

M O N T S E R R A T

**REAL ESTATE AGENTS (REGISTRATION)
(AMENDMENT) ACT**

No. 2 of 2014

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Real Estate Agents (Registration) (Amendment) Act, 2014

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I ASSENT

(Sgd.) Adrian Davis

Governor

DATE:

M O N T S E R R A T

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AN ACT TO AMEND THE REAL ESTATE AGENTS (REGISTRATION) ACT
(CAP. 6.10).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and
with the advice and consent of the Legislative Assembly of
Montserrat, and by the Authority of the same as follows:—

1. Short title

This Act may be cited as the Real Estate Agents
(Registration) (Amendment) Act, 2014.

2. Interpretation

In this Act, “**principal Act**” means the Real Estate Agents (Registration) Act (Cap. 6.10) and “**principal Regulations**” means the Real Estate Agents (Registration) Regulations (Cap. 6.10).

3. Section 2 amended

Section 2 of the principal Act is amended—

(a) by deleting the definitions of “**company**”, “**person**”, “**real estate agents**” and “**salesman**”; and

(b) by inserting the following definitions in the correct alphabetical order—

“**Minister**” means the Minister with responsibility for lands;

“**Montserratian**” means—

(a) a person who is deemed to be a Montserratian under section 107(2) of the Constitution;

(b) a company incorporated in Montserrat, if all of its directors and more than 50% of its shareholders are Montserratian; or

(c) a partnership registered in Montserrat, if all of its partners are Montserratian;

“**non-Montserratian**” means a person other than a Montserratian and includes—

(a) a company incorporated in Montserrat, if any of its directors or

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more than 50% of its shareholders are non-Montserratian;

- (b) a company incorporated outside of Montserrat;
- (c) a partnership registered in Montserrat, if any of the partners are non-Montserratian; or
- (d) a partnership registered outside of Montserrat;

“Permanent Secretary” means the person appointed as such in the Ministry with responsibility for lands;

“person” includes a company or a partnership;

“prescribed” means prescribed by regulations made under the Act;

“real estate agent” has the meaning assigned to it in section 3;

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

“Real Estate Agents Register” means the Register of real estate agents to be kept by the Permanent Secretary under section 4B;”.

4. Replacement of “salesman” and “salesmen”

The principal Act is amended by deleting **“salesman”** and **“salesmen”** wherever they appear and substituting **“salesperson”** and **“salespersons”** respectively.

5. Section 4 amended

Section 4 of the principal Act is deleted and the following is substituted—

“4. Application for registration

- (1) A person who intends to carry on business as a real estate agent in Montserrat shall apply to the Minister for permission to be registered as a real estate agent.
- (2) An application made under subsection (1) shall be submitted in duplicate in the prescribed form and shall—
 - (a) state—
 - (i) the applicant’s name;
 - (ii) if the applicant is a company, the names of all its directors, shareholders and salespersons; or
 - (iii) if the applicant is a partnership, each partner’s name and nationality;
 - (b) state the applicant’s place of business or proposed place of business in Montserrat;
 - (c) be accompanied by—
 - (i) a copy of the photograph page of—
 - (A) the applicant’s passport;
 - (B) each director and salesperson’s passport if the applicant is a company; or
 - (C) each partner’s passport if the applicant is a partnership;

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- (ii) two recent passport size photographs of—
 - (A) the applicant;
 - (B) each director and salesperson who is a non-Montserratian if the applicant is a company; or
 - (B) each partner who is a non-Montserratian if the applicant is a partnership;
- (iii) a bank reference showing the applicant's financial status for at least two years before the date of the application;
- (iv) two references in support of the application—
 - (A) one from a Montserratian or a resident of Montserrat; and
 - (B) one from a person who has known the applicant for at least three years before the date of the application;
- (v) a statement from the relevant authority of the country of residence of—
 - (A) an applicant who is non-Montserratian;
 - (B) each director and salesperson who is a non-Montserratian if the applicant is a company; or

(C) each partner who is a non-Montserratian if the applicant is a partnership,

indicating that a person under sub-subparagraph (A), (B) or (C) does not have a police record or stating that details of the person's police record will be provided;

(vi) if the applicant is a company, a certificate of incorporation of the company and the most recent notice of directors filed and recorded at the registry of companies;

(vii) if the applicant is a partnership, a certificate of registration of the partnership;

(d) in the case of—

(i) a Montserratian, be accompanied by a non-refundable application fee of \$500; and

(ii) a non-Montserratian, be accompanied by a non-refundable application fee of \$1,000; and

(e) set out any other information required.

(4) The Minister shall submit the application to Cabinet for consideration.

(3) For the purposes of subsection 2(c)(iv), a referee must be a Judge, a Magistrate, a Justice of the Peace, a Commissioner for Oaths, a Notary

Public, a Bank Manager or a Minister of Religion.”.

6. Sections 4A and 4B inserted

The principal Act is amended by inserting the following as sections 4A and 4B—

“4A. Approval of registration as a real estate agent

The Governor acting on the advice of Cabinet may, on application, grant to a person permission in the prescribed form to be registered as a real estate agent.

4B. Real Estate Agents Register

The Permanent Secretary shall keep a Real Estate Agents Register in which he shall enter—

- (a) the name and address of real estate agents;
- (b) the date of registration as a real estate agent; and
- (c) any other information the Permanent Secretary considers relevant.”.

7. Section 5 amended

Section 5 of the principal Act is amended by deleting subsection (1) and inserting the following as subsections (1) and (1A)—

- “(1)** A person who intends to carry on the business of a real estate agent, and to whom the required permission has been granted under section 4A shall, within thirty days of the grant of permission and subsequently before the 15 January each year—

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- (a) present to the Permanent Secretary proof of a grant of permission for registration in the Real Estate Agents Register; and
 - (b) at the time of the presentation of proof of permission, pay to the Permanent Secretary in respect of a given year—
 - (i) in the case of a Montserratian, an annual registration fee of \$1,000; and
 - (ii) in the case of a non-Montserratian, an annual registration fee of \$3,000.
- (1A) The Permanent Secretary shall issue to a person a certificate of registration in the prescribed form on receipt of—
- (a) proof of permission being granted to the person; and
 - (b) the requisite fee.”.

8. Section 13 amended

Section 13 of the principal Act is deleted and the following is substituted—

“13. Shareholding etc. to be declared

- (1) A company or partnership carrying on the business of a real estate agent shall make a declaration to the Permanent Secretary in the prescribed form of its intention to change—
 - (a) the ownership of the company or partnership; or
 - (b) in the case of a company, any of its directors, shareholders or salespersons.

- (2) If a change under subsection (1) will transform a company or partnership from Montserratian to a non-Montserratian or from a non-Montserratian to a Montserratian, the company or partnership shall obtain the approval of the Governor acting on the advice of Cabinet before the change is effected.
- (3) If a change under subsection (1) is effected—
 - (a) permission to be registered granted to the company or partnership before its transformation is cancelled; and
 - (b) the company or partnership shall apply under section 4 for permission to be registered.
- (4) If a company or partnership contravenes this section a director or shareholder of the company or a partner of partnership commits an indictable offence and is liable to a fine of \$50,000 or to two years imprisonment or to both the fine and imprisonment.”.

9. Real Estate Agents (Registration) Regulations amended

The amendments to the Real Estate Agents (Registration) Regulations are set out in the Schedule.

SCHEDULE

**AMENDMENT TO THE REAL ESTATE AGENTS
(REGISTRATION) REGULATIONS**

1. Regulation 2 amended

Regulation 2 of the principal Regulations is amended—

(a) by inserting the following as the chapeau to regulation 2—

“In deciding whether to grant to a person permission to be registered as a real estate agent, the Governor acting on the advice of Cabinet shall take into account the following criteria, in addition to any other relevant considerations:”;

(b) by deleting paragraphs (a), (f) and (g);

(c) by deleting paragraph (d) and substituting the following—

“(d) ***Character and Financial Standing:***

(i) An applicant must be a person of integrity and sound reputation with satisfactory financial standing.

(ii) The net assets of an applicant who is—

(A) a Montserratian must not be less than \$20,000; and

(B) a non-Montserratian must not be less than \$100,000,

as certified by the Comptroller of the Inland Revenue Department.”; and

(d) by deleting paragraph (e) and substituting the following—

“(e) **Place of Business:** An applicant must have a suitable place of business or suitable proposed place of business in Montserrat.”.

2. Regulation 3 inserted

The principal Regulations are amended by inserting the following as regulation 3—

“3. Forms

The forms required under the Real Estate Agents (Registration) Act are set out in the Schedule.”.

3. Form 1 deleted

The principal Regulations are amended by deleting “Form 1”.

4. Schedule inserted

The principal Regulations are amended by inserting the following as the Schedule—

“SCHEDULE

FORM 1

REAL ESTATE AGENTS (REGISTRATION) ACT

(Section 4)

APPLICATION FOR REGISTRATION AS A REAL ESTATE AGENT

Instructions

1. The application form must be submitted in duplicate.
2. Please complete all applicable sections.
3. If a question does not apply, this may be indicated by filling the space with the phrase “**not applicable**” or “**N/A**”.
4. If the space provided is not sufficient, please provide the additional information as an attachment to the application form and label it appropriately.

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5. The application must be submitted to the Permanent Secretary, Ministry of Agriculture, Lands, Housing and the Environment.

1. APPLICANT

Title: Mr. Mrs. Ms. Dr. Other

Name of Applicant:

Date of Birth/ Incorporation/Registration*:

Place of Birth/Incorporation/Registration*:

Registration No./Certificate No.:

Marital Status:

Nationality (*if naturalised, attach a copy of the naturalisation certificate and state previous nationality as well*)

Passport Type and Number:

Immigration Status in Montserrat:

.....

If applicant is a company:

(a) list the name and nationality of each director of the company

Director

Nationality

.....

.....

.....

.....

(b) list the name and nationality of each shareholder in the company and the number of shares held

Shareholder

Nationality

Shares held

.....

.....

.....

.....

.....

.....

(c) list each salesperson

.....

.....

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| If applicant is a partnership: | <u>Partner</u> | <u>Nationality</u> |
|---|----------------|--------------------|
| list the name and nationality of each partner | | |
| | | |

| 2. REGISTERED ADDRESS* & (PROPOSED) PLACE OF BUSINESS | | |
|--|-------|--|
| Street and Number: | ..... |  |
| Town: | ..... |  |
| Zip or Postal Code: | ..... |  |
| Country: | ..... |  |
| Telephone No. | ..... |  |
| Email: | ..... |  |
| Time at the above address: | ..... |  |
| <i>(list residential or registered addresses in full for the previous five years, if they are different from above and give related dates)</i> | | |
| Place of business/proposed place of business* in Montserrat: | ..... |  |
| | | |
| | | |

| 3. PROFESSIONAL AND EDUCATIONAL BACKGROUND <i>(to be completed for each director and salesperson or partner if applicant is a company or a partnership)</i> | | |
|--|-------|--|
| State occupation or profession: | ..... |  |
| Give details of professional qualifications: | | |
| | | |
| Give details of your educational background: | | |

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| | |
|--|---|
| <u>Educational Institution</u> | <u>Qualifications</u> (including years of attendance and level of qualifications obtained) |
| Are you a member of any professional body? | <input type="checkbox"/> No <input type="checkbox"/> Yes <i>(If yes, please give details, including year of membership and current membership status)</i> |
| Do you have any previous experience in the conduct of real estate transactions or knowledge of how such transactions are to be conducted? | <input type="checkbox"/> No <input type="checkbox"/> Yes <i>(If yes, please give details)</i> |
| Are you familiar with the laws and regulations governing the conduct of the real estate business in Montserrat? | <input type="checkbox"/> No <input type="checkbox"/> Yes |
| 4. FINANCIAL POSITION AND DETAILS | |
| Do your net assets amount to or exceed: | |
| • in the case of a Montserratian, \$20,000? | <input type="checkbox"/> No |
| • in the case of a non-Montserratian, \$100,000? | <input type="checkbox"/> Yes |
| Have you or your spouse ever*/Has the company or partnership ever*: <i>(to be also completed for each director and salesperson or partner if applicant is a company or a partnership)</i> | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| ▪ been declared bankrupt? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| ▪ been the subject of a bankruptcy petition? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| ▪ received a judgment against you in a civil court? | <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If yes, please give details)</i> |

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| | | | |
|--|---|--------------------------|-------|
| 5. DETAILS OF OFFENCES <i>(to be completed for each director and salesperson or partner if applicant is a company or a partnership)</i> | | | |
| Have you ever been convicted in a Court of Law of an offence in any country? | <input type="checkbox"/> No <input type="checkbox"/> Yes <i>(If yes, please give details)</i> | | |
| 6. BANK REFERENCE | | | |
| Name of Bank: | ..... |  |  |
| Name of Banker: | ..... |  |  |
| Address: | ..... |  |  |
| Telephone No.: | ..... |  |  |
| Fax No.: | ..... |  |  |
| 7. PERSONAL REFERENCES | | | |
| Name of Referee: | ..... | Name of Referee: | ..... |
| Address: | ..... | Address: | ..... |
| | | | |
| Telephone No. | ..... | Telephone No.: | ..... |
| Fax No.: | ..... | Fax No.: | ..... |
| Email address: | ..... | Email address: | ..... |
| Nationality/Citizenship: | ..... | Nationality/Citizenship: | ..... |
| 8. OTHER DETAILS | | | |
| Describe any land/property owned in Montserrat |  | ..... ..... |  |
| 9. SUPPORTING DOCUMENTATION | | | |
| I/We attach to the application: | | | |
| <input type="checkbox"/> A copy of the photograph page of the applicant's passport or if the applicant is a company or partnership, the passport photograph page of each director and salesperson or partner respectively. | | | |
| <input type="checkbox"/> Two recent passport size photographs of the applicant or if the applicant is a company or a | | | |

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partnership, two recent passport size photographs of each director and salesperson or partner who is not a Montserratian respectively.

- A bank reference showing the applicant's financial status for at least two years before the date of application.
- Two references in support of the application, one from a Montserratian or a resident of Montserrat and one from a person who has known the applicant for at least three years before the date of this application.
- A police record from the applicant's country of residence or if the applicant is a company or partnership, a police record in respect of each director and salesperson or partner who is a non-Montserratian respectively.
- A Certificate of Incorporation of the company and the most recent notice of directors filed and recorded at the registry of companies (if applicable).
- A Certificate of Registration of the partnership (if applicable).
- The requisite application fee of \$_____.

10. DECLARATION AND UNDERTAKING

I/We certify that the details and information provided in this application are true and accurate to the best of my/our knowledge and no information has been intentionally omitted or provided to mislead the Governor acting on the advice of Cabinet in the determination of this application.

I/We hereby authorise the Government of Montserrat to contact all relevant authorities and referees and authorise the said authorities and referees to provide the Government of Montserrat with whatever information the Government may request.

If I/we am/are granted approval to be registered as a real estate agent and granted a Certificate of Registration, I/we undertake to abide by all laws and regulations governing the real estate business in Montserrat and to observe all conventions, practices and usages of real estate business as they exist in Montserrat.

Dated the day of, 20.....

.....

Signature of Applicant/Authorised Representative

** Delete as necessary*

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| | | | |
|-------------------------------------|--|----------------------------|--|
| Date application received: | | Application approved: | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Received by: | | Cabinet Decision No.: | |
| Supporting documentation checked: | <input type="checkbox"/> Yes <input type="checkbox"/> No | Date of Cabinet Decision: | ..... |
| Requisite application fee included: | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Fee amount: | \$..... | | |
| Receipt Issued: | <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Receipt No.: | | Signed: | |
| | | Permanent Secretary, MALHE | |
| | | Date: | |

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FORM 2

REAL ESTATE AGENTS (REGISTRATION) ACT

(Section 4A)

PERMIT OF REGISTRATION AS A REAL ESTATE AGENT

Permit No..... of 20.....

.....(*Name of Applicant*).....of is granted permission by
virtue of Cabinet Decision to carry on business as a Real Estate Agent in
Montserrat.

Conditions

- (1) This permit is revocable if the company or partnership transforms from a Montserratian to a non-Montserratian or from a non-Montserratian to a Montserratian.
- (2) ...

Dated this day of 20.....

.....
GOVERNOR

Montserrat

Real Estate Agents (Registration) (Amendment) Act, 2014

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FORM 3

REAL ESTATE AGENTS (REGISTRATION) ACT

(Section 5)

CERTIFICATE OF REGISTRATION AS A REAL ESTATE AGENT

Certificate No..... of 20.....

I hereby certify that(*Name of Applicant*).....of was registered as a Real Estate Agent, under section 5 of the Real Estate Agents (Registration) Act (Cap. 6.10) on the day of, 20.....

This certificate expires on the day of, 20.....

Given this day of 20.....

.....
PERMANENT SECRETARY

| | | | | |
|--|---------|-------------|-----------------------|-------------------|
| FORM 4 REAL ESTATE AGENTS (REGISTRATION) ACT <i>(Section 13)</i> NOTICE OF INTENTION TO CHANGE OWNERSHIP OF A COMPANY/PARTNERSHIP* ----- | | | | |
| Name of Company/Partnership | ..... |  |  |  |
| Registration No./Certificate No. | ..... |  |  |  |
| Real Estate Certificate No. | ..... |  |  |  |
| Notice is given that <i>(name of company/partnership*)</i> intends to change the ownership of the company/partnership. | | | | |
| Notice is given that the new ownership of the company/partnership will vest in: | | | | |
| Name | Address | Nationality | Shares Currently Held | Shares to be Held |
| | | | | |
| | | | | |
| The <i>(name of new ownership of company/partnership*)</i> has/has not* been declared bankrupt/been the subject of a bankruptcy petition /received a judgment against it in a civil court* | | | | |
| The <i>(name of new ownership of company/partnership*)</i> has/has never* been convicted in a Court of Law of an offence in any country. | | | | |
| Dated this day of 20..... | | | | |

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.....
Name and Signature of Authorised Representative
**Delete if not applicable*

FORM 5
REAL ESTATE AGENTS (REGISTRATION) ACT
(Section 13)

NOTICE OF INTENTION TO CHANGE DIRECTOR OF A COMPANY

Name of Company

Registration No.

Real Estate Certificate No.

Notice is given that *(name of company/partnership)* intends to appoint the following person(s) as director(s):

| <u>Name</u> | <u>Address</u> | <u>Nationality</u> | <u>Shares Held</u> |
|-------------|----------------|--------------------|--------------------|
| | | | |
| | | | |

(Name of new director) has/has not* been declared bankrupt/been the subject of a bankruptcy petition /received a judgment against it in a civil court*.

(Name of new director) has/has never* been convicted in a Court of Law of an offence in any country.

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| | | |
|---|--------------------|----------------|
| Notice is given that it is intended that the following person(s) will cease to hold office as director(s) of <i>(name of company/partnership)</i> : | | |
| <u>Name</u> | <u>Nationality</u> | <u>Address</u> |
| | | |
| | | |
| Dated this day of 20..... | | |
| | | |
| Name and Signature of Authorised Representative | | |
| <i>*Delete if not applicable</i> | | |

FORM 6
REAL ESTATE AGENTS (REGISTRATION) ACT
(Section 13)
NOTICE OF INTENTION TO CHANGE SALESPERSON OF A COMPANY

Name of Company

Registration No.

Real Estate Certificate No.

Notice is given that *(name of company/partnership)* intends to appoint the following persons as salespersons:

| <u>Name</u> | <u>Address</u> |
|-------------|----------------|
| | |
| | |

Notice is given that it is intended that the following persons will cease to hold office as salespersons of *(name of company/partnership)*:

| <u>Name</u> | <u>Address</u> |
|-------------|----------------|
| | |
| | |

Dated this day of 20.....

.....

Name and Signature of Authorised Representative

FORM 7
REAL ESTATE AGENTS (REGISTRATION) ACT
(Section 13)
NOTICE OF INTENTION TO CHANGE SHAREHOLDERS OF A COMPANY

Name of Company

Registration No.

Real Estate Certificate No.

Notice is given that it is intended that the shares held by the following persons in *(name of company/partnership)* be reduced/increased:*

| <u>Name</u> | <u>Nationality</u> | <u>Shares currently held</u> | <u>Shares to be held</u> |
|-------------|--------------------|------------------------------|--------------------------|
| | | | |
| | | | |

or

Notice is given that it is intended that the following persons shall cease to hold shares in *(name of company/partnership)*:*

| <u>Name</u> | <u>Nationality</u> | <u>Shares held</u> |
|-------------|--------------------|--------------------|
| | | |
| | | |

Notice is given that *(name of company/partnership)* intends to issue shares to the following persons:

| <u>Name</u> | <u>Nationality</u> | <u>Shares to be held</u> |
|-------------|--------------------|--------------------------|
| | | |
| | | |

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Dated this day of 20.....

.....

Name and Signature of Authorised Representative

Delete as necessary.

(Sgd.) **Teresina** Bodkin

SPEAKER

Passed the Legislative Assembly this 27th day of February, 2014.

(Sgd.) Judith Baker

CLERK OF THE LEGISLATIVE ASSEMBLY