

Regulation of Real Estate Agency Practice in Malaysia: An Investigation for Nigeria

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Abstract: *Nigeria and Malaysia have a similar colonial history. The Malaysian Institute of Estate Agents (MIEA) is the recognized body representing all Registered Estate Agents. This paper examines real estate agency organization, education, and standards of practice in Malaysia. It employs the instrument of document review of (i) Valuers, Appraisers and Estate Agents (VAEA) Act No. 242 of 1981, incorporating all amendments up to January 10, 2014(i) (ii) Malaysian Institute of Estate Agents' Brochure 2014 (iii) Valuers, Appraisers and Estate Agents' Rules of 1986 (iv) Malaysia Real Estate Agency Standards of 1999, and triangulated the reviews by direct observation of procedures and operations in selected Real Estate Agents' Offices in Kuala Lumpur and Selangor for fourteen working days. It found significant compliance with the Act and the Agency Standards by Appraisers, Real Estate Agents and Negotiators. The study provides evidence to the National Assembly of Nigeria to amend the Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) Act No.24 of 1975 for the statutory definition of an Estate Agent; facilitate the setting up of Training Institute for prospective estate agents who are not registered estate surveyors and valuers. The study contributes a discussion that seeks to reorder estate agency practice standards for Nigeria in compliance with best practices.*

Keywords: *Estate Agency, Best Practices, Real Estate Profession, Standards, Quacks, Malaysia, Nigeria*
Paper Type: Information/Document Review

1. BACKGROUND INFORMATION

Malaysia has a geographic coordinate that reads 2° 30' North latitude and 112° 30' East longitude. It is a federal constitutional monarchy located in Southeast Asia. It consists of thirteen states and three federal territories and has a total landmass of 329,847 square kilometres separated by the South China Sea into two similarly sized regions, Peninsular Malaysia and East Malaysia. Peninsular Malaysia shares a land and maritime border with Thailand and Singapore, Vietnam, and Indonesia. East Malaysia shares land and maritime borders with Brunei and Indonesia and a maritime border with the Philippines. The capital city is Kuala Lumpur, while Putrajaya is the seat of the federal government. In 2010, the population was 28.33 million, with 22.6 million living in Peninsular Malaysia.

Real estate agency was introduced by the British during the colonial era, although before then, there were middlemen in land transactions. Estate agency grew from the old auctioneers who were chattlemen attracted by the exciting prospects of selling large estates. These auctioneers were mainly the lawyers who had easy access to the available properties in the market and kept the lists of estates for sale and prospective purchasers. These real estate practices became visibly lucrative during England's Industrial Revolution of the nineteenth century. During this period, new wealth and employments were created. The desires for homeownership were largely satisfied. New lands were explored and built-upon or bought and developed. The market for property development widened considerably and the property markets grew exponentially. Then as more lands were developed, more properties enlarged the market base, and property experts were needed as people began to realise the complications that arose from marketing or buying properties. Notwithstanding, more self-styled estate agents also emerged, and over time, the real estate business became marred by incompetence and unwholesome behavior. Due to lack of

control over the self-styled estate agents, there were many victims of obtaining and fraud. The Estate Agents Act of 1979 was enacted in England and that exerted great influence on Malaysia to control its estate agency practice. To safeguard public interests against unscrupulous practice of estate agency by unqualified parties and rogues in the 1970s and early 1980s, the Malaysian Parliament enacted the legislation known as the Valuers, Appraisers and Estate Agents Act 1981. The Act took effect from September 7, 1984. The Real Estate Profession came under the purview of the Ministry of Finance; regulated by The Board of Valuers, Appraisers & Estate Agents (BOVAEA), Malaysia and governed by the Valuers, Appraisers & Estate Agents Act of 1981, as amended up to January 10, 2014; the Rules of 1986 and the Standards of 1999.

2. THE PROBLEM

The fundamental problem is that the term —Estate Agent|| is not statutorily defined in the context of real estate agency practice in Nigeria. There are three categories of —Estate Agents|| in Nigeria:

(i) The registered Surveyor and Valuer (ii) The Owner-Estate Agents, who are the owners of residential and/or commercial properties to be sold/let out, while also acting as estate agents for themselves in marketing and finding tenants/buyers for the same property. (iii) The Quack Estate Agents, who are victims of circumstances and have to change their careers informally. The last two categories neither have formal training, educational qualifications, nor professional expertise in the art and science of real estate agency, and have taken advantage of an apparent lax in the system to encroach into the landed profession. Due to their numerical strength and lack of awareness on the part of the people, they are widely consulted. The study focuses on the need for proper definition of estate agency practitioners, with particular reference to the Estate Agent.

