

# The impact of the activities of quacks on the practice of real estate



## INTRODUCTION

### Background to the Study

The notion of professionalism is based upon a practitioner in whatever vocational field to serve not only his client but also the society at large.

This implies the need to maintain a high degree of ethical responsibility and conduct, because integrity must be the watch word for any profession. Thus the attainment of professional status involves a discipline of study, a compilation of knowledge and a basis of trust coupled with practical experience. However, the more diversified the field of practice, the less likely it becomes for high professional codes and standards to be maintained and therefore estate agency in particular can present problems.

Agency can be referred to as the business of representing or providing a particular service for people or organizations while an agent is a person who acts on behalf of another with respect to a particular transaction, also an agent as somebody who officially represents somebody else in business or somebody who provides a particular service for another. On the other hand, Real Estate, in broad definition, refers to land and everything fixed permanently a part thereof, and the nature and extent of one's interest therein. In law, the word real, as it relates to property, means land as distinguished from personal property; and estate is defined as the interest one has in property. Valuers, Appraisers and Estate Agents Act 1981 defined estate agency practice as acting or holding oneself out to the public as ready to act, for a commission, fee, reward or other consideration, as an agent in respect of the sale or other disposal of land and buildings and of any interest therein or the purchase or other acquisition of land and buildings and of any

<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

interest therein or in respect of the leasing or letting of land and buildings and of any interest therein.

Ibiyode(2009) in an interview with the Saturday Tribune refers to an untrained and unregistered member of the Nigerian Institution of Estate Surveyors and Valuers (NIESV) practising estate agency as a quack. Over the years, real estate agency practice has witnessed the influx of both professionals and non-professionals alike. Registered Estate Surveyors and Valuers, lawyers that serve as solicitors, property consultants, mortgage institutions, land vendors and uneducated intermediaries are found in estate agency business (Opalana, 2009).

Akomolede (2006) makes the point that it is only idle and unsuccessful lawyers who leave their own profession to dabble into estate agency. He further explained that butchers, mechanics, drivers, accountants, lawyers, teachers, students, security guards, even idle housewives and just about anybody can dabble into the practice for the purpose of earning a commission.

Statistics derived by Akpoyibo ( 2009) shows that in the past 5 to 8 years, fraudsters, operating under the cover of estate developers, estate agents, property consultants and management, among other business names, have taken over the city of Lagos, duping and bringing misery and confusion into the lives of their victims. Some of their methods are quite sophisticated, they would place advertisements in the print and electronic media, use bill boards and even print hand bills to announce vacancies for flats, self-contained apartments to let or even land and houses for sale (Akpoyibo, 2009).

This situation has seriously affected the image of practicing Estate Surveyors whereby owners of properties have handed over sales and lettings of their different properties to agents who in most cases are not reliable and do not have legal rights to carry out such activities and who cannot follow up the monitoring and proper maintenance of their client's properties.

In such cases the owner of the properties is at risk of bad tenant and poor maintenance which results in loss of client's money. In the course of reading all this, the researcher was prompted to find out in what way has the activities of quacks affected Real Estate Profession with special focus on real estate agency and property dealings in Lagos Island and its environs due to its high volume of letting and sales transactions.

### **Statement of Research Problem**

According to Akomolede (2006), the biggest problem facing the estate agency business in Nigeria today is the absence of regulation, there is no enabling law under which estate agents are registered and controlled; the danger is that the profession in its present state allows for the intrusion of all kinds of quacks. Another main problem with the current system is that there is no requirement to belong to a regulatory body in order to set up and practice as an agent.

Estate agents may choose to become members of the Royal Institution of Chartered Surveyors or the National Association of Estate Agents, and it's a good idea to check for their membership of these bodies when choosing one to work on your behalf. Crime Watch investigations published in the PM News (17th September, 2009) revealed that most of the properties advertised for

rent or lease do not exist, and where they exist, people are joining hundreds of other victims to line the greedy pockets of these criminals.

