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# MALAWI GOVERNMENT

(Published 8th November, 2024)

Act

## No. 26 of 2024

I assent

# DR. LAZARUS MCCARTHY CHAKWERA PRESIDENT 4th November, 2024

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## An Act to provide for the regulation and practice of property valuation, and to provide for matters incidental thereto or connected therewith

ENACTED by the Parliament of Malawi as follows-

#### PART I-PRELIMINARY

1.—This Act may be cited as the Property Valuation Act, 2024, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

2.- In this Act unless the context otherwise requires\_\_\_\_

"authorized valuer" means an authorized valuer appointed under section 7;

"Board" means the Board of Valuers established under section 9:

"Commissioner" means Commissioner for Valuation appointed under section 3;

"Government valuer" means a valuer employed in the public service pursuant to section 6;

"land" has the meaning ascribed to it under the Land Act;

"market value" means the estimated amount for which an asset should, on the date of valuation, be exchanged between a willing buyer and a willing seller, after proper marketing, and where the parties act knowledgeably, prudently and without compulsion;

"property" means interests, rights and benefits related to the ownership of physical land and improvements thereon, or movable assets:

"Registrar" means the Registrar of the Board designated pursuant to section 9;

"technician valuer" means a person who is registered as a technician valuer under section 28 (4);

"Tribunal" means the Valuation Tribunal established under section 19:

"valuation" means a process in which the value of an interest in property is assessed and determined by a valuer;

Cap. 36:01

Short title and commencement

"valuation practice" means a system where a valuer determines value of an interest in land and movable property, business, ownership or user rights; and

"valuer" means a person registered as valuer under section 28.

#### PART II—ADMINISTRATION

Commissioner for Valuation **3**.—(1) There shall be a Commissioner for Valuation (in this Act otherwise referred to as the "Commissioner") who shall be a public officer, and shall be responsible for advising the Minister on all matters in relation to valuation practice and activities.

(2) A person shall not be qualified to be appointed Commissioner under this Act unless that person—

(a) holds a minimum qualification of a Bachelors' degree in real estate, or an equivalent qualification obtained from a university or institution recognized or accredited by the National Council for Higher Education;

(b) is registered and licensed to practice under this Act; and

(c) has practiced for not less than ten years' as a licensed valuer.

**4**.—(1) Subject to special and general written direction of the Minister, the Commissioner shall—

(a) advise the Minister on valuation matters and activities, including valuation rates in the purchase and disposal of Government properties;

(b) carry out valuation of properties or other assets upon request from Government institutions, the private sector or the general public;

(c) carry out or cause to be carried out, and oversee and approve or endorse, valuation reports of authorized Government valuers and authorized valuers;

(d) carry out research and maintain a valuation data bank for the use by valuers and members of the public;

(e) prepare and maintain a data base or related data of all property transactions;

(f) call for bi-annual returns, in the prescribed form, from registered and licensed valuers on their work;

(g) prepare and submit to the Minister quarterly reports on valuation activities;

Powers and functions of the Commissioner (h) manage complaints arising out of valuation of Government properties; and

(i) perform any other functions as may be assigned by the Minister.

(2) In performing functions under subsection (1) the Commissioner shall have power to—

(a) appoint, recommend or approve Government valuers and authorized valuers for specific valuation assignments, as may be required;

(b) recommend to the Board disciplinary measures to be taken against any Government valuer and authorized valuers; and

(c) impose fees in respect of services rendered by Government valuers and authorized valuers, as may be prescribed.

(3) The Commissioner shall perform functions and exercise powers under this Act in a manner which—

(a) promotes transparency and public confidence in valuation practice;

(b) does not allow any other interest to compromise, or in any other way jeopardise, the integrity of the valuation profession; and

(c) manifests fairness and impartiality without due regard to one's social or economic status.

5.—(1) The Commissioner shall have power to review and certify every valuation report made in respect of Government property.

(2) Where the Commissioner is not satisfied with the manner in which any valuation was conducted, he may reject the valuation report and order fresh valuation by another Government valuer to ensure the valuation meets the requirements of this Act.

6.—(1) There shall be appointed in the public service such number of registered and licensed Government valuers, subordinate to the Commissioner, as the Minister may determine, who shall assist the Commissioner in the performance of his functions under this Act.

(2) Government valuers appointed under subsection (1) shall, under the supervision of the Commissioner, undertake valuation of Government property in Government departments or other entities as may be required, from time to time.

(3) Government valuers may, subject to the directions and supervision of the Commissioner, undertake valuation of private property upon request by a private individual or entity.

Power to review and certify Government valuation reports

Appointment of Government valuers (4) A person shall not be qualified to be appointed as a Government valuer under subsection (1), unless that person—

(a) holds a minimum qualification of a Bachelors' degree in real estate, or an equivalent qualification obtained from a university or institution recognized or accredited by the National Council for Higher Education; and

(b) is registered and licensed to practice under this Act.

(5) The names of all Government valuers appointed under subsection (1) shall be published in the *Gazette*.

7.—(1) The Commissioner may appoint any registered and licensed valuer to be an authorized valuer, who shall undertake valuation functions, as may be directed by the Commissioner.

(2) A person shall not be qualified to be appointed as an authorized valuer under subsection (1), unless that person-

(a) holds a minimum qualification of a Bachelors' degree in real estate, or an equivalent qualification obtained from a university or institution recognized or accredited by the National Council for Higher Education;

(b) is registered and licensed to practice under this Act; and

(c) has practiced for not less than five years as a licensed valuer.

(3) The names of all authorized valuers appointed under subsection (1) shall be published in the *Gazette*.

8.—(1) The Commissioner may in writing delegate any of the functions of that office to a Government valuer, or authorized valuer, for such time as the Commissioner may stipulate.

(2) Any delegation under subsection (1) may be made in respect of a specific matter or class of matters, or generally, and may be limited to any particular part of Malawi.

(3) The Commissioner may, at any time, revoke any delegation under subsection (1), and any such delegation shall not prevent the Commissioner from carrying out any of the matters so delegated.

## PART III-BOARD OF VALUERS AND VALUATION TRIBUNAL

9.—(1) There is hereby established the Board of Valuers (in this Act otherwise referred to as the "Board") which shall consist of—

(a) three persons, being land economy surveyors and valuers in private practice, registered and licensed to practice under the Act, appointed by the Minister;

Power to delegate

Establishment and composition of the Board Valuers

Appointment of authorized valuers (b) a representative of the Bankers' Association of Malawi, appointed by the Minister;

(c) an academic in real estate from an institution of higher learning which provides real estate studies, appointed by the Minister;

(d) a representative of Local Government Associations, appointed by the Minister;

(e) a legal practitioner of not less than ten years' experience, appointed by the Minister; and

(f) the following ex-officio members-

(i) the Surveyor General; and

(ii) Commissioner for Lands.

(2) The Minister shall, in making appointments under subsection (1) (a), (b), (c) (d) and (e)\_\_\_\_

(a) take into account the provisions of the Gender Equality Act; Cap. 25:06 and

(b) have regard to the need for continuity in the membership of the Board so that at least two members of the immediate past Board shall be retained.

(3) The Chairperson of the Board shall be appointed by the Minister from amongst the persons appointed under subsection (1) (a), (b), (c), (d) and (e).

(4) The Vice-Chairperson of the Board shall be elected by the members of the Board from amongst their number at the first meeting of the Board.

(5) The Minister shall designate\_\_\_\_

(a) a public officer who is registered and licensed under this Act to be Registrar of the Board, and who shall be responsible for the day to day management of the functions of the Board; and

(b) public officers, subordinate to the Registrar, to perform such functions as are necessary to assist the Registrar in the discharge of the functions and duties of the Registrar.

(6) The Registrar shall perform such functions and carry out such duties as shall be stipulated by the Board.

10 .- The Board shall have power to-

(a) register and license valuers

Powers and functions of the Board

(b) define unprofessional conduct, the mode of inquiry into and the method of dealing with such misconduct and the penalties

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which may be imposed upon a valuer found guilty of such misconduct;

(c) enforce rules of professional conduct;

(d) prescribe the scale of fees to be charged by registered and licensed valuers for professional advice, services rendered and work done;

(e) prescribe required professional indemnity for licensing valuers;

(f) prescribe the terms and conditions subject to which articled pupils may be engaged; and

(g) ensure the maintenance and improvement of the status of valuers in Malawi.

11.—(1) A member of the Board, other than *ex-officio* member, shall hold office for a period of three years, and shall be eligible to be re-appointed for a further term of three years.

(2) A member of the Board, other than an *ex-officio* member, may at any time resign from office in writing addressed to the Minister.

(3) A member of the Board, other than an *ex-officio* member, who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Board.

(4) The Minister may by letter addressed to a member revoke the appointment of that member where the member is\_\_\_\_\_

(a) unable for any reason to perform functions of a member;

(b) adjudged to be of unsound mind;

(c) declared bankrupt;

(d) convicted of an offence, and sentenced without the option of a fine; or

(e) ceases to hold the qualifications for appointment as a member or circumstances arise which would have qualified the member to be appointed a member of the Board.

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

(6) Where a vacancy occurs in accordance with subsection (2), (3), (4) or (5), or by reason of the death of a member, the Minister shall appoint a person to fill the vacancy in accordance with section 9 (1).

Term of office and vacancies (7) The Board may, in its discretion, at any time and for any period, co-opt any person with specific knowledge, information or expertise, to attend any meeting of the Board or a committee of the Board, and to address the Board or a committee of the Board on any matter, but such person shall not be eligible to vote at the meeting on a decision of the Board or a committee, as the case may be.

(8) Section 16 shall apply, with necessary modifications, to a person attending a meeting of the Board or committee of the Board pursuant to subsection (7).

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

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

(3) The Chairperson shall preside at meetings of the Board, and in the absence of the Chairperson, the vice chairperson shall preside and, in the absence of both the chairperson and vice chairperson, a member of the Board elected by the members present from among their number shall preside.

(4) The quorum at a meeting of the Board is five members.

(5) A decision the Board on any question shall be by a majority of the members present and voting, and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Registrar shall be the secretary of the Board, and shall record and keep minutes of meetings of the Board, and the minutes shall be confirmed at the subsequent meeting of the Board.

(7) Subject to the provisions of this Act, the Board shall determine its own procedure.

13.—(1) The Board may establish such number of committees as Com the Board determines necessary for the performance of its functions of the under this Act.

(2) A committee shall consist of, either members of the Board only, or members of the Board, and such other suitably qualified persons as the Board may determine.

(3) The Board shall appoint a chairperson of each committee from among members of the Board appointed under section 9 (1) (a), (b), (c) (d) and (e).

Committees of the Board

Meetings of the Board

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(4) Every committee shall act in accordance with any directions given in writing to it by the Board.

(5) The Registrar shall act as secretary of committees of the Board, or may, with the approval of the Chairperson, delegate any senior public officers, subordinate to the Registrar, to act as secretaries to committees.

14.—(1) Members of the Board and members of a committee of the Board shall be paid such allowances as the Minister may determine, after consultation with the Minister responsible for finance.

(2) The Board may reimburse any reasonable expenses incurred by a member of the Board, a member of a committee of the Board or a person invited to attend a meeting pursuant to section 11 (7).

Oath of office

Allowances and expenses

15.—Every—

(a) member of the Board;

(b) member of a committee of the Board; and

(c) person co-opted to attend a meeting of the Board pursuant section 11 (7),

shall upon assumption of office, or before attending a meeting of the Board, take an oath of secrecy in the form set out in the *Schedule*.

Disclosure of interest 16.—(1) A member of the Board or a committee of the Board, or a person invited to attend a meeting of the Board or a committee of the Board under section 11 (7), who has a direct or indirect interest in any matter before the Board or a committee of the Board, as the case may be, shall disclose the interest as soon as is practical before or soon after the commencement of the meeting, and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

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

(3) Where a person fails to disclose an interest in accordance with subsection (1) and the Board or committee of the Board makes a decision which benefits that person, a close relative, or professional or business partner, of that person, the decision shall, to the extent that it benefits that person, the close relative, or professional or business partner, as the case may be, be null and void.

(4) Where a member contravenes subsection (1), the chairperson shall notify the Minister who shall revoke the appointment of the member.

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

(6) For purposes of this section, "close relative" includes a spouse, brother, sister, parent, child, child of a spouse and the spouse of any these relations.

17. No action or proceeding shall be brought personally against Protection any member of the Board or committee of the Board, in respect of from liability any act or omission done in good faith in the course of carrying out the provisions of this Act.

18.-(1) The funds of the Board shall consist of-

(a) such sums as may be appropriated by Parliament for purposes of this Act;

(b) such moneys as may accrue to or received by the Board by way of registration and licensing fees, subsidies, contributions, subscriptions, charges and penalties, levies;

(c) monies paid to the Board by way of grants or donations;

(d) any other monies which may in any manner become payable to, or vested in, the Board in respect of any matter incidental to its functions.

(2) The funds of the Board shall be utilized for purposes of this Act, in accordance with the written directions of the Board, and for no other purpose.

19.--(1) There is hereby established a Valuation Tribunal (in this Establishment Act otherwise referred to as the "Tribunal") which shall consist of-

(a) a representative of the Surveyors Institute of Malawi, appointed by the Minister;

(b) a legal practitioner of not less than ten years' experience, appointed by the Minister; and

(c) the Commissioner for Lands.

(2) The Tribunal shall hear complaints on valuation or decisions of the Commissioner on valuation as may be referred, to it from time to time.

(3) The Tribunal shall establish its own procedures, and its decision on matters of fact shall be final.

(4) Any party who is dissatisfied with the decision of the Tribunal may appeal on point of law to the High Court.

of Valuation Tribunal

Funds of the

Board

PART IV \_\_\_PRINCIPLES AND PROCEDURES OF VALUATION PRACTICE

Valuation guidelines 20. Every valuer engaged in valuation shall comply with valuation standards prescribed by the Board, including international valuation standards, Royal Institute of Chartered Surveyors Professional Standards, and the guidelines and principles stipulated under this Part.

Objectives of valuation **21**.—(1) Every valuer shall, in accordance with instructions received for any valuation, indicate the purpose of the valuation in the valuation report.

(2) Without derogating from the generality of the foregoing, the purpose of valuation may be for-

(a) rating;

(b) compensation;

(c) land rent assessment;

(d) deceased estate administration;

(e) capital gains tax administration;

(f) transfer of land;

(g) rental;

(h) mortgage;

(i) financial reporting;

(*j*) insurance;

(k) investment;

(1) purchase;

(m) sale;

(n) reserve price;

(o) lease renewal and surrender;

(p) stock market floatation;

(q) [court] bail; and

(r) any other purpose the Board may prescribe.

Basis and method of valuation **22**.—(1) Every valuer shall state the basis and method of valuation adopted and all assumptions used in arriving at the value of the property.

(2) The basis of valuation may, taking into account the scale of the exercise, include the state of the property market, cost of property and income receivable on the property.

(3) Where the valuer relies on any assumptions, he shall outline such assumptions and the reasons therefor.

(4) A valuer shall use and apply appropriate method of valuation which may include the\_\_\_

(a) direct market comparative method in order to determine a market value:

(b) replacement cost or contractor's test method;

(c) income approach or investment method;

(d) profit method:

(e) discounted cash flows:

(f) residual method; and

(g) such other method as the Board shall approve.

(5) Where any method of valuation is utilized, the valuer shall explain the method, and shall substantiate with the data used in the valuation.

23.-(1) A valuer may, for purposes of carrying out valuation Access to under this Act\_\_\_\_

property and information

(a) enter any property at all reasonable hours to inspect and carry out valuation activities without liability for trespass;

(b) obtain information from any owner or occupier of property to enable the valuer carry out functions under this Act; and

(c) inspect any document relating to property under valuation;

(2) Any person who, upon being informed or requested by the valuer of an intention to enter the property or seeking information relating to the property for purposes of performing valuation activities under this Act\_

(a) refuses or fails to allow the valuer entry into or inspection of the property;

(b) fails or refuses to provide information requested by the valuer; or

(c) wilfully makes any false statement in reply to request for information.

commits an offence and shall, upon conviction, be liable, in case of an individual, to a fine of K1,000,000, and to imprisonment for twelve months, and in the case of body corporate, to a fine of K5,000,000.