3. OBJECTIVES OF STUDY

The key aspects of this paper brings to the fore, the institutional and educational frameworks for real estate agency practice in Malaysia, and the lessons for Nigerian Estate Agency Practice. The objective are: To review documents relating to real estate agency practice in Malaysia and verified by the researcher_s direct observation of procedures and practices in four registered estate agency offices in Kuala Lumpur and Selangor areas: To elicit the major areas in the review that can be adapted by ESVARBON for reforms in real estate agency practice in Nigeria in line with best practices. The study contributes a discussion, and provides a direction for reordering estate agency practice standards in Nigeria

4. METHODS

The method adopted is by reviewing documents related to estate agency practice in Malaysia. Verification of procedures and processes were made by direct observation for triangulation. Four real estate agents offices in Kuala Lumpur and Selangor were selected and observed for fourteen days. The main documents reviewed are: (i) MIEA (ii) Valuers, Appraisers and Estate Agents Act No. 242 of 1981, incorporating all amendments up to 2006 and the Amendment Act No. 1404 of 2011 (iii) Valuers, Appraisers and Estate Agents_ Rules of 1986, (iv) Malaysia Real Estate agency Standards of 1999. The reviews are done in relation to Estate Agency exclusively, and care was taken to avoid repetitions, except when unavoidable.

5. DOCUMENTS REVIEWED

1. Valuers, Appraisers and Estate Agents Act No. 242 of 1981 incorporating all Amendments up to January 10, 2014 (65pages)

The VAEA Act of 1981 was assented to on the 4th of February, 1981. Prior to 1981, General Practice Surveying was carried out under the Registration of Surveyors_ Act 1967. The 1981 Act, which replaced it, consists of 8 parts and 35 sections: Part I – PRELIMINARY (1.Short title and application 2. Interpretation; Part II - APPOINTMENT, DUTIES AND POWERS OF DIRECTOR GENERAL OF VALUATION AND PROPERTY SERVICES AND OTHER OFFICERS (3. Director General and other officers 4. Functions and duties of Director General, 5. Access to lands, buildings, *etc.* 6. Submission of relevant information, 7. Power of delegation 8. Minister may make rules: Part III - BOARD OF VALUERS, APPRAISERS AND ESTATE AGENTS 9. Board of Valuers, Appraisers and Estate Agents 10. Functions of the Board

11. Examiners and other staff 12. Fund of the Board 13. Auditing of accounts: Part IV – REGISTERS 14. Registers 15. Registrar 15A. Application for authority to practice 16. Authority to practice: Part V – 17. Registration of valuers and appraisers 18. Qualifications for registration of valuers and probationary valuers 19. Valuation practice 20. Restriction on registered appraisers 21. Restrictions on valuation practice 22. Special authority Part Va – ESTATE AGENTS 22_A Registration of estate agents 22B. Estate agency practice 22C. Restrictions on estate agency practice. 22D. Qualifications for registration of estate agents and probationary estate agents: Part VI – FIRMS 23. Practice by firms): Part VII - DISCIPLINARY AND OTHER PROCEEDINGS 24. Cancellation, suspension and admonishment 25. Removal from Register 26. Reinstatement 27. Appeal 28. Appeal Board 29. Procedure for appeal) Part VIII - 30. Offences 30A. Search by warrant 30B. Search and seizure without warrant 30C. List of things seized 31. Penalty for other offences 31A. Immunity of Board 32. Board may make rules 33. Saving as to right of Government 34. Consequential amendments to the Registration of Surveyors Act 1967. 35. Repeal.

The Act is administered by a registered valuer, who is the Director General (DG) of Valuation and Property Services in the Ministry of Finance. He is to provide advice to Government on standards of valuation, estate agency, and other property related matters in Malaysia. Under Parts III (9-11) BOVAEA was established as a body corporate with perpetual succession, and a common seal, which may sue and be sued. Members of BOVAEA are appointed by the Minister of Finance, and they include the DG as President, 6 registered valuers from the public service, 4 registered valuers nominated by the Malaysian Royal Institute of Surveyors (RISM), 3 registered Estate Agents, and 3 other registered valuers nominated by the President of the Board. They hold office for 3 years, or shorter period. The Board keeps and maintains a register of Valuers, Appraisers and Estate Agents, and Firms. It holds disciplinary proceedings and causes written professional examinations to be held, prescribes professional fees, awards scholarships, relate with other professional bodies, and handles other such similar matters, including appointment of examiners, and consideration of applications for authority to practice as a valuer, appraiser or estate agent. Part IV (7) mandates a registered valuer, appraiser or estate agent who is an employee to inform the Board in writing and within 30 days of change of employment, provide detail information about his movement. Any valuer, appraiser or estate agent or partnership must also provide detail information to the Board fourteen days prior to such movement.

