

CHAPTER 61:07
REAL ESTATE PROFESSIONALS

ARRANGEMENT OF SECTIONS

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Act 18, 2003.

An Act to provide for the regulation of the practice of real estate in Botswana and for matters incidental thereto.

[Date of Commencement: 17th October, 2003]

PART I
Preliminary (ss 1-2)

1. Short title

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

2. Interpretation

In this Act, unless the context otherwise requires-

"Council" means the Real Estate Advisory Council established under section 3;

"estate agent" means a person engaged in the purchase, sale, letting or hiring of real estate as agent or broker for another person;

"property auctioneer" means a person engaged in the auctioning of real estate;

"property manager" means a person engaged in rent collection, management or administration of real estate;

"property valuer" means a person engaged in the valuation and appraisal of real estate or any development potential thereon;

"real estate" means immovable property together with any improvements thereon;

"Real Estate Institute of Botswana" means the Real Estate Institute of Botswana registered under the Societies Act;

"Register" means the register of real estate professionals as provided for under section 16;

"registered professional" means a person registered by the Council as-

- (i) an estate agent;
- (ii) a property auctioneer;
- (iii) a property manager; or
- (iv) a property valuer; and

"Registrar" means the Registrar of real estate professionals appointed under section 15.

PART II

Establishment of Council (ss 3-14)

3. Establishment of Council

(1) There is hereby established a Council to be known as the Real Estate Advisory Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may by law perform.

4. Membership to the Council

(1) The Council shall consist of the following members who shall have been resident in Botswana for not less than 3 years-

- (a) the Chairman;
- (b) four persons appointed by the Minister of whom at least two shall be civil servants representing the Attorney General's Chambers and the Minister respectively, and one an employee of a local authority;
- (c) three members of the Real Estate Institute of Botswana who shall be elected by the Institute and appointed by the Minister; and
- (d) two persons from the private sector who shall be nominated by the Real Estate Institute of Botswana and appointed by the Minister.

(2) Notwithstanding subsection (1), the Minister may, where he is satisfied that it is in the public interest to do so, waive the number of years that a member shall have been resident in

Botswana to qualify for appointment to the Council.

(3) The Chairman and the Vice Chairman shall be elected by the members from among their number and appointed by the Minister.

(4) The appointments to the Council shall be published by notice in the *Gazette*.

5. Powers and functions of the Council

(1) The Council shall be responsible for regulating the activities and conduct of registered real estate professionals in accordance with the functions and powers conferred under this Act.

(2) Without prejudice to the generality of subsection (1), the Council shall-

- (a) receive applications for admission to practice as registered professionals and decide upon those applications;
- (b) maintain a register of registered professionals;
- (c) determine the application fee, annual subscription and any other fees payable by registered professionals;
- (d) recommend to the Minister, a tariff of fees and other allowances to be charged by registered real estate professionals, for professional and other services;
- (e) endorse the field of practice in which a registered professional may engage, and endorse the certificate of practice accordingly;
- (f) remove from the register the name of a person no longer entitled to practice;
- (g) utilize the funds of the Council in any manner which may be necessary or expedient for the proper conduct of the functions of the Council;
- (h) lend or invest any of its funds against suitable security;
- (i) make rules for professional conduct and ethics to be binding on all registered professionals; and
- (j) carry out decisions on any matter relating to the control or management of the affairs of the Council.

6. Seal of Council

(1) The seal of the Council shall be such device as may be determined by the Council and shall be kept by the Chairman.

(2) The affixing of the seal shall be authenticated by the Chairman and Vice Chairman or any other person authorised by a resolution of the Council.

7. Tenure of office of members

(1) The Chairman shall hold office for a period not exceeding three years and at the end thereof, he shall be eligible for reappointment.

(2) A member, other than the Chairman, shall hold office for a period not exceeding two years as may be specified in the notice appointing him.

(3) In appointing members to the Council, the Minister shall specify their periods of appointment such that at any given time, two thirds of the old membership is retained.