24.-(1) A valuation report shall have indicated on it a validity Validity of period from the date of the valuation: valuation reports

Provided that the Minister may prescribe specific periods of validity for specific valuation objectives.

(2) No person shall add or make improvements to premises which are subject of a valuation until the valuation is completed.

Certification of valuation reports **25**.—(1) Every valuer shall, on completion of a valuation report, certify that such report is final and official by endorsing, in an appropriate place or places in the valuation report, with a stamp bearing his name, address, date and signature and, where applicable, the name of the firm where he is a partner or director.

(2) A valuation report shall not be valid unless certified in accordance with the subsection (1).

#### PART V-REGISTRATION AND LICENSING OF VALUERS

Prohibition of valuation practice without registration and a licence **26**.—(1) No person shall provide valuation services, undertake or engage in a valuation practice, or in any business connected with the provision of valuation services or engage in a valuation transaction unless that person is registered and licensed as a valuer under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable—

(a) in case of an individual, to a fine of K5,000,000, and to imprisonment for two years; or

(b) in the case of body corporate, to a fine of K10,000,000.

27.—(1) A person shall be eligible to be registered as a valuer under this Act if the person—

(a) holds a minimum qualification of a Bachelor's degree in real estate, or an equivalent qualification, obtained from university or institution recognized or accredited by the National Council for Higher Education; and

(b) has complied with such additional requirements, including the acquisition of practical experience in valuation, as may be prescribed by the Board.

(2) Any person who qualifies to practice as a valuer, or to perform the valuation services under this Act may make an application to the Board for registration.

(3) The application for a registration shall-

(a) be in the prescribed form accompanied with prescribed fees;

(b) in the case of a company, society, association or partnership be accompanied with a declaration that officers of the company,

Qualifications and application and for registration to practice as a valuer society, association or partnership do not have any criminal record:

(c) where appropriate, be accompanied with the prescribed fee for examination; and

(d) be accompanied with evidence that the applicant is a citizen or has permanent residence in Malawi.

(4) A firm shall be eligible to be registered as a consulting firm of valuers if the firm\_\_\_\_

(a) is incorporated or registered under the Companies Act or Cap. 46:03 the Business Registration Act; and Cap. 46:02

(b) has at least two practitioners of the firm registered and licensed as valuers under this Act.

(5) In addition to the qualifications in subsections (1) and (3), the Board shall require the applicant to satisfy the Board that his professional and general conduct render him fit and proper to be registered under this Act.

28.-(1) The Board may register valuers as professional, Categories of graduate or technician valuers based on the qualifications stipulated in this section.

registration

(2) The Board may register an applicant as a professional valuer if the applicant\_\_\_

(a) is a citizen of Malawi or is permanently resident in Malawi;

(b) and satisfies the requirements for registration as a valuer prescribed under section 27;

(c) has at least two years of practical experience as a valuer; and

(d) passes examinations conducted by the Board.

(3) The Board may register an applicant as a graduate valuer if the applicant

(a) is a citizen of or is a permanent resident in Malawi; and

(b) holds at least a first degree in land economy, land management or estate management or equivalent qualification, with specialization in valuation, from a university or institution recognized or accredited by the National Council for Higher Education.

but does not have practical experience to be registered as a professional valuer under subsection (2).

(4) The Board may register an applicant as a technician valuer if the applicant\_\_\_

(a) has a diploma in land economy or land management in valuation from a university or institution recognized or accredited by the National Council for Higher Education; and

(b) meets such additional requirements as the Board may prescribe.

(5) Every graduate or technician valuer shall work under the supervision of a professional valuer for at least two years, and during that period shall not sign or certify any valuation report in accordance with this Act

29.-(1) The Board may register as a temporary valuer any person who is not a citizen of, or is not permanently resident, in Malawi if\_\_\_\_

(a) the person meets the requirements for registration as a professional valuer prescribed under section 27; and

(b) intends to be employed in Malawi as a valuer to carry out a specific valuation assignment for a period not exceeding one year.

(2) The registration of a temporary valuer under subsection (1) shall have effect only during the subsistence of the assignment, or the period the Board may set on registration, and shall expire on the termination of the assignment or expiry of the period specified by Board, as the case may be.

(3) Any valuer registered under this section shall be subject to the condition that he or she shall practice and carry out any assignment in partnership with a professional valuer who is registered and licensed under this Act.

**30**.—(1) A person is eligible to be granted a licence to practice as a valuer if that person\_\_\_\_

(a) is a registered valuer in accordance with section 28;

(b) has not been convicted of an offence, without the option of a fine;

(c) has a Tax Identification Number;

(d) has taken out a professional indemnity approved by the Board: and

(e) in the case of a company, society association or partnership has designated at least one of its officers or partners as its representative for the purpose of obtaining the licence.

(2) Any person who qualifies to practice as a valuer, or to perform the valuation services under this Act may make an application for grant of licence.

Oualifications and application for licence to practice as a valuer

Registration of temporary

professional

valuers

(3) The application for a licence shall-

(a) be made to the Board in the prescribed form;

(b) be signed and supported with a statutory declaration by the applicant;

(c) in the case of a company, society, association or partnership be accompanied with a declaration that officers of the company, society, association or partnership do not have any criminal record;

(d) where appropriate, be accompanied with the prescribed fee for examinations; and

(e) be accompanied with evidence that the applicant is a citizen or has permanent residence in Malawi.

31.—(1) The Board shall, where it is satisfied that the applicant has met all the requirements for registration and licensing under this Act, within thirty days from the date of receiving the application, issue the applicant with a practice licence.

Grant of valuer's licence

(2) Every practice licence issued under subsection (1) shall be valid for one year, and may be renewed upon fulfilment of such requirements as may be prescribed, and upon payment of prescribed fees.

(3) The Board shall cause to be published annually in the *Gazette*, and in at least one newspaper of wide circulation, the names and addresses, and the categories of, valuers registered and licensed under this Act.

**32**.—(1) The Board may reject an application for registration or issuance of a licence as a valuer if the application is defective in a material particular, or the applicant provides false or misleading information or where the applicant has been guilty of professional misconduct.

(2) Where the Board rejects an application for registration or issuance of a licence, it shall, within a period of seven days of its decision, notify the applicant in writing giving reasons for the rejection.

(3) An applicant who is aggrieved by the decision of the Board may, within twenty-one days of receiving the notification of rejection under subsection (2), appeal to the Tribunal stating the grounds for the appeal.

(4) The Tribunal shall determine the appeal within thirty days of receipt of the appeal, and may upon review of the information

Refusal of application to register or issue licence before it and any further information that it may request from the applicant or the Board, uphold, quash or vary the decision of the Board.

(5) The Tribunal shall, where it upholds, quashes or varies the decision of the Board, give necessary directions and communicate its decision to the parties.

Rights and privileges of valuers

Disciplinary action against a valuer

Cancellation of registration or licence 33. A registered valuer who is granted a practice licence shall be entitled to carry out valuation practice for gain and may demand, sue and recover in any court any fees and expenses for valuation services rendered.

34. The Board may caution, censure or suspend a valuer who after due inquiry is found guilty of professional misconduct contrary to the Act, or the code of ethics adopted under this Act.

**35**.—(1) The Board may cancel the registration or licence of any valuer if the valuer—

(a) requests that the registration as a valuer be discontinued;

(b) being a non-Malawi citizen or not being permanently resident in Malawi, has completed the assignment for which the registration or licence was obtained;

(c) is convicted of an offence of corrupt practices, tax evasion or any offence involving moral turpitude without the option of a fine;

(d) is declared bankrupt;

(e) has committed gross professional misconduct as determined by the Board; or

(f) is dead, or is by reason of any incapacity, unable to carry out valuation practice.

(2) Except in the case of death or where a valuer requests that registration or licence be cancelled, registration or licence shall only be cancelled where the Board issues a notice to the valuer to show cause why his registration or licence should not be cancelled and the valuer fails to do so.

Appeal against suspension or cancellation of registration or licence **36**.—(1) A valuer who is aggrieved by the decision of the Board to suspend or cancel a registration under section 34 or cancel a registration under section 35 may, within thirty days from the date of such decision, appeal to the Tribunal, stating the grounds for the appeal, and the Tribunal shall determine the appeal within thirty days of receiving appeal or any further information the Tribunal may request from either of the parties.

(2) Where the Tribunal fails to determine the appeal within thirty days, the appellant may petition the High Court for an appropriate

# PART VI-MISCELLANEOUS

37. A valuer who permits his or her name to be used by an unregistered or unlicensed valuer or enables an unregistered valuer to appear, act or practice as a valuer or in any way assists or aids or abets any person to contravene this Act commits an offence and shall, on conviction, be liable to-

(a) in case of an individual, to a fine of K5,000,000 and to imprisonment for two years; or

(b) in the case of body corporate, to a fine of K10,000,000.

38. Any person who acts or holds himself out as a valuer or uses the style or title 'valuer' without registration and a licence, commits an offence and shall, upon conviction be, liable-

(a) in case of an individual, to a fine of K5,000,000, and to imprisonment of two years; or

(b) in the case of body corporate, to a fine of K10,000,000.

The Board shall prescribe minimum fees for valuation Valuation fees 39. services rendered in accordance with this Act.

40.-(1) The Board shall develop and adopt a Code of Ethics for Code of Valuers to regulate the practice and conduct of valuers.

(2) Without derogating from the generality of subsection (1), the Code of Ethics shall stipulate the procedures and guidelines of valuation practice and professional conduct and discipline of valuers in accordance with this Act.

(3) The Code of Conduct referred to in this section shall be published in the Gazette.

A valuer who negligently misrepresents any data or 41. information obtained in the course of valuation for compiling a valuation report, shall be personally liable for professional negligence arising from such misrepresentation:

Provided that no liability shall accrue against a valuer acting in good faith and applying his skills and knowledge.

42.--(1) The Minister may, on the recommendation of the Board, Regulations make regulations for the better carrying out of the provisions of this Act.

(2) Without derogating from the generality of subsection (1), the Minister may make regulations prescribing-

Valuer not to act as agent for unregistered or unlicensed valuer

Restriction on use of title "valuer"

ethics

Negligence by valuer

(a) procedure for registration of individuals or firms under this Act;

(b) procedures for accessing property for valuation;

(c) procedures for assessing land and property rates under single and mass valuations;

(d) procedures for assessing crops and preparation of crop schedules and land values;

(e) forms for carrying out different valuations;

(f) procedures for carrying out compensation valuations;

(g) best practices, including guidelines for valuers' standards of care and skill; and

(h) any other matter in furtherance of the objects of this Act.

(2) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, regulations made under subsection (1) may provide for offences the contravention of which may impose a penalty of—

(a) in case of an individual, a fine of K1,000,000, and to imprisonment of twelve months; or

(b) in the case of body corporate, a fine of K5,000,000.

**43**.—(1) The Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act is hereby repealed.

(2) Any subsidiary legislation made under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force, unless in conflict with this Act;

(b) shall be deemed to be subsidiary legislation made under this Act; and

(c) may be replaced, amended, revoked or repealed by subsidiary legislation made under this Act.

(3) A valuer who is registered and licensed under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, repealed by subsection (1), shall continue to practice valuation as if registered and licensed under this Act until the licence expires.

Repeal, savings and transition Cap.58:08

Cap. 1:01

Cap.58:08

Cap.58:08

#### SCHEDULE

#### OATH OF SECRECY

I,...., being a member of the Board/member of a committee of the Board /having been invited to attend a meeting of the Board /a meeting of a committee of the Board, do swear/affirm that I will freely without fear or favour, affection, or ill-will discharge the functions of a member of the Board /member of a committee of the Board, and I will not, directly or indirectly, reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So help me God.

Signature of the person making the oath [or affirmation]

| Sworn [or affirmed] by the sa | id   | <b></b> |   |      |
|-------------------------------|------|---------|---|------|
| at                            | this | day o   | f | , 20 |
| Before me:                    |      |         |   |      |

Commissioner for Oaths

Passed in Parliament this sixteenth day of September, two thousand and twenty four.

FIONA KALEMBA Clerk of Parliament

21

(s. 15)

## (Published 8th November, 2024)

Act

#### No. 27 of 2024

#### I assent

## DR. LAZARUS MCCARTHY CHAKWERA PRESIDENT 4th November, 2024

## ARRANGEMENT OF SECTIONS

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- 1. Short title and commencement
- 2. Interpretation

PART II-REGISTRATION OF SECTIONAL PLANS AND UNITS

- 3. Sub-division of buildings into units
- 4. Registration of sectional plans
- 5. Certificate to indicate share in common property.
- 6. Incidental rights of owners of common property, etc.
- 7. Liability of owner of a unit
- 8. Requirements for registration of sectional plans
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- 10. Certificates to accompany sectional plans
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#### SECTION

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## An Act to provide for the division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common; to provide for the use and management of the units and common property; and for matters incidental thereto or connected therewith

## PART I-PRELIMINARY

1.—This Act may be cited as the Sectional Titles Act, 2024, and shall come into operation on such date as the Minister may appoint operation by notice published in the *Gazette*.

2.—(1) In this Act, unless the context otherwise requires\_

"Association" means the body corporate established under section 16:

"board of management" means a board of management an Association referred to in section 26;

"building" means one or more structures on the same parcel;

"by-laws", in relation to an Association, means the by-laws of the Association as amended from time to time, and includes bylaws made in substitution for them;

Short title and commencement

Interpretation

"common property" means so much of a parcel as is not comprised in a unit shown in a sectional plan, and includes the physical ground on which the building stands, the walls and fencing, the outside of the building, the roofs, the walkways, staircases, stores, garages, parking, pool and garden machinery rooms, lifts, and meter rooms that service the building and owners of the individual units;

"Court" means the High Court of Malawi;

"developer" means a person registered under the Real Estate Management Act, 2024 as a real estate developer and who, whether alone or in conjunction with another person, sells or offers for sale to the public units or proposed units that have not previously been sold to the public;

"landlord" means the owner of a unit that is being rented and includes a person acting on behalf of the owner;

"local government authority" means a local government authority duly constituted under the Local Government Act;

"management agreement" means an agreement entered into by an Association with unit owners for the general control, management and administration of—

(a) the movable and immovable property of an Association associated with the residential units; and

(b) the common property associated with the residential units;

"owner" means the registered owner of-

(a) the freehold estate in a unit;

(b) the leasehold estate in a unit; or

(c) the customary estate in a unit;

"parcel" means the land comprised in a sectional plan;

"proprietor" means-

(a) in relation to land or a lease, the person named in the register as the proprietor thereof; and

(b) in relation to any unit, the person or persons registered as proprietors of an estate in the unit;

"purchase agreement" means an agreement with a developer whereby a person purchases a unit or proposed unit or acquires a right to purchase a unit or proposed unit;

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"recreational agreement" means an agreement entered into by an Association that allows-

(a) persons, other than the owners, to use recreational facilities located on the common property; or

(b) the owners to use recreational facilities not located on the common property;

"Registrar" means a registrar appointed under the Registered Land Act;

"residential unit" means a unit used or intended to be used for residential purposes;

"responsible authority" has the meaning ascribed it under the Physical Planning Act;

"sectional plan" means a plan registered in a land registry which complies with section 8, and includes a plan of a subdivision registered under section 11;

"sectional property status" means the status of a building that has fulfilled the conditions of a sectional title;

sectional title" means the separate ownership of a unit within a building;

"sectional title document" means a document indicating title to a unit which is registerable under the Registered Land Act;

"special resolution" means a resolution-

(a) passed at a properly convened meeting of an Association by a majority of not less than seventy-five per centum of all the persons entitled to exercise the voting powers conferred by this Act or the by-laws, and representing not less than seventy-five per centum of the total unit factors for all the units; or

(b) signed by not less than seventy-five per centum of all the persons who, at a properly convened meeting of an Association, would be entitled to exercise the voting powers conferred by this Act or the by-laws, and representing not less than seventy-five per centum of all the total unit factors for all the units;

"unanimous resolution" means a resolution-

(a) passed unanimously at a properly convened meeting of an Association by all the persons entitled to exercise the voting powers conferred by this Act or the by-laws, and representing the total units; or

Cap. 23:01

Cap. 58:04

Cap. 58:04

(b) signed by all persons who, at a properly convened meeting of an Association, would be entitled to exercise the voting powers conferred by this Act or the by-laws, and representing the total units;

"unit" means a space that is situated within a building and described in a sectional plan by reference to floors, walls and ceilings within the building together its proportion of the common property; and

"unit factor", in relation to a unit, means the unit factor determined for that unit as shown in the schedule of unit factors endorsed on a sectional plan registered by the Registrar.

