

ESTATE AGENTS (ACCOUNTANT'S CERTIFICATE) RULES, 1989

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ESTATE AGENTS (ACCOUNTANT'S CERTIFICATE) RULES, 1989

[L.N. 36/1989.]

1. Citation

These Rules may be cited as the Estate Agents (Accountant's Certificate) Rules, 1989.

2. Interpretation

(1) In these Rules unless the context otherwise requires—

“**accountant's certificate**” means the certificate provided for by rule 3;

“**estate agent**” means any person whose name is duly entered upon the register of estate agents kept in accordance with section 7 of the Act;

“**the Board**” means the Estate Agents Registration Board;

(2) The expressions “**client**”, “**client account**”, and “**client money**” have the meanings assigned to them in the Estate Agents (Accounts) Rules, 1989 (L.N. 20/1989).

3. Accountant's certificate

Subject to these Rules, every estate agent shall once in every practice year deliver to the Board a certificate signed by an accountant and complying with these Rules.

4. Qualification of accountant

(1) An accountant is qualified to give an accountant's certificate under these Rules if—

- (a) he has neither been at any time during the accounting period, nor subsequently, before giving the certificate, become a partner, clerk or servant of the estate agent or any partner or co-director of any company of which he is a member of; and
- (b) he is not subject to notice of disqualification under paragraph (2);

(2) In either of the following cases, that is to say, where—

- (a) the accountant has been found guilty by the Disciplinary Tribunal of his professional body of professional misconduct or discreditable conduct; or
- (b) the Board is satisfied that an estate agent has not complied with the provisions of the Estate Agent (Accounts) Rules, 1989, in respect of matters not specified in an accountant's certificate and that the accountant was negligent in giving such certificate, the Board may at any time notify the accountant concerned, that he is not qualified to give accountant's certificate, and it may give notice of that fact to any estate agent on whose behalf he has given an accountant's certificate, and after the accountant has been so notified, unless and until the notice is withdrawn by the Board, he is not qualified to give an accountant's certificate.

5. Duty of accountant

(1) With a view to the signing of an accountant's certificate an accountant is not required to do more than—

- (a) make a general test examination of the books of account of the estate agent;

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- (b) ascertain whether a client account is kept and operated in accordance with the Estate Agents (Accounts) Rule, 1989;
- (c) make a general test examination of the bank pass books and statements kept in relation to the estate agent's practice;
- (d) make a comparison, as at not fewer than two dates selected by the accountant, between—
 - (i) the liabilities of the estate agent to his clients as shown by his books of account;
 - (ii) the balance standing to the credit of the client account; and
- (e) ask for such information and explanations as he may require arising out of paragraphs (a) to (d);

(2) If after making the investigation prescribed by paragraph (1), it appears to the accountant that there is evidence that the Estate Agents (Accounts) Rules, 1989 have not been complied with, he shall make such further investigations as may be necessary to enable him to sign the accountant's certificate.

6. Form of accountant's certificate

An accountant's certificate delivered by an estate agent shall be in the form set out in the Schedule or in a form to the like effect approved by the Board.

7. Powers of the Board

The Board shall, in each practice year, be satisfied that the delivery of an accountant's certificate is unnecessary, and shall not require evidence of that fact, in the case of an estate agent who—

- (a) holds his first current practising certificate; or
- (b) after having for twelve months or more ceased to hold a current practising certificate, holds his next current practicing certificate; or
- (c) delivers to the Board a statutory declaration stating that the Estate Agents (Accounts) Rules, 1989 did not apply to him because he had not, during the period to which the declaration refers, practised on his own account either alone or in partnership or held or received client's money; or
- (d) has ceased to hold a current practising certificate and, if he has at any time after the 9th February, 1986, held or received client's money, has delivered an accountant's certificate covering an accounting period ending on the date upon which he ceased to hold or receive client's money; or
- (e) has at no time since the 9th February, 1986, held a current practising certificate or held or received client's money.

8. Accounting period

Subject to rules 9, 10 and 11 the accounting period specified in an accountant's certificate shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's certificate has been delivered;
- (b) cover not less than twelve months;
- (c) terminate not more than six months before the date of the delivery of the certificate to the Board; and
- (d) where possible correspond to a period or consecutive periods for which the accounts of the estate agent or his firm are ordinarily made up.