(4) A member shall be eligible for reappointment.

8. Disqualification

A person shall not be appointed as a member or be qualified to continue to hold office who has-

(a) in terms of a law in force in any country-

- (i) been adjudged or otherwise declared bankrupt and has not been discharged; or
- (ii) made an assignment, arrangement or composition with his creditors, which has not been rescinded or set aside;

(b) within a period of ten years immediately preceding the date of his appointment, been convicted-

- (i) of a criminal offence in any country; or
- (ii) of any criminal offence for which he has not received a free pardon and notwithstanding that the sentence has been suspended, which, if committed in Botswana, would have resulted in a criminal offence having been committed,

the penalty for which would be at least six months imprisonment without the option of a fine.

9. Removal and resignation

(1) The Minister may remove a member from office where that member-

- (a) is absent without reasonable cause from three consecutive meetings of the Council of which he has had notice;
- (b) is inefficient;
- (c) has been found to be physically or mentally incapable of performing his duties efficiently, and the member's medical doctor has issued a certificate to that effect;
- (d) contravenes the provisions of this Act or otherwise misconducts himself to the

detriment of the objectives of the Council; or

- (e) has failed to comply with the provisions of section 11.
- (2) A member may resign from office by giving 30 days notice in writing to the Minister.
- (3) The office of a member shall become vacant after-
- (a) where the member appeals, a period of 30 days from the date a ruling against the member is made on an appeal made in respect of a conviction against the member under section 8(b);
 - (b) where the member does not appeal, 30 days from the date the member was convicted of an offence referred to under section 8(b);
 - (c) the member communicates his resignation, in writing, to the Minister, in accordance with subsection (2);
 - (d) a period of 30 days has elapsed from the date the member is given notice in writing by the Minister to vacate office; or
 - (e) a member is removed by the Minister on the grounds of misconduct in accordance with subsection (1)(d).

10. Filling of vacancy

Where the office of a member becomes vacant before the expiry of the member's term of office, the Minister may, in accordance with section 4, appoint another person to be a member in place of the member who vacates office.

11. Disclosure of interest

(1) Where a member is present at a meeting of the Council or any committee of the Council at which any matter which is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, he shall forthwith after the commencement of the meeting, disclose such interest and shall not, unless the Council otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes the provisions of subsection (1) commits an offence and is liable to a fine of P7 000 or to imprisonment for 1 year, or to both.

12. Proceedings of the Council

- (1) Subject to the provisions of this Act, the Council shall regulate its own proceedings.
- (2) The Council shall meet at least three times a year, for the transaction of its business.

(3) Upon giving notice in writing of not less than 14 days, a meeting of the Council may be called by the Chairman and shall be called if not less than one half of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) The quorum at any meeting shall be one half of the members.

(5) There shall preside at any meeting of the Council-

(a) the Chairman;

(b) in the absence of the Chairman, the Vice Chairman; or

(c) in the absence of the Chairman and Vice Chairman, such member as the members present may elect from amongst themselves for the purpose of that meeting.

(6) A decision of the Council on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to that person's deliberate vote.

(7) The Council may invite any person whose presence it considers necessary, to attend and participate in the deliberations of a meeting of the Council, but such person shall have no vote.

13. Committees of the Council

(1) The Council may from time to time appoint committees either of a general or special nature consisting of such number of members, with such qualifications, as the Council may determine.

(2) The Council may delegate any of its powers, functions or duties under this Act to a committee appointed under subsection (1).

14. Remuneration and allowances

A member shall be paid out of the funds of the Council such allowances as the Minister may from time to time determine.

PART III

Registrar, Register and Registration (ss 15-25)

15. Registrar

(1) There shall be a Registrar of real estate professionals, who shall be a public officer, and who shall perform such functions and exercise such powers as may be conferred on him by this Act or any other enactment.

(2) The Registrar shall be appointed in accordance with the provisions of the Public Service Act.