(2) For the purposes of this Act, the terms "easement", "registry" and "the register" shall have the meaning assigned to those terms under the Registered Land Act.

PART II-REGISTRATION OF SECTIONAL PLANS AND UNITS

**3**.—(1) An existing or planned structure may be designated a building containing a unit or part of a unit or divided into two or more units by the registration of a sectional plan under this Act.

(2) The Registrar shall not register a sectional plan unless-

(a) the sectional plan describes two or more units in it; and

(b) the sectional plan is presented for registration in quadruplicate.

(3) A sectional plan, together with the interest attached to it, shall be registered under the Registered Land Act.

Registration of 4.—(1) On the registration of a sectional plan, the Registrar sectional plans shall —

(a) close the register of the parcel described in it; and

(b) open a separate register for each unit described in the plan; and

(c) on the payment of the prescribed fee, issue certificate of land or lease for sectional property in respect of each unit.

(2) Where a certificate was already issued, the registered owner shall surrender the certificate to the Registrar.

(3) Any interest affecting the parcels which are noted on the register closed under subsection (1) (a) shall be endorsed, on the registers opened under subsection (1) (b) and on the certificate of land or lease for sectional property issued under subsection (1) (c).

Cap. 58:04

Cap. 58:04

Subdivision of buildings

into units

(4) No more than one unit may be referred to in one register and no other unit, except the share in the common property apportioned to the owner of that unit in accordance with section 5 (2), may be referred to in the same register.

(5) Any interest affecting an individual unit which is part of a sectional plan registered under section 3 (1), and which is not endorsed pursuant to subsection (3) of this section, shall be endorsed on\_\_\_

(a) the register of the unit opened under paragraph (b) of subsection (1); and

(b) the land certificate or certificate of lease for sectional property issued in respect of the unit under subsection (1)(c).

(6) Notwithstanding any other written law, where a sectional plan is registered under this Act, the title to a unit comprised in the plan shall, with effect from the date of the registration of the sectional plan, be deemed to be issued under the Registered Land Act.

(7) After a register for a unit is opened pursuant to subsection (1) the unit may devolve or be transferred, leased, charged or otherwise dealt with in the same manner and form as land held under the Registered Land Act, and the provisions of that Act shall apply to Cap 58:04 those dealings in so far as those provisions do not conflict with this Act.

5.—(1) The Registrar, on opening a register for a unit under section 4 (1), shall include in that register the share in the common property apportioned to the owner of that unit under subsection (2), and shall include the share in the common property on a certificate of land or lease for sectional property issued in respect of the unit under section 4(1)(c).

(2) The common property comprised in a registered sectional plan shall be held by the owners of all the units as tenants in common in shares proportional to the unit factors for their respective units.

(3) Except as provided in this Act, a share in the common property shall not be disposed or become subject to a charge, except as appurtenant to the unit of an owner, and where a chargee exercises a power of sale on the unit, the sale shall operate to dispose of or charge that share in the common property without express reference to it.

Cap 58:04

Certificate to

indicate share in common property

(4) Where the same person is the owner of all the units, subsection (2) shall apply as if there were different owners for each of the units.

6.—(1) The common property and each unit on a sectional plan shall have, as appurtenant thereto—

(a) all such rights of support, shelter and protection, and for the passage or provision of water, sewerage, drainage, electricity, garbage, air and all other services of whatsoever nature, including telephone, radio and television services, over the parcel and every structure thereon as may, from time to time, be necessary for the reasonable use or enjoyment of the common property or unit; and

(b) a right to the full, free and uninterrupted access and use of light to or for any windows, doors or other apertures existing at the date of the registration of the sectional plan and enjoyed at that date.

(2) The rights created by this section shall carry with them all ancillary rights necessary to make them effective as if they are easements.

(3) Nothing in this section shall affect any parcel other than the parcel to which the sectional plan relates.

7. Except to the extent that an interest endorsed on a sectional plan relates to a particular unit, the owner of a unit shall only be liable in respect of an interest endorsed on the sectional plan in proportion to the unit factor for the unit.

8.—(1) Every sectional plan presented for registration under this Act shall—

(a) be described in the heading of the plan as a sectional plan;

(b) delineate the external surface boundaries of the parcel, and the location of the building in relation to the parcel;

(c) bear a statement containing those particulars as may be necessary to identify the title to the parcel;

(d) include a drawing illustrating the units, and distinguishing the units by numbers or other symbols;

(e) define the boundaries of each unit;

(f) show the floor area of each unit;

(g) be georeferenced;

(h) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel;

Requirements for registration of sectional plans

Liability of owner of a

unit

8

(i) have endorsed on it the address at which documents may be served on the Association concerned in accordance with section 61; and

(j) contain any other particulars prescribed by the regulations.

(2) Where a sectional plan presented for registration includes residential units, the plan shall, in addition to meeting the requirements of subsection (1), delineate to the satisfaction of the Surveyor General, the boundaries of the areas that are, or may be, leased to an owner of a residential unit in accordance with section 48

(3) Every sectional plan presented for registration under this section shall be accompanied by proof of insurance place in respect of the parcel.

(4) The Registrar shall, within twenty-one days from the date a sectional plan is registered, submit to the local government authority of the area in which the building is located, a copy of the registered sectional plan.

9. Unless otherwise stipulated in the sectional plan-

(a) a boundary of a unit shall be described by reference to a floor, wall and ceiling; and

(b) all doors and windows of a unit are part of the unit.

10 .- (1) Every sectional plan presented for registration shall be Certificates to endorsed with, or accompanied by-

(a) a certificate of a surveyor as defined under the Land Survey plans Act stating that the structure shown on the plan is within the Cap. 59:03 external surface boundaries of the parcel which is the subject of the plan, and if guttering project beyond those external boundaries, that an appropriate easement has been granted as an appurtenance of the parcel; and

(b) a certificate of a responsible authority as defined under the Physical Planning Act stating that the proposed division of the Cap. 23:01 structure as illustrated on the plan has been approved by the responsible authority.

(2) Where the sectional plan presented for registration is in respect of building containing units, it shall, in addition to the certificate required under subsection (1), be endorsed with, or accompanied by, a certificate of a surveyor as defined under the Land Survey Act, or such other person as shall be approved by the Cap. 59:03 Surveyor General, stating that the units shown on the plan correlate with the existing structure.

Boundaries of units

accompany sectional

(3) Where an application is made for a certificate under subsection (1) (b), the responsible authority—

(a) may, with respect to a structure that was constructed prior to the commencement of this Act, or for which the building permit was issued prior to the commencement of this Act, prohibit the issue of the certificate, if it considers it proper to do so; and

(b) shall, with respect to a structure for which a building permit was issued on, or after, the commencement of this Act, direct the issue of the certificate, if it is satisfied that the structure conforms to—

(i) the development plan, development control by-law, zoning by-law or land use by-law, as the case may be; and

(ii) any permit issued under that scheme or by-law that existed at the time the building permit was issued.

11.—(1) Any proprietor may, with the approval of the responsible authority, subdivide or consolidate a unit by registering a sectional plan relating to the unit intended to be so subdivided or consolidated in the manner provided by this Act for the registration of sectional plans.

(2) A responsible authority shall not approve subdivision or consolidation of a unit unless the application meets the requirements prescribed by the Minister.

(3) On the registration of a sectional plan of subdivision or consolidation, units comprising the sectional plan are subject to the obligations, and have the benefit of, any easements affecting those units in the original sectional plan which are included in the sectional plan of subdivision or consolidation.

(4) The *schedule* endorsed on a sectional plan of sub-division or consolidation as required by section 8 (1) shall apportion among the units the unit factor or factors for the unit or units in the original sectional plan that are included in the subdivision or consolidation.

(5) Before registering a proposed sectional plan of sub-division or consolidation the Surveyor General shall amend the original sectional plan in accordance with the Land Survey Act.

(6) On registration of a sectional plan of subdivision or consolidation the land comprised in it shall not be dealt with by reference to units in the original sectional plan.

(7) Except as provided in this section the provisions of this Act relating to sectional plans apply with all necessary modifications to a sub-division or consolidation of units.

Cap. 59:03

Application for subdivision, etc.; of a unit 12. Where a building contains premises that are not included in a sectional plan, the owner of those premises, or a person acting on behalf of the owner, shall not sell those premises as a residential unit until the sectional plan that includes those premises is registered at a registry.

13. After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan in favour of the owner of the unit, and as appurtenant to the unit.

(a) an easement for the subjacent and lateral support of the unit by the common property, and by every other unit capable of affording support;

(b) an easement for the shelter of the unit by the common property, and by every other unit capable of affording shelter; and

(c) an easement for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services through or by means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit.

14.—(1) After the registration of a sectional plan, there is implied in respect of each unit shown on the sectional plan as against the owner of the unit, an easement, to which the unit is subject—

(a) for the subjacent and lateral support of the common property, and of every other unit capable of enjoying support;

(b) to provide shelter to the common property, and to every other unit capable of enjoying shelter; and

(c) for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services through, or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property, and also to every other unit capable of enjoying those easements.

(2) Where an easement is implied under this section, the owner of any utility service providing a service to the parcel, or to any unit on it, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service.

15.—(1) The easements or restrictions as to user implied or created by this Act or by-laws take effect, and are enforceable—

(a) without any notification on that part of the register constituting titles to the dominant or servient tenements; and

Easement or

restrictions exist without

mention

Conversion to units

Easements in favour of the owner

Easements against the owner (b) without any express indication of those tenements.

(2) The easements and restrictions referred to in subsection (1) include all ancillary rights and obligations reasonably necessary to make easements apply effectively in respect of easements implied under this Act, and the right of an owner of a dominant tenement to enter a servient tenement, and to replace, renew or restore anything the dominant tenement is entitled to benefit from.

#### PART III—ESTABLISHMENT OF ASSOCIATIONS

16.—(1) On the registration of a sectional plan there shall be constituted an Association under the name "The Owners, Sectional Plan No. ..... (the number to be specified being the number given to the plan of registration)" (in this Act otherwise referred to as an "Association").

(2) An Association shall consist of all persons who are-

(a) the owners of units in the parcel to which the sectional plan relates; or

(b) entitled to the parcel when the sectional arrangement is terminated under this Act.

(3) An Association shall have perpetual succession and a common seal.

(4) An Association shall be regulated in accordance with this Act, and subject to this Act, its by-laws.

17.—(1) The owner of the land at the time a sectional plan is registered shall, without charge, provide to an Association, not later than one hundred and eighty days from the day the sectional plan is registered, the original or a copy of the following documents—

(a) all warranties and guarantees on the movable and immovable property of the Association, and the common property for which the Association is responsible;

(b) the structural, electrical, mechanical and architectural documents required working drawings and specification, and as built drawings, which exist for the common property for which the Association is responsible;

(c) the plans that exist showing the location of underground utility services and sewer pipes;

(d) all written agreements to which the Association is a party;

(e) all certificates, approvals and permits issued by a local authority, the Government or an agent of the Government which relate to any property for which the Association is responsible.

Documents to be provided an Association

Establishment of an

Association

(2) An Association may, at any time before it receives a document under subsection (1), make a written request to the owner of the land referred to in subsection (1) for a copy of the document, and the owner shall, within twenty-one days of receiving that request, provide to the Association without charge a copy of the document if the document is in the possession of the owner.

18. Subject to this Act, an Association shall have all such powers Powers of an as are reasonably necessary to enable it to carry out the duties Association imposed on it under this Act and its by-laws:

Provided that an Association shall not have power to carry on any trading activities.

19.—(1) An Association shall be capable of suing and being sued in its corporate name and, subject to section 18, of doing anything that a body corporate may do.

(2) Without restricting the generality of subsection (1), an Association may sue for and in respect of damage or injury to the common property caused by any person, whether that person is the proprietor of a unit or not.

20.--(1) An Association shall, subject to this Act, carry out any Duties of an duty imposed on it under this Act or its bylaws.

(2) Without derogating from the generality of subsection (1), an Association shall\_

(a) insure and keep insured buildings and other improvements on the parcel against loss resulting from destruction or damage caused by fire, and such other perils as are specified in the bylaws:

(b) effect such other insurance as it is required by law to effect, or as it may consider expedient;

(c) pay the premiums in respect of any policies of insurance effected by it;

(d) do all things reasonably necessary for the enforcement of any contract of insurance entered into by it under this section;

(e) keep the common property in a state of good repair;

(f) comply with any notice or order duly served on it by any competent local authority or public body requiring repairs to, or work to be performed in respect of, the parcel or any building or improvements thereon;

(g) control, manage, and administer the common property, and do all things reasonably necessary for the enforcement of the bylaws; and

Actions by or against an Association

Association

(h) do all things reasonably necessary for the enforcement of any lease or licence under which the parcel is held.

(3) An Association shall-

(a) establish and maintain a fund for administrative expenses sufficient, in the opinion of the Association for the control, management, and administration of the common property, and for the payment of any insurance premiums, rent, and the discharge of any other obligation of the Association; and

(b) determine from time to time the amounts to be paid for the purposes aforesaid; and

(c) raise amounts so determined by levying contributions on the proprietors in proportion to the unit entitlement of their respective units.

(4) An Association may, pursuant to a resolution of the proprietors, distribute any money or personal property in its possession and surplus to its current requirements among the proprietors for the time being according to their unit entitlements.

(5) For the purposes of effecting any policy of insurance under subsection (2), an Association shall be deemed to have an insurable interest on all the buildings and other improvements on the parcel.

(6) Any policy of insurance authorized by this section and effected by an Association in respect of any buildings or other improvements on the parcel shall not be liable to be brought into contribution with any other policy, save another policy authorized by this section in respect of the same buildings or improvements.

Liability in tort

**21**.—(1) Where any proceedings are commenced in tort, or in respect of an alleged breach of any statutory duty, and it is required by law that proceedings be brought against the owner or occupier of any particular parcel or premises, the provisions of this section shall apply, notwithstanding any other written law to the contrary.

(2) For the purposes of any proceedings to which this section applies-

(a) the common property and each of the units shall be separate premises; and

(b) where the proceedings are brought in respect of the common property, an Association shall be deemed to be the owner and occupier of the common property, and any judgment which may be awarded to the plaintiff shall be entered against the Association accordingly:

Provided that, where the cause of action arose for negligence or unauthorized act or omission of one or more of the proprietors or former proprietors, an Association may join that proprietor or those proprietors as co-defendants, and judgment may be given against the Association and the proprietor or proprietors, jointly and severally.

(3) The amount of any judgment, including costs, given jointly and severally as provided in subsection (2) may be recovered as a debt by an Association from the proprietor or proprietors against whom judgment is given in an action in any Court of competent jurisdiction.

(4) Where the defendant in any proceedings to which this section applies is an Association, the proprietors of the units at the time when judgment is entered shall be deemed to have guaranteed to the plaintiff the payment by the Association of the full amount awarded by way of judgment.

(5) Where an Association in a general meeting so resolves, any sum payable by it in accordance with the provisions of this section may be paid out of any general fund established by it.

22.—(1) Any instrument evidencing any transfer, lease, grant of easement, or other dealing affecting the common property, or parcel that is to become part of the common property, may be executed by an Association, if the transfer, lease, grant, or dealing has been approved by unanimous resolution of the Association.

(2) A certificate of an Association that any approval referred to in subsection (1) has been given shall be sufficient evidence of the approval in the absence of proof to the contrary.

23.—(1) Every transfer of the whole, or any part of the common property shall, in addition to any plan that the Registrar may require to be deposited under section 3, be accompanied by a sectional plan which shall be in substitution for, and shall be deposited under the same number as, the existing sectional plan, and shall show the effect of the transfer to the satisfaction of the Registrar.

