



PRESS BRIEFING BY THE ESTATE AGENTS REGISTRATION BOARD (EARB) ON THE PROPOSED “REAL ESTATE REGULATION BILL, 2023” ON 27TH SEPTEMBER 2023 AT 10.00AM AT SAFARI PARK HOTEL

We hereby issue this statement in response to the proposed Real Estate Regulation Bill, 2023 which seeks to regulate real estate agents, developers of properties for sale purposes and land trading companies that subdivide land for sale popularly known as land buying companies.

THE EARB HEREBY STATES AS FOLLOWS;

Since the bill was published in the Kenya Gazette on 11th September 2023, the Board has received a lot of concerns from our members.

It is imperative to note that despite there being a functional Estate Agents Board, there was no prior attempt to engage the Board during the preparation of the bill either directly or through the line Ministry of Lands, Public Works, Housing and Urban Development. The bill therefore came as a surprise to the board and the registered estate agents.

The proposed bill seeks to regulate the Registered Real Estate Agents together with the property developers who build properties for sale and land buying companies that subdivide land for sale. It is our opinion and we have stated this before in our media briefs that there is need to tame the operations of land buying companies and property developers. This is to safeguard the interests of property buyers from fraudsters who have in many cases collected money from the public and failed to deliver the land or the houses to the buyers. There are cases of some land buying companies who have created schemes to defraud the public by promising them cheap parcels of land around country; others failing to deliver title deeds to their purchasers years after the parcels were subdivided and subsequently creating illegal land registries in their offices to transact such parcels; and failure by some property developers to deliver houses to purchasers after the projects stalled taking down with them purchaser's deposits. To this extent, there is urgent need for regulations for developers and land buying companies.

Real Estate Agents in Kenya are already regulated under the Estate Agents Act Cap 533, thus there is no vacuum.

The proposal to regulate real estate agents professionals together with the developers and land buying companies who are business people is unreasonable and awkward. You cannot mix professional real estate agency practice with the non-professional part of the business/trade of developing land either through subdivision or through construction for profit. The professional real estate agent/practitioner is a distinct specialization that requires training, practice and competence. Our universities and colleges are producing over 300 real estate graduates annually. The profession is more than just facilitating selling and letting of property. It encompasses property and facilities management, retail management, feasibility studies among other disciplines. Developers are in the business of investing/development of projects for sale as a business—in essence comparing a profession and a trade. Also the two groups adhere to different codes of conduct and calls for distinct disciplinary mechanisms. All that is required in a trade is the requisite capital as opposed to a profession where training and experience is key. This therefore calls for different approach in regulating the two.

The proposed bill adopts a very narrow view of the estate agent, mainly as the person who offers for sale or let real estate projects. This only comprises one sub sector of real estate agency, i.e. brokerage. It tends to ignore the fact that real estate is a profession both in training and practice that goes beyond brokerage. It also assumes the need for professional competence of real estate agents. All these are contained in the current Estate Agents Act, Chapter 533 of the Laws of Kenya. We therefore find the proposed bill inferior to the already existing regulatory framework for estate agents that only requires minimal amendments. Indeed, the Board together with the Ministry has already initiated the processes of carrying out the requisite amendments to the Estate Agents Act.

The Bill proposes a board comprised of non-professionals to regulate professionals. Professionals all over are regulated by boards that mainly comprise professionals in the specific area of specialization. That is why they are called professional boards. The Estate Agents Board is akin to other professional boards like BORAQS, Engineers' Board, Land Surveyors' Board, Medical Practitioners and Dentists Board that are comprised of professionals in their areas of expertise. We therefore find that the current Estate Agents Registration Board suffices in regulating real estate professionals with no need to change.

In Summary, we find that the interests of real estate professionals and that of developers to be quite distinct in training, practice and objectives, therefore they cannot be regulated under one bill. Real estate agents and property developers represent diverse and sometimes conflicting interests. Real estate agents represent the professional practice while property developers are focused on maximizing their profits. Regulating both groups under the same authority may lead to conflicts of interest and hinder effective regulation. There is potential for inefficiency in jointly regulating real estate agents and property developers. The processes of regulation the two calls for different processes and consideration and imposing a one-size-fits-all regulatory framework will terribly fail.

The Board strongly recommends that the proposed bill should be redrafted to concentrate on regulating property developers and land buying companies and leave the regulation of the professional real estate agents as currently contained in the Estate Agents Act, Cap 533.

THE CHAIRPERSON

ESTATE AGENTS REGISTRATION BOARD

OUR MANDATE

The Estate Agents Registration Board (EARB) is the regulatory body for estate agency practice in Kenya, and it derives its mandate from Estate Agents Act, Cap 533. The Board is responsible for registering and overseeing regulation of estate agents.

The Estate Agents Registration Board's primary objective is to ensure professionalism, integrity, and ethical conduct among real estate agents, thereby safeguarding the interests of both buyers and sellers, lessors and lessees and property and facilities managers and their clients in property transactions. We strive to maintain a level playing field in the real estate market and foster public confidence in the services provided by registered estate agents.