It was also revealed that between last year and today, over 1, 000 house seekers in Lagos State have been duped by these con men, while several millions of naira has been lost. Some families have lost their entire life savings and some have faced destitution through the activities of these rogues. This study's greatest concern is the fact that more and more house seekers are falling into the hands of these quacks and several millions of naira is fraudulently collected on a daily basis from Lagosians. The major questions this study intends to answer therefore include: i.

What laws have been in place to control the activities of quacks in Nigeria? ii.

What are the effects of quacks on Real Estate Practice ? iii. What can be done to minimize their activities?

### **Aim and Objectives of Study**

The aim of this research is to study the impact of the activities of quacks on the practice of real estate profession in Nigeria, with particular reference to Lagos Island property market. In achieving the aim of this study, the specific objectives are to: i. Examine the laws relating to the practice of estate agency in Nigeria. ii.

Asertain peculiar effects of quacks on practice of estate agency in the study area. iii. Identify ways to minimize the activities of quacks to enhance Real estate practice.

**Significance of the Study**

Several writers have partly examined the impacts and effects of quacks on estate agency practice. In relation to their individual studies, this study will examine all aspect of quackery related activity by identifying who these quacks are, also by examining the laws that regulates the practice of estate agency as well as suggesting possible solutions to this menace.

This project will serve as an incentive especially to students currently studying estate management and for those whose specialty would be estate agency because it will assist in properly orienting them as prospective estate surveyors, and also to the public letting them know who they can relate with and how to identify Estate Surveyors and Valuers. This study is also important because it would reveal the activities of quacks/non-professionals in estate agency, thus enabling the Nigerian Institution of Estate Surveyors and Valuers to be in a good position to fashion out new codes of conduct for its members and find ways of dealing with quacks.

This research is to enable the readers understand why and how these quacks operate under the covering of estate developers, estate agents, property consultants and management, this is because it has been noticed by Crime Watch investigations that these quacks have taken over the city of Lagos, duping and bringing misery and confusion into the lives of their victims. A detailed study that would undergo the complete research requirements would no doubt minimize, if not eradicate the activities of quacks in estate agency practice.

This is what this study intends to achieve in addition to promoting patriotism of agency surveyors in the property market. This

<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

research will go a long way in abolishing the activities of quacks and also letting the public know who specifically they can relate with and how to identify them, also prevent the public from entering into wrong hands.

### **Scope of the Study**

No matter how ambitious a researcher could be, no single study can be all encompassing. Hence, study limits have to be defined clearly. In this view his study focuses on the the impact of the activities of quacks on the practice of Real Estate Profession in Nigeria. Estate agency is choosen amongst other aspects of real estate profession, because the other aspects of the profession needs licensing before one can practise, basically an eatate agent do not need professional qualifications to practice. Also the activities of the quacks affect more people at the lower rung of social and economic ladder. However, time constraint does not allow for the coverage of the entire country.

For this reason, the scope of this research is restricted to Lagos Island, because it is known to be a commercial area and it plays host to the main government buildings, shops and offices. Lagos Island contains a central business district and this district is characterized by high-rise buildings where all sort of activities take place, most commercial and financial businesses are transacted and also where different professionals are based, and also because it is vast and has a lot of estate firms within the area.

### **Study Area**

Lagos Island contains a central business district.

This district is characterized by high-rise buildings. The island also contains many of the city's largest wholesale market places (such as the popular <https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

Idumota and Balogun markets). It also has the National Museum of Nigeria, a Central mosque, Glover Memorial Hall, Christ's Cathedral (CMS), and the Oba palace. Though formerly in derelict condition, the Tinubu Square on the island is a site of historical importance; it was here that the amalgamation ceremony that unified the Northern and Southern protectorates to form Nigeria took place in 1914.

Lagos Island is the principal and central local government area of the Metropolitan Lagos in Nigeria. It is part of the Lagos Division. According to 2006 Nigerian census, the Local Government Area (LGA) had a population of 209, 437 in an area of 8. 7 km<sup>2</sup>. The Local Government Area (LGA) only covers the western half of Lagos Island; the eastern half is under the jurisdiction of Eti-Osa Local Government Area (LGA). The Island has continued to rapidly develop and is a favourite spot for Nigerians and foreigners to live and play.