(2) Where any unit is subject to any existing registered charge, lease, or sublease, the Registrar shall not register any transfer of the whole, or any part, of the common property until there has been produced to the Registrar a consent in writing by every registered chargee, lessee, or sublessee to the release of the interest in the land comprised in the transfer; and upon registration of the transfer each such consent shall operate as a discharge of the charge, or a surrender of the lease or sublease, as to the land comprised in the transfer, as the case may be.

Dealings affecting the common property

Registration of transfers of common property (3) The Registrar shall register any transfer to which subsection (1) refers by—

(a) causing the transfer to be noted on the new unit plan and on the supplementary record sheet; and

(b) issuing in the name of the transferee a certificate of land or lease for sectional property for the land transferred free from any incidental rights existing over the land by virtue of any written law.

24.—(1) The voting rights of the owner of a unit shall be determined by the unit factor for the unit.

(2) Where an interest of the owner of a unit is subject to a registered charge, a power of voting conferred on an owner by this Act or by-laws—

(a) if a unanimous resolution is required, may not be exercised by the owner of the unit, but is exercisable by the registered chargee first entitled in priority; and

(b) in other cases, is exercisable by the chargee first entitled in priority, and may not be exercised by the owner of the unit where the chargee is present personally or by proxy.

(3) Subsection (2) does not apply unless the chargee has given written notice of the charge to an Association.

(4) An owner of the unit or chargee, as the case may be, may exercise his right to vote personally or by proxy.

25.—(1) Where an owner of a unit is incapable of voting, any powers of voting conferred by this Act, or by-laws, may be exercised—

(a) in the case of an owner who is a minor, by the guardian of his estate, or if no guardian has been appointed, by the person who is for the time being authorized by law to exercise control over that property; or

(b) in the case of an owner who is for any reason unable to exercise control over the property, by the person who is for the time being authorized by law to exercise control over that property.

(2) Where the Court, on application an Association or by an owner, is satisfied that there is no person capable, willing or reasonably available to vote in respect of a unit, the Court\_\_\_\_\_

(a) shall in cases when a unanimous resolution is required by this Act; and

Voting where owner incapable of voting (b) may, in its discretion, in any other case,

appoint such other person as the Court determines for the purpose of exercising the powers of voting under this Act or the by-laws.

(3) The Court may, when making an appointment under subsection (2), make any other order it considers necessary or expedient to give effect to the appointment.

26.—(1) An Association shall have a board of management (in this Act otherwise referred to as the "board of management") which shall be constituted as provided by the by-laws of the Association.

(2) An Association shall, within fifteen days of a person becoming or ceasing to be a member of the board of management, file at the land registry a notice, in the prescribed form, stating the name and address of that person, and the day that the person became, or ceased to be, as the case may be, a member of the board.

(3) The powers and duties of an Association shall, subject to any restriction imposed, or direction given at a general meeting of the Association, be exercised and performed by the board of the management.

(4) All acts done in good faith by a board of management are, notwithstanding that it is afterwards discovered that there was some defect in the election or appointment or continuance in office of any member of the board, as valid as if the member had been properly elected or appointed or had properly continued in office.

27. A developer who registers a sectional plan shall-

(a) within ninety days from the day that fifty percent of the residential units are sold; or

(b) within one hundred and eight days from the day that the first residential unit is sold,

whichever is sooner, convene a meeting of the Association at which a board of management shall be elected.

**28**.—(1) A board of management shall, once every year, convene an annual general meeting of the owners.

(2) An annual general meeting of the owners shall be convened by the board of management within fifteen months of the conclusion of the immediately preceding annual general meeting.

**29**.—(1) A board of management may appoint an institutional manager for the management of the units, the movable and immovable property of an Association and the common property.

Convening of meetings of an Association

Board of management

Annual meetings

Appointment of an institutional manager (2) An institutional manager shall perform such functions as may be delegated to him by the board of management.

(3) The institutional manager shall be paid such remuneration as may be specified in the by-laws.

(4) Where an institutional manager relinquishes his appointment for whatever reason the board of management shall appoint another institutional manager within twenty-one days.

(5) A local government authority, a judgment creditor of an Association for an amount of not less than K5,000,000 or any owner or person having a registered interest in or over the units comprised in a sectional plan, may apply to Court for the appointment of an institutional manager to replace an institutional manager appointed by the board of management under this section.

(6) An institutional manager appointed by the Court under subsection (5) shall hold office for a period determined by the Court; and the dismissal of an institutional manager by the Court terminates any contract between the Association and the institutional manager.

By-laws of an **30**.—(1 Association control, n and imm

**30**.—(1) An Association may make by-laws to provide for the control, management and administration of the units, the movable and immovable property of the Association and the common property.

(2) Any by-laws of an Association made pursuant to subsection (1) do not take effect until\_\_\_

(a) the Association has filed a copy thereof with the Registrar; and

(b) the Registrar has made a memorandum of the filing on the sectional plan.

(3) An Association may, by a special resolution, amend, repeal or replace any by-laws.

(4) An amendment, repeal or replacement of by-laws do not take effect until-

(a) the Association has filed a copy of it with the Registrar; and

(b) the Registrar has made a memorandum of the filing on the sectional plan.

(5) No by-laws shall operate to prohibit or restrict the alteration of a unit, or the transfer, lease or other dealing with the unit, or to destroy or modify an easement implied or created by this Act.

(6) The by-laws bind an Association and the owners to the same extent as if the by-laws had been signed and sealed by the Association and by each owner, and contained covenants on the part of each owner with every other owner and with the Association to observe and perform all the provisions of the by-laws.

(7) By-laws made by an Association under subsection (1) shall have no force or effect to the extent to which it purports to prohibit or restrict\_\_\_

(a) the keeping on a unit of a dog used as a guide by a completely blind owner, occupier or resident of the unit; or

(b) the use of a dog as a guide on a unit or common property by a completely or partially blind person.

(8) An Association is responsible for the enforcement of its bylaws.

(9) Where an owner or tenant residing in a residential unit contravenes a by-law, the Association may impose on the owner or tenant a penalty of not more than K500,000 in respect of a contravention.

31.-(1) An Association is responsible for the control, Control and management and administration of its movable and immovable property and the common property.

(2) Without derogating from the generality of subsection (1), the duties of an Association include-

(a) keeping in a state of good and serviceable repair and properly maintain the movable and immovable property of the Association and the common property;

(b) complying with notices or orders by any local authority or public authority requiring repairs to or work to be done in respect of the parcel; and

(c) paying such charges or rates as may be levied against the property.

(3) An Association may by a special resolution acquire or dispose of an interest in immovable property.

(4) An Association may recover from an owner, by an action in debt, any sum of money spent by the Association-

(a) pursuant to a by-law; or

(b) as required by a local authority or other public authority, in respect of the unit or common property that is leased to that owner under section 48.

management

(5) An Association may recover, by an action for debt, as provided in section 19 (2), any contribution levied that is due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, from the person who was the owner at the time when\_\_\_

(a) the resolution was passed; and

(b) the action was instituted, both jointly and severally.

(6) An Association shall, in relation to the contribution referred to subsection (5), on the application of an owner or a person authorized in writing by the owner, certify—

(a) the amount of any contribution of the owner;

(b) the manner in which the contribution is payable;

(c) the extent to which the contribution has been paid by the owner; and

(d) the interest owing, if any, on any unpaid balance of a contribution,

and in favour of a person dealing with that owner the certificate is conclusive proof of the matter so certified.

(7) An Association may register a caution against the title to an owner's unit for the amount of a contribution levied on the owner but unpaid by him.

(8) On the registration of the caution under subsection (7) the Association has a charge against the unit equal to the unpaid contribution.

(9) A charge under subsection (7) has the same priority from the date of registration of the caution as a charge under the Registered Land Act.

(10) Where an Association has registered a caution under subsection (7), the Association shall, on the payment to it of the amount of the unpaid contribution, withdraw the caution.

(11) An Association may delegate any or all of its functions under this section to an institutional manager, and shall provide such assistance as is necessary to the institutional manager to perform such delegated functions.

Interest on outstanding account

Cap. 58:04

32. An Association may, if permitted to do so by the by-laws, charge interest at a rate to be set out in the by-laws on any unpaid balance of a contribution owing to it by an owner.

**33**. Where any interest referred to in section 32, or a deposit R referred to in section 48 (3), is owing by an owner to an Association, m the Association may, in addition to any rights of recovery that the Association has in law, recover that amount in the same manner as the recovery of a contribution under section 31.

34. Where an Association registers a caution against the title to a unit under section 31 (7), an Association may recover from the owner of the unit the cost incurred in preparing and registering the caution and in discharging the caution.

**35.** An Association may invest any funds not immediately required by it only in those investments in which a trustee may invest under the Trustee Act.

36.—(1) An Association or institutional manager shall, on the written request of an owner, a purchaser or chargee of a unit, within twenty-one days of receiving the request, provide the person making the request, any of the following information as requested by that person—

(a) a statement setting forth the amount of any contribution due and payable in respect of a unit;

(b) the particulars of \_\_\_\_\_

(i) any action commenced against, and served on, the Association;

(ii) any unsatisfied judgment or order for which the Association is liable; and

(iii) a written demand made on the Association for an amount in excess of K500,000 that, if not met, may result in an action being brought against the Association;

(c) the particulars of, or a copy of, any subsisting recreational agreement;

(d) the particulars of or a copy of any subsisting management agreement;

(e) a copy of the budget of the Association;

(f) a copy of the financial statement of the Association;

(g) a copy of the by-laws of the Association; and

(h) a copy of any minutes of proceedings of a general meeting of the Association or of the board of management.

(2) Where a request is made under subsection (1) and the Association or institutional manager fails to comply with the request, the aggrieved person may seek an order of the Court that the Association or the institutional manager, as the case may be, comply with such request.

Recovery of money owing

Recovery of costs

Investments

Cap. 5:02

Information on request (3) Where an aggrieved person commences proceedings pursuant to subsection (2), a Court may make an order against the Association or the institutional manager, as the case may be, that it comply with subsection (1), and the Court may also—

(a) award a penalty against the Association or the institutional manager of a sum not exceeding K100,000 per day for each day exceeding twenty-one days after a request was properly made under subsection (1); and

(b) make such award as to costs as seems appropriate in the circumstances.

**37**.—(1) Where a sectional plan has not been registered prior to the sale of any units, the developer—

(a) shall place insurance on the units, and the common property against\_\_\_\_

(i) loss resulting from destruction or damage caused by fire, and such other perils as are specified in the by-laws; and

(ii) damages awarded against the developer, the owner of a unit or the Association in an action for occupier's liability; and

(b) may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws; and for that purpose, the developer has an insurable interest in the units and the common property.

(2) Upon the registration of the sectional plan, the insurable interest in the units and the common property passes to the Association, and if no insurance on the units and common property has been effected under subsection (1), the Association—

(a) shall place insurance on the units and the common property against\_\_\_\_

(i) loss resulting from destruction or damage caused by fire, and such other perils as are specified in the by-laws; and

(ii) damages awarded against the owner of a unit or the body corporate in an action for occupier's liability; and

(b) may place insurance on the units and the common property or either of them against additional perils other than those specified in the Act or the by-laws.

(3) An Association shall, subject to subsection (4), maintain such insurance on the units and common property as has been placed under subsections (1) or (2).

Insurance

(4) Upon the appointment of an institutional manager as provided under this Act, the duty to maintain insurance under the terms of subsection (3) devolves upon the institutional manager.

(5) In complying with subsections (1) or (2) the developer or an Association, as the case may be, must place insurance which provides that upon\_\_\_\_

(a) the insured property being destroyed or damaged; and

(b) that property being replaced or repaired,

no deduction shall be made from the settlement for depreciation of the property.

(6) Where insurance has been placed under subsection (1) (b) or (2) (b), such insurance may be continued by an Association unless it is prohibited from doing so by a resolution passed at a properly convened meeting of the Association.

(7) Any payment by an insurer under a policy of insurance for destruction of or damage to a unit or the common property shall, notwithstanding the terms of the policy\_\_\_\_

(a) be paid to the insurance trustee designated in the by-laws, or where the by-laws do not designate an insurance trustee, to the Association; and

(b) subject to sections 54 (3), be used forthwith, for the repair or replacement of the insured property which was destroyed or damaged.

(8) Notwithstanding the Insurance Act, or any other policy of Cap. 47:01 insurance, where insurance is placed by both a developer or an Association, and an owner against the loss resulting from destruction of or damage to the units or the common property\_\_\_\_

(a) the insurance placed by the developer or the Association is deemed to be first loss insurance; and

(b) the insurance placed by the owner of the unit in respect of the same property which is insured by the developer or the Association is deemed to be excess insurance.

(9) A developer, an Association or institutional manager that fails to comply with this section commits an offence, and shall, upon conviction, be liable to a fine of K10,000,000, and to imprisonment for five years.

**38**. An Association or an institutional manager shall, within twenty-one days of receiving a request in writing from an owner or a person authorized in writing by an owner, or the chargee of a unit, provide to the person making the request, subject to the payment of

Copies of insurance policies such fee as is prescribed in the by-laws, copies of the policies of insurance placed by the developer or the Association.

Disposition of common property **39**.—(1) An Association may, by a unanimous resolution, transfer or lease the common property or any part thereof, or may grant an easement on the whole or part of the common property:

Provided that no part of the common property may be transferred or leased, where such part of the common property is used for personal access to one or more units.

(2) Where the board of management is satisfied that the unanimous resolution was properly passed and that all persons having registered interests in the parcel and all other persons having interests, other than statutory interests, notified to an Association have—

(a) in the case of either a transfer, consented in writing to the release of those interests in respect of the land comprised in the proposed transfer; or

(b) in the case of a lease, approved in writing of the execution of the proposed lease,

the Association shall execute the appropriate transfer or lease.

(3) A transfer or lease executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the common property, and the receipt of an Association of the purchase money, rent, premiums or other money payable to the Association under the terms of the transfer or lease is a sufficient discharge of, and exonerates the persons taking under the transfer or the lease from, any responsibility for the application of the money expressed to have been so received.

(4) The Registrar shall not register a transfer or lease authorized under this section unless it has endorsed on it, or is accompanied by a certificate of an Association stating that -

(a) the unanimous resolution was properly passed;

(b) the transfer or lease conforms with the terms of it; and

(c) all necessary consents were given.

(5) The certificate referred to in subsection (4) is\_\_\_\_

(a) in favour of a purchaser or lessee of the common property, or party to it; and

(b) in favour of the Registrar,

conclusive proof of the facts stated in the certificate.

(6) On the filing for registration of a transfer or lease of common property, the Registrar shall register the transfer or lease in accordance with the Registered Land Act.

**40**. An Association may, if its by-laws permit it to do so, grant a lease to an owner of a residential unit permitting that owner to exercise exclusive possession in respect of an area or areas of the common property.

**41.** An Association may, by a unanimous resolution, accept, on c behalf of the owners, a grant of easement or a restrictive covenant benefiting a parcel.

**42**.—(1) An Association may, by a unanimous resolution, execute, on behalf of the owners, a grant of easement or a restrictive covenant on the parcel.

(2) Where a board of management is satisfied that a unanimous resolution was properly passed and that all persons having interests in the parcel and all other persons having interests, other than statutory interests, that have been notified to an Association, have consented in writing to the release of those interests in respect of the land comprised in the proposed disposition, the Association shall execute the appropriate instrument to grant the easement or restrictive covenant.

(3) An instrument granting an easement or restrictive covenant executed in accordance with subsection (2) is valid and effective without execution by any person having an interest in the parcel, and the receipt of an Association of any moneys payable to the Association under the terms of the grant of easement or restrictive covenant is a sufficient discharge of, and exonerates all persons taking under the instrument from, any responsibility for the application of the moneys expressed to have been so received.

(4) The Registrar shall not register an instrument granting an easement or restrictive covenant authorized under this section unless it has endorsed on it, or is accompanied by, a certificate of an Association stating that the unanimous resolution was properly passed, and that all necessary consents were given.

(5) The certificate referred to in subsection (4) in favour of a person dealing with an Association under this section shall be conclusive proof of the facts stated in the certificate.

(6) The Registrar shall register the instrument granting the easement or restrictive covenant by noting it on the sectional plan in the prescribed manner.