Registration of estate agents Part V_A, section 22_A

Every person shall be entitled to have his name entered under Part III of the Register upon making application to the Board and proving to its satisfaction that—(a) he has attained the age of 21 years and is of sound mind, good character and has not been convicted of any offence involving fraud or dishonesty or moral turpitude during the five years immediately preceding the date of his application; (b) he is not an undischarged bankrupt; (c) he has been registered as a probationary estate agent: having passed the examinations prescribed by the Board or who has obtained qualifications which the Board recognizes as equivalent to such examinations may apply to the Board to be registered as a probationary estate agent. A probationary estate agent shall be required to obtain the practical experience and pass the Test of Professional Competence prescribed by the Board or any equivalent test or examination recognized by the Board. One who is not a citizen or permanent resident of Malaysia shall not qualify for registration as an estate agent or as a probationary estate agent unless he is or has been a registered estate agent before the coming into force of section 22D. The person must have made a declaration in the form in a manner prescribed by the Board;

Estate agency practice and Restrictions Part V_A, Sections 22_B & 23_C

No person, except a registered estate agent can (a) practise or carry on business or take up employment under any name, style or title containing the words —Estate Agent||, —House Agent||, —Property Agent||,— Land Agent||, —House Broker|| or the equivalent thereto, in any language or bearing any other word whatsoever in any language, or carry on business or take up employment as an estate agent; (b) display any signboard, or use, distribute or circulate any card, letter, pamphlet, leaflet, notice or any form of advertisement, implying either directly or indirectly that he is a registered estate agent; offer for sale or invite offers to purchase any land, building and

any interest therein irrespective of whether such land, building and interest is located within Malaysia or outside Malaysia: Provided that where foreign properties are to be marketed in Malaysia, such offer or invitation is made by or through an estate agent practising and residing in Malaysia on behalf of a principal practicing or residing outside Malaysia. However, an owner of any land, building and any interest therein, a licensed auctioneer, and a holder of power of attorney, may sell or rent as the case may be, but without commission, fee, reward or other consideration

Practice by firms – Part VI, s.23

No registered estate agent is allowed to practice estate agency or have the right to recover in any court any fee, charge or remuneration for any professional advice or services rendered by him pursuant to his practice unless he practices as a sole proprietor of a sole proprietorship, a partner of a partnership, a shareholder or director of a body corporate registered with the Board, or as an employee of such sole proprietorship, partnership or body corporate in which all the shareholders and directors are registered estate agents. No estate agent which is a firm may carry on property management unless all of its partners, in the case of a partnership, or all of its shareholders and directors, in the case of a body corporate, are permitted by the Board to carry on property management and it may only carry on property management of the categories of property approved by the Board. No registered estate agent may, unless the Board so approves in writing, become or remain as a sole proprietor, partner, shareholder or director of more than one sole proprietorship, partnership or body corporate practising estate agency.

Disciplinary and other Proceedings, Part VII, s.24 & 25

If an estate agent or probationary estate agent whose name has been placed in the Register (a) has been convicted of any offence involving fraud or dishonesty or moral turpitude;(b) has been found to have obtained his registration or authority to practice under this Act by fraud or misrepresentation; (c) has his qualification withdrawn or cancelled by the authority through which it was acquired or by which it was awarded;(d) has been found guilty by the Board of any professional misconduct or of any act or conduct which in the opinion of the Board is infamous or disgraceful, the Board may make an order—(i) cancelling his registration under the appropriate Part of the appropriate Register; (ii) suspending his practice for a period not exceeding three years; (iii) admonishing him and recording such admonishment in the appropriate Register; (iv) admonishing him or imposing a fine not exceeding five thousand ringgit or both but without recording such admonishment or fine in the appropriate Register; or (v) imposing a fine not exceeding ten thousand ringgit and recording such fine in the appropriate Register and that he be suspended from practice until the fine is paid. There shall be removed from the Register or the Register of Probationary Estate Agents the name and particulars of any registered estate agent or probationary estate agent—(a) who has applied in writing for such removal;(b) who has died;(c) who has been certified by the proper authority to be of unsound mind or has been adjudged a bankrupt; (d) who has failed to renew his authority to practise within three months of the expiry thereof; or (e) whose registration has been cancelled. Any person whose name is removed from the Register must, within fourteen days after the date of notification of the Board's decision by registered post, surrender to the Board his authority to practise and any person who fails to do so commits an offence. There shall be removed from the Register of Firms the name and particulars of any firm—(a) which has applied in writing for such removal; or (b) which has contravened or failed to comply with any of the terms or conditions of its registration.

Any person whose name has been removed from the Register of Estate Agents, shall, if his appeal has been allowed, forthwith be reinstated. Any person whose practice has been suspended and who has been admonished shall, if his appeal has been allowed, forthwith have the particulars of the suspension or the admonishment removed from the Register or the Register of Probationary Estate Agents, as the case may be. Any person whose name has been removed from the Register or the Register of Probationary Estate Agents, as the case may be, shall be reinstated if he has notified the Board and the Board is satisfied with the change of circumstances removing his disability. Any person whose name has been removed from the Register may be reinstated as soon as he has applied to be reinstated and upon payment of such fees, arrears and charges, and upon satisfying such other conditions, as may be prescribed by the Board.

The list of amendments are as follows: Act A598 of 7/9/1984; Act A980 of 31/1/1997; Act A1056 of 9/9/1999; and Act A1404 of 19/8/2011.