However the influx of banks and other commercial ventures has changed the formerly serene atmosphere of the Island. Today, Lagos Island is one of Nigeria's busiest centres of banking and commerce, with most Nigerian and international corporations headquartered on the Island. Study Area Fig. 1 Map of the Local Government Areas of Lagos with study area highlighted. Source : wikimedia (2006). Map showing the 16 LGAs making up Metropolitan Lagos. Note that Metropolitan Lagos is a statistical area and not an administrative entity unlike Lagos State.

### **Limitations of the study.**

The research is designed such that it identifies the impact of the activities of quacks on the practice of real estate profession and also proffer solutions so



identified. However, the limitation of the research is borne on the fact that covering the entire state was not possible, thus, an area was selected for the purpose of this research. Other limitations include financial constraints, time constraints, transportation problems, limited exeat from the school premises and the target populace in giving information as regards the subject matter.

#### 1. 8. Definition of terms

In a study of this nature, it is considered necessary and desirable to define key terms with a view to clarifying both operational and constructive definitions to avoid ambiguity. Constructive definition involves substituting the concept or construct of the term we are defining with other concepts or constructs, the operational definition requires that the concept or construct be assigned a type of meaning which the researcher wants to carry throughout the study. Agent: An “ agent”, broadly defined, is a person who affects the legal relations of another person, called the “ principal”.

The agent can affect the legal relations of the principal in several ways but does so primarily through entering into contractual relationships on behalf of the principal. If, for example, A (as agent) enters into a contract with X on behalf of P (the principal), A having disclosed to X that she is acting on behalf of P, the contract will be a contract between X and P (and not a contract between X and A). The principal can also be vicariously liable for the torts committed by the principal’s agent.

Estate agent: is a person that represents some other person in property or land dealings. He could provide land and property related services which mostly include the sales, letting or management of land and buildings. An agent that specialises in Letting/Sales transaction is called an agency  
<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

surveyor. Principal: is one who authorises and controls the actions of the estate agent. In commercial law, a principal is a person legal or natural-who authorizes an agent to act to create one or more legal relationships with a third party.

Disclosed principal is a class of principal, where at the time of the transaction made by the Agent with the Third Party, the latter knows that the person he is dealing with is acting as an Agent and also knows the Principal's identity. Partially disclosed principal is a class of principal where, at the time of the transaction, the Third Party knows that the person he is dealing with is acting as an Agent acting but does not know the Principal's identity and undisclosed principal, the person acting as an Agent represents is acting on their own behalf and does not disclose the existence of the agency relationship.

This is usually because the Principal is wealthy and believes that money can be saved on the proposed deal if their involvement is hidden. Quack: is someone who pretends to have a professional knowledge (which he does not possess), he is also a person who generally claims to have knowledge in real estate while he does not. He has not undergone any professional training and naturally will not work in the capacity of a manager Property: is any physical or intangible entity that is owned by a person or jointly by a group of persons.

Important widely recognized types of property include real property (land), personal property (physical possessions belonging to a person), private property (property owned by legal persons or business entities), public property (state owned or publicly owned and available possessions) and

intellectual property (exclusive rights over artistic creations, inventions, etc), although the latter is not always as widely recognized or enforce.

### **Chapter Summary**

In chapter one, a vivid introduction of the research work was given by exploring the background to the study, statement of research problem including research questions, objectives of the study, significance of the study, scope of the study, study area, limitations of the study and the definition of terms. The next Chapter is a review of relevant literature on the subject of study.

## **LITERATURE REVIEW**

### **Introduction**

Describing quackery as one of the greatest challenges confronting estate surveyors in the state, Nemieboka (2010) revealed that quacks infiltrate the estate profession through the practice of estate agency which is one of the major aspect of the profession whereby the professional represents either the buyer or seller in law and valuation and guide his client on how best to go about the business in the property market. Apparently, the business of estate agency has become an all-comers affair, opening a floodgate of quacks.

