

KANETUOHY

SOLICITORS

CONTENT:-

<i>Property Services (Regulation) Bill, 2009 – an explanation</i>	1
<i>Licences to Provide Property Services</i>	2
<i>Letter of Engagement</i>	2
<i>Client Accounts</i>	2
<i>Sale or Letting of Property</i>	2
<i>Complaints, Investigations and Sanctions</i>	2
<i>Appeals against Certain Decisions of the Authority</i>	3
<i>Property Services Compensation Fund</i>	3
<i>Maintenance of Professional Competence</i>	3
<i>Property Services Provided By Certain Persons from Other EU Member States</i>	3
<i>Contact Details</i>	4

PROPERTY SERVICES (REGULATION) BILL 2009

This Bill (which has now been referred to Dáil Éireann for consideration and is currently at Second Stage) implements the recommendations contained in the Report of the Auctioneering/Estate Agency Review Group (October 2005). It will introduce a new regulatory scheme for auctioneers, estate agents and other providers of “property services” such as management agents. It will replace the more limited licensing scheme operating under the Auctioneers and House Agents Acts 1947-1973. The regulatory scheme will be operated by the Property Services Regulatory Authority.

Sections 7 and 8 provide for the establishment of the Authority. Section 10 outlines the main functions of the new Authority which include the following:

- To operate a comprehensive licensing system covering all providers of property services i.e. auctioneers, letting agents and property management agents. This extended system will replace the licensing system for auctioneers and house agents which is currently based in the District Court,
- To set and enforce qualification standards e.g. education and training standards;
- To specify and enforce standards to be observed in the provision of property services by licensees;
- To establish, maintain and administer the Property Services Compensation Funds;
- To establish and administer a system of investigation and adjudication of complaints;
- To promote the development of codes of practice;
- To promote public awareness and disseminate information in respect of property services.

Licences to Provide Property Services

Part 3 sets out details of the application system for licences to provide property services. In essence persons (including companies who employ others to provide property services as well as independent contractors providing a property service) will be prohibited from providing a property service without a licence issued by the Authority.

Letter of Engagement

The Bill requires licensees to issue a letter of engagement to all clients. Once signed by the Licensee and the client, the letter becomes a Property Services Agreement. The information which must be included in the Agreement is set out in Schedule 2. The issuing of a letter of engagement is to increase consumer protection.

Client Account

Part 5 of the Bill contains extensive provisions in relation to the keeping and preservation of client accounts and records by licensees. These are largely based on the safe guards already contained in the Auctioneers and House Agents Acts 1947-1973 but will in future extend to funds under the control of Property Management Agents.

Sale or Letting of Property

Part 6 contains provisions which are designed to safe guard the interests of purchasers of property, whether by auction or otherwise. In future, licensees will be required to give intending vendors a statement of the “advised market value” of the property. This can be changed to take account of prevailing market conditions. Similar provisions apply in relation to “advised letting value” of property which is being valued for potential letting. The current practice of permitting a vendor of property being sold by auction to bid up to the reserve price or procuring or permitting another person to do so, will be prohibited. Where property is sold, other than by auction, the Licensee will be required to retain a record of all offers received, including conditional acceptances, for a period of six years.

In order to avoid conflicts of interest, the written consent of both the vendor and licensee must be obtained where a licensee (or a subsidiary or associated body) who is selling property on behalf of a vendor is also providing a financial service to the purchaser of that property.

Complaints, Investigations & Sanction

Part 7 sets out the procedures to be followed in relation to complaints, investigations and sanctions. The Authority has power to appoint an inspector (or inspectors) to investigate a licensee either of its own volition or on foot of a complaint. An inspector will carry out an investigation and prepare and submit a report to the Authority. The report will indicate whether or not the inspector is satisfied that improper conduct by the licensee is occurring or has occurred or whether further investigation is necessary. The report will not make any recommendation in relation to the sanction (if any) that should be imposed on the licensee. Extensive provisions are included to ensure that fair procedures are followed in relation to investigations carried out by the Authority.

Where, after consideration of a report, the Authority is satisfied that improper conduct is occurring or has occurred it has power to impose a “minor sanction” i.e. a reprimand, warning, caution or advice or a “major sanction” i.e. a financial penalty (which can be payment of up to €50,000.00 into the Compensation Fund, the cost/part of the cost (up to €50,000.00) of an investigation, a penalty of up to €250,000.00 to the Authority) and/or the suspension or revocation of a licence. However, a decision by the Authority to impose a “major sanction” will not take effect unless the decision is confirmed by the High Court on foot of an appeal by the licensee or on the basis of an application by the Authority.

Where a licensee is convicted of an offence under the Act, the Court may, and in some cases will, revoke all licences held by the licensee and prohibit the licensee (either permanently or temporarily) from applying for a licence or a particular type of licence. In exceptional circumstances, where the Authority considers that there is immediate risk of

financial harm to clients of licensees or users or potential users or property services, the Authority is empowered to apply to the High Court on an ex-parte basis for an interim order to suspend the licence.

Section 84 of the Bill provides for the investigation by the Authority of persons providing a property service without a licence. Where the Authority, after investigation, considers that a person is operating without a licence, it must refer the matter to the Garda Síochána and the Minister and may also seek a High Court injunction requiring the person to cease the activities concerned and/or institute summary proceedings against the person concerned.

Appeals against Certain Decisions of the Authority

Part 8 of the Bill provides for the establishment of an independent Property Services Appeal Board to hear and determine appeals against certain decisions of the Authority. Details of the composition and operations of the Appeal Board, the decisions which can be appealed to the Board and the procedure for handling appeals are set out in Schedule 5.

The following decisions can be appealed:

- (a) Refusal to issue a licence (other than decisions to refuse on technical grounds);
- (b) A decision not to carry out an investigation on foot of a complaint (e.g. because the complaint is considered frivolous and vexatious);
- (c) Dismissal of a complaint following an investigation;
- (d) Imposition of a minor sanction; or
- (e) Refusal to make a grant or the amount of a grant made, from the Compensation Fund.

Property Services Compensation Fund

Part 9 (and Schedule 6) provide for the establishment, administration and maintenance of the Property Services Compensation Fund by the Authority. The purpose of the fund is to compensate clients or licensees for losses sustained with the result of dishonesty on the part of a licensee, the agents or employees. The grant or renewal of licences will be subject to making an annual contribution to the Fund. One of the “major sanctions” included in the Bill is the payment of an additional sum of up to €50,000.00 into the Fund.

Maintenance of Professional Competence

Part 10 of the Bill empowers the Authority to make regulations providing for schemes of education and training so as to ensure ongoing maintenance of the professional competence of licensees. The duty is being placed on licensees to maintain their professional competence.

Property Services Provided by Certain Persons from Other EU Member States

Part 11 and Schedule 7 contain provisions which will permit recognition of licences or other authorisations granted by a comparable licensing authority in another Member State, while at the same time ensuring that such a person (“relevant person”) will be subject to the Authority’s complaints procedure and disciplinary code. A “relevant person” must, however, be subject to a scheme of protection in respect of client accounts similar to that provided in Part 5 of the Bill. They will also be required to state in the letter of engagement whether or not they are covered by a compensation scheme similar to the Compensation Fund and provide full details of professional indemnity insurance.

CONTACT:

Further information is available from:

Sheena Beale, Partner
t: +353 1 6722243
e: sbeale@kanetuohy.ie

Cómhnall Tuohy, Partner
t: +353 1 6722244
email: ctuohy@kanetuohy.ie

or from your usual contact in Kane Tuohy

www.kanetuohy.ie