list-style-type: none"> 3.6. If yes, give particulars below: |
|--|--|

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3.7. Have you been convicted of any offence involving fraud or dishonesty? Tick which applicable:

3.8. If yes, give details:

Yes No

SECTION 4:
DECLARATION

I/We.....declare that the preceding are full and correct answers to the information asked, and further declare that:

Name of Applicant

(If an individual):

- (a) I am over the age of 18 years;
- (b) I have not had an order in bankruptcy made against me which remains undischarged.

(If a body corporate):

- (c) no resolution has been passed or order made by a court of competent jurisdiction winding-up the applicant body;
- (d) no proceeding has been taken whereby the property of the applicant body may be distributed among its creditors;
- (e) no receiver has been appointed for any of the property of the applicant body;
- (f) at least one director of the applicant body possesses the prescribed qualifications for registration;
- (g) no director of the applicant body is disqualified for registration as an individual.

I/We have submitted the prescribed fees and (the qualifying director(s) or partner(s), as the case may be) possess the prescribed qualifications for registration and will furnish the Board with all other records it may require in considering this application.

.....
Signature of Applicant *Date*

FOR OFFICIAL USE OF REAL ESTATE BOARD ONLY

Date application received:.....
Fees submitted \$.....Receipt No:.....
Date application considered by R.E.B.:.....
Decision of the Board:.....
.....

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6. I/We propose to carry out the Development Scheme the subject of this application and in accordance with section 35 of the Real Estate (Dealers and Developers) Act. I/We wish to be entered in the Register of Developers. I/We submit herewith the prescribed fee as follows:

(a) Application fee		\$500
(b) Development fee		
_____ Lots and/or units @ \$100 each		\$ _____
Total fee		\$ _____

Signature of Developer

Date

FOR OFFICIAL USE ONLY

DATE OF APPLICATION	FEE COLLECTED	BOARD'S CONSIDERATION	REGISTRATION NUMBER
	AMOUNT \$ _____	DATE _____	
	RECEIPT NO _____	DECISION _____	

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FORM C

REAL ESTATE (DEALERS AND DEVELOPERS) ACT
CERTIFICATE OF REGISTRATION

REGISTRATION NO:.....

DATE OF REGISTRATION:.....

THIS IS TO CERTIFY THAT

.....
(Name)

.....
is registered under the Real Estate (Dealers and Developers) Act to engage
in the practice of real estate business as a:

.....
at the following address(es):
.....
.....
.....

subject to the following conditions:

SEAL
REAL ESTATE BOARD

.....
Chairman

.....
Date

FORM D

**REAL ESTATE (DEALERS AND DEVELOPERS) ACT
LICENCE TO PRACTISE REAL ESTATE BUSINESS AS
A REAL ESTATE DEALER**

LICENCE NO:.....

EXPIRY DATE:.....

.....
(Name)

of.....
(Address(es) of Registered Office(s))

.....
.....
.....

*is hereby licensed to practise real estate business as a real estate dealer subject
to the prohibitions and conditions stated hereunder:*

**SEAL
REAL ESTATE BOARD**

.....
Chairman

.....
Date

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FORM E

REAL ESTATE (DEALERS AND DEVELOPERS) ACT
LICENCE TO PRACTISE REAL ESTATE BUSINESS AS
A REAL ESTATE SALESMAN

LICENCE NO:.....

EXPIRY DATE:.....

.....
of

is hereby licensed to practise real estate business as a real estate salesman
employed to:.....

.....
subject to the prohibitions and conditions stated hereunder:

SE 1L
REAL ESTATE BOARD

.....
Chairman

.....
Date

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FORM F

**THE REAL ESTATE (DEALERS AND DEVELOPERS) ACT
CHARGE UNDER SECTION 31**

The person described in the First Schedule hereto (hereinafter referred to as "the chargor") being registered as the proprietor of an estate in fee simple in the land described in the Second Schedule hereto (hereinafter referred to as "the said lands") subject to the incumbrances if any, set out in the Third Schedule hereto, which said lands are the subject of prepayment contracts within the meaning of the Real Estate (Dealers and Developers) Act and desiring to render the said lands available for the purpose of securing to and for the benefit of the Real Estate Board (a body established under the aforesaid Act and hereinafter referred to as "the Board") the repayment of the hereinafter-mentioned moneys received pursuant to the said prepayment contracts **BOTH HEREBY CHARGE** the said lands with the repayment of all amounts of money received by the chargor as vendor pursuant to the said prepayment contracts as shall become repayable by him upon breach by him of the contracts or rescission of the contracts or any of them, and with the payment of all other amounts of money as shall be payable by the chargor in accordance with the conditions set out in the Fourth Schedule hereto.

And subject as aforesaid the Board shall have all the powers and remedies given to a mortgagee by the Registration of Titles Act.

FIRST SCHEDULE
(Name, occupation and address of chargor)

SECOND SCHEDULE
(Description of the lands the subject of the charge)

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**THIRD SCHEDULE
(Incumbrance to which the lands are subject)**

FOURTH SCHEDULE

CONDITIONS

The chargor hereby covenants with the Board that he will faithfully and diligently observe and perform each and all the provisions herein set forth.

- (1) Subject to any requirement to the contrary pursuant to the Registration (Strata Titles) Act, the chargor will insure and so long as any moneys shall remain secured by this charge keep insured to the full insurable value thereof against loss or damage by fire, lightning, earthquake, and fire occasioned thereby, hurricane, windstorm, flood however caused, burglary, theft, malicious damage and civil commotion, riots, strikes, explosion and such other perils as the Board may at any time require in the name of the Board in some insurance office approved by the Board all buildings, fixtures, fittings, machinery and all building materials which shall for the time being be erected or from time to time brought upon the said lands, and which shall be of a nature or kind capable of being so insured, and will when required by the Board deposit with the Board the policy of such insurance and within seven days after each premium shall become payable the receipt for such premium, and the moneys received on account of such insurance shall at the option of the Board be applied either in or towards the satisfaction of moneys secured by this charge or, in or towards rebuilding, reinstating or replacing the buildings, fixtures, fittings, machinery and building materials lost, destroyed or damaged.
- (2) The chargor shall repay to every party to a prepayment contract entered into between the chargor and such party such sums of money as such party may be entitled to by reason of default by the chargor in the discharge of his liabilities and obligations under the prepayment contract in accordance with the terms and conditions of such contract or upon rescission of the contract.
- (3) The chargor shall at all times duly and regularly pay all rates, taxes, assessments and outgoings now or hereafter to become due and payable in respect of the said land and/or the buildings, fixtures, fittings and machinery thereon and produce to the Board on demand all receipts and vouchers in proof of such payments.

- (4) The chargor shall at all times during the continuance of this charge keep up, preserve and maintain in good order and condition upon the said lands all and singular the buildings now or that hereafter may be erected thereon and the fixtures and fittings therein and all wells, ponds, drains, gates, walls, fences and things that are now or may hereafter be thereon and the gardens and grounds thereof (including parking areas) and do all things necessary and proper for keeping up the value of the said hereditaments in order that the security hereby given may not be depreciated or lessened in value and the Board shall be entitled by its servants or agents at all reasonable times during the continuance of this security to enter the said land or any part thereof and to view, search and see the state and condition thereof and the condition and order of the said buildings, fences, walls, gates, wells, ponds, drains, gardens and grounds and things with full and free rights of ingress and egress for such purposes and in respect of all decays, defects and wants of reparation and amendment found upon such inspection to give or leave notice in writing to or with the chargor and thereupon the chargor will promptly make good repair and supply according to any notice given hereunder:

Provided that this paragraph shall not apply to buildings or other structures erected merely to facilitate carrying out of building operations on the said land.