These quacks are allowed such liberty because the house owners are not adversely affected by their activities since they believe that in the long run, they get whatever accrues to them as rent, rather effortlessly, leaving tenants to bear the financial brunt (Amaku and Ogunleye, 2010). Therefore the literature reviewed includes, the creation of estate agency, the types of estate agency, the duties and termination of estate agency, the different

laws governing estate agency, code of conduct for estate agents, the activities of quacks, factors responsible for the emergence of quacks and also the steps to becoming an estate surveyor.

### **Estate Agency Relationship**

Fillmore, Wellington ; Robert (2003) in their works identified that principal-agent relationship evolved from master-servant relationship under English common law. In that relationship, the servant owed absolute loyalty to the master. This loyalty replaced the servant's personal interests as well as any loyalty the servant might owe to others. In a modern day agency relationship, the agent owes the principal similar loyalty.

The agent is regarded as expert on whom the principal can rely for specialised professional advice. Estate agency can be described as a relationship resulting from an agreement authorising an agent to represent, act for and be subject to control of a principal in dealing with a third party. They went further to explain that estate agency involves the buying, selling, letting and leasing of interests in land and property on behalf of others which applies to all types of real estate namely: residential, commercial, industrial, agricultural.

ACCA F4 Corporate and Business Law (2010) contributed to agency relationship, and defines an agent as a person (or company) that acts on behalf of a principal. This means that in the estate agency relationship, the agent is acting on behalf of another rather than in their own right. Third parties Agent Principal Source: ACCA F4 Corporate and Business Law (2010). Since the agent is not acting on his/ her own behalf, any contracts that the

agent negotiates on behalf of the agent have this effect: Third parties  
Principal Source: ACCA F4 Corporate and Business Law (2010)

This means that all the rights and obligations of any contract negotiated by the agent are rights and obligations of the principal and the third parties. Principal and agent relationship in law is a voluntary legal relationship between two parties whereby one, the agent, is authorized by express or implied consent to act on behalf of the other, called the principal. The designated agent can thus affect or conduct the legal affairs of the principal with others, as in the case of the agreement known as power of attorney.

The authorized acts of the agent are thus considered to be the acts of the principal, who is entitled to the benefits, if any, from these actions. The relationship differs from that of master and servant in that the agent is the representative, as well as the employee, of the principal (Microsoft Encata (2008). Dave (2010) is of the opinion that agency is the special relationship whereby one person (agent) agrees on behalf of another (principal) to conclude a contract between the principal and a third party.

The most common agency relationships are; Buyer's Agency: in a buyer's agency relationship, the buyer is considered the client. Seller's Agency: a seller's agency relationship represents the seller in the transaction and the seller is considered the client. Dual Agency: In a dual agency, an agent represents both buyer and seller in a single transaction and carries fiduciary responsibilities to both principals Any person who has legal capacity to make contracts can appoint an agent, who in turn must be of legal age and of sound mind.

A corporation or a partnership, as well as an individual, can be either principal or agent. The agent may be appointed by actual agreement, or may be acknowledged as such by actions on his or her and a principal's part indicating such a mutual agreement. Obligations of the agent vary according to the particular agreement with the principal, who is generally required to act by specific instructions and is held responsible for wrongful acts of the agent only when they fall within the scope of the legal contract.

The agent, besides being paid for services, is entitled to reimbursement for particular expenses.

### 2. 3. Historical Background of Estate Agency

The precise origin of estate agency is still a subject of controversy and a little cloudy. Some believe it originated from lawyers who were responsible for the drafting of lease and conveyances in respect of dwelling houses and agricultural land but no concrete evidence as to the authenticity of any precise origin exists (Olayinka, 2010). From researches, many believe that estate agency emerged from the profession of law i. attorney who developed the auctioneering sides of their practices but this was refuted by Ash (1958) who states that estate agency grew from old auctioneers who were chattel men ( but surely also agricultural auctioners) who turned eagerly to the exciting prospect of selling big landed estates and that the expression “ estate agent” was coined to describe the parctitioner who did more of selling and buying than auctioneering. This is basically true because throughout the country one can readily identify firms of estate agents that grew directly from this source and who will still combine the sale of real roperty with earlier skills which still go a great deal further than autioneering (Jacobus, Charles, and Bruce, 1998). The employment by great land owners of persons to oversee their holdings,

deal with tenure, rentals and many other matters on behalf of their lords goes far back to the Norman conquest. It could be argued that the stewards were amongst the progenitor of today's "general practitioners" and as most of today's practising estate agents can be so described as being one of the origins from which they sprang.

