

Positioning the VES for the Real Estate Agency Act, 2020 (ACT 1047)

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Presentation Outline



General Provisions of the Act

Clauses 1-60



Application of the Act and the Council

Clauses 1 -4



Becoming a Broker or an Agent

Clauses 22-31



Real Estate Brokerage and Agency Practice

Clauses 40-52





Presentation Outline



Miscellaneous Provisions

Clauses 53-60



Positioning the VES Practitioner



Questions and Discussion





Take Homes

Which real estate transactions are the Act regulates?

How does the Act affect real estate agents /brokers?

Who can obtain a license as a real estate agent or broker?

What does the qualifying examination entails?

Are there any other application requirements?

What is the duration of the License?

Under what circumstances may the license be revoked?





Take Homes

POSITIONING THE VES PRACTITIONER WHEN AND HOW?



OVERVIEW OF THE ACT 1047

- Long Title: *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*
- Sec. 2-4: *Real estate Agency Council*
- Sec. 5-13: *Governance of the Council*
- Sec. 14-18: *Administrative Provisions*
- Sec.19-21: *Finances of the Council*
- Sec. 22-31: *Licensing and Related Matters*
- Sec. 32-37 : *Appeal to the Council*
- Sec. 38-39: *Inspection*
- Sec. 40-52: *Real Estate Brokerage and Agency Practice*
- Sec. 53-60: *Miscellaneous Matters*



Application of the Act

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 (Long Title)

Application:

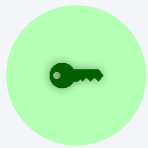


Applies to real estate transactions including a tenancy for a term of not less than one year (Sec 1:2



Application of the Act

Exemptions:



Transaction that do not involve Principal-agent relationship- agent/broker and a client. There are 8 of such exemptions.

- ***A person acts personally or an employee acts on behalf,***
- ***a public officer or an employee performs the official duties of that public officer or employee,***
- ***a person sells real estate under an order of a court***

It does not apply to real estate transactions in which a person acts in their own capacity, as an employee, as a trustee pursuant to a court order or where there is no principal-agency relationship



The Real Estate Agency Council





The Real Estate Agency Council



The Act establishes the **Real Estate Agency Council** as a body corporate with perpetual succession



The Objects of the Council is to facilitate and regulate the real estate agency practice and the provision of real estate agency service





Functions of the Council

The Council has a total of 19 functions Including to;

- 1 regulate the practice of real estate agency
- 2 conduct and set standards for qualifying examinations for registration as a Real Estate Brokers and Agents
- 3 license Real Estate Brokers and Agents
- 4 provide forms for real estate transactions





Functions of the Council

- 5 issue real estate transaction certificates
- 6 maintain and publish a register of real estate brokers and agents
- 7 set performance standards for real estate agency practice
- 9 monitor and evaluate compliance with this Act and in furtherance of that, conduct inspection of the premises of real estate broker and real estate agent





Functions of the Council

10

establish and enforce a code of conduct and ethics for real estate agency practice

11

monitor the performance of real estate brokers

12

monitor advertisements in both the print and electronic media including the WWW or the internet to ensure compliance with the Act

13

maintain a national database of real; estate transactions





Functions of the Council

14

prescribe the scale of fees for real estate transactions

15

collaborate with the FIC to ensure compliance with the regulatory requirements on anti-money laundering and countering the financing of terrorism in the real estate agency practice.



14

Governing Body of the Council



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Governing Body of the Council

The governing body of the Council is a Board consisting of 11 people

a chairperson nominated by the President in accordance of article 70 of the Constitution.

one of the other 10 is a rep of GhIS

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



Committees of the Board

The Board shall establish sub committees including:

- a an Education and Examinations Committee
- b an Appeals Committee





So who can be a Real Estate Broker or an Agent?





Broker or Agent?





Real Estate Broker

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 Agent

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

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



Licensing and Related Matters

Clauses 22-31

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Requirement for license

1 A person shall not

- a. provide real estate agency services
- b. provide services as a real estate broker or agent
- c. engage in any business connected with the provision of real estate agency services, or
- d. engage in a real estate transaction

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



Application for a License ⁽²³⁾

1 A person may apply for a license as a real estate broker or agent...

2 The application for the license 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. be accompanied with the prescribed fee for examination (where appropriate)





Conditions for grant of a License ⁽²⁴⁾

The Board may issue a license 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 a VES registered by GhIS is a lawyer licensed by the General Legal Council to practise as a lawyer
- c** 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.