2. MIEA Brochure (15 pages)

MIEA is the recognized body representing all Registered Estate Agents in the country. In 1977, Malaysian Association of Real Estate Agents (MAREA) was registered after their first constitution was approved by the Registrar of Societies. However, with the coming into force of the Valuers, Appraisers and Estate Agents Amendment Act on the 6th of December 1984, and the active property market and development trends, the Association was transformed from a mere association to a professional institute. MAREA was changed to MIEA on May 3, 1989. Today it has formed alliances with international real estate associations, bilateral cooperation agreements with the National Association of Realtors of the United States of America, Real Estate Institute of Western Australia, and Association of Singapore Realtors. The objectives of the Institute are: (i) To unite those engaged in the Estate Agency Practice for the purpose of extending beneficial influence on the profession and related interests. (ii) To promote and maintain a high standard of conduct amongst members in accordance with the Code of Ethics of the Institute. (iii) To improve the technical and general knowledge of persons engaged in the profession. (iv) To develop and foster and maintain relations between members of the Institute and to provide a platform for the networking and exchanging of ideas and opinions amongst practitioners. (v) To provide for the upholding of the honour, reputation and status of members. (vi) To provide for the training, education, examination of persons practicing or intending to practice as estate agents, or who are otherwise employed or engaged in the profession. (vii) To represent members in discussion and dialogues with other trade/industry bodies and Government agencies. (viii) To safeguard and protect the interest of the general public against fraud by practitioners or illegal agents, and (ix) To elevate and encourage the maintenance of a high level of professionalism amongst practitioners. MIEA collaborates with the Institute of Professional Development, Open University Malaysia IPD-OUM that offers the Professional Diploma (PD) course in Estate agency to its members on weekend/evening timings. The PD covers the following modules Principles of Accounting, Introduction to Land Use, Economics, Property Taxation, Marketing and Building Technology I in the first part, while the second part consists of Land Economics, Estate Agency laws, Laws relating to Property, Real Estate Agency Practice and Building Technology II. Participants who have completed one or more modules can attempt to take the Estate Agents examinations conducted by BOVAEA. Memberships are in two categories: (i) Ordinary – Real estate agents registered with BOVAEA, and (ii) Affiliate Membership – Negotiators, Students/employees of real estate related industries.

3. Valuers, Appraisers and Estate Agents' Rules of 1986 (19 pages)

The Valuers, Appraisers and Estate Agents Rules of 1986 consist of Parts I – XVI and 147 rules. Rules 33A - 42 cover the Estate Agent_s examinations and practical experience. The estate agent_s examinations set by the Board shall consist of –Parts I and II Written Examinations; and a Test of Professional Competence (TPC). The TPC consists of practical and oral examinations. A candidate for the TPC shall satisfy the following conditions (i) has been registered as a probationary estate agent.; (ii) Has either passed the Part II Estate Agents_examinations and completed two years post qualifying practical experience in an estate agency firm, or passed the examination of an institution of higher learning or any recognised professional institution and completed one year of post-qualifying practical experience under a registered estate agent firm, or (iii) any other examinations approved by the Board and completed two years of post-qualifying practical experience in an estate agency firm. A candidate who has passed the TPC has completed the Estate Agents_ examination. The Board shall then confer a diploma under rule 33A. Those eligible to enroll for the examinations are: (i) Lawyers/Insurance Agents/Auctioneers (ii) Real Estate Negotiators (iii) School leavers who are considering a career in real estate (iv) Financial

Planners and Wealth Managers (iv) Property investors/Developers_ Sales personnel (v) Retirees or soon to be retired (vi) Bankers and Mortgage officers, and (vii) Those who are considering a change of career.

Figure 1 shows the pathway to become a registered estate agent in Malaysia.

How to become a Licensed Real Estate Agent?

