



MONTSERRAT

CHAPTER 6.10

REAL ESTATE AGENTS (REGISTRATION) ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 6.10

REAL ESTATE AGENTS (REGISTRATION) ACT

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CHAPTER 6.10

REAL ESTATE AGENTS (REGISTRATION) ACT

(Acts 1 of 1972, 7 of 1987, 11 of 1992 and 9 of 2011)

AN ACT TO PROVIDE FOR THE REGISTRATION OF REAL ESTATE AGENTS AND THE PAYMENT OF FEES FOR SUCH REGISTRATION, AND FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH.

Commencement

[1 April 1972]

Short title

1. This Act may be cited as the Real Estate Agents (Registration) Act. *(Amended by Act 7 of 1987)*

Interpretation

2. For the purposes of this Act—

“**company**” means a company where all the directors and shareholders are Montserratians within the meaning of the Immigration Act; *(Amended by Act 9 of 2011)*

“**person**”, in the case of a natural person means a Montserratian within the meaning of the Immigration Act; *(Amended by Act 9 of 2011)*

“**real estate agents**” has the meaning assigned thereto by section 3;

“**registration**” includes the enrolment, entry, or insertion of a name in a roll, card, list or register, and “**registered**” shall be construed accordingly.

“**salesman**” means a real estate salesman, and includes a person employed, appointed or authorised by a real estate agent to trade in real estate;

“**trade**” means—

- (a)* a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise;
- (b)* any offer or attempt to list real estate for the purpose of such disposition or transaction referred to in paragraph *(a)*; and

- (c) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of such a disposition, acquisition, transaction, offer or attempt, and the verb “**trade**” has a corresponding meaning.

(Amended by Act 11 of 1992)

Meaning of real estate agent

3. (1) For the purposes of this Act every person shall, subject to subsection (2), be deemed to be a real estate agent who acts, or who holds himself out to the public or to any member thereof as ready to act, for reward as an agent in respect of—

- (a) the sale or other disposal of land or of businesses (either with or without any interest in land); or
- (b) the purchase or other acquisition of land or of businesses (either with or without any interest in land); or
- (c) the leasing or letting of land,

notwithstanding that he may carry on any other business either in conjunction with the business of a real estate agent or separately therefrom.

(2) Notwithstanding the provisions of subsection (1)—

- (a) a solicitor shall not be deemed to be a real estate agent for the purposes of this Act by reason only of the fact that he may, in conjunction with his business as a solicitor, act as agent in respect of the sale or purchase or other disposal or acquisition of land or of businesses, unless he is remunerated for so acting by a commission in addition to or instead of his professional charges;
- (b) a person who sells or offers to sell any land by auction shall not, by reason only of that fact, be deemed to be a real estate agent for the purposes of this Act.

(3) Where two or more persons carry on business jointly as real estate agents or where a person is engaged in real estate work by a real estate agent each of those persons shall be deemed to be a real estate agent.

(4) Where a company is engaged in the business of real estate agents each one of the Directors of that company and every other person who is engaged in real estate work by that company shall be deemed to be a real estate agent.

(5) For the purposes of this section “**real estate work**” means to trade in real estate or carry on the business of a real estate agent or function as a salesman.

(Substituted by Act 11 of 1992)

Application for Registration

4. (1) Any person, whether a body corporate or not, who desires to carry on business in Montserrat as a real estate agent, shall make application to the Governor acting on the advice of Cabinet for permission to be registered as a real estate agent. *(Amended by Act 9 of 2011)*

(2) Such application shall state—

(a) the name of the applicant and, if the applicant is a partnership, the name of each partner, and if a body corporate, the names of all its directors, shareholders and salesmen; and

(b) the place of business of such applicant.

(Amended by Act 11 of 1992)

Annual registration of real estate agents and fees therefor

5. (1) Every person who desires to carry on in Montserrat the business of a real estate agent, and to whom permission to be so registered has been granted by the Governor acting on the advice of Cabinet, shall, within thirty days of the grant of such permission and thereafter before 15 January in each year—

(a) cause his name to be registered in a register to be kept by the Accountant General for the purposes of this Act and to be called the Real Estate Agents Register; and

(b) at the same time pay to the Accountant General in respect of that year the annual registration fee of \$1,000 and obtain from the Accountant General a certificate of registration.

(Amended by Acts 7 of 1987, 11 of 1992 and 9 of 2011)

(2) In the case of a first registration under this Act, the registration fee shall, subject to the provisions of section 6, be as follows—

(a) the whole of the annual registration fee if registration is attained between 1 January and 31 March;

(b) three quarters of the annual fee if registration is attained between 1 April and 30 June;

(c) one half of the annual fee if registration is attained between 1 July and 30 September; and

(d) one quarter of the annual fee if registration is attained between 1 October and 31 December.

Time for Payment of registration fees and penalty for late payment

6. (1) All annual registration fees payable under this Act in respect of renewals of registration shall become due and payable on 1 January in each year.

(2) Any person who, under section 5, is required to pay a registration fee and who fails to pay such fee within thirty days of its becoming due and payable, shall, in respect of his registration for that year, pay to the Accountant General by way of a penalty and in addition to the fee payable by that person under section 5 hereof, a sum equal to such fee.

(3) All fees and penalties payable by any person under section 5 and this section shall be paid to the Accountant General before such person is registered.

Penalty for failure to register

7. (1) Any person who, without being registered under section 5, describes himself in writing or holds himself out as a real estate agent, or carries on business as a real estate agent shall be guilty of an offence against this Act and shall be liable on summary conviction thereof to a fine of \$15,000 and to a further fine of \$500 for each day during which the offence continues after conviction therefor.

(2) For the avoidance of doubt it is hereby declared that any person who for reward engages in a single transaction of the nature set out and described in section 3(1)(a), (b) or (c) shall be deemed to have carried on the business of a real estate agent.

(Amended by Act 11 of 1992)

Effect or refusal or failure to pay registration fee

8. Any person who is by section 5 required to pay a registration fee and who refuses or fails to pay such fee within one month after such fee becomes payable, shall be treated as not being registered for the purposes of this Act and shall not be entitled to sue for or recover any commission, reward or other valuable consideration in respect of any service or work performed by him as a real estate agent during such time as he shall be deemed as not having being registered.

Applications for licences under Landholding Control Act

9. (1) Notwithstanding the provisions of the Landholding Control Act every application under that Act for a licence to hold land or a mortgage on land or any other interest in land in Montserrat shall contain the name and address of the real estate agent, if any, through by or with whom the transaction is being or has been negotiated.

(2) If any person, for the purpose of obtaining such a licence as in subsection (1) referred to, shall, in his application for such a licence, give any false or misleading information with regard to the existence or the name or address of a real estate agent involved in the transaction, any licence obtained thereby shall be null and void and any land or interest in land acquired by virtue of any such licence shall be forfeited to Her Majesty the Queen.

(3) For the purposes of a forfeiture under subsection (2), sections 3, 4, 7, 10 and 11 of the Landholding Control Act shall apply:

Provided that, no application shall be made to the High Court for a forfeiture under this section after the expiration of five years from the date of granting of such a licence which has become null and void as aforesaid.

Publication of registrations in *Gazette*

10. The Accountant General shall cause to be published in the *Gazette*—

- (a) in the month of February in every year, a list in alphabetical order of persons who have as at 31 January in that year registered their names as real estate agents; and
- (b) as soon as practicable after any such registration, the name and address of any person registering his name as a real estate agent after 31 January in any year.

Recovery of unpaid registration fees

11. Without prejudice to the provisions of sections 7 and 8 any registration fee payable under this Act which remains unpaid after one month from the date on which such fee becomes payable may be recovered as a civil debt due to the Crown.

Regulations

12. The Governor acting on the advice of Cabinet may make Regulations to give effect to the provisions of this Act and in particular for—

- (a) prescribing forms for use under this Act;
- (b) providing criteria by which permission would be granted to be registered as a real estate agent.
(*Inserted by Act 11 of 1992 and amended by Act 9 of 2011*)

Shareholding to be declared

13. Every person, partnership or company which carries on the business of a real estate agent shall make a declaration to the Accountant General in the prescribed form of any intention to change the ownership of the company or partnership or any directors or shareholders or salesmen and obtain the approval of the Governor acting on the advice of Cabinet before any change is effected. Where there is any contravention of the provisions of this section, every person who is a real estate agent in that business shall be liable on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both such fine and imprisonment.

(*Inserted by Act 11 of 1992 and amended by Act 9 of 2011*)

REAL ESTATE AGENTS (REGISTRATION) REGULATIONS – SECTION 12

(S.R.O. 12/1993 and Act 9 of 2011)

Commencement

[18 February 1993]

Short title

1. These Regulations may be cited at the Real Estate Agents (Registration) Regulations.

Criteria for grant of permission to be registered as real estate agents

2. (a) **Nationality:** Applicant must be a Montserratian within the meaning of the Immigration Act. *(Amended by Act 9 of 2011)*
- (b) **Educational Background:** Applicant must have a sound educational background, capable of handling correspondence, maintaining accounts and competent to read maps and survey maps.
- (c) **Knowledge of Government Policies and Programmes:** Applicant must have a sound knowledge of Government Policy with regard to Real Estate and should be conversant with the legislation governing taxation especially with property tax.
- (d) **Character and Financial standing:** Applicant must be a person of integrity, sound repute with satisfactory financial rating. Applicants net assets should not be less than \$100,000 as certified by the Comptroller of Inland Revenue.
- (e) **Place of Business:** Applicants must have a proper place of business in Montserrat.
- (f) **Interview:** Applicants may be called upon to appear before a Board constituted by the Governor to be interviewed to test the suitability of the applicant to be a real estate agent.
- (g) **Application Form:** Every application for permission to register as a Real Estate Agent shall be substantially in form appended below and addressed to the Governor acting on the advice of Cabinet and forwarded to the Permanent Secretary with responsibility for Trade. *(Amended by Act 9 of 2011)*

FORM

(Regulation 2(g))

APPLICATION FOR REAL ESTATE LICENCE

(to be completed by Applicant)

This application is to be accompanied by—

- (a) two character references; and
- (b) evidence of the particulars furnished in items 1, 2 and 4 of this application.

1. NAME

2. DATE OF BIRTH 3. MARITAL STATUS

4. NATIONALITY 5. IMMIGRATION STATUS IN MONTSEERRAT

6. In the space provided below, outline your general educational background stating names of institutions, years attended and qualifications obtained.

.....
.....
.....

7. Do you have any previous experience in the conduct of Real Estate transactions or knowledge of how such transactions are to be carried out?

.....

8. Are you familiar with the laws and regulations governing the conduct of Real Estate Business in Montserrat?

.....

9. Are you in a position to enter into a bond with the Government of Montserrat in the sum of Fifty Thousand Dollars (\$50,000) for the purpose of indemnity to clients?

.....

10. Were you ever convicted in a court of Law in Montserrat or abroad for the Commission of any offence? If so, give particulars.

.....
.....

I swear that the above information is true to the best of my knowledge and belief. If I am granted a Real Estate Licence, I undertake to abide by all laws and regulations governing Real Estate Business in Montserrat and to observe all conventions, practices and usages of Real Estate Business as they exist in Montserrat.

Signature of Applicant