(3) The Registrar of real estate professionals shall also be the Secretary to the Council.

16. Register

(1) Subject to the provisions of this Act, the Registrar, with the approval of the Council, shall establish and maintain a register of real estate professionals.

(2) A register kept in accordance with subsection (1) shall be kept at the Department of Lands offices and shall be open for inspection during office hours to any member of the public upon payment of a fee to be prescribed.

17. Duties of the Registrar

(1) The Registrar shall-

- (a) enter in the register, in relation to a registered professional his-
 - (i) name and address;
 - (ii) qualifications;
 - (iii) the real estate discipline in which he is to be registered;
 - (iv) date of first registration; and
 - (v) such other particulars as the Council may from time to time require to be included in the register;
- (b) make in the register, upon the professional's application for alterations, alterations to the particulars referred to in paragraph (a);
- (c) remove from the register, the name of a registered professional who dies or who ceases to operate as a registered professional in Botswana; and
- (d) when required to do so under this Act or in pursuance of a court order-
 - (i) enter in the register the registration of an applicant or the suspension from practice of a registered professional;
 - (ii) remove from the register the name of a registered professional; or
 - (iii) generally in connection with the register, comply with the provisions of this Act and any order of the courts.

(2) The Registrar shall, where he removes from the register the name of a registered professional, enter in the register a record of the reason therefor.

(3) The Registrar shall, where he-

- (a) registers an applicant or restores a person's name to the register, issue that person with a certificate of registration;
- (b) removes from the register, the name of a registered professional, or suspends a registered professional, publish such removal or suspension, as the case may be, by notice in the *Gazette*.

(4) The Registrar shall cause to be published by notice in the *Gazette* as soon as may be practicable after registration, the name, and address of each registered professional.

(5) The Registrar shall cause to be published by notice in the *Gazette*, at the beginning of each year, a list containing the names, and addresses of all registered professionals remaining on the register at the close of the previous year.

(6) The Registrar may, on application by a registered professional, issue to the professional, a certificate of registration on production by the applicant of an affidavit certifying that the certificate of registration has been lost or destroyed-

- (a) if he is satisfied as to the identity of the applicant; and
- (b) on payment by the applicant of a fee to be prescribed by the Council.

18. Offences in connection with the register

A person who-

- (a) makes or causes to be made an unauthorised entry, alteration or deletion from the register;
- (b) procures or attempts to procure for himself or another person registration or a certificate of registration by means of fraud, false pretence or concealment of a material fact;
- (c) makes or causes to be made in connection with an application for registration a false declaration in a document used for the purpose of establishing his identity;
- (d) wilfully destroys or renders illegible an entry in the register;
- (e) without the permission of the holder, wilfully destroys or renders illegible a certificate of registration; or
- (f) forges or utters, knowing the same to be forged, a document purporting to be a certificate of registration, commits an offence and is liable to a fine not exceeding P7 000 or to imprisonment for a term not exceeding 1 year, or to both.

19. Register to be prima facie evidence

A certificate purporting to be signed by the Registrar to the effect that-

- (a) the name of a person appears in the register shall be *prima facie* evidence that the person is a registered professional;
- (b) the name of a person does not appear in the register shall be *prima facie* evidence that the person is not a registered professional; or
- (c) a registered professional has been suspended from practice as such for a period specified in his certificate, shall be *prima facie* evidence that the professional has been suspended from practice for that period.

20. Registration

(1) A person who is a member of the Real Estate Institute of Botswana in accordance with the provisions of the constitution of the Institute, may apply to the Council to be admitted as a registered professional.

(2) A person who makes an application in terms of subsection (1) shall apply in a form to be prescribed and shall pay such application fee as may be prescribed:

Provided that-

- (i) a person whose application for membership to the Real Estate Institute of Botswana has been refused may appeal in such manner and form to be prescribed; and
- (ii) where the Council after hearing the appeal is satisfied that the appellant should be admitted as a member of the Institute, the Council shall order that the appellant be so admitted.