Other Requirements⁽²⁴⁾

The Board may issue a license to a person if that person

1 Has a tax Identification Number

2 in the case of a company, society, association or partnership

- I. Has submitted an application which is not an application for a licence as a real estate agent;
- II. has designated at least one of the its officers or partners of the company, society, association or partnership as the 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





Other Requirements⁽²⁴⁾

The Board shall not issue a license to a person if that person has been convicted of an offence involving the security of the State, fraud, dishonesty or moral turpitude

- a** The Board may issue a license to a person if that person has
- executed and submitted to the Council a professional indemnity insurance or
 - engaged a a surety company licensed to operate an insurance business in the country to have executed and submitted to the council a professional indemnity insurance cover in the sum specified, and in the form, approved by the Board





Grant of Licence

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

A licence issued under this Act is not transferable

A licence issued under the Act is valid for a year from the date of issue and is renewable.





Suspension of a licence (30)

1

the Council may suspend the licence of a real estate broker or agent where the Council determines that the real estate broker/agent in the performance of a function authorized by the licence,

- fails to use the real estate forms required for the real estate transaction.
- accept cash in payment of the real estate transaction
- fails, within reasonable time, which shall not exceed one month, to pay out moneys received into a client account, to the client.
- Pays a commission or fees to, or divides a commission or fees with, a person who is not a licensed broker/agent or
- Fails to give a copy of the sale and purchase agreement to both the seller and purchaser of real estate.





Suspension of a licence (30)

Subsections 2 and 3 of section 30 provides the conditions under which the Council shall suspend the licence.

- Notices
- Grounds for suspension
- Opportunity to be heard
- Failure to take remedial action among others



Revocation of a licence (31)

- 1 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 determines that the licence was obtained by fraud





3 the Council may revoke the licence of a real estate broker or agent

- a. where the agreement entered by that real estate broker/agent in relation to the licence of that real estate broker/agent ceases to be effective;
- b. if that broker or agent is convicted by a court of competent jurisdiction for a serious offence; or



Revocation of a licence (31)



- 3 the Council may revoke the licence of a real estate broker or agent
 - c. if in the performance of a function authorised by the licence, the real estate broker or agent
 - i. knowingly makes a fraudulent misrepresentation
 - ii. acts in the dual capacity of broker and undisclosed principal in the same transaction
 - iii. acts for more than one party in the same transaction without the knowledge and consent of the parties that the licensee represented in the transaction



Revocation of a licence

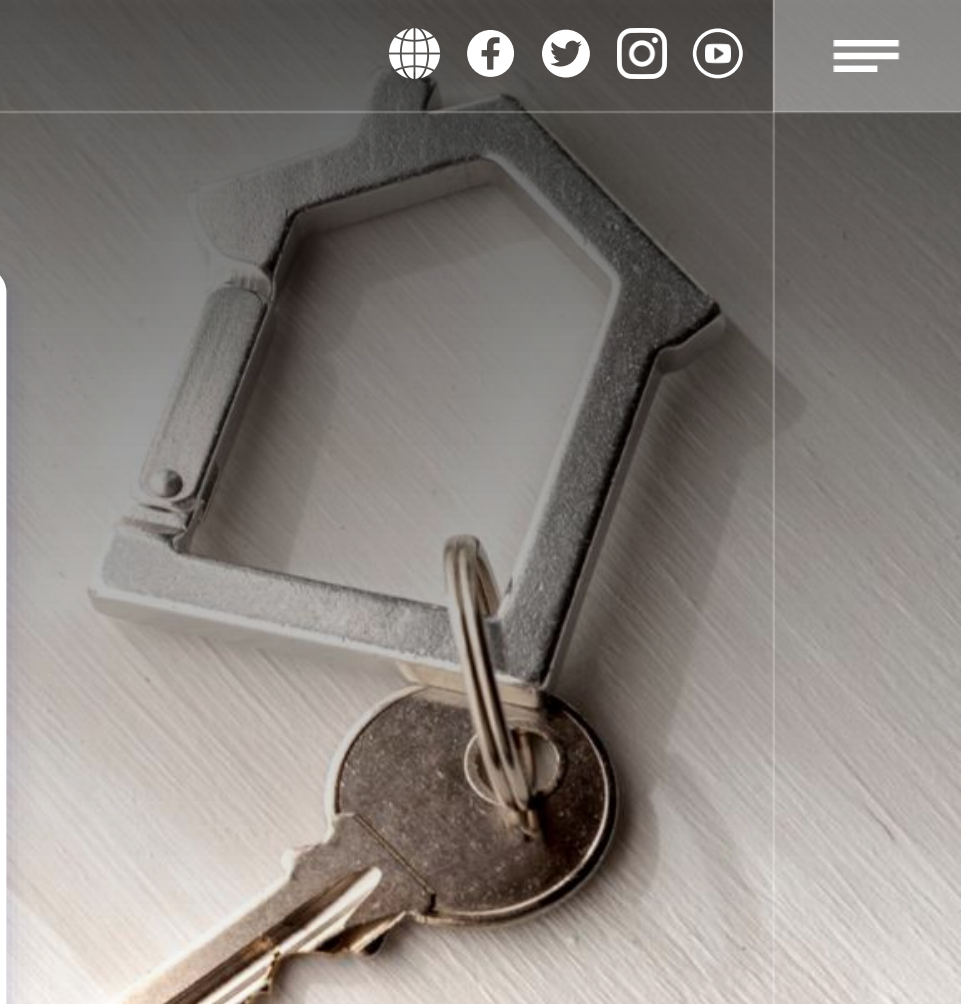
3 the Council may revoke the licence of a real estate broker or agent