Cap. 58:04

Exclusive use areas

Covenants benefiting parcel

Procedure for granting restrictive covenant PART IV-SALE AND RENTAL OF UNITS

Sale of a unit

43.—(1) A developer shall not sell or agree to sell a unit or proposed unit, unless there has been delivered to a purchaser a copy of—

(a) the proposed purchase agreement;

(b) the by-laws or proposed by-laws;

(c) any management agreement, or proposed management agreement;

(d) any recreational agreement or proposed recreational agreement;

(e) if the parcel on which the unit is located is held under a lease, the lease of the parcel;

(f) the certificate of sectional property in respect of the unit, or proposed unit, which has been, or will be, issued under section 4 (1)(c);

(g) any charge that affects, or proposed charge that will affect, the title to the unit or proposed unit or, in respect of that charge or proposed charge a notice prescribed under subsection (2); and

(h) the sectional plan or proposed sectional plan.

(2) A developer shall deliver to the purchaser in respect of a charge, or proposed charge, a written notice stating\_\_\_\_\_

(a) the maximum principal amount available under the charge;

(b) the maximum monthly payment that may be paid under the charge;

(c) the amortization;

(d) the term of the charge;

(e) the interest rate or the formula, if any, for determining the interest rate; and

(f) the pre-payment privileges, if any.

(3) Subject to subsection (4), a purchaser under this section may, without incurring any liability for doing so, rescind the purchase agreement within ten days from the date the purchase agreement was executed by the parties.

(4) A purchaser may not rescind the purchase agreement under subsection (3) if all the documents required to be delivered to the purchaser under subsection (2) have been delivered to the purchaser not less than ten days prior to the execution of the purchase agreement by the parties. (5) Where a purchase agreement is rescinded under subsection (3), the developer shall, within ten days from the receipt of a written notice of the rescission by the purchaser, return to the purchaser all of the money paid in respect of the purchase of the unit.

(6) A purchaser shall not resell a unit until the property is fully developed, and a certificate of occupation is issued.

44. A developer who enters into a purchase agreement shall include in the agreement the following-

(a) a notification that is at least as prominent as the rest of the contents of the agreement, and that is printed in red ink on the outside front cover or on the first page of the agreement stating as follows—

"The purchaser may, without incurring any liability for doing so, rescind this agreement within ten days of its execution by the parties to it, unless all of the documents required to be delivered to the purchaser under section 43 have been delivered to the purchaser not less than ten days prior to the execution of this agreement by the parties to it."

(b) a description, drawing or photograph showing-

(i) the interior finishing of all major improvements to the common property located within a building;

(ii) the recreational facilities, equipment and other amenities to be used by the person residing in the residential units;

(iii) the equipment to be used for the maintenance of the common property;

(iv) the location of roadways, walkways, fences, paving areas and recreational facilities;

(v) the landscaping; and

(vi) the exterior finishing of the building as it will exist when the developer has fulfilled his obligations under the agreement;

(c) the amount or estimated amount of the monthly unit contributions in respect of a residential unit; and

(d) the unit factor of the unit, and the basis of unit factor apportionment for all units comprised in the sectional plan.

45.—(1) A developer, or a person acting on behalf of the developer, shall hold in trust all the money paid by a purchaser under a purchase agreement, other than rents, security deposits or mortgage advances, and—

(a) if the improvements to the unit and the common property are substantially completed, the money may be paid to the developer on delivery of the title documents to the purchaser; or

Contents of purchase agreement

Payment held in trust (b) if the improvements to the unit are substantially completed, but the improvements to the common property are not substantially completed...

(i) not more than fifty percent of that money less the interest earned on it may be paid to the developer on delivery of the title document to the purchaser; and

(ii) on the improvements to the common property being substantially completed, the balance of that money, and all the interest earned on the total amount held in trust in respect of that purchase agreement, may be paid to the developer.

(2) The developer, or a person acting on behalf of the developer, who receives money that is to be held in trust under subsection (1), shall forthwith deposit the money into an interest earning trust account maintained in a financial institution licensed under the Banking Act.

(3) Where money is being held in trust under subsection (1), and the purchaser of the unit takes possession of, or occupies the unit prior to receiving the title document, the interest earned on that money from the day the purchaser takes possession or occupies the unit to the day the purchaser receives the title document shall be applied against the purchase price of the unit.

(4) Subject to section (3), the developer is entitled to the interest earned on money held in trust under this section.

(5) For the purposes of this section, improvements to the unit or the common property, as the case may be, are deemed to be substantially completed when the improvements are ready for use or are being used for the purpose intended.

(6) The provisions of this section shall not apply if the purchaser does not perform the obligations of the purchaser under the purchase agreement.

46. Where a purchaser of a unit prior to receiving title to the unit, rents that unit from the developer, the amount that the developer may charge the purchaser as a security deposit in respect of the unit shall not exceed one month's rent charged for the unit.

47.—(1) Subject to subsection (2), an Association may, notwithstanding anything contained in a developer's management agreement or a collateral agreement, terminate a developer's management agreement at any time after its board of management is comprised of persons who were elected to the board after the majority of the units were owned by persons other than a developer.

(2) A developer's management agreement-

Limit on security deposit

Developer's management agreements

Cap. 44:01

(a) may not be terminated under subsection (1) without reasonable cause until two years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date; and

(b) may only be terminated under subsection (1) on an Association giving sixty days' written notice to the developer of its intention to terminate the agreement, and the Association is not liable to the developer by reason only of the agreement being terminated under this section.

(3) For purposes this section "developer's management agreement" means a management agreement that was entered into by an Association at time when its board of management was comprised of persons who were elected to the board while the majority of units were owned by a developer.

48.-(1) An owner of a residential unit shall not rent out the unit Rental of without giving an Association written notice of intention to rent out the unit, setting forth\_\_\_

residential units

(a) the address at which the owner may be served with a notice given by the Association under section 49 or an order referred to in section 50; and

(b) the amount of rent to be charged for the unit.

(2) Where the owner of a residential unit rents [out] the unit, it shall be a condition of that tenancy that, notwithstanding anything in the tenancy agreement, the persons residing in the unit shall not -

(a) cause damage to the movable or immovable property of an Association or the common property; or

(b) contravene the by-laws.

(3) An Association may require an owner who rents out a residential unit to pay to, and maintain with the Association, a deposit, not exceeding one month's rent, that the Association may

(a) the repair or replacement of the movable and immovable property of the Association, or of the common property; and

(b) the maintenance, repair or replacement of any common property that is subject to a lease granted to the owner of the unit under section 39.

that is damaged, destroyed, lost or removed, as the case may be, by a person residing in the rented unit.

(4) Where owner of a residential unit rents out the unit, the owner shall, within twenty-one days from the commencement of the tenancy, give an Association written notice of the name of the tenant residing in the unit.

(5) Where the owner of a residential unit ceases to rent [out] the unit, the owner shall, within twenty-one days of ceasing to rent his unit, give an Association written notice that the unit is no longer rented out.

(6) An Association shall, within twenty-one days of receiving a written notice under subsection (5)—

(a) return to the owner the deposit referred to in subsection (3);

(b) if the Association has made use of the deposit for one or more of the purposes referred to under subsection (3), deliver to the owner—

(i) a statement of account showing the amount used; and

(ii) the balance of the deposit not used, if any; or

(c) if the Association is entitled to make use of the deposit, deliver to the owner an estimated statement of account showing the amount it intends to use, and within sixty days after delivering to the owner the estimated statement of account, deliver to the owner...

(i) a final statement of account showing the amount used; and

(ii) the balance of the deposit not used, if any.

49.—(1) An Association may give a tenant renting a residential unit notice to give up possession of that unit, if the tenant residing in the unit.—

(a) causes damage, other than normal wear and tear, to the movable or immovable property of the Association or to the common property; or

(b) contravenes a by-law.

(2) Where an Association gives a tenant a notice under subsection (1)—

(a) the tenant shall give up possession of the residential unit; and

(b) notwithstanding any written law or anything contained in the tenancy agreement between the tenant and the landlord, the tenancy agreement terminates on the last day of the month immediately following the month in which the notice is served on the tenant.

(3) A notice given under subsection (1) shall be served on the tenant and the landlord.

Application for order to give up possession **50**.—(1) Where a tenant is given notice under section 49 (1) to give up residential unit and does not give up possession, an Association or the landlord, as the case may be, may make an application to the Court for an order requiring the tenant to give up possession of the unit.

(2) The application to the Court under subsection (1) shall be supported by an affidavit—

(a) indicating service of the notice under section 49 to give up possession;

(b) stating the reasons for giving the tenant a notice to give up possession;

(c) stating the failure of the tenant to give up possession and the reasons given, if any, for that failure; and

(d) stating any other relevant facts.

(3) The Court may, on hearing an application made under this section, order the tenant to give up possession of the residential unit by a date specified in the order, and may make any other order that it considers proper in the circumstances.

(4) Where an Association is granted an order under subsection (3), it shall serve a copy of that order on the tenant and the landlord.

(4) Where a landlord is granted an order under subsection (3), it shall serve a copy of that order on the tenant.

## PART V—TERMINATION OF SECTIONAL TITLE AND SECTIONAL PROPERTY STATUS

**51**. The owners of a sectional title of a building may terminate their sectional title by a unanimous resolution.

**52**.—(1) Where, in accordance with section 51, the sectional title of a building is terminated, the sectional property status of a building shall be terminated by a unanimous resolution of the owners.

(2) Where the sectional property status of a building is not terminated in accordance with subsection (1), an Association, an owner, a registered chargee of a unit or a purchaser under an agreement for sale of a unit, may make an application to the Court for the termination of the sectional status of a building.

(3) The Court may, on an application under subsection (2), terminate the sectional property status of the building, if the Court is satisfied that having regard to the rights and interests of the owners as a whole, or the registered chargee or purchaser under agreement for sale of units, it is just and equitable to do so.

(4) Where the sectional property status of a building is terminated pursuant to subsection (3), the Court may, by order, impose any conditions and give any directions, including directions for the payment of money, that the Court thinks fit for the purpose of adjusting, as between an Association and the owners, and as

Termination of sectional title

Termination of sectional property status amongst the owners themselves, the effect of terminating the sectional property status of the building.

(5) Where an application to terminate the sectional property status of a building is made under subsection (3), an insurer who has effected insurance on the building, or a part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or by a legal practitioner.

**53**.—(1) Where the sectional property status of the building is terminated under section 52, an Association shall forthwith file with the Registrar a notice of the termination in the prescribed form.

(2) The Registrar shall, on the receipt of a notice referred to in subsection (1), make a notification in respect of the notice on the sectional plan in the prescribed manner, and on the notification being made, the owners of the units in the plan are entitled to the parcel as tenants in common in shares proportional to the unit factors of their respective units.

54.—(1) Where a building is damaged but the sectional property status is not terminated pursuant to section 52 or 55, an Association, an owner, a registered chargee of a unit or a purchaser under an agreement for sale of a unit may make an application to the Court to settle a scheme in accordance with subsection (2).

(2) Where on an application is made under subsection (1), the Court may, by order settle a scheme, including provisions for-

(a) the reinstatement in whole or in part of the building; and

(b) the transfer of the interests of owners of units that have been wholly or partially destroyed to the other owners in proportion to their unit factors.

(3) The Court may, in the exercise of the powers conferred by subsection (2), make such further orders as it considers necessary or expedient for giving effect to the scheme, including orders—

(a) directing the application of insurance money received by an Association in respect of damage to the building;

(b) directing payment of money by an Association or by the owners or by one or more of them;

(c) directing such amendment of the sectional plan, as the Court thinks fit, so as to include in the common property any accretion to the property; and

(d) imposing any terms and conditions as the Court thinks fit.

Effect of termination of sectional property status

Settlement of scheme No. 27

(4) Where an application to settle a scheme is made under subsection (2), an insurer who has effected insurance on the building, or any part of it, being insurance against destruction of units or damage to the building, has the right to appear in person or by agent or a legal practitioner.

**55**.—(1) Where the sectional property status of a building is Transfer of terminated an Association may, by a unanimous resolution, transfer property the parcel or any part of it.

(2) When the board of management is satisfied that the unanimous resolution was properly passed, and that\_\_\_\_\_

(a) all persons having registered interests in the parcel; and

(b) all other persons having interests, other than statutory interests, which have been notified to the Association, have consented in writing to the release of the interests in respect of the land comprised in the proposed disposition,

the Association shall execute the appropriate transfer.

(3) A transfer executed pursuant to subsection (2) is valid and effective, without execution by any person having an interest in the parcel, and the receipt of an Association of the purchase money or other moneys payable to the Association under terms of the transfer is sufficient discharge of, and exonerates the person taking under the transfer from, any responsibility for the application of the money expressed to have been received.

(4) The Registrar shall not register a transfer executed pursuant to this section—

(a) unless the transferor has endorsed on it, or is accompanied by, a certificate under the seal of the Association that the unanimous resolution was properly passed, and that all necessary consents were given; and

(b) until the notification required by section 23 has been made on the sectional plan.

(5) A certificate issued pursuant to subsection (4)-

(a) in favour of a purchaser of the parcel; and

(b) in favour of the Registrar,

is conclusive proof of the facts stated in the certificate.

(6) Where a parcel is transferred by an Association pursuant to this section, the Registrar—

(a) shall close the registers relating to the units, and reopen the register closed under section 4(1); and

(b) shall register the transfer.

Dissolution of an Association **56**.—(1) An Association may be dissolved by unanimous resolution of the owners.

(2) The Court may, on an application by an Association, a member of the Association, or an institutional manager-

(a) order the winding up of the affairs of an Association; and

(b) by the same or subsequent order, declare an Association dissolved on a date specified in the order.

## PART VI-MISCELLANEOUS

Copies of sectional plan to assessing authority

57.—(1) An Association shall, within twenty-eight days after the registration of a sectional plan or an amendment thereto, furnish to the local government authority two copies of the sectional plan or an amendment thereto, and all certified endorsements thereon, as prescribed by the regulations.

(2) For all purposes in relation to the making, levying, imposition, assessment or recovery of rates, charges or taxes in relation to a parcel or a part of it—

(a) the particulars shown on the certified copy of the sectional plan or any amendment thereto furnished pursuant to subsection (1) are conclusive proof of those particulars; and

(b) the production by an assessing authority of what purports to be a certified copy of a sectional plan or an amendment thereto furnished pursuant to subsection (1) is prima-facie proof that it is a certified copy so furnished.

(3) An Association that fails to comply with subsection (1), commits an offence and shall, on conviction, be liable to—

(a) a fine of K5,000,000; and

(b) where the offence continues, a fine of K100,000 for each day the Association fails to comply.

Assessment 58. For the purposes of assessment of rates by a local government authority—

(a) each unit and the share in the common property appurtenant to it constitutes a separate parcel of land and improvements; and

(b) the common property does not constitute a separate parcel of land or improvements.

59.-(1) An application to the Court under this Act shall be-

Applications to Court

(a) by petition; and

(b) served on the persons whom the Court directs.

(2) The Court may direct the trial of an issue, and may give any directions as to all matters, including filing of pleadings, that appear necessary and proper for the final hearing of the application.

(3) The Court may, from time to time, vary any order made under this section.

60. Where a local government authority or public authority, or a person authorized by either of them, has a statutory power to enter on a parcel or any part of a parcel, the authority or person authorized by the authority is entitled to enter on a parcel or any other part of the parcel to the extent necessary or expedient to enable the authority or authorized person to exercise a statutory power.

61.-(1) Any document, including any written notice or request, Service of required to be served on an Association under this Act may be notices served on the Association-

(a) by leaving it at or by sending it by registered post-

(i) to the address shown on the sectional plan; or

(ii) if a change of address for service has been filed under section 63 (2), to the address for service shown on the latest notice filed: or

(b) by personal service on a member of the board of management.

(2) For the purposes of this section "document" includes a summons, notice, tax notice, order and other legal process.