Yet they really operated as managing agents and could not be said to have operated in a free and open market therefore estate agency was then practiced by a privileged few. Real estate practice grew out of England's industrial development and it is the upheaval of the nineteenth century with its redistribution of ownership and its multiplication of problems affecting property that can be traced to the vocation of auctioneers and estate agents (Stephens, 1981). Ash (1958) writing on the first auctioneer suggested that real estate activities originated and developed with Christopher Cook of the great piazza in Covent Garden.

His first sale announcement which was entirely devoted to land appeared in the London evening post in April 1740, following this he built a considerable practise. Real estate practice grew out of England industrial development and it is the upheaval of the nineteenth century with its redistribution of ownership and its multiplication of problems affecting property that can be traced to the vocation of auctioneers and estate agents (Olayinka, 2010). He went further to state that in the eighteenth century, the conditions governing the possession of real estate were vastly different from those prevailing today.

Landowners were an exclusive and privileged and certainly limited class so far, land changing hands with any frequency was held for most parts in large

<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

estate and by the same families from generation. Therefore the real estate was free from modern perplexities (Ash, 1958). Fillmore, Wellington & Robert (2003) maintained that common law, law of agency is the basic framework of the law that governs the legal responsibilities of the estate agents to the people they represent. The fundamental of agency law has remained largely unchanged for hundreds of years.

However the application of the law has changed dramatically, particularly in residential transaction and especially in recent years. Oni (2009) in his book, Real Estate Marketing revealed that in recent times in Nigeria, a number of professional bodies have been formed, the oldest recognizable one is the Royal Institute Of Chartered Surveyors (RICS) founded in 1868 as the institute of surveyors. As the name implies, the early members were limited to those whose task it was to survey land and to oversee, report on and manage the land.

Membership of RICS are professionals in the feild of Estate Surveying and Valuation, Land surveying and Quantity Surveying. The organised body recognised for the regulation of practise of estate agency in Nigeria is the Nigerian Institution of Estate Surveyors and Valuers (NIESV). The practitioners are referred to as Estate Surveyors and Valuers. However, the corporate affairs commission regards estate agency as a business concern and classifies it under general business practice.

This has partly accounted for why non- professionals, otherwise called “quacks” engage in the practice of estate agency without regulation. According to Stephens (1981), there is a high level of statisfaction with the



services rendered by estate agents. If changes occurs, it might be in form of fewer or larger firms and computerisation in the future.

### **Creation of Agency**

Creation of agency is viewed by Oni (2009) which is seen in two major ways : Expressly, By implication. Express creation maybe orally made or could be done in writing, usually under seal.

A form of written instruction “ power of attorney” is usually given. This is an authorization to act on someone else’s behalf in a transaction involving land or land and building. Implied creation of agency can come in three ways : By Estoppel, by ratification and by necessity. By estoppel it means that one can be portrayed as an agent of another person. This type is of limited character and is sometimes known as “ agency by estoppel” because parties bound by contract are prevented or “ estopped” by law, or by conduct, from denying the existence of the agency.

By ratification, this is permised on the equal dignity rule”. The rule is a principle of law that requires an authorization for someone performing certain acts for another person to have been appointed with the same formality and required for the act the representative is going to perform. By necessity occurs when a situation arises in emergency condition where a person is obliged to act in order to prevent irreparable loss to another. However three conditions must be atisfied before this type of agency can be created: It must be impracticable or impossible to communicate with the owner of the goods in order to get instructions, the agent must have acted in the best interest of the client and there must be imminent commercial necessity. According to Fillmore, Wellington &Robert (2003) research, it

<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

shows that an agency relationship may be based on formal agreement between the parties, an express agency, or it may result from the parties' behaviour, an implied agency.