- (5) The chargor shall not without written consent of the Board sell, lease or part with the possession or the right to possession of the said lands or any part thereof whether by licence, trust or otherwise, except to the party entitled under a prepayment contract.
- (6) The chargor if an individual shall not commit any act of bankruptcy whereby any provisional or absolute order in bankruptcy shall be made against the chargor or enter into a compromise agreement with his creditors or if the chargor is a company, cease to carry on its business; or allow any distress or execution to be levied upon or issued against any of the property of the company to remain unsatisfied for more than three days from the date of the levy of such distress or execution; or pass any effective resolution for the winding up of the company or do any act whereby a receiver shall be appointed of the company's property by any court or debenture holder or mortgagee.
- (7) The chargor if a company shall lodge with the Board a statement of the names, addresses and other particulars of its directors and any changes in relation to such particulars within seven days of the occurrence of the event.
- (8) The chargor shall complete the prepayment contracts and any connected contracts in accordance with the terms, conditions and stipulations contained in such contracts.
- (9) (i) If the chargor shall neglect or fail to effect any insurance in accordance with paragraph (1) of these conditions or to pay the premium in respect thereof the Board may, but shall not be obliged to, effect the said insurance and all sums expended by the Board in relation thereto with interest thereon at the prime rate for the time being charged (by the Bank of Nova Scotia Jamaica Limited or any other bank with which the Board for the time being maintains accounts hereinafter referred to as the "Board's Bankers") plus two *per centum* (2%) per annum computed from the time of paying or advancing the same shall be repaid to the Board by the chargor on demand and in the meantime shall be a charge on the lands hereby charged.

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- (ii) If the chargor shall neglect or fail to remedy or make good any defect or want of repair in relation to the buildings, fixtures, fittings, wells, ponds, drains, gates, walls, fences and things on the lands hereby charged or the gardens and grounds thereof the Board may, but shall not be obliged to, remedy and make good such defect or want of repair and all sums expended by the Board in respect thereof with interest thereon at the rate mentioned in sub-paragraph (i) of this paragraph shall be repaid by the chargor to the Board on demand and in the meantime shall be a charge on the lands hereby charged.
- (10) If any of the following events shall occur all moneys intended to be hereby secured shall become due and payable and so remain until full payment thereof and be recoverable by the Board under this charge and the powers of sale and of distress and of appointing a receiver and all ancillary powers conferred on mortgagees by the Registration of Titles Act shall in any such event thereupon be exercisable by the Board under this charge and for the purpose of the exercise of such powers a notice requiring payment of the money owing under this charge shall be deemed to be sufficient notwithstanding that no amount may be stated therein and such notice shall be deemed sufficiently given to and served upon the chargor and upon every proprietor for the time being of any interest in the lands hereby charged if given in the manner provided in paragraph 13 of these conditions. The said events are the following:—
- (1) If default shall be made by the chargor in the payment of any moneys herein covenanted to be paid by the chargor and such default shall continue for a period of fifteen days;
 - (2) If the chargor is in breach of any of the chargor's covenants contained in paragraph (6) or (8) of these conditions;
 - (3) If there shall be any other default mentioned in section 105 of the Registration of Titles Act.
- (11) Without prejudice and in addition to any other remedy of the Board in respect thereof the chargor HEREBY COVENANTS with the Board that on demand the chargor will pay to the Board the amount of all the Board's expenses incurred by the Board in relation to the security hereby constituted with interest thereon from the date when the chargor becomes liable therefor until payment thereof at the prime rate for the time being charged by the Board's bankers plus two per centum (2%) per annum, and the chargor HEREBY CHARGES the said lands with the payment of such expenses and the interest thereon and for the avoidance of doubt it is hereby declared that the expression "Board's expenses" includes not only all such expenses as would otherwise be allowable on the taking of an account between a mortgagor and a mortgagee but also (and insofar as they are not so allowable) includes all moneys, costs, charges and expenses paid and all liabilities incurred by the Board (including legal costs, charges and expenses ascertained as between Attorney-at-Law and own client) on or in connection with or incidental to the lands hereby charged and this security and without prejudice to the generality of the foregoing shall include all moneys, costs, charges and expenses paid and all liabilities incurred by the Board in or in connection with or incidental to, amongst other things:
- (i) effecting any insurance whatever on or in connection with the lands hereby charged or any part thereof;
 - (ii) inspecting surveying or obtaining any report of any nature or kind whatsoever on or in relation to the lands hereby charged or any part thereof or repairing rebuilding or reinstating any building or other erection or engineering work thereon or any part or parts thereof;
 - (iii) considering or enforcing or attempting to enforce any of the rights and powers hereby or by Law vested in the Board in relation to the lands hereby charged or this security.