62.-(1) Any notice required to be served by an Association on Service of an owner of a residential unit under this Act may be served by personal service at, or by registered post sent to, the address given to the Association under section 48.

documents and notice

(2) Any notice required to be served by an Association on a tenant under this Act may be serve\_\_\_

(a) by personal service; or

(b) if the tenant cannot be served personally by reason of his absence from the premises or by reason of his evading service-

(i) by giving it to an adult person who is residing with the tenant:

(ii) by posting it up in a conspicuous place on some part of the premises; or

(iii) by sending it by registered post to the tenant at the address where he resides.

63.-(1) An Association may by resolution of the board of Change of address for management change its address for service. service

Right of entry

|                         | (2) A change in the address for service referred to in subsection<br>(1) does not take effect until a notice of the change of address, in the<br>prescribed form, is filed with the Registrar. |
|-------------------------|--|
| Fees for<br>documents   | 64. An Association may charge any person a reasonable fee to compensate it for the expenses it incurs in producing and providing a document required under this Act.                           |
| Writ of<br>execution    | 65. If a judgment is obtained against an Association, a writ of execution in respect of the judgment may be registered against the sectional plan.   |
| Offences and<br>penalty | 66.—Any person who fails to comply with any provision of this Act for which no penalty has been prescribed commits an offence and shall, on conviction, liable to—                             |
|                         | (a) in case of an individual, a fine of K5,000,000, and to imprisonment of two years; or   |
|                         | (b) in the case of body corporate or partnership, to a fine of $K10,000,000$ .   |
| Waiver<br>release, etc. | 67.—(1) This Act applies notwithstanding any agreement to the contrary and any waiver or release given of the rights, benefits or protections provided by or under this Act shall be void.     |
|                         | (2) A remedy that a purchaser of a residential unit has under this Act is in addition to any other rights or remedies that the purchaser has at law.   |
|                         | (3) A purchase agreement may be enforced by a purchaser notwithstanding that the developer failed to comply with this Act.   |
| Regulations             | <b>68</b> .—(1) The Minister may make regulations for the better carrying out into effect of the provisions of this Act.   |
|                         | (2) Without derogation from the generality of subsection (1), the Minister may make regulations—   |
|                         | (a) in respect of forms to be used for the purposes of this Act including the form of certificates of title to units;  |
|                         | (b) respecting the manner of registering sectional plans;  |
|                         | (c) prescribing the fees to be paid for any process, procedure or function required or permitted to be done under this Act;  |

(d) prescribing the form of by-laws that may be adopted by an Association; and

(e) concerning all matters that by this Act are required or be permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act. (3) Notwithstanding the provisions of section 21 (e) of the General Interpretation Act, regulations made under subsection (1) may provide for offences the contravention of which may impose a penalty of—

(a) in case of an individual, to a fine of K1,000,000, and imprisonment of twelve months; or

(b) in the case of body corporate, a fine of K5,000,000.

Passed in Parliament this sixteenth day of September, two thousand and twenty-four.

FIONA KALEMBA Clerk of Parliament

## (Published 8th November, 2024)

### Act

## No. 28 of 2024

#### I assent

# DR. LAZARUS MCCARTHY CHAKWERA PRESIDENT 4th November, 2024

# ARRANGEMENT OF SECTIONS

#### SECTION

## PART I\_PRELIMINARY

- 1. Short title and commencement
- 2. Interpretation
- 3. Practice of real estate business
- 4. Exempted real estate transactions

## PART II\_ADMINSITRATION

- 5. Commissioner for Estate Management
- 6. Powers and functions of the Commissioner
- 7. Appointment of Government real estate managers and authorized real estate managers

# PART III-REAL ESTATE MANAGEMENT COUNCIL

- 8. Establishment of the Real Estate Management Council
- 9. Powers and functions of the Council
- 10. Composition of the Council
- 11. Tenure of office and vacancies
- 12. Meetings of the Council
- 13. Committees of the Council
- 14. Allowances and expenses
- 15. Appointment of Chief Executive Officer
- 16. Removal of Chief Executive Officer
- 17. Appointment of other staff

#### SECTION

- 18. Oath of secrecy
- 19. Disclosure of interest
- 20. Protection from liability
- 21. Common seal
- 22. Annual reports

# PART IV-FUNDS AND PROPERTY OF THE COUNCIL

- 23. Sources of funding for the Council
- 24. Accounts and audit

PART V—REGISTRATION AND LICENSING OF REAL ESTATE AGENCY AND REAL ESTATE MANAGEMENT PRACTICE, AND REGISTRATION OF REAL ESTATE DEVELOPMENT PRACTICE

- 25. Requirement for registration and licence to practice as real estate agent or real estate manager
- 26. Qualifications for registration as a real estate agent or real estate manager
- 27. Application for a licence
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- Place of business of licensed real estate agent, real estate managers and real estate developers
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### 3

## SECTION

- 45. Other records to be kept
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# PART VI-DISPUTE RESOLUTION

- 47. Appeals Committee
- 48. Powers of the Appeals Committee
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## PART VII-MISCELLANEOUS

- 54. Code of ethics
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- 57. Offences
- 58. Regulations
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## An Act to provide for the regulation of practice of real estate agents, real estate developers and real estate transactions, to provide for the establishment of the Real Estate Agency Council, and to provide for matters incidental thereto or connected therewith

ENACTED by the Parliament of Malawi as follows-

## PART I-PRELIMINARY

1.—This Act may be cited as the Real Estate Management Act, Show 2024, and shall come into operation on such date as the Minister may appoint by notice published in the *Gazette*.

Short title and commencement

Interpretation

2.- In this Act unless the context otherwise requires-

"Chief Executive Officer" means the Chief Executive officer of the Council appointed under section 15; "Commissioner" means the Commissioner for Estate Management appointed under section 5;

"connected contract", in relation to any land, means any one of two or more contracts which provides for disposition of the land or for building thereon or for matters ancillary to such disposition or building on terms, either expressed or implied, whereby the completion of any such contract is conditional upon completion of any other such contract;

"Council" means the Real Estate Agency Council established under section 8;

"development" means the carrying out of building, engineering, or other operations in, on, over or under any land, or the making of any material change in its use or in the use of any buildings or other land, for the purpose of disposal of such land or any part thereof in a development scheme;

"development scheme" means a scheme, or intended scheme, for the development of land, the subdivision or proposed subdivision of which is subject to the Physical Planning Act;

"estate" means an estate or interest in land, and includes the improvement on the estate or interest in land;

"Financial Intelligence Authority" means the Financial Intelligence Authority established under the Financial Crimes Act;

Cap. 57:01 "land" has the meaning ascribed to it under the Land Act;

"Malawi Revenue Authority" means the body established under the Malawi Revenue Authority Act;

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

"the practice of real estate business" has the meaning ascribed to that expression in section 3.

"prepayment contract" means any contract under which at the time of entering into the contract, or any connected contract, there are to be performed by one party for the benefit of the other party, or for the benefit of a party to a connected contract, obligations, expressed or implied, with regard to—

(a) the building of roads, or the carrying out of engineering or other operations in on, over or under any land the subject of the contract or any connected contract; or

Cap. 39:07

Cap. 7:07

Cap. 23:01

(b) the carrying out of any building operations, including, the construction or completion of any house, townhouse, or apartment in a condominium building, and of the structures or works for the use in connection therewith upon any such land, and under which moneys are payable by the party to benefit from the performance and discharge of such obligations prior to the performance and discharge thereof;

"real estate agent" means a person who performs any act or engages in any transaction which results or is intended to result in the sale, exchange, purchase, renting or leasing of real estate or in a loan secured or to be secured by mortgage or other encumbrance on real estate, and includes a real estate auctioneer;

"real estate developer' means a person who carries on, whether in whole or in part, the business of real property development;

"real estate manager" means a person who oversees the maintenance, security, facility management, rental income, payment of fees and taxes of real property; and

"real property" means land or interest in land including any lease issued under the Land Act or the Customary Land Act.

3.—Subject to section 4, for the purpose of this Act, a person engages in the practice of real estate business if, on behalf of another person, for compensation or valuable consideration directly or indirectly paid or expressly or impliedly promised, or with intent to collect or receive compensation or valuable consideration therefor, the person—

(a) appraises, auctions, sells, exchanges, buys, leases or rents or offers, attempts or agrees to appraise, auction or negotiate the sale, exchange, purchase, lease or rental of, any land, or otherwise acts as a broker in relation to any land;

(b) advertises or holds out to the public by any oral, printed or online representation that the person is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting, land;

(c) manages land or engages in any other business concerned with the management of land, either in a consultative capacity or as an agent;

(d) takes any part in procuring of sellers, purchasers, lessors, lessees, landlords or tenants of land; or

(e) directs or assists in procuring of prospects, or the negotiation or closing of any real estate transaction which results in a sale, exchange, lease, lease or rental of land of another or is calculated to have that result.

Cap. 39:07 Cap. 59:01

Practice of real estate business Exempted real estate transactions 4. This Act does not apply to a real estate transaction in which a person—

> (a) acts personally, or an employee acts on behalf of the employer in the regular course of employment, to acquire, lease or rent real estate for the use or investment of that person or employer;

> (b) acts as an attorney for another under a valid power of attorney for the purposes of negotiating or executing contracts, transfers or conveyance in respect of interest in real estate;

> (c) being a person practising as a legal practitioner, furnishes to any person legal advice and services ancillary thereto, in connection with real estate business within the scope of the profession of such person as such, or within such narrower limits as may be prescribed by regulations under this Act;

> (d) negotiates a loan secured or to be secured by a mortgage or other encumbrance on real estate for that person or employer;

(e) acts as a licensed auctioneer of movable property;

(f) buys, sells or otherwise deals in any stock, mortgage or any other security, or certificate of beneficial interest in any trust;

(g) as a public officer or an employee, performs the official duties of that public office or employee;

(h) as a receiver, a trustee in bankruptcy, executor, administrator, guardian or conservator is performing the function of that person;

(i) sells real estate under an order of a court;

(*j*) as a trustee, acts under a written instrument of trust, or deed or declaration of trust, or will, or a regular employee of a trustee, acts in the course of the employment; and

(k) as a financial institution licensed under the Financial Services Act, lawfully engages in business, or a regular employee of such financial institution acts in the course of the employment, or acting in the capacity of a fiduciary, is—

(i) acting for itself in negotiating a loan secured or to be secured by a mortgage, or other encumbrance on real estate;

(ii) acting for itself with reference to real estate owned, mortgaged, leased or rented, by or to it or which it seeks to acquire, lease or rent for its own use; or

(iii) a credit union that operates under any written law and undertakes the transaction or the regular employees of that credit union act in the course of the employment.

Cap. 7:07

# PART II\_ADMINSITRATION

5.—(1) There shall be a Commissioner for Estate Mmanagement (in this Act otherwise referred to as the "Commissioner") who shall be a public officer, and shall be responsible for advising the Minister on all matters in relation to real estate management and activities.

(2) A person shall not be qualified to be appointed Commissioner under this Act unless that person-

(a) holds a minimum of a Bachelors' degree in real estate or land management from a university or institution recognized or accredited by the National Council for Higher Education, or an equivalent qualification;

(b) is registered and licensed under this Act; and

(c) has practiced for not less than ten years' as a registered licensed real estate manager.

6.--(1) Subject to special and general written direction of the Powers and Minister, the Commissioner shall be responsible for-

(a) advising the Minister on real estate management and real Commissioestate agency matters;

(b) the development of land in terms of the provision of basic infrastructure, including access roads, electricity, water, street lights and fibre cables;

(c) the issuance of ground rent invoices and maintenance of ground rent database;

(d) preparing and maintaining a record of Government buildings:

(e) calling for bi-annual returns, in the prescribed form, from registered and licensed real estate agents and real estate managers on their work.

(f) preparing and submitting to the Minister quarterly reports on real estate activities;

(g) managing complaints arising out of real estate transactions; and

(h) performing any other functions as may be assigned by the Minister

(2) In performing functions under subsection (1) the Commissioner shall have power to-

(a) appoint, recommend or approve authorized Government real estate managers for assignments as may be required;

(b) recommend to the Council disciplinary measures to be taken against any Government estate manager; and

Commissioner for Estate Management

functions of ner

(c) impose fees for accessing information from the data bank.

(3) The Commissioner shall perform functions and exercise powers under this Act in a manner which—

 (a) promotes transparency and public confidence in real estate practice;

(b) does not allow any other interest to compromise or in any other way jeopardise the integrity of the real estate practice; and

(c) manifests fairness and impartiality without due regard to one's social or economic status.

7.—(1) There shall be such number of Government real estate managers appointed in the public service, who shall be subordinate to and assist the Commissioner in the performance of the functions of the Commissioner under this Act as shall be determined by the Minister.

(2) Government real estate managers shall undertake estate management of Government property in Government departments or entities as may be required from time to time.

(3) Government real estate managers shall undertake estate management under the supervision of the Commissioner.

(4) The Commissioner may appoint any registered and licensed real estate manager to be an authorized real estate manager to undertake real estate management functions, as may be directed by the Commissioner.

(5) A person shall not be qualified to be appointed a Government real estate manager under subsection (1), or an authorized real estate manager under subsection (4) unless that person—

(a) holds a minimum of a Bachelors' degree in real estate or land management from a recognized institution or equivalent qualification; and

(b) is registered and licensed under this Act.

(6) The names of all Government real estate managers and authorized real estate managers appointed pursuant to this section shall be published in the *Gazette*.

PART III-REAL ESTATE MANAGEMENT COUNCIL

8.—(1) There is hereby established the Real Estate Management Council (in this Act otherwise referred to as the "Council").

Appointment of Government real estate managers and authorized real estate managers

of the Real Estate Management Council

Establishment

(2) The Council shall be a body corporate with perpetual succession, and a common seal, and shall be capable, by that name, of—

(a) doing and performing all acts as may be necessary or expedient for the furtherance of the provisions of this Act; and

(b) subject to this Act, doing and performing all such acts as a body corporate may, by law, do or perform, or such as are incidental or appertain to a body corporate.

**9**.—(1) The Council shall be responsible for promoting and facilitating the development and regulation of real estate agency practice, and the provision of real estate agency services in Malawi.

Powers and functions of the Council

(2) Without derogation from the generality of subsection (1), the Council shall—

(a) regulate the practice of real estate business and real estate developers in Malawi;

(b) prescribe or approve courses of study for real estate business;

(c) conduct and set standards for qualifying examinations for registration as real estate agents;

(d) register and license real estate agents and real estate managers;

(e) register real estate developers;

(f) provide forms for real estate transactions;

(g) issue real estate transaction certificates;

(h) maintain and publish a register of real estate agents, real estate managers and real estate developers;

(i) set performance standards for real estate agency business and management practice;

(*j*) facilitate and promote education which is necessary for the development and growth of real estate agency business and management practice;

(k) establish programmes of continuing education for real estate agents and real estate managers;

(1) monitor and evaluate compliance with this Act and in furtherance of that, conduct inspections;

(m) establish and enforce a code of conduct and ethics for real estate agency business and management practice;

(n) monitor the performance of real estate agents and real estate managers;

(o) monitor real estate advertisements in the print and electronic media, including the world-wide web, to ensure compliance with this Act;

(p) maintain a national database of real estate transactions;

(q) prescribe the scale of fees for real estate transactions;

(r) establish structures and mechanisms for\_\_\_\_

(i) resolving disputes between real estate agents or real estate developers and their clients;

(ii) settling complaints made against real estate agents or real estate developers by their clients; and

(iii) the discipline of real estate agents or real estate developers who violate the established standards or who breach the code of conduct and ethics;

(s) assisting relevant authorities in the enforcement of compliance with regulatory requirements on anti-money laundering and countering the financing of terrorism in the real estate agency business and real estate management practice; and

(t) performing any other function connected with the objects of the Council.

(3) The Council shall perform its functions and exercise its powers provided in this Act independent of the direction, influence or interference of any person, entity or authority.

10.—(1) The Council shall consist of—

(a) five members representing real estate agents, real estate developers, and persons with knowledge and experience in real estate transactions, appointed by the Minister;

(b) a representative of Local Government Associations, appointed by the Minister; and

(c) the following ex-officio members-

 (i) the Principal Secretary responsible for land matters or his or her designated representative;

(ii) the Director General of the Financial Intelligence Authority, or his or her designated representative; and

(iii) the Chief Executive of the National Construction Industry Council, or his or her designated representative.