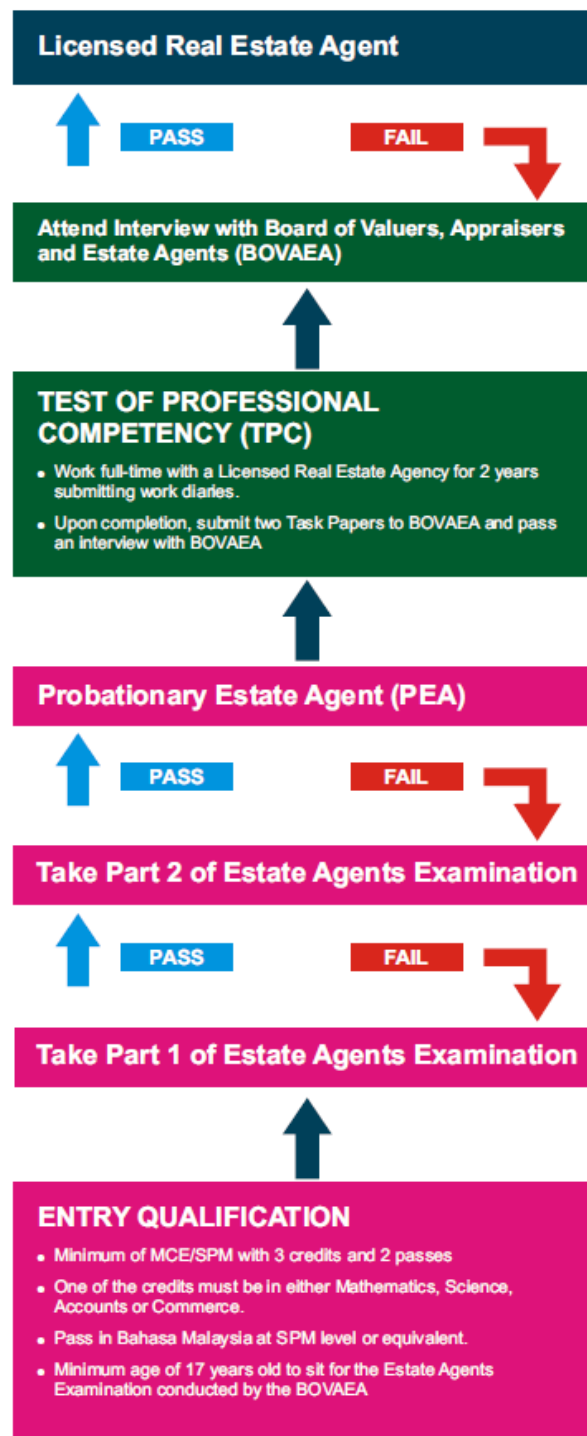


Figure1. Pathway to become a registered estate agent in Malaysia (MIEA, 2014)

The first duty of every registered estate agent is to render service to his client or his employer and uphold the interest of his client and the dignity of the profession with devotion to the high ideals of integrity, honour and courtesy, loyalty to his country, fairness and goodwill. He should act towards his client in all professional matters strictly in a fiduciary manner and hold as confidential, the results and other findings of his work and any report, until released from his obligation by his client, or until the transaction or proceedings for which the work or report was made have lapsed or been completed. The conduct of a registered estate agent in relation to other registered estate agents should be characterized by candour, courtesy and fairness. He must act both within the law and in the best interest of the client. He cannot, without the prior written

approval of the Board, be gainfully employed elsewhere.

Regarding advertisements, it should contain the firm's name, registration number, the office telephone number and may include the Board's logo, firm's address, and the signature of the registered person where necessary. An advertisement made or to be made by a registered estate agent or firm shall not contain the following: an inaccurate or misleading statement of fact; an explicit comparison between the service offered by a firm with that of other firms; mission statements, slogans, mottos or quotations, and self-laudatory statements. No advertisement made or to be made by a registered estate agent or firm shall be located or placed in an undesirable place and so designed in respect of wording, content, layout, illustration, caricature or arrangement as to bring the profession into disrepute or to undermine public confidence in the services provided by registered valuers, appraisers, or estate agents. A registered estate agent should not allow any reference to him or his firm to appear in any advertisement published by a commercial concern, except with the consent of the Board.

Every firm shall have a professional indemnity insurance.

If a registered estate agent is employed by a non-estate agency organization, he cannot hold himself out to be in professional practice or in a position to give independent advice on matters related to estate agency.

For the purpose of enforcing the rules, there is an inspectorate charged with visiting and inspecting any office to investigate compliance, and report to the Board. There is also a Disciplinary Board to take all matters of professional misconduct, and a Standing Complaints Investigation Committee

4. Malaysian Estate Agency and Standards (MEAS), 1999 (31 pages)

MAES consists of standards 1-10 categorized into Instructions, the Estate agency Office, Inspection, Types of Agencies/Listing, Code of Conduct and Ethics, Advertisement/Marketing, Estate Agency Fees, Negotiators, and Standard Forms.

There are standard forms for all estate agents, with the following reference numbers:

MEAS1: Appointment to act as an Estate Agent to Secure a Purchaser MEAS2: Appointment to act as an Estate Agent to Secure a Tenant

MEAS3 Appointment to act as an Estate Agent to Secure a Property for purchase MEAS4 Appointment to act as an Estate Agent to Secure Premises for Rent MEAS5 Viewing form

MEAS6 Typical Flyer

All estate agents are encouraged to use the Board's Standard Forms on instructions, MEAS1 to MEAS4

Negotiators are not given explicit recognition in the Act or Rules but are informally recognized by the Board as assistants engaged by estate agents in their practice of estate agency. They are usually salespersons who themselves are paid a fee or commission based upon conclusion of a successful estate agency transaction, usually not more than 40% of the fees. Negotiators can also be under the direct employment of estate agents and be paid salaries rather than fees or commissions. Negotiators are persons who come into contact with the public in many estate agency transactions, hence the manner in which they are directed and supervised by the estate agent is of concern to the Board. Generally the Board requires of estate agents to ensure that Negotiators assist in the conduct of the practice of estate agency in full compliance with the provisions of the Act, Rules and these Standards. In any disciplinary action against an estate agent, a plea in mitigation founded on the claim that the estate agent was unaware of wrongful actions by the Negotiator will not be acceptable and neither will it be a defence. Estate agents should ensure that all Negotiators engaged by them work under their direction and supervision.