- (12) No neglect, omission or forbearance on the part of the Board to take advantage of or enforce any right or remedy arising out of any breach or non-observance of any covenant or condition herein contained or implied shall be deemed to be or operate as a general waiver of such covenant or condition or the right to enforce or take advantage of the same in respect of any breach or non-observance thereof either original or recurring.
- (13) Any demand or notice hereunder may be properly and effectively made given and served on the chargor at any time by letter or other instrument in writing signed by the Board or on its behalf by its Attorney-at-Law, agent, clerk or other person authorized either in writing or orally by the Board and addressed to the chargor and sent by registered post to his address appearing in the First Schedule hereto and in the absence of other proof of service every such demand or notice shall be deemed to have been given and served on the seventh day following the date of posting thereof.

Dated the _____ day of _____ 19____

Signed sealed and delivered by the said [chargor] in the presence of

Chargor

J.P. or Attorney-at-Law

N.B. If the chargor is a company or other body corporate this charge must be expected in the manner provided for execution of instruments under seal of the articles of association or regulations of the company or body corporate which must be witnessed as provided above.

THE REAL ESTATE (DEALERS AND DEVELOPERS) ACT

REGULATIONS
(under section 43 (1) (h))

THE REAL ESTATE (DEALERS AND DEVELOPERS) (CODE OF ETHICS)
REGULATIONS, 1998

(Made by the Minister on the 2nd day of December, 1998)

L.N. 98/98

1. These Regulations may be cited as the Real Estate (Dealers and Developers) (Code of Ethics) Regulations, 1998. Citation

2. A real estate dealer shall maintain an office for the purpose of carrying on the practice of real estate business. Real estate dealer to maintain office.

3. A real estate dealer shall— Real estate dealer to display licence, etc.
 - (a) display in a conspicuous position, on the outside of his office, a sign bearing his name as a real estate dealer; and
 - (b) display in a conspicuous position, inside his office, the certificate of registration and the current annual licence issued to him by the Board.

4. A developer shall maintain an office for the purpose of carrying out a development scheme and shall display in a conspicuous position, in his office, the instrument of registration issued by the Board. Developer to maintain office and display instrument of registration.

- 5.—(1) A real estate dealer, real estate salesman or developer shall— Professional conduct.
 - (a) not engage in or assist in any improper or unprofessional practice;
 - (b) conduct himself in a manner so as to maintain the dignity and integrity of the real estate profession and shall at all times uphold the laws and regulations which relate to the practice of real estate business or real estate development, as the case may be;

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(CODE OF ETHICS) REGULATIONS, 1998**

- (c) assist in maintaining the integrity of the practice of real estate business or real estate development, as the case may be;
- (d) avoid the appearance of professional impropriety;
- (e) observe these Regulations and encourage other real estate dealers, real estate salesmen or developers, as the case may be, to act in like manner;
- (f) expose, without fear or favour, before the Board, unprofessional or dishonest conduct of any other real estate dealer, real estate salesman or developer.

(2) Every real estate dealer, real estate salesman and developer shall act in a manner which gives due consideration to the instructions and requirements of his client or employer, as the case may be, and shall treat fairly, all parties to any real estate transaction in which he is involved.

(3) Where property is listed exclusively with a real estate dealer, no other real estate dealer or salesman shall enter into negotiations with the vendor of that property without the consent of the real estate dealer with whom the property is listed.

(4) The conduct of every real estate dealer, real estate salesman and developer towards his colleagues shall be characterized by courtesy and good faith.

(5) A real estate dealer, real estate salesman, or developer shall not discourage any party to a transaction in which he is involved from seeking legal counsel.

(6) A real estate dealer, real estate salesman or developer shall not knowingly permit any property under his control to be used for an unlawful purpose.

Claims as to
competence.