(2) The Minister shall, in making appointments under subsection
(1) (a)—

Cap. 25:06

(a) take into account the provisions of the Gender Equality Act; and

(b) have regard to the need for continuity in the membership of the Council so that at least two members of the immediate past Council shall be retained.

(3) The Chairperson of the Council shall be appointed by the Minister from amongst the persons appointed under subsection 1 (a) and (b).

(4) The Vice-Chairperson of the Council shall be elected by members of the Council from among their number at the first meeting of the Council.

11.—(1) A member of the Council, other than ex-officio member, shall hold office for a period of three years, and shall be eligible to office and be re-appointed for a further term of three years.

Tenure of vacancies

(2) A member of the Council, other than an ex officio member, may at any time resign from office in writing addressed to the Minister.

(3) A member of the Council, other than an ex-officio member, who is absent from three consecutive meetings without sufficient cause ceases to be a member of the Council

(4) The Minister may by letter addressed to a member revoke the appointment of that member where the member is-

(a) unable for any reason to perform the functions of a member:

(b) adjudged to be of unsound mind;

(c) declared bankrupt:

(d) convicted of an offence, and sentenced without the option of a fine: or

(e) ceases to hold the qualifications for appointment as a member, or circumstances arise which would have disqualified the member to be appointed a member of the Council.

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

(6) Where a vacancy occurs in accordance with subsection (2), (3), (4) or (5), or by reason of the death of a member, the Minister shall appoint a person to fill the vacancy.

(7) The Council may, in its discretion, at any time and for any period, co-opt any person with specific knowledge, information or expertise, to attend any meeting of the Council or a committee of the Council, and to address the Council or a committee of the Council

on any matter, but such person shall not be eligible to vote at the meeting on a decision of the Council or a committee, as the case may be.

(8) Section 19 shall apply, with necessary modifications, to a person attending a meeting of the Council or committee of the Council pursuant to subsection (7).

**12**.—(1) The Council shall meet at least once every three months for the despatch of business at a time and place determined by the Chairperson.

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

(3) The quorum at a meeting of the Council is five members.

(4) The Chairperson shall preside at meetings of the Council, and in the absence of the Chairperson, the Vice-Chairperson shall preside and, in the absence of both the Chairperson and Vice-Chairperson, a member of the Council elected by the members present from among their number shall preside.

(5) A decision of the Council on any question shall be by a majority of the members present and voting, and in the event of an equality of votes, the person presiding shall have a casting vote.

(6) The Chief Executive Officer shall be the secretary of the Council, and shall record and keep minutes of meetings of the Council, and the minutes shall be confirmed at the subsequent meeting of the Council.

Committees of the Council 13.—(1) The Council may establish such number of committees as the Council determines necessary for the performance of its functions under this Act.

(2) A committee may consist of, either members of the Council only, or members of the Council, and such other suitably qualified persons as the Council may determine.

(3) The Council shall appoint a chairperson of each committee from among members of the Council appointed under section 10 (1) (a) and (b).

(4) Every committee shall act in accordance with any directions given in writing to the Committee by the Council.

(5) The Chief Executive Officer, shall act as secretary of committees of the Council, or may, with the approval of the

Meetings of

the Council

Chairperson, delegate senior members of staff of the Council to act as secretaries to committees.

14.--(1) Members of the Council and members of a committee of the Council shall be paid such allowances as the Minister may determine, after consultation with the Minister responsible for finance.

(2) The Council may reimburse any reasonable expenses incurred by a member of the Council, a member of a committee of the Council or a person invited to attend a meeting pursuant to section 11 (7).

15.-(1) The Council shall appoint a Chief Executive Officer for the Council who shall be the chief executive officer of the Council. and shall, subject to the general direction of the Council, be responsible for the day to day operations of the Council.

(2) The Chief Execute Officer shall be appointed through a competitive process, and on such terms and conditions as the Council may determine.

(3) A person shall not be appointed as Chief Executive Officer unless the person-

(a) possesses a minimum qualification of a Master's degree in a relevant field obtained from a reputable university or institution recognized or accredited by the National Council for Higher Education:

(b) has proven and demonstrable expertise in the management and regulation of real estate, or any field relevant to the functions of the Council:

(c) has not less than ten years' experience in real estate transactions:

(d) has not less than ten years' experience in executive management; and

(e) is registered and licensed to practice under this Act.

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

16.—(1) The Council may terminate the appointment of the Chief Executive Officer on the following grounds-

(a) incompetence in the execution of functions of the office;

(b) incapacity to perform functions of the office by reason of physical or mental infirmity;

Allowances and expenses

Appointment of Chief Executive Officer

Removal of Chief Executive Officer

(c) failure to declare a conflict of interest relating to any matter under consideration by the office or the Council;

(d) being found guilty of misconduct punishable by dismissal under the contract of employment;

(e) being convicted of an offence and sentenced to a term of imprisonment; and

(f) being declared or adjudged bankrupt by a competent court of law.

(2) The Council shall not terminate the appointment of the Chief Executive Officer, unless the Chief Executive Officer is given an opportunity to be heard.

17.—(1) The Council shall employ such other members of staff, and may engage the services of such short-term advisors, subordinate to the Chief Executive Officer, as may be required or may be necessary for the proper and efficient discharge of the functions of the Council.

(2) The Council may delegate to the Chief Executive Officer the appointment, discipline and dismissal of members of staff in specified junior ranks, and the Chief Executive Officer shall report to the Council, at its next sitting, every appointment, disciplinary decision or dismissal made pursuant to this subsection.

(3) The members of staff of the Council appointed under subsection (1) shall be appointed on such terms and conditions as the Council may determine.

(4) Section 19 shall apply, with necessary modifications, to the dismissal of members of staff employed under this section.

Oath of office

(a) member of the Council;

18. Every-

(b) member of a committee of the Council;

(c) member of staff of the Council; and

(d) person co-opted to attend a meeting of the Council pursuant section 11 (7),

shall upon assumption of office, or before attending a meeting of the Council, take an oath of secrecy in the form set out in the Schedule.

Disclosure of interest

19.—(1) A member of the Council or a committee of the Council, or a person invited to attend a meeting of the Council or a committee of the Council pursuant to section 11 (7), or any member of staff of the Council, who has a direct or indirect interest in any matter

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Appointment of other staff

before the Council or a committee of the Council, as the case may be, shall disclose the interest as soon as is practical before or soon after the commencement of the meeting, and shall not take part in any consideration or discussion of, or vote on, any question on such matter at that meeting or any subsequent meeting.

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

(3) Where a person fails to disclose an interest in accordance with subsection (1) and the Council or committee of the Council makes a decision which benefits that person, a close relative, or professional or business partner, of that person, the decision shall, to the extent that it benefits that person, the close relative, or professional or business partner, as the case may be, be null and

(4) Where a member contravenes subsection (1), the chairperson shall notify the Minister who shall revoke the appointment of the member

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

(6) For purposes of this section, "close relative" includes a spouse, child and any person related by blood or marriage to a person mentioned in subsection (1).

20. No action or proceeding shall be brought personally against any member of the Council or committee of the Council, or a member of staff of the Council, in respect of any act or omission done in good faith in the course of carrying out the provisions of this

21.-(1) Subject to this section, the common seal of the Council Common seal shall be kept by the Chief Executive Officer, and shall not be used except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered duly executed by, or on behalf of, the Council-

(a) where they are required to be under seal, if sealed with the common seal and authenticated by the Chairperson, or other member nominated in that behalf by the Council, and the Chief Executive Officer, or any other officer authorized by the Council for that purpose; or

(b) where they are not required to be under seal, if executed in

Protection from liability

that behalf by a member authorized by the Council for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Council, its assignees and its successors, and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Council affixed to any document and shall presume, unless otherwise proven, that it was duly affixed.

**22**.—(1) The Council shall cause to be prepared and submitted to the Minister, within three months after the end of each financial year, an annual report on the general conduct of the affairs of the Council and the activities carried out during that financial year.

(2) The report submitted under subsection (1) shall be in the prescribed form, and there shall be appended to the report—

(a) an audited statement of the financial position of the Council;

(b) an audited statement of the income and expenditure of the Council; and

(c) such other information as the Minister responsible for finance may require, in accordance with the provisions of the Public Finance Management Act.

(3) The Minister shall, as soon as practical, but not later than six months after the end of the financial year, lay before the National Assembly a copy of the annual report.

## PART IV-FUNDS AND PROPERTY OF THE COUNCIL

23.-(1) The funds and property of the Council shall consist of-

(a) such sums as may, from time to time, be payable to the Council from moneys appropriated by Parliament;

(b) moneys from fees charged by the Council in the performance of functions of the Council under this Act;

(c) levies the Council may charge on real property transactions;

(d) subscriptions from real estate agents and real estate developers; and

(e) such sums of money or other property, real or personal, as may be acquired, purchased or received by or transferred to the Council, whether by way of donation, devise, bequest, purchase or otherwise.

Funds and property of the Council

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(2) The funds and property of the Council shall be exclusively under the control of the Council, and shall be utilized solely for the purposes of this Act in accordance with the written directions of the Council, and for no other purpose.

(3) The Council shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act, and the Public Procurement and Disposal of Assets Act. Cap. 37:01 4 of 2022 Cap. 37:03

**24**.—(1) The Council shall cause to be kept all proper books of accounting account and records of accounts of income, expenditure and assets of the Council in accordance with the provisions of the Public Finance Management Act.

(2) The accounts of the Council shall be audited at the end of each financial year in accordance with the Public Audit Act.

(3) The financial year of the Council shall be a period of twelve months in line with the financial year of the Government.

(4) The first financial year of the Council may be such shorter or longer period than twelve months as the Council may determine, but being not less than six months nor more than eighteen months.

PART V—REGISTRATION AND LICENSING OF REAL ESTATE AGENCY AND REAL ESTATE MANAGEMENT PRACTICE, AND REGISTRATION OF REAL ESTATE DEVELOPMENT PRACTICE

**25**.—(1) No person shall engage in the practice of real estate agency business or real estate management, unless that person is registered and licensed under this Part.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable—

(a) in case of an individual, to a fine of K5,000,000, and to imprisonment of two years; or

(b) in the case of body corporate, to a fine of K10,000,000.

**26**.—(1) A person is eligible to register as a real estate agent under this Act if the person—

(a) holds a minimum qualification of a Diploma in real estate, or an equivalent qualification obtained from a university or institution recognized or accredited by the National Council for Higher Education; and

(b) has complied with such additional requirements, including the acquisition of practical experience in real estate agency business, as may be prescribed by the Council. 17

Requirement for registration and licence to practice a as real estate agent or real estate manager

Qualifications for registration as a real estate agent or real estate manager

Cap. 37:01

(2) A person shall be eligible to regisster a real estate manager under this Act if the person-

(a) holds a minimun qualification of a Bachelor's degree in real estate, or an equivalent qualification obtained from a university or institution recognized or accredited by the National Council for Higher Education; and

(b) has complied with additional requirements, including the aquisition of practical experience in real estate management, as may be prescribed by the Council.

(3) A firm is eligible to register as a real estate agency firm, if the firm-

(a) is incorporated under the Companies Act or registered under the Business Registration Act; and

(b) has at least one practitioner registered and licensed as real estate agent under this Act.

(4) A firm is eligible to register as a real estate management firm, if the firm-

(a) is incorporated under the Companies Act, or registered under the Business licencing Act; and

(b) has employed at least one practitioner registered and licensed as a real estate manager.

(5) Any person who qualifies to practice as a real estate agent or real estate manager, or to perform real estate services under this Act may make an application to the Council for registration.

(6) An application for registration shall-

(a) be in the prescribed form, accompanied with the prescribed fees;

(b) in the case of a company, society, association or partnership be accompanied with a declaration that officers of the company, society, association or partnership do not have any criminal record;

(c) where appropriate, be accompanied with the prescribed fee for examination; and

(d) be accompanied with evidence that the applicant is a citizen of Malawi or has permanent residence in Malawi.

Application for a licence 27.—(1) Any person who desires to practice as an estate agent, or a real estate manager, or a real estate agency firm, or a real estate management firm, or to perform estate agency services under this Act may make an application to the Council for grant of a licence.

Cap.46:03 Cap. 46:02 (2) An application for a licence under subsection (1) shall-

(a) be in the prescribed form, accompanied with the prescribed fee;

(b) in the case of a company, society, association or partnership, be accompanied with a declaration that officers of the company, society, association or partnership do not have any criminal record; and

(c) be accompanied with evidence that the applicant is a citizen of Malawi or has permanent residence in Malawi.

(3) The Council may issue a licence to a person under this section, within ninety days after the receipt of an application, if the Council determines that the applicant—

(a) is a registered real estate agent or real estate manager under this Act;

(b) has\_\_\_\_

(i) in the case of a real estate agent, a diploma; and

(ii) in the case of a real estate manager, a degree,

in valuation, real estate management, land economy, land management, land administration, property development and management from a university or institution recognized or accredited by the National Council for Higher Education in Malawi;

(c) has passed a qualifying examination conducted by the Council or an independent testing service designated by the Council;

(d) has not been convicted of an offence, and sentenced without the option of a fine;

(e) has a Tax Identification Number;

(f) has taken out a professional indemnity approved by the Council; and

(g) in the case of a company, society, association or partnership, has designated, as its representative for the purpose of obtaining the licence, an officer or partner who, as an individual, has a licence to practice as a real estate agent.

(4) A licence issued under subsection (3) shall-

(a) be in the prescribed form;

(b) bear the name and address of the licensee;

(c) in the case of a licence for a real estate agent issued to a company, society, association or partnership, bear the name of

each designated officer or partner to whom, as an individual, a real estate agent's licence has been issued;

(d) indicate the date of issue;

(e) subject to renewal, be valid for one year from the date of issue; and

(f) be subject to the terms and conditions determined by the Council.

(5) A person who is designated as an officer or a partner for the purpose of obtaining a real estate agent licence is entitled to perform the functions of a real estate agent or officer of the company, society, association or partnership to which that person is a designated officer or partner:

Provided that a designated officer or partner shall not act as a real estate agent on that person's own behalf for as long as that person remains a designated officer or partner of the company, society, association or partnership.

(6) A licence issued under this section shall not be transferrable.

**28**.—(1) A licence granted under section 27 may be renewed after expiry by application to the Council.

(2) An application for a renewal of a licence under subsection (1) shall be—

(a) in the prescribed form, accompanied with the prescribed fee; and

(b) signed by the applicant;

(3) The Council may grant an application for a renewal of a licence under this section where the applicant—

(a) is not in breach of any of the terms and conditions of the licence or the code of conduct;

(b) satisfies the requirements for the grant of the licence;

(c) has a valid tax clearance certificate; and

(d) has paid the prescribed fee for the renewal of the licence.

Revocation and suspension of licence

Renewal of

licence

29.—(1) Except as otherwise provided in this Act, the Council shall revoke the real estate agent or real estate management licence of a company, society, association or partnership, if the company, society, association or partnership.

(a) ceases to have a registered and licensed real estate agent or real estate manager as the designated officer or partner of that company, society, association or partnership; (b) is de-registered under the written law under which it was registered; or

(c) obtained the licence by fraud.

(2) Without limiting subsection (1), the Council may revoke the licence of a real estate agent or real estate manager, if\_\_\_\_\_

(a) an agreement entered into by the real estate agent or real estate manager and the company, society, association or partnership in relation to the licence of the real estate agent or real estate manager ceases to be effective;

(b) the real estate agent or real estate manager is convicted by a court of competent jurisdiction of an offence, and sentenced without the option of a fine; or

(c) in the performance of a function authorized by the licence, the real estate agent or real estate manager—

(i) knowingly makes a fraudulent misrepresentation;

(ii) acts in the dual capacity of agent 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;

(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.

(3) The Council may suspend the licence of a real estate agent or real estate manager, if the agent or manager, in the performance of a function authorized by the licence—

(a) fails to use the real estate forms required for that function, where the function is a real estate transaction;

(b) accepts cash in payment for the function, where the function is a real estate transaction;

(c) fails, within thirty days, to pay out money received into the client account, to the person entitled to that money;

(d) pays a commission or fees to, or shares a commission or fees with, a person who is not a registered and licensed real estate agent or manager; or

(e) fails to give a copy of the sale and purchase agreement to both the seller and purchaser of real property.