Estate agents should ensure that Negotiators do not operate independently of the firm, and that all Negotiators are full time negotiators and not part-time Negotiators, without making any secret profits for themselves. Estate agents will ensure that Negotiators do not, when offering a property for sale, purchase, let or rent, quote a price different from that agreed upon with the principal. A negotiator can work for only one estate agent at any a time, usually under a contractual or

employment agreement. Except with the express permission of the Board, no estate agent shall have more than 20 Negotiators at any a time; the estate agents, keeping the register of all their Negotiators with the dates of their respective appointment and fees or commissions paid. No negotiator is permitted to sign any formal estate agency letter or document nor advertise on behalf of the estate agent.

Many estate agents by the very nature of their practice hold money belonging to other people. It is therefore appropriate that there should be Standards dealing with estate agents' accounts and the handling of clients' money. The purpose of maintaining a clients' account is to ensure that monies entrusted to registered persons are paid into a separate designated account, properly recorded in the accounts maintained by the registered estate agent, and properly monitored

Every firm, including every branch or other office of the firm, must operate from a proper office

In all types of estate agencies, the estate agent must obtain prior written instructions from the principal before commencement of the estate agency assignment. The written instructions shall include the name of the estate agency firm, the clear identification of the subject property and the terms and conditions of the estate agency engagement and the intended transaction. In line with Rule 97, and when obtaining instructions from the principal, the estate agent will not, where another estate agent has been exclusively appointed or appointed as a sole agent, as evidenced by a signboard or any other form of advertisement in any media referring specifically to the property solicit for the same business; accept instructions without verification from the previous estate agent that his appointment has been terminated. If the principal withdraws his instructions from an estate agent, the estate agent must advise the principal of any circumstances in which he may have to pay more than one fee and any continuing liability the principal may have to incur. An estate agent must never misinterpret the value of a property in order to gain an instruction.

6. NIGERIA

Nigeria's latitude and longitude is 10° 00' N and 8° 00' E. It is a Federal Republic comprising 36 states and its Federal Capital Territory is Abuja. The country is located in West Africa and shares land borders with the Republic of Benin in the west, Chad and Cameroon in the east, and Niger in the north. Its coast in the south lies on the Gulf of Guinea on the Atlantic Ocean. Its population is over 150million on an area of over 923,000 square kilometers. Despite Nigeria emerging as the largest economy in Africa post rebasing, the contribution of real estate, mortgage and construction industry to the country's gross domestic product (GDP) is just 2.20 percent, and South Africa, 2.50 percent. Poor land policy and administration, a fledgling mortgage system, among others, are responsible for Nigeria's distant position behind its peers. Nigeria lags behind countries like Ghana, Thailand and New Zealand in ease of registering property. In Ghana it requires just five procedures, 34 days and 1.3 percent of a property's value to register any property. In New Zealand, property could be registered online in two days at a cost of 0.1 percent of the property's value; Nigeria is one of the world's most difficult places to register property, especially when compared to countries such as Thailand, where registering property requires just one step, less than a day and 1 percent of property value. It requires 13 procedures, an average of 80days and about 29% of the property value. This has implications for estate agency and property dealings in general.

7. MAJOR FINDINGS

The definition of an Estate Agent and Real Estate Negotiator are clearly stated and backed by the enabling Act and Rules. No one other, than those registered can practice estate agency in the whole of Malaysia. An estate Agent in Malaysia is a person whose name has been entered under Part III of the Register and to whom an Authority of Practice has been issued by the Board of Valuers, Appraisers & Estate Agents under Section 16 of the Act, and a Negotiator is a real estate salesperson employed by a real estate agent. All negotiators are required to work on a full time basis with a real estate firm. To raise the standard of professionalism, Malaysian Institute of Estate Agents has also registered Negotiators and they are called Certified Real Estate Negotiators and they carry a certification card. No one appoints you as negotiator without presenting the card. The status of the Valuer and Appraiser, Estate Agent, and the Negotiator is are clearly defined. Illegal estate agents are also defined in Section 22c of the Valuers, Appraisers & Estate Agents Act 1981 Restrictions on Estate Agency Practice as any person other than a registered estate agent.

—No person shall unless he is a Registered Estate Agent practice or carry on business or take up employment as an Estate Agent under any name style or title containing the words "Estate Agent", "House Agent", "Property Agent", "Land Agent" or to the equivalent thereto, in any language or bearing any other word whatsoever in any language which may reasonably be construed to imply that he is a "Registered Estate Agent."

Anyone other than the registered estate agent cannot: (i) Use or display any sign board, card or other device representing or implying that he is a "Registered Estate Agent" and; (ii) Be entitled to recover in any court any fees, charges or remuneration for any professional advice or services rendered as an "Estate Agent."