- iv. accepts, gives or charges an undisclosed commission, rebate or profit on expenditures from a principal
- v. commingles the money or other property of a property owner with those of the licensee
- vi. fails to disclose information on a property which is the subject matter of a transaction; or
- vii. accepts from a prospective seller a net listing



Investors dealing with real estate brokers will have guarantee against fraud and their investment will be protected by efficient regulatory mechanism

Sanity in Real Estate Agency Market!!



Real Estate Brokerage and Agency Practice

Sections 40-52

Learn More →



Real Estate Brokerage and Agency Practice

Sec. 40(1) requires the Council to keep and maintain a register of brokers and agents

Publish in the Gazette and daily newspaper annually an alphabetical list of real estate brokers and agents who are in good standing

Establish and maintain a national database on real estate transactions which shall contain the transaction records of each licensed real estate broker/agent



Real Estate Brokerage and Agency Practice

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
- c. Ghana Revenue Authority
- d. Any other competent authority



Place of Business

A licensed real estate agent shall maintain a place of business in this country and conspicuously display in that place of business

- a. the licence of that broker/agent; and
- b. the fees to be charged by the real estate broker/agent

The Council shall be given notice prior to a change of business location. Failure of which can be ground for suspension.

Where a real estate agent opens and maintains an office, the office shall be affiliated to a licensed real estate broker

Real Estate Transaction Forms

1 Only real estate transaction forms issued by the Council shall be used for real estate transactions

2 A real estate transaction in which forms issued by the Council are not used is voidable.

Real Estate transaction forms include purchase agreements forms, sales agreement forms and disclosure of defect or health hazard forms.

Affiliation of Real Estate Agent

- 1 A licensed real estate agent shall not undertake any real estate transaction unless that agent is affiliated to a licensed real estate broker

- 2 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

Mode of Payment for Real Estate Transaction

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**

This provision is intended to assist in creating a financial record trail in relation to real estate transactions



Real Estate Transaction Certificate

Clause 47 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





Real Estate Transaction Certificate

47: 6- Despite any provision in any other enactment to the contrary, the Lands Commission shall not register any real property estate or interest in real property estate 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.

47:7 Registration of real property or interest in real property estate by the Lands Commission contrary to subsection (6) is voidable

Rules of Conduct

These 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, accept, give or charge any undisclosed commission, rebate or profit on expenditures for a principal and accept from a prospective seller a net listing.



Transaction Report

Quarterly reports covering all transaction undertaken within the quarter to the Council.

Annual report with thin three months after the calendar year covering all transactions undertaken within the year under review.

- Failure to submit the quarterly report attract a penalty of one thousand penalty units (12,000Ghs)





Offences

- advertising as a real estate broker or agent without a licence issued under this Act;
- engaging in a real estate transaction without a licence contrary to section 22,
- transferring a licence issued under this Act contrary to section 27,
- falsifying a document under this Act,
- obstructing an authorised officer in the performance of the duties of that officer under section 38, or
- failing to submit transaction reports contrary to section 47,





Offences

A person engaging in any of the listed acts commits an offence and is liable on summary conviction to a fine of not less than five thousand penalty units (60,000) and not more than ten thousand penalty units (120,000) or to a term of imprisonment of not less than five years and not more than ten years, or to both.





Legislative Instrument

By legislative instruments Regulations are to be made to

- prescribe facilities to be provided by a real estate agency practitioner for the practice
- prescribe the conduct of hearings by the Council;
- prescribe the conduct of examinations;
- prescribe the content of an examination for the licensing of a real estate broker and a real estate agent;
- prescribe the form and content of reports to be submitted by real estate agency practitioners to the Council;
- prescribe the effective monitoring, assessment and improvement of real estate agency practice





Link with other Legislations

- Specifically, the Act is to be read together with the Anti-Money Laundering Act, 2020 (Act 1044) and where there is any conflict, the provisions of Act 10044 shall prevail
- Certainly, the Act has some link with the Land Act, 2020 (Act 1036) when it come to registration of Title. Transaction Certificate is now a requirement for the registration of all real estate transaction even those exempted from in section 1 of this Act.



Positioning VES and VES Practitioner

Section 61 and above

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Positioning Professional Services

Market Segmentation

Positioning





Positioning in Estate Agency Practice

Intangibility

Heterogeneity





Positioning in Estate Agency Practice

Inseparability

Perishability



Discussion and Matters Arising



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Summary

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 transactions involved

Investors in property who deal with real estate brokers and agents needs guarantee against fraud and other unprofessional practices.

Summary and Resolution

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Summary and Resolution

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Summary and Resolution





Thank You!