It is an express agency when the principal and agent enters into a contract, or an express agreement, in which the parties formally express their intention to establish an agency and state its terms and conditions. The agreement maybe either oral or written. It is an implied agency when agency is created by implied agreement. This occurs when the actions of the parties indicate that they have mutually consented to an agency.

ACCA F4 Corporate and Business Law (2010) maintained that principal/agent relationship can be created in a number of ways; Agreement, Ratification, Estoppel, Necessity Agreement: This is the most common manner in which a principal/agent relationship comes into existence. In this situation, the agent is specifically appointed by the principal to carry out a particular task or to undertake some general function. In most situations, the appointment of the agent will itself involve the establishment of a contractual relationship between the principal and the agent but need not necessarily depend upon a contract between the parties.

Ratification: An agency is created by ratification when a person who has not actual authority purports to contract with a third party on behalf of a principal and the principal subsequently accepts the contract. Where the principal elects to ratify the contract, it gives retrospective validity to the action of the purported agent Estoppel: This form of agency is also known as „ agency by holding out? and arises where the principal has led other parties to believe that a person has the authority to represent him.

<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

In such circumstances, even though no principal/agency relationship actually exists in fact, the principal is prevented (estopped) from denying the existence of the agency relationship and is bound by the action of his or her purported agent as regards any third party who acted in the belief of its existence. To rely on agency by estoppel, there must have been a representation by the principal as to the authority of the agent (Freeman and Lockyer v Buckhurst Park Properties Ltd (1964)) and the party seeking to rely on it must have relied on the representation.

**Necessity:** Agency by necessity occurs under circumstances where, although there is no agreement between the parties, an emergency requires that an agent take particular action in order to protect the interests of the principal. The usual situation which gives rise to agency by necessity occurs where the agent is in possession of the principal's property and, due to some unforeseen emergency, the agent has to take action to safeguard that property.

### **Types of Agency**

Fillmore, Wellington & Robert (1988) explained that one major characteristic feature of estate agency is that more than one agent maybe involved in disposing off a particular property. This may occur whereby the owner of the property instructs more than one agent or where the agent himself appoints one or more sub- agents. This has given rise to four types of agency. i. Sole Agency ii. Joint Agency iii. Sub Agency iv. Multiple Agency. Sole Agency: this is when a client (house owner) appoints a single agent to dispose or let a property.

However, the principal in some cases do sell the property personally despite his instruction to the agent but will not be allowed to sell through another agent especially where the sole agency is created by a valid contract. Joint Agency: this arises where two agents are instructed by a principal to act jointly and cooperate in effecting the vendor's instruction and share whatever fee is agreed as commission. Sub Agency: this exists where the type of property desired by a client in an area is not available in the agents' portfolio, thus, the principal agent appoints a firm of sub-agents to cooperate in the contract.

Multiple Agencies: this is the situation where the principal instructs several agents and each acting independently of the others with a view to reaching as large and wide market, expedite sales and procuring a better price. The winner takes all situations when it comes to commission. 2. 6. Duties and Rights of an Estate Agent Estate agents are legally obliged to put their client's interests above anyone else's. They must keep clients information confidential and obey their client's lawful instructions. They have to report any useful information to their clients that they find out, concerning the seller or buyer.

They have to account to their client for any money involved with their work. They are required to answer the principals questions to clarify their understanding of regulations and their responsibilities other parties involved. Lawdit readingroom (2006), an estate agent shall explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such

offer or contract, or, if he is unable to do so, refer such party to a person who can do so. i.

To obey the lawful instructions of the principal. ii. Not to delegate, sub-contract his authority. iii. Only to act within the limits of his authority (actual or ostensible). iv. Not to make a secret profit or accept bribes. v. Not to put himself into a situation where his interests will conflict with those of his principal. vi. To use reasonable diligence and care, and reasonable dispatch. vii. To disclose all material facts to the principal and to refrain from divulging confidential information to third parties. viii. To account to the principal for property and money of the principal, which is under his control.