(4) The Council shall not suspend or revoke a licence, unless the Council—

(a) gives at least ten working days' written notice to the person whose licence the Council intends to suspend or revoke, as the case may be;

(b) states in the notice mentioned in paragraph (a) the grounds of the suspension or revocation, as the case may be;

(c) serves on the affected licensee a copy of any complaint or charges which the Council proposes to consider; and

(d) gives the licensee affected, the opportunity to-

(i) appear personally for a hearing or be represented by a legal practitioner; and

(ii) examine and cross-examine witnesses and present documents and other evidence in support of the case of that affected licensee.

**30**.—(1) No person shall engage in the practice of real estate development unless that person is registered under this Part.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable—

(a) in case of an individual, to a fine of K5,000,000, and to imprisonment of two years; or

(b) in the case of body corporate or partnership, to a fine of K10,000,000.

31.—(1) A person is not eligible to register as a real estate developer unless the proposed development involves a development scheme in which—

(a) the number of lots into which the land is, or is intended to be, subdivided exceeds five;

(b) the number of strata lots comprising building units to be constructed exceeds five; or

(c) the person carrying out or proposing to carry out the building scheme is also carrying out or has carried out, within the preceding twenty-four months, another development scheme of whatever size.

(2) The Minister may prescribe rules for establishment of development schemes for real estate development.

(3) Without derogating from the generality of subsection (2), the Minister may make rules for-

Qualifications for registration as real estate developer

registration as real estate

developer

(a) the nature and type of development schemes that may be established in accordance with any written law;

(b) the nature and form of prepayment contracts real estate developers may enter into with clients in respect of development schemes;

(c) advertisements of real estate development schemes;

(d) the requirements for trust accounts and the responsibilities of financial institutions in respect thereof;

· (e) dealings with money in trust accounts; and

(f) such other matters as the Minister may deem necessary for the management of development schemes.

**32**.—(1) Subject to section 31, a person who desires to carry out Re any real estate development shall, before commencing such of development, apply to the Council, for registration as a real estate developer.

Registration of real estate developers

(2) An application under subsection (1) shall be in the prescribed form, and accompanied by the prescribed fee.

(3) The Council shall not register a person as a real estate developer unless the Council is satisfied that such person—

(a) has identified and acquired land for purposes of a development scheme as defined under section 31;

(b) has demonstrated financial capacity to carry out such development in such manner as the Council shall prescribe; and

(c) has not been convicted at any time of an offence, and sentenced without the option of a fine.

(4) Every real estate developer registered in accordance with this section shall, in every year, on or before the first day of April after the date of registration, pay to the Council a prescribed annual fee.

33. The Council may suspend or cancel the registration of a real estate developer where the Council is satisfied that—

(a) the registration was obtained by misrepresentation or fraud;

(b) [the real estate developer has contravened the Financial Crimes Act, or any written law relating to real estate; or

(c) circumstances have arisen which would have disqualified the real estate developer from registration under this Act.

34. Where the Council refuses to grant an application for registration or a licence for a real estate agent or real estate manager, or registration for real estate developer, the Council shall notify the applicant in writing within ten days of its decision, giving reasons

Suspension or cancellation of real estate developer registration

Cap. 7:07

Right of appeal against refusal to register or grant a licence for the decision, the Council shall inform the applicant of the right of appeal conferred by section 47.

**35**.—(1) The Council shall keep and maintain a register in which shall be recorded the personal and business details of registered and licensed real estate agents and real estate managers, and registered real estate developers.

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

(3) The Council shall annually publish in the *Gazette* and a daily newspaper of nationwide circulation that the Council may determine, a list of registered and licensed real estate agents and real estate managers, and registered real estate developers who are in good standing.

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

(5) The Council shall keep the transaction records referred to in subsection (4) for a period of at least five years.

(6) The national database on real estate transactions referred to subsection (4) shall, on request made in writing to the Council, be made accessible to the Financial Intelligence Authority and the Malawi Revenue Authority.

**36**.—(1) Every registered and licensed real estate agent and real estate manager, and every registered real estate developer, shall maintain a place of business in Malawi, and conspicuously display in that place of business—

(a) the registration and licence of the real estate agent or real estate manager, or registration certificate of real estate developer, or a certified true copy thereof, as the case may be; and

(b) in the case of a real estate agent or a real estate manager, the fees to be charged by the real estate agent or real estate manager, as the case may be.

(2) Every registered and licensed real estate agent or real estate manager, and every registered real estate developer shall give written notice of a change of business location to the Council before any change, and the Council shall effect the change in the register and in any subsequent publication of the list of real estate agents, real estate managers or real estate developers.

Place of business of licensed real estate agents, real estate managers and real estate developers

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(3) The Council may suspend or cancel the registration and licence of any real estate agent or real estate manager, or suspend or cancel the registration of any real estate developer, that fails to comply with subsection (2).

37.-(1) All real estate transactions, including transactions otherwise exempted from the application of this Act, shall executed on prescribed real estate transaction forms issued by the Council.

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

(a) record the personal and business details of the applicant; and

(b) issue real estate transaction forms to the applicant.

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

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

38. Subject to any written law, a real estate agent, real estate manager, or real estate developer shall, in relation to each real estate transaction prepare as appropriate, a sales and purchase agreement or a lease agreement and give the seller and the buyer or the lessor and the lessee a copy each of the agreement.

**39**.—(1) All payments for real estate transactions shall be by bank draft, cheque, bank transfer or electronic money transfer.

(2) No real estate agent, real estate manager or real estate

developer shall accept cash in payment of any real estate transaction.

(3) Any person who contravenes this section commits an offence, and shall, on conviction, be liable-

(a) in case of an individual, to a fine of K5,000,000, and to imprisonment of two years; or

(b) in the case of body corporate, to a fine of K10,000,000.

40.-(1) Every real estate agent, real estate manager and real Client accounts estate developer shall separate their funds from those of the clients, and shall open and operate a separate clients' or trust account into which moneys due in relation to real estate transactions shall be kept.

Sale and purchase agreements

Mode of payment for real estate transactions

(2) Any person who contravenes this section commits an offence, and shall, on conviction, be liable-

(a) in case of an individual, to a fine of K5,000,000, and to imprisonment of two years; or

(b) in the case of body corporate, to a fine of K10,000,000.

Real estate transaction certificates 41.—(1) A real estate transaction, including a transaction otherwise exempted from the application of this Act, shall not be complete until the parties to the transaction have been issued with a real estate transaction certificate by the Council.

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

(3) The application under subsection (2) shall include-

(a) the personal details of the applicant;

(b) the particulars of the real estate transaction to which the real estate transaction certificate is intended to relate including\_\_\_\_\_

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

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

(iii) the nature of the transaction;

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

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

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

(vii) details of receipts issued to cover payment of taxes payable for the transaction including receipts from the Malawi Revenue Authority; and

(c) copies of the purchase and sales agreement on the transaction.

(4) The Council shall issue the real estate transaction certificate to an applicant within thirty days after receipt of the application.

(5) Where the Council has reasonable grounds to believe that there has been any misrepresentation in respect of a real estate transaction or payments made in relation to the real estate transaction which is the subject of the application have been underdeclared or far exceeds the value of the property, the Council may—

(a) conduct an investigation into the transaction;

(b) cause an independent valuation of the property to be made; or

(c) refer the transaction to the Financial Intelligence Authority and the Malawi Revenue Authority for investigation.

(6) Notwithstanding any provision in any written law, the Land Registrar shall not register any real property or interest in real property which has been the subject of real estate transaction, including a transaction otherwise exempted from the application of this Act under section 3 (1), if the application for registration is not accompanied with a real estate transaction certificate issued by the Council.

(7) Any registration of real property or interest in real property by the Land Registrar contrary to subsection (6) shall be void.

42.-(1) A real estate agent, real estate manager or real estate General developer shall not, in relation to real estate agency practice or a real estate transaction\_

rules of conduct

(a) make any misrepresentation for the purpose of obtaining a licence or registration, or in any report that the real estate agent, real estate manager or real estate developer submits to the Council:

(b) act in the dual capacity of real estate agent, real estate manager or real estate developer and an undisclosed principal in the same transaction;

(c) act for more than one party in the same transaction without the knowledge and consent of all the parties involved in the transaction:

(d) pay commission or fees to or share commission or fees with a person who is not a registered licensed real estate agent or real estate manager or registered real estate developer, as the case may be:

(e) accept, give or charge any undisclosed commission, rebate or profit on expenditures for a principal;

(f) commingle the money or property of a client or principal with the money or property of the real estate agent, real estate manager or real estate developer;

(g) fail to give the seller and the buyer a copy of the sales and purchase agreement; or

(h) accept from a prospective seller a net listing.

(2) A real estate agent, real estate manager or real estate developer shall disclose to the buyer any defect with the property that the real estate agent, manager or developer is dealing with.

(c) each mode of payment issued for the payment of a real estate transaction;

(d) each property which is the subject of a real estate transaction;

(e) the nature of each transaction;

(f) the valuation report on each property which is the subject of a real estate transaction; and

(g) the sums of money payable in respect of each real estate transaction.

**46**.—(1) Every real estate agent and real estate manager shall, within three months after the end of each calendar year, submit to the Council a report covering the real estate transactions undertaken by that real estate agent and real estate manager in the previous year.

Annual reports of real estate agents and real estate managers

(2) The report under subsection (1) shall include the audit report of that real estate agent or real estate manager, as the case maybe.

#### PART VI-DISPUTE RESOLUTION

47.—(1) The Council shall establish, for the purpose of hearing Appeals grievances under this Act, an Appeals Committee (in this Act <sup>Committee</sup> otherwise referred to as the "Appeals Committee") which shall comprise of—

(a) one member of the Council, designated by the Chairperson;

(b) two real estate agents, and one real estate manager registered and licensed under this Act, appointed by the Minister; and

(c) a legal practitioner of not less than ten years' experience, appointed by the Minister.

(2) A person aggrieved by the conduct of a real estate agent, real estate manager or a real estate developer, or by a decision of the Council relating to a registration or licence may make a complaint to the Council.

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

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

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

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

(c) be submitted to the Council.

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Powers of the Appeals Committee **48**.—(1) The Appeals Committee shall determine the time and place for hearings of the Appeals Committee.

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

Submission of decision to the Council

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

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

(3) Where the Council approves the decision of the Appeals Committee, the Council—

(a) shall within fourteen days after the approval serve on the affected party a copy of the decision, and the reasons for the decision;

(b) may suspend or revoke a licence of a real estate agent or real estate manager, or suspend or revoke the registration of a real estate developer; or

(c) take any other action as appropriate.

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

Alternative dispute resolution Cap. 6:03 **50**.—(1) Parties to a transaction under this Act may agree to resolve a dispute that arises in relation to a transaction in accordance with the Arbitration Act:

(2) An agreement of the parties under subsection (1) shall not oust the jurisdiction of the Court.

(3) Where parties agree to resolve a dispute in accordance with subsection (1), the Arbitrator shall, within fourteen days after the referral of the dispute, initiate action to resolve the dispute.

Review of decision of Council Cap. 6:03 **51.**—(1) A person who is not satisfied with a decision of the Council may within one month after being informed of the decision, apply to the High Court for a review of that decision.

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

52.-(1) The Council shall appoint real estate inspectors for the effective implementation of the functions of the Council under this Act.

(2) An inspector appointed under subsection (1) shall be issued with an identity card by the Council.

(3) An inspector shall produce the identity card whenever required in the discharge of the duties of the inspector under this

53.-(1) An inspector may at a reasonable time during the day for Inspections the purpose of inspection, enter the premises of a real estate agent, real estate manager or real estate developer, or premises which the officer has reasonable grounds to believe relate to a real estate transaction, including a transaction otherwise exempted from the application of this Act.

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

(3) The inspector may, in furtherance of an inspection, request, among others, for-

(a) copies of real estate agreements;

(b) information and records on real estate transactions; and

(c) the real estate transfer certificate for any completed real estate transaction.

# PART VII-MISCELLANEOUS

54.-(1) The Council shall, develop and adopt a Code of Ethics Code of for real estate agents, real estate managers and real estate developers ethics to regulate the practice and conduct of real estate agents, real estate managers and real estate developers.

(2) The Code of Ethics shall, without derogating from the generality of subsection (1), stipulate the procedures and guidelines for the practice and professional conduct and discipline of real estate agents and real estate developers in accordance with this Act.

(3) The Code of Ethics shall be published in the Gazette.

55. A real estate agent, real estate manager or real estate Negligence developer negligently misrepresents any data or information obtained in the course of a real estate transaction, shall be personally

Appointment of real estate inspectors

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liable for professional negligence arising from such misrepresentation:

Provided that no liability shall accrue against a real estate agent, real estate manager or a real estate developer acting in good faith and applying appropriate skills and knowledge.

Administrative sanctions

56. Any person who-

(a) fails to conspicuously display a licence issued in accordance with this Act contrary to section 36;

(b) fails to use forms issued by the Council for a real estate transaction contrary to section 37; or

(c) fails to submit an annual report to the Council contrary to section 46,

shall be liable to pay to the Council an administrative penalty of K1,000,000, and K100,000 for each day that the default or failure continues.

Offences and penalties

Regulations

57. Any person who-

(a) advertises as a real estate agent or real estate manager without registration and a licence issued under this Act, or as a real estate developer without registration under this Act;

(b) engages in a real estate transaction without registration and a licence issued under this Act;

(c) falsifies a document under this Act;

(d) obstructs an authorized officer in the performance of the duties of that officer under this Act; or

(e) fails to submit transaction reports contrary to section 43,

commits an offence and shall, on conviction, be liable-

(i) in case of an individual, to a fine of K1,000,000, and to imprisonment for twelve months; and

(ii) in the case of body corporate, to a fine of K5,000,000.

58.—(1) The Minister may, on the advice of the Council, make regulations to prescribe for—

(a) facilities to be provided by real estate agents, real estate managers and real estate developers;

(b) the content and conduct of examinations for real estate agents, real estate managers and real estate developers;

(c) the establishment of real estate development schemes;

(d) the form and content of reports to be submitted by real estate agents, real estate managers or real estate developers to the Council:

(e) the effective monitoring, assessment and improvement of real estate agency, real estate management and real estate developer practice;

(f) fees for examination, grant or renewal of licence, processing and recording of transactions fees, and any other fees chargeable under this Act: and

(g) any other matters for the effective implementation of this Act.

(2) Notwithstanding the provisions of section 21 (e) of the Cap. 1:01 General Interpretation Act, regulations made under subsection (1) may provide for offences the contravention of which may impose a penalty of\_\_\_\_

(a) in the case of an individual, a fine of K1,000,000 and imprisonment for twelve months; and

(b) in the case of a corporation, a fine of K5,000,000.

59.-(1) Any subsidiary legislation made under the Land Savings and Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, repealed by the Property Valuation Act, 2024, in force immediately before the commencement of this Act\_\_\_\_

(a) shall remain in force, unless in conflict with Act;

(b) shall be deemed to be subsidiary legislation made under this Act; and

(c) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(2) A real estate agent or real estate manager who is registered under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, repealed by the Property Valuation Act, 2024, shall Cap. 53:08 continue to practice real estate agency as if registered under this Act.

(3) Any licence, permit or other authority granted under the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, repealed by the Property Valuation Act, 2024, shall continue, subject Cap. 53:08 to the terms and conditions, to have effect as if it was granted under this Act.

transition Cap. 53:08 26 of 2024

No. 28

## SCHEDULE

### (s. 18)

# OATH OF SECRECY

I, ...., being a member of the Council/member of a committee of the Council/having been invited to attend a meeting of the Council/a meeting of a committee of the Council/a member of staff of the Council, do swear/affirm that I will freely without fear or favour, affection, or ill-will discharge the functions of a member of the Council, and I will not, directly or indirectly, reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So help me God.

Signature of the person making the oath or affirmation

Sworn [or affirmed] by the said .....

at ..... this ... day of ....., 20....

Before me:

Commissioner for Oaths

Passed in Parliament this seventeenth day of September, two thousand and twenty-four.

FIONA KALEMBA Clerk of Parliament

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