Its overall aim was to ensure that the public is served only by duly qualified professional estate agents and by their duly and properly employed assistants known as the Negotiators: 1) Not any —Tom, Dick and Harry|| can practise as a real estate agent (Sec 22A, 22C, 23(1)...Rules 102 & 110, the other standards); 2) Nor can anyone be simply employed as Negotiators (Standard 9 of MEAS 1999, Circulars 11/96 & 1/2000, Circular 2/97, Circulars 11/98 & 12/98, Circular 2/2004...

The Malaysian estate agency law has detailed stipulations to ensure that the public is served only by 1) qualified and practising real estate agents - not the sleeping one(s) who "sublet" or "lease-out" or "loan" their registration/licence to non-registered persons through various means, fronts or veils; and 2) Negotiators who are not on loose attachments nor are illegally employed by either the "sleeping principals" or "those who 'loan' licences" from them in blatant contravention of existing estate agency law and stipulations. In order to ensure that the sleeping principal cannot disclaim/escape responsibility when there are troubles - such as when there is a suit for misrepresentation by a customer or a prosecution by the authority; or, can file a claim for estate agency fee, all formal documents - such as an agreement for fees - will be executed with calculated ambivalence where the letterhead and registration numbers are those of the estate agency/REA but the name used is not that of the REA (usually a nickname), the signature is also not that of the REA and the designation used does not square with the status of the REA so that the "sleeping

REA|| who —sublets licence|| can:

(a) when he/she needs to disclaim responsibility, allege that the document was not executed by him/her as the signature, the name and the designation were clearly not his/hers - someone without her authority simply misuse her letterhead and registration numbers; or,

(b) when he/she wants to sue for fees, allege that the document was indeed executed by him/her only that he/she was using another signature, another name and a lower designation - the letterhead and registration numbers which were there would now be used to support his/her case. To prevent conduct of estate agency by any unregistered person on behalf or in the name of "sleeping principal" and/or of any registered real estate agent ("REA") who "sells, transfers, sublets or otherwise permits any other (unregistered) person to use" his/her authority to practise estate agency (an act in contravention of sec 30(i)), the law (Rule 102) insists that the signature, name and registration number of the REA must appear on all documents prepared by him/or her (Rule 110(1)) as well as all documents not of/for administrative purposes (Rule 110(2) & (3)) - the Board has issued Circular (e.g. Cir. 2/97), among others, on what are and what are not administrative documents, for example, all documents on professional fees are not administrative documents - therefore, no one can sign such documents on behalf of the REA. The Conviction: Anyone who commits an offence is liable on conviction to a fine not exceeding RM25,000 or to an imprisonment for a term not exceeding 3 years or both, and shall be liable to a further penalty of RM500 for each day during the continuance of such offence. RM25,000 is equivalent to N1,250,000 (One million, two hundred and fifty thousand naira only) and RM500 is N25,000.

Property 'scouts' are known as Negotiators. An estate agency office can appoint up to 20 or more negotiators to work for it on full time basis. Estate Agents are not generally allowed to carry out property management functions. The registered valuer and appraiser are solely empowered to act as property managers

Estate Agents are required to have a Professional Indemnity Insurance to protect the interest of

their clients. In addition, every Estate Agent is assigned with a number which reflects the individual Estate Agent whose name has been registered with the Board. On the other hand the firm is issued with another registration number e.g. E(3)1188 for sole proprietorship and E(1)1329 for Sendirian Berhad. These registration numbers are required to be displayed in all communication tools of the firm. Every member of the Institute including Certified Real Estate Negotiators (C.R.E.N.) must carry a card which is issued by the Institute.

The enabling law provided for the setting up of a training institute for prospective estate agents, and success at the TPC is the yardstick to advance to the level of a professional estate agent.

There is uniformity in the standards of practice and prescribed formats for engagements are widely used.

BOVAEA keeps records of movements of all registered valuers, appraisers, estate agents, and negotiators in the country from one firm to another, and records are updated within 30days. The Board of Valuers, Appraisers & Estate Agents Malaysia has now made it easy and possible for members of public to check through its official web site whether the person they are dealing with is a lawful real estate agent or a Negotiator employed by a registered estate agency firm.

A body corporate can be registered by the Board to practice estate agency provided all the directors and shareholders are solely registered estate agents, a combination of registered estate agents, valuers and appraisers; or a combination of registered estate agents and other persons or bodies corporate. However, the shares in the body corporate must be held solely by the registered estate agents, or by majority of the estate agents who hold the majority interests and voting rights(Part VI: s.23 (2a&b)). Examples of limited liability estate agency companies are: GS Reality SdnBhd, WTW Real Estate SdnBhd, Provenz Premier Realty Sdn. Bhd, Metroworld Realty SdnBhd, CBD Properties (KL) SdnBhd, Starcity Property Sdn. Bhd, The One Property International Sdn Bhd, Chester Properties Sdn. Bhd., just to mention very few.

8. CONCLUDING REMARKS

The present Nigerian real estate agency predicament is similar to the experience of Malaysia in the 1980s. This is to be expected because we have a similar colonial history.