- 6.—(1) A real estate dealer, real estate salesman and developer shall—**
- (a) not make inaccurate claims as to his competence or abilities in the areas of practice of real estate business or development for which he is registered or licensed; and
 - (b) undertake only such duties and responsibilities as are within his competence and for which he is properly registered or licensed under the Act.

- (2) Every real estate dealer and real estate salesman shall—
- (a) strive to maintain and improve the levels of his professional knowledge and competence and shall, to the best of his ability, endeavour to promote public knowledge and understanding of the practice of real estate business;
 - (b) endeavour to discover such facts which a prudent real estate dealer or salesman would discover in order to avoid error, misrepresentation or concealment of pertinent facts.

7.—(1) A real estate dealer shall keep such accounts as shall enable the financial position between his client and himself to be clearly and accurately distinguished. Clients money

(2) A real estate dealer shall account to his client for all monies in hand for the account or credit of the client, whenever reasonably required to do so.

(3) The Board, with the approval of the Minister, may make regulations prescribing the manner in which accounts shall be kept.

8.—(1) Except with the specific approval of his client in writing, given after full disclosure of his interest, a real estate dealer or real estate salesman shall not provide professional services in respect of any property in which he has a present or contemplated interest and in respect of which his personal and professional interests conflict, or are likely to conflict. Conflict of interest.

(2) A real estate dealer or real estate salesman, or any partnership of which he is a partner or company of which he is a director shall not act for more than one party to a real estate transaction without prior disclosure of that fact to each of the parties involved, unless permission in writing to do so has been obtained from all the parties.

(3) A real estate dealer or real estate salesman shall not acquire an interest in, or buy for any member of his immediate family, his company or any person employed therein or any other organization in which he has an interest, any property listed with him without full disclosure in writing to the owner of that property.

(4) Where a real estate dealer or real estate salesman, acting in such capacity, is selling or intends to sell property in which he has a

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(CODE OF ETHICS) REGULATIONS, 1998*

legal or equitable interest, he shall, in writing, prior to the sale thereof, disclose the fact of his interest to the purchaser.

(5) A real estate dealer or real estate salesman shall not recommend or suggest to a client, the use of the services of another organization in which he has an interest, unless he discloses his interest in writing at the time he makes such recommendation or suggestion.

(6) Where an attorney-at-law is licensed to engage in the practice of real estate business either in the capacity of real estate dealer or real estate salesman, he shall avoid any conflict of interest, and shall disclose in writing to the client with whom he is dealing in any real estate transaction—

- (a) that he practises as an attorney-at-law;
- (b) the capacity in which he is offering his services;
- (c) the possible effect of his representation on behalf of the client if such representation is in more than one capacity.

Financial interest.

9. A real estate dealer or real estate salesman shall not accept or offer to accept instructions in a real estate transaction on terms which could reasonably be construed as taking a financial interest in the transaction, unless he first makes written disclosure of his financial interest to all the parties.

Notification to client of terms and conditions regarding payment of fees.

10.—(1) A real estate dealer or real estate salesman shall, upon accepting instructions to act for a vendor or lessor with respect to the sale or letting of property, as the case may be, notify the vendor or lessor, in writing, of the terms and conditions relating to the payment of his fees.

(2) No fees or expenses in respect of the sale or letting of property shall become due and payable until the terms of the sale or letting are settled and the transaction is completed.

Action prejudicial to practice of others.

11. A real estate dealer or a real estate salesman shall not—

- (a) agree to be engaged to act in any real estate transaction in which the client has, to his knowledge, previously engaged another real estate dealer or real estate salesman without first notifying the other real estate dealer or real estate salesman;

- (b) knowingly engage in any practice, or take any action which is damaging to the practice of another real estate dealer or real estate salesman.

12.—(1) A real estate dealer or real estate salesman shall not—

Soliciting
business.