(3) The Council shall not register a person as-

- (a) a property auctioneer, a property manager or a property valuer, unless the person-
 - (i) has obtained by examination, a Bachelors Degree in Estate Management, Land Administration, or Land Economy from any university or institution specified in the Schedule; or
 - (ii) is a member of either the Royal Institute of Chartered Surveyors, or the Institute of Valuation Surveyors and Auctioneers or such other professional institution as may be approved by the Real Estate Institute of Botswana; or
- (b) an estate agent, unless the person has obtained by examination, a Certificate in Property Management or Estate Agency, or a Certificate in Real Estate Auctioneering.

(4) The Council may require an applicant to satisfy the Council that his general conduct has been such as to make him a fit and proper person to be registered under this Act.

(5) The Council may direct the Registrar to postpone a registration until the Council has been satisfied in accordance with subsection (4).

21. Non operation of the Institute

In the event that the Real Estate Institute of Botswana ceases to operate, whether temporarily or permanently, the Council shall make regulations necessary to provide for the ongoing registration of real estate professionals under this Act.

22. Application by a non resident

(1) Where a person satisfies the Council that-

- (a) he is not ordinarily resident in Botswana;
- (b) he intends to be present in Botswana in the capacity of a real estate professional for the purpose of carrying out specific work for which he has been engaged; and
- (c) immediately before entering Botswana was in practice as a registered professional at such a level as to satisfy the Council of his fitness to serve the public as a registered professional,

the Council may, if it considers it appropriate, direct that such person be registered for a period not exceeding one year or for the duration of the specified work.

(2) An application in accordance with subsection (1) shall be in a form to be prescribed and accompanied by a fee to be prescribed and the Council may require an applicant to appear before the Council for the purpose of facilitating the consideration of the application, including furnishing the Council with documentary evidence of his work or employment immediately prior to his entering Botswana.

(3) Registration of a professional under this section shall be for the duration of the specified work and shall be subject to such conditions as the Council may determine.

(4) A person registered under this section shall be treated as registered under this Act only in relation to the period of specified work and to things done or omitted in respect thereof.

23. Removal from the register

(1) The Council may order that the name of a person be removed from the register where the person has-

- (a) been expelled from the membership of the Real Estate Institute of Botswana;
- (b) failed within a period of six months from the date of an inquiry sent by the Registrar by prepaid registered letter to the address appearing in the register against his name, to notify the registrar of his current address; or

(c) been found by the Council to be guilty of misconduct under this Act.

(2) A registered professional may request that his name be removed from the register, and the professional shall satisfy the Council by affidavit that no criminal proceedings or an inquiry under Part IV of this Act has been instituted against him.

(3) An interested person may apply to the Council to remove the name of a registered professional from the register and the Registrar shall, if he is satisfied that there is merit in the allegations made, remove the professional's name.

(4) The Registrar shall notify a registered professional of the removal of the professional's name from the register, by prepaid registered letter addressed to the address appearing in the register against his name immediately before his name is removed.

(5) A registered professional whose name has been removed from the register shall cease from the date of such removal to be registered for the purpose of this Act.

(6) The Registrar shall cause to be published by notice in the *Gazette*, the name of a professional whose name has been removed from the register.

24. Restoration etc, to the register

(1) Where the name of a registered professional has been removed from the register in accordance with section 23, the professional shall not be registered again except by order of the Council.

(2) Where the name of a registered professional has been removed from the register or the registration of a professional has been suspended, the Council may on its own motion or on the application of the professional concerned and after holding such inquiry as the Council deems fit, direct that-

- (a) the removal from the register be confirmed;
- (b) the name of the professional be restored to the register; or
- (c) the suspension from the register be terminated.

(3) The Registrar shall cause to be published in the *Gazette*, notice of the restoration of a registered professional to the register.