From virtually all indications, the real estate agency practice in Malaysia is far better organized than in Nigeria, weighed on the parameters of standards, order, and absence of quackery. It fits all categories of real estate personnel into their appropriate compartments, enforcement of ethical rules and regulations and confidence building with service users. There is order in the Malaysian real estate agency practice. Perhaps, this is because all persons who wish to take up career in estate agency is given equal opportunity, first as a Negotiator, then probationary estate agent, registered estate agent, or could even become a Valuer. The MIEA program accommodates interested people from all kinds of background. The order in this sector, and the cadastral land information systems facilitate swift transactions and attract massive local and foreign investments. There may be more skyscraper residential and commercial development in Kuala Lumpur than all the cities in Nigeria put together, some towering above 80floors. The Petronas Towers in Kuala

Lumpur City Center has 88 floors, standing 452 metres as the world's tallest twin towers, and the 4th tallest building in the world behind the Burj Khalifa in Dubai, One World Trade Centre in New York, Taipei 101 in Taiwan.

The Nigerian real estate agency has to be reorganised. In this quest, we need to take lessons from the Malaysian experience and boldly adapt them to suit our local environment.

First, there should be an amendment to the ESVARBON Act of 1975 to provide appropriate definition and determine who an Estate Agent is, and also enable the establishment of an INSTITUTE for Estate Agency similar to MIEA with collaborator capacity with one or two institution where, for example, lawyers who wish to practice estate agency can be properly trained in its theory and practice, and thereafter, mandated to establish visible offices. What should be setup is a Professional Training Institute, not an association of Estate Agents of Nigeria. MAREA was transformed to MIEA when it was incapable of training professional estate agents because it did not have the legal capacity to do so.

ESVARBON has outlived its usefulness under the Ministry of Lands, and should be placed under the Ministry of Finance where it is likely to be more relevant and appreciated. After all, Estate Management and Valuation, in concrete terms, is investment-oriented and a subset of the finance sector.

Having seen the need to restore confidence, promote investments in the sector, and enhance compliance with international best practices, Lagos State Real Estate Agency Transaction Department (LASRETRAD) was established to tackle the housing challenge in the State and regulate the practice of estate agency. The LASRETRAD bill was passed in 2007 by the Lagos State House of Assembly but it took six years to sign it into law by the Governor (2013) to curb the excesses of practitioners and unethical practices in real estate agency, as well as serve as a board for issuance of licence to practitioners. The real question is: Whether a State Government has the capacity to determine who an Estate Agent is? It simply does not. Even if it does, it lacks the regulatory prowess. That regulatory power is domicile with ESVARBON as the bonafide regulatory body. Countries that have succeeded used the institutional and educational frameworks, then the command and control approach.

Second, the Real Estate Surveyor/Estate Agents must themselves understand that they are rendering specialised services to their clients, and they cannot afford not to hold them captive so that they can maximise returns. They must add value to delivery of agency services provided by upgrading their levels of efficiency and effectiveness for them to be accorded recognition by society. They must visibly display competence and nobility to distinguish them from quacks. Their conduct, character and carriage must speak for them. At the moment, and for many of them, their work environment and ethics are not significantly different from those of quacks, besides, standard rules of engagement and valuation standards are neither uniform, nor clearly spelt out.

The Real Estate Agent of the 21st Century should perceive and seize new profit opportunities by creating new product market combinations in real estate practice in the following areas: Real estate marketing, by using pictorial, emailing and web designs /paging advertisement strategies in addition to the traditional strategies; property management portfolio that is driven by database management systems for easy information retrievals; environment-friendly office spaces that maximises use-efficiency; use of powerful PowerPoint presentations to client-investors; transaction closures supported with CCTV, digital photography, and smart storage systems; Cost and value data banks that are updated periodically; real estate education that are supported with modern teaching aids, mentoring, and exposure to international networking; empirical real estate research into contemporary real estate issues; and direct involvement in residential, commercial, and industrial investment in real estate development. They need to make the difference in these areas in the most imaginative and innovative manner in order to become mega players in their local property markets. It is also necessary to take advantage of opportunities created by globalization and become players in the international real estate markets.

All persons wishing to practice estate agency must pass all prescribed qualifying examinations, including a TPC to be prescribed by the 'new' ESVARBON. Anything short of this should be unacceptable.

There must be uniform format for engagement of services to secure a purchaser, or tenant; to secure a property for purchase or leasing. Flyers and inspection forms need to be standardized with explanatory notes attached to each of the forms.

Registered Estate Surveyors and Valuers (RSVs) should become registered estate agents automatically.

All estate agency firms should be registered by the Board as sole proprietorship, partnerships, or body corporate. In the case of body corporate, all the directors must be registered estate agents in accordance with standards to be set by ESVARBON under a newly amended law.

ESVARBON should forge alliances with the Real Estate Institute of South Africa, and other countries identified to have solved the problems of real estate quackery.

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