- (a) offer to provide, whether to a prospective client or to a third party, any gift or favour whatsoever which is intended to attract or secure instructions for work;
- (b) seek an unfair advantage over other real estate dealers or real estate salesmen, nor injure directly or indirectly the reputation of, nor publicly disparage the business practice of real estate dealers or real estate salesmen, or conduct his business so as to foster controversy with other real estate dealers or real estate salesmen;
- (c) pay, for the introduction of a client, any fee or commission to a third party who is not a person licensed to engage in the practice of real estate business;
- (d) act or offer to act in any capacity in relation to any matter which is the subject of judicial or quasi-judicial proceedings, either on the basis—
 - (i) that no charge will be made unless the proceedings are successful; or
 - (ii) that the amount to be charged will reflect the degree of success attained;
- (e) when offering property to a prospective purchaser or lessee on behalf of a client, stipulate that his services be retained by that purchaser or lessee in any capacity;
- (f) offer real estate for sale or lease—
 - (i) without the knowledge or consent in writing of the owner thereof or his authorized agent; or
 - (ii) on terms other than those authorized by the owner or his authorized agent;
- (g) induce any party to a contract in respect of real estate to substitute another contract therefor.

(2) Notwithstanding paragraph (1), a real estate dealer or real estate salesman may properly solicit instructions for the sale or lease of property if—

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(CODE OF ETHICS) REGULATIONS, 1998*

- (a) he does so in writing; and
- (b) he first ascertains that no similar instructions are in force with any other real estate dealer or real estate salesman in respect of that property.

Advertisements
and
announcements.

13.—(1) A real estate dealer or developer shall ensure that the content of advertisements published by him in pursuance of the practice of real estate business, or the development of land in a development scheme, comply with the requirements of the Act and all regulations made thereunder.

(2) A real estate dealer or developer shall ensure that all advertisements by him in respect of properties for sale contain the name and address of the real estate dealer or the developer advertising the property.

(3) Where an advertisement is published respecting the sale of property, the advertisement shall contain a statement specifying—

- (a) in the case of an advertisement by a real estate dealer, that he is licensed to engage in the practice of real estate business and the number of his licence; and
- (b) in the case of an advertisement by a developer—
 - (i) that he is registered; and
 - (ii) the registration number of the development scheme being advertised.

(4) A real estate dealer shall ensure that advertisements referred to in paragraph (1) do not contain—

- (a) any inaccurate statement of fact;
- (b) any explicit comparison between the services offered by him and the services offered by other persons;
- (c) any information concerning the identity of parties to the real estate transaction being proposed in the advertisement; or
- (d) any claim that he is a specialist or expert in any area of the practice of real estate business.

(5) Notwithstanding paragraph (4) (b), a real estate dealer may, in advertising property, state the branch of real estate business in which he is registered or licensed to practise.

(6) A real estate dealer shall not advertise a property for sale, lease or rental, or place any sign on any property without the authority of the owner in writing.

(7) Where the location, price, rental value, area of land or any other information is included in any advertisement, the real estate dealer or developer placing the advertisement shall ensure that such information is accurate.

(8) A real estate dealer shall ensure that every advertisement published by him in respect of property—

- (a) promotes the interest of his client; and
- (b) provides an accurate representation of the property.

14.—(1) Where a developer enters into a contract with a purchaser and has reason to believe that the scheme will not be completed within the time specified, either in an advertisement or as stated in the contract, he shall, in writing, advise the purchaser and the Board of the delay in completing the scheme and state the new estimated time for completion.

Notification of delay in completion of contracts.

(2) Where the cost of development has escalated, the developer shall—

- (a) in writing, notify the purchaser and the Board of such escalation;
- (b) set out in the notice, the factors taken into account when calculating the escalation cost; and
- (c) set out the base price of the unit at the time the contract was executed.

15. Where a real estate dealer and a real estate salesman enter into a contract between themselves they shall have regard to the provisions of these Regulations and shall, where practicable, include provisions relating to the compensation payable during the contract period as well as after the expiration or termination thereof.

Contracts between dealer and salesman.

16.—(1) Every person registered to practise real estate business shall have regard to the need for continuing professional education, training and development and shall participate in such courses as may from time to time be offered or directed by the Board.

Continuing education.

(2) The Board shall take into consideration any participation in courses under paragraph (1) as the basis of renewal of a licence.