(4) A direction given by the Council in accordance with subsection (2) may provide for-

- (a) the date upon which a restoration to the register or the termination of a suspension shall take effect; or
- (b) the payment by the professional concerned of a penalty fee which fee shall not exceed the fee payable on an application for registration.

25. Penalty for offence or improper conduct

Where a registered professional has been convicted of an offence under this Act or, after an inquiry held by the Council, he is found to be guilty of an act or omission amounting to improper or disgraceful conduct as determined by the code of conduct of the Real Estate Institute of Botswana, the Council may-

- (a) caution, censure or fine such professional;
- (b) suspend the registration of the professional for such period as the Council may specify; or
- (c) direct that his name be removed from the register.

PART IV

Disciplinary And Other Inquiries (ss 26-30)

26. Inquiry by the Council

(1) Subject to the provisions of this Act, the Council may hold an inquiry into allegations made by a member of the public that a registered professional-

- (i) is guilty of improper or disgraceful conduct; or
- (ii) is grossly incompetent or has performed an act pertaining to his profession in a grossly incompetent manner.

(2) The Council shall cause to be sent to the professional concerned, a registered letter to his address as shown in the register, containing a notice setting out the allegations against him and the Council shall afford the professional an opportunity of being heard personally or through a legal representative.

(3) The Council shall invite and have present, during its deliberations under this section, a legal practitioner employed either in the Attorney General's Chambers or in private practice, to render legal advice to the Council, during the course of the inquiry.

(4) For the purposes of an inquiry under this section, the Council may-

- (a) administer oaths;
- (b) summon persons to attend and give evidence; and
- (c) order the production of documents.

(5) All summonses and orders issued under the hand of the Chairman or Vice Chairman of the Council shall be deemed to be issued by the Council.

(6) The Chairman, or in his absence the Vice Chairman, shall record or cause to be recorded a summary of any oral evidence given at an inquiry under this section.

(7) Subject to the provisions of this Act, the Council shall regulate its own procedure at an inquiry held under this Part provided that all parties having an interest in the inquiry shall have been advised by the Council of the form of the procedure.

27. Disobedience of summons, etc

(1) A person to whom a summons or order is issued in accordance with section 26 and upon whom such summons or order is served, who-

- (a) refuses or omits without sufficient cause to attend at the time and place mentioned in the summons;
- (b) refuses without sufficient cause to answer fully and satisfactorily questions put to him by or with the concurrence of the Council; or
- (c) refuses or omits without sufficient cause to produce any documents in his possession or under his control,

commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding six months, or to both.

(2) A person giving evidence before an inquiry by the Council shall, in respect of evidence given by him or documents produced by him, be entitled to all the privileges to which he would be entitled as a witness before the High Court.

28. Power of Council at inquiry

(1) The Council may, where it finds a registered professional liable for allegations made under section 26-

- (a) order the Registrar to cancel the registration of the registered professional;
- (b) order the suspension of the registered professional for a specified period, from performing work as a real estate professional;
- (c) order the registered professional to pay such penalty as the Council may determine;
- (d) order the registered professional to pay costs or expenses of and incidental to the inquiry;
- (e) caution the registered professional; or
- (f) impose such other conditions as it deems fit.

(2) The Council may after giving 30 days notice in writing to the registered professional, take further action against the professional where he has not complied with the penalty imposed under subsection 1(a) or (e).

(3) A registered professional whose registration has been suspended in terms of subsection

1(b) shall be disqualified from performing the work of a registered professional and his registration shall be deemed to be cancelled until the period of suspension has expired.

29. Disciplinary powers of the Council

Where a registered professional has been convicted of an offence by a court of law within or outside Botswana, whether before or after the date of registration, the Council may institute an inquiry into his conduct in accordance with this Part if the Council is of the opinion that such offence constitutes improper or disgraceful conduct.

30. Appeals

Any person who is aggrieved by a decision of the Council under this Act may, within 30 days of the date of the decision, appeal to the High Court.