Lawdit readingroom (2006) explained that the principal duties of an estate agent may be specified in the contract between principal and agent. A qualified professional agent after accepting an instruction from his client and concluding the basis of his contract has the following rights: i. He is entitled to compensation and remuneration for services rendered. ii. He must be indemnified against all losses and liabilities suffered on behalf of his client and also reimbursed for expences incurred. iii. He may retain possession of his principals property untill he has been fully paid iv. Continue employment for time period specified.

### **Liabilities of an Estate Agent**

According to Fillmore, Wellington & Robert (1988), it appears that no man longer wishes to take the slightest risk on his property and attempts to insure himself against accidents, theft, fire, flooding damage or risks arising from renting accommodation. Therefore, the subject of liability is of importance both for real estate agents and their clients. Also the severity

<https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

shown towards real estate professionals constitutes the price at their success where the value of their work and professional knowledge is recognised more each day, therefore, being competent and prudent to a client is of great importance.

As one is to be ever prudent, the real estate professional must act with discernment and must seek advice of many technical experts in other fields of construction before embarking upon a project with his client. The risk of each operation stage should be clearly explained for he is at the service of not just his client but also the public. By accepting an instruction with good negotiating ability, he must reflect all the obligations of the tenant and landlord or the purchaser and vendor. He must have a good knowledge of the property concerned and the property market of the area he is dealing with.

### **Termination of Estate Agency**

Subject to section 201 of the The Indian Contract Act, 1872, it explained that an agent's authority can be terminated at any time, if the trust between the agent and principal has broken down, it is not reasonable to allow the principal to remain at risk in any transaction that the agent might conclude during a period of notice. Section 201 to 210, The Indian Contract Act, 1872, provided that agency may come to an end in a variety of ways: By the principal revoking the agency - However, principal cannot revoke an agency coupled with interest to the prejudice of such interest.

An agency is coupled with interest when the agent himself has an interest in the subject-matter of the agency, (ii) By the agent renouncing the business of agency, (iii) By the business of agency being completed; (iv) By the

principal being adjudicated insolvent (Section 201 of The Indian Contract Act, 1872) The principal also cannot revoke the agent's authority after it has been partly exercised, so as to bind the principal (Section 204), though he can always do so, before such authority has been so exercised (Sec 203).

Further, section 205, states that if the agency is for a fixed period, the principal cannot terminate the agency before the time expired, except for sufficient cause. If he does, he is liable to compensate the agent for the loss caused to him thereby. The same rules apply where the agent, renounces an agency for a fixed period. Notice in this connection that want of skill continuous disobedience of lawful orders, and rude or insulting behavior has been held to be sufficient cause for dismissal of an agent.

Further, reasonable notice has to be given by one party to the other; otherwise, damage resulting from want of such notice, will have to be paid (Section 206). Section 207, provides that the revocation or renunciation of an agency may be made expressly or impliedly by conduct. The termination does not take effect as regards the agent, till it becomes known to him and as regards third party, till the termination is known to them (Section 208).

## **Comparative Study**

### **Real Estate Agents**

Act 1976 (Public Act 1976 No 9) The Real Estate Agent Act 1976 of New Zealand consists of 9 parts and 125 sections.

The first Part consist of Real Estate Agents Licensing Board, the second part addresses the Licensing of real estate agents, the third part addresses on the approval of salespersons, the fourth part consists of the duties of real

estate agents, the fifth part addresses the Real Estate Institute of New Zealand incorporated, the sixth part also addresses the Real Estate Agents Fidelity Guarantee Fund, the seventh part addresses on the Disciplinary provisions of the board, the eighth part consists of the Appeals and lastly the ninth part addresses on the Miscellaneous provisions.

The Estate Agents Act 1976 regulates the work of estate agents in New Zealand. The Act gives the meaning of real estate agent as any person who holds himself or herself out to the public as ready to act, for reward as an agent in respect of the sale or other disposal of land or of businesses either with or without any interest in land) or the purchase or other acquisition of land or of businesses (either with or without any interest in land), or in respect of the leasing or letting of land, whether or not that person carries on any other business. Subject to section 34 of this Act, no person shall carry on the business of a real estate agent unless he or she is the holder of a licence issued in accordance with this Part of this Act.