[Subsidiary]**9. Duration of accounting period**

The accounting period specified in an accountant's certificate delivered during the practice year beginning on the 9th February, 1986 shall begin on—

- (a) the date to which the estate agents books were last made up before the 9th February, 1986;
- (b) if the books were not made up during the practice year beginning on the 9th February, 1986, either on the 9th February, 1986, or on the day upon which the estate agent began or began again to hold or receive client's money, whichever be the later; or
- (c) in the case of an estate agent retiring from practice who has ceased to hold or receive client's money after the 9th February, 1986, the period up to the date upon which he so ceased.

10. Accounting periods for firms of estate agents

In any practice year beginning on or after the 9th February, 1986—

- (a) in the case of an estate agent who—
 - (i) becomes under an obligation to deliver his first accountant's certificate; or
 - (ii) having been exempt under rule 7 from delivering an accountant's certificate in the previous practice year becomes under an obligation to deliver an accountant's certificate,

the accounting period shall begin on the date upon which he first held or received client's money or, after such exemption, began again to hold or receive client's money, and may cover less than twelve months, and shall in all other respects comply with rule 8; and

- (b) in the case of an estate agent retiring from practice who, having ceased to hold or receive client's money, is under an obligation to deliver his final accountant's certificate, the accounting period shall end on the date upon which he ceased to hold or receive client's money, and may cover less than twelve months, and shall in other respects comply with rule 8.

11. Accounting periods for estate agents not exempt under rule 7

(1) In any practice year beginning on or after the 9th February, 1986, in the case of an estate agent who—

- (a) was not exempt under rule 7 from delivering an accountant's certificate in the preceding practice year; and
- (b) since the expiry of the accounting period covered by such accountant's certificate has become, or ceased to be a member of a firm of estate agents,

the accounting period may cover less than twelve months and shall in all other respects comply with rule 8.

(2) In the case of an estate agent who has two or more places of business—

- (a) separate accounting periods, covered by separate accountant's certificates, may be adopted in respect of each such place of business provided that the accounting periods comply with rule 8; and
- (b) the accountant's certificate or accountant's certificates delivered by him to the Board in each practice year shall cover all client's money held or received by him.

12. Complaints

If any estate agent fails to comply with these Rules a complaint in respect of such failure may be made by or on behalf of the Board to the Disciplinary Committee.

13. Certificate from Registrar

On receipt either of an accountant's certificate or of a declaration under rule 7(3) the Registrar will forward to the estate agent a certificate under his hand stating that an accountant's certificate for a specified period has been received or that no accountant's certificate is required for a specified period, as the case may be.

14. Final proof

A certificate under the hand of the Registrar is, until the contrary is proved, evidence that an estate agent has or has not, as the case may be, delivered to the Board an accountant's certificate or supplied any evidence required under these Rules.

15. Notice of estate agent

Every notice to be given by the Board under these Rules to an estate agent shall 'be in writing under the hand of the Registrar and sent by registered post to the last address of the estate agent appearing in the register of estate agents kept by the Registrar under section 7 of the Act and when so given and sent, is taken to have been received by the estate agent within seven days after the date of posting.

16. Notice to accountant

Every notice given by the Board under these Rules to an accountant shall be in writing under the hand of the Registrar and sent by registered post to the address of the accountant shown on an accountant's certificate or appearing in the records of the accountancy body of which the accountant is a member, and when so given and sent, is taken to have been received by the accountant within seven days after the date of posting.

SCHEDULE

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FORM OF ACCOUNTANT'S CERTIFICATE

Note.—In the case of a firm with a number of partners or company with directors carbon copies of the certificate may be delivered provided section 1 below is completed on each certificate with the name of the individual estate agent.

1. Estate agent's full name.
2. Firm(s) name(s) and address(es).

Note.—All addresses at which the estate agent(s) practice(s) must be covered by an accountant's certificate or certificates.

3. State whether practising alone or in partnership.
4. Accounting period(s).

Note.—The period(s) must comply with the Estate Agents (Accountant's Certificate) Rules.

ACCOUNTANT'S CERTIFICATE

In compliance with the Estate Agents (Accountant's Certificate) Rules, 1989.

I, have examined the books, accounts and documents of the above-named estate agent relating to the above practice(s)

Estate Agents

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SCHEDULE—*continued*

produced to me and I hereby certify that from my examination pursuant to rule 5 of the Estate Agents (Accountant's Certificate) Rules, and from explanations and information given to me, I am satisfied that—

(1) During the above-mentioned period(s) he has complied with the provisions of the Estate Agents (Accounts) Rules, 1989 except so far as concerns—

(a) certain trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery; I am satisfied that none of such breaches resulted in any loss to any client;

(b) the matters set out on the back hereof;

(2) Having retired from active practice as an estate agent he ceased to hold client's money on the:

Particulars of the Accountant

Full name

Qualifications (if any)

Firms name

Address

Signature

Date

To: The Registrar,

The Estate Agents Registration Board,

P.O. Box

NAIROBI.

*Delete clause not applicable.

ESTATE AGENTS (ACCOUNTS) RULES, 1989

[L.N. 20/1989.]

1. These Rules may be cited as the Estate Agents (Accounts) Rules, 1989.

2. In these Rules, unless the context otherwise requires—

“estate agent” means a person who deals with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or building, forming part thereof or does any of the following acts—

- (a) bringing together or taking steps to bring together a prospective vendor, lessor, lender and a prospective purchaser, lessee or borrower; or
- (b) negotiating the terms of sale, mortgage, charge or letting as an intermediary between or on behalf of either of the principals;

“client” means any person on whose account an estate agent holds or receives client's money;

“client account” means a current or deposit account at a bank or financial institution operating under the Banking Act (Cap. 488) or a building society registered under the Building Societies Act (Cap. 489), in the name of the estate agent the title of which accounts contains the word “client” or “trust”;

“client's money”, in relation to an estate agent, means any money received by him in the course of estate agency work which is a contract or a pre-contract deposit, whether the money is held or received by him as agent, bailee, shareholder or in any other capacity;

“contract deposit”, means any sum paid by a purchaser—

- (a) which in whole or in part is intended to form part of the consideration for acquiring an interest in land in Kenya; or
- (b) which is paid by him at or after the time at which he acquires the interest or enters into an enforceable contract to acquire it;

“pre-contract deposit” means any sum paid by any person—

- (a) in whole or in part as a show of his intention to acquire such an interest in immovable property or any house, shop or building forming part thereof;
- (b) in whole or in part towards meeting any liability of his in respect of the consideration for the acquisition of such an interest which will arise if he acquires or enters into an enforceable interest; or
- (c) in respect of a connected contract and which is paid by him at the time or before he either acquires the interest or enters into an enforceable contract to acquire it;

“connected contract”, in relation to the acquisition of an interest in land, means a contract which is conditional upon entering into an enforceable contract for such an acquisition (whether or not it is also conditional on other matters).

3. An estate agent may keep one client account or several client accounts as he thinks necessary.

[Subsidiary]**4.** Client's money received by any agency work in Kenya—

- (a) is held by him on trust for the person who is entitled to call it to be paid over to him or to be paid on his direction or have it otherwise credited to him; or
- (b) if it is received by him as a shareholder, is held by him on trust for the person who may become so entitled on the occurrence of the event against which the money is held.

5. Subject to rule 9, every estate agent who receives client's money, shall without delay pay the money into a client's account maintained by him or by a person in whose employment he is.

6. There shall be paid into the client's account—

- (a) client's money;
- (b) such money belonging to the estate agent as may be necessary for the purpose of maintaining the account;
- (c) money to replace any sum drawn from the account in contravention of these Rules; and
- (d) a cheque or draft received by the estate agent which he is entitled under rule 7 to split but which he does not split.

7. (1) Where an estate agent holds or receives a cheque or draft which includes client's money—

- (a) he may where practicable split such cheque or draft and, if he does so, he shall deal with each part thereof as if he had received a separate cheque or draft in respect of that part; or
- (b) if he does not split the cheque or draft, he shall pay the cheque or draft into a client account.

(2) Money which is not client's money but which is paid into a client's account, other than under rule 6, shall be paid out as soon as is reasonably possible.

8. An estate agent shall not account for any money other than money which he is required to pay into a client's account under these Rules.

9. An estate agent need not pay into a client account client's money held or received by him which—

- (a) is received by him in the form of cash and is without delay paid in cash in the ordinary course of business to the client or to a third party; or
- (b) he pays in, without delay to the credit or a separate account opened or to be opened in the name of a client, trust, or estate or of some person nominated by the client; or
- (c) is received by him in the form of a cheque or draft and is without delay, endorsed over or delivered in the ordinary course of business to the client or to a third party for, or on behalf of or to the use of the client and is not cashed or passed through a bank by the estate agent.

10. (1) Subject to rules 11 and 12, an estate agent may withdraw from a client account—

- (a) money properly required for payment to the client;
- (b) money properly required for or towards a payment authorized by client;

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- (c) money properly required for or towards a payment on behalf of the client within the mandate of the estate agent in the matter or any of the matters in which he is acting for or on behalf of the client;
- (d) money which he is transferring to a separate account opened or to be opened in the name of the client;
- (e) money properly required for or towards payment of a debt due to the estate agent from the client or in reimbursement of money properly expended by the estate agent for or on behalf of the client;
- (f) money properly required for or towards payment of the estate agent's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client;
- (g) money paid into the account in contravention of these Rules;
- (h) money paid into the account under rule 6(b);
- (i) money not being client's money paid in the account under rule 7(1)(b).

(2) Every cheque drawn upon a client account shall bear on its face the words "client account" or "trust account".

11. An estate agent shall not withdraw from a client account any sum in excess of the amount held for the time being in such account for the credit of the client in respect of whom, the drawing is proposed to be made.

12. No money may be withdrawn from the client account under paragraphs (e), (f), (g), (h) and (i) of rule 10 except by cheque drawn in favour of the estate agent.

13. No money may be withdrawn from the client account except as may be authorized by rule 10 or as specifically authorized in writing by the Board in pursuance of an application made by the estate agent.

14. (1) Every estate agent shall at all times keep properly written up such books of account as may be necessary to show—

- (a) every receipt by him of client's money for each separate client; and
- (b) every payment or application by him of or from client's money for each separate client; and
- (c) the amount held by him for the time being in a client account, for each separate client; and
- (d) the moneys expended by him for and the costs charged by him to each separate client.

(2) The books of account referred to in paragraph (1) shall include—

- (a) either—
 - (i) a cash book in which to record every transaction involving client's money or other money dealt with by the estate agent through a client account and a separate cash book in which to record every transaction involving the estate agent's own money and relating to the affairs of his client's; or
 - (ii) a cash book ruled with two separate principal money columns on each side, one such column for recording every transaction involving client's money or other money dealt with by the estate agent through a client account and the other for recording every transaction involving the estate agent's own money and relating to the affairs of his client;

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(b) either—

- (i) a ledger in which to record every transaction involving client's money or other money dealt with by the estate agent through a client account and a separate ledger in which to record every transaction involving the estate agent's own money and relating to the affairs of his clients; or
- (ii) a ledger ruled with two principal money columns on each side one such column for recording every transaction involving client's money or other money dealt with by the estate agent through a client account and the other recording every transaction involving the estate agent's own money and relating to the affairs of his clients; and

(c) a record showing particulars of all bills of costs delivered by the estate agent to his clients distinguishing between profit, cost and disbursement.

(3) A cash book ledger required to be kept under these Rules may be a loose-leaf book.

(4) In this rule, "cash 'book" and "ledger" include such cards or other permanent records as are necessary for the operation of a mechanical system of book-keeping.

(5) Every estate agent shall preserve for at least seven years from the date of the last entry therein all books of account required to be kept by him under rule 14.

16. Every estate agent shall take reasonable precautions to ensure the safety of all books of account which he is required by rule 15 to preserve and in the event of any of the books being lost, destroyed or materially damaged shall forthwith give notice thereof to the Board together with a written report on the circumstances.