PART V

Financial Provisions (ss 31-34)

31. Funds of the Council

- (1) The funds of the Council shall consist of-
- (a) grants and donations that the Council may receive;
 - (b) annual fees;
 - (c) application fees and other fees as shall be charged by the Council; and
 - (d) income that the Council may receive from investments, rentals, sale of land or buildings.

(2) The Council shall use the funds acquired under subsection (1) to meet the costs incurred for its operations and shall use any surplus accrued for such purposes as it may determine.

32. Financial year

The financial year of the Council shall be a period of twelve months ending on the 31st of March.

33. Accounts and audit

(1) The Council shall keep and maintain proper accounts and records in respect of every financial year relating to the assets, liabilities, income and expenditure of the Council, and shall prepare in each financial year, a statement of such accounts.

(2) The accounts of the Council in respect of each financial year shall within three months of the end thereof, be audited by an auditor appointed by the Council.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to

any other matter on which the auditor deems it pertinent to comment, whether or not-

- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Council have been properly kept;
- (c) the Council has complied with all the financial provisions of this Act with which it is the duty of the Council to comply;
- (d) the statement of accounts prepared by the Council was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Council.

(4) The report of the auditors and a copy of the audited accounts shall, within 14 days of completion thereof, be forwarded to the Council by the auditor.

34. Annual report

(1) The Council shall within a period of six months of the financial year or within such longer period as the Minister may approve, submit to the Minister a comprehensive report on the operations of the Council during that year, together with the auditor's report and the audited accounts as provided for under section 33, and the Council shall cause such report to be published in such manner as the Minister may require.

(2) A report compiled in accordance with sub section (1) shall be laid before Parliament by the Minister within three months of receipt thereof.

PART VI **General (ss 35-38)**

35. Indemnity

No matter or thing done or omitted by a member of the Council or a member of staff of the Council shall, if the matter or thing is done or omitted to be done bona fide in the course of the operations of the Council, render a member or staff of the Council personally liable to an action, claim or demand.

36. Offences and penalty

- (1) A person who is not a registered professional under this Act, shall not-
- (a) perform the work of a real estate professional for gain;
 - (b) practice, carry on business or take up employment as a real estate professional;
 - (c) use or display any signboard, card or other device representing or implying that he is

a registered professional;

- (d) undertake for any fee, commission, reward or any other consideration, the work or duties of a registered professional;
- (e) be entitled to recover in court, any fee, charge or remuneration for any professional advice or services rendered as a real estate professional; or
- (f) practice or carry on business using the style or title "real estate professional", "property valuer", "estate agent", "property manager" or "property auctioneer" or such other style or title as the Council may determine to be understood as representing a registered professional.

(2) A person who contravenes sub section (1) commits an offence and is liable to a fine not exceeding P50,000 or to imprisonment for a term not exceeding three years, or to both.

37. Transitional provisions

The Minister may, by Order, make such transitional arrangements as shall be necessary for the establishment of the Council.

38. Regulations

(1) The Minister, in consultation with the Council, may make regulations prescribing anything which, under this Act, is to be prescribed or which, in the opinion of the Council, is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to its provisions.

(2) Without prejudice to the generality of sub section (1), regulations may provide for-

- (a) the conduct of the business of the Council and the procedure to be followed at an inquiry under this Act;
- (b) the appointment of committees of the Council;
- (c) the issuing of certificates of registration;
- (d) fees and fines to be paid under the Act;
- (e) forms to be used under the Act;
- (f) the establishment of minimum standards of education, qualifications and experience for registration for each of the disciplines of persons registered;
- (g) the holding of examinations of persons wishing to apply for registration;
- (h) the determination and regulation of the professional conduct and ethics of persons registered;

- (i) the establishment of disciplinary procedures of registered professionals;
- (j) the establishment and administration of a fidelity fund;
- (k) the education and training of persons registered or intending to be registered;
- (l) the establishment of tariff of fees for the provision of services; and
- (m) the regulation of real estate societies.