Every person, not being the holder of a licence, commits an offence and is liable to a fine not exceeding \$2, 000 who describes himself or herself in writing as or holds himself or herself out to be a real estate agent, or carries on business as a real estate agent, and, in addition to any fine that may be imposed, shall be liable to forfeit to Her Majesty the Queen all money received by him or her by way of commission, profit, or remuneration for any services or work performed by him or her as an unlicensed real estate agent.

Subject to section 17 of this Act, every person who has attained the age of 20 years and has passed the examinations for the time being prescribed by the Institute and has been approved by the Board for the purposes of this <https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>



section; or is a company; or is a building society; or was, at any time within 5 years before the commencement of this Act, the holder of a real estate agent's licence issued under the Real Estate Agents Act 1963 or a partner of such holder or a director or officer of a licensee company, in either case approved under section 21(2) of the Real Estate Agents Act 1963 or has surrendered a licence pursuant to section 31 of this Act and has been approved by the Board for the purposes of this section, or is, and has been, an associate member of the Institute since before the 1st day of January 1966 and who has, at least since that date, been continuously engaged or employed as an approved salesperson by the same or different real estate agents shall be eligible to hold a licence under this Act. The Act further explained in subsection (1) of this section, no person shall apply for or obtain or be eligible to hold a licence under this Act if the agent is a bankrupt and has not obtained the order of discharge, or, if the agent has obtained the order of discharge and it is suspended for a term not yet expired or is subject to conditions not yet fulfilled or the agent holds practising certificate as a barrister or solicitor of the High Court of New Zealand or Every person who applies for or obtains a licence knowing that he or she is not eligible to do so under the foregoing provisions of this section commits an offence. Under section 67, of the real estate institute of New Zealand, every licensee shall be a member of the Institute, whether or not he or she applies for membership, notwithstanding subsection (1) of this section, such of the officers of a licensee company as the rules of the Institute provide shall be members of the Institute. If any person suspended under this section satisfies the Board that all fees and other payments have been paid, the Board shall cancel the suspension of that person. Section 36 provides for the <https://assignbuster.com/the-impact-of-the-activities-of-quacks-on-the-practice-of-real-estate/>

purpose of the Act a Registrar shall be appointed and the registrar shall set up and maintain a Register of Real Estate Agents.

The real estate institute of New Zealand Regulates the members of the Institute who are not holders of licences. Subject to subsection (4) of section 55, all money received by a real estate agent in respect of any transaction in his or her capacity as a real estate agent shall be paid to the person lawfully entitled thereto or as that person may in writing direct: Provided that where the real estate agent is in doubt on reasonable grounds as to the person who is lawfully entitled to any such money, he or she may retain that money in his or her trust account until the person lawfully entitled has been ascertained, but shall take all reasonable steps to ascertain as soon as practicable the person so entitled.

Except in pursuance of an order of a Court of competent jurisdiction or an authority signed by all the parties to the transaction, where a real estate agent receives any money (other than money received by way of rent from the letting of any land) in respect of any transaction, he or she shall not pay that money to any person for a period of 10 days after the date on which he or she received it; and, if at any time while he or she holds any money on behalf of any party to the transaction he or she receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, he or she shall not at any time pay that money to any person except in pursuance of such an order or authority. In general, the principles promoted by the Act, It is a criminal offence for an un-discharged bankrupt to engage in estate agency work except as an employee of another person or as an employee of a company of which he is neither a director nor

has control, it is also a criminal offence for anybody carry on the business of an estate agent, unless the agent is the holder of a licence issued in accordance with the Act. 2. 9. 2 Valuers, Appraisers And Estate Agents Act 1981 (Laws Of Malaysia Act 242). The Valuers, Appraisers And Estate Agents Act 1981 of Malaysia consists of 8 parts and 35 sections.

The first Part focuses on the interpretation of terms, the second part addresses the appointment, duties and powers of director general of valuation and property services and other officers, the third part consists of the board of valuers, appraisers and estate agents, the fourth part addresses on the registers, the fifth part addresses on the valuers and appraisers and the estate agents, the sixth part also addresses the firms, the seventh part consists of the disciplinary and other proceedings and lastly the eighth part addresses generally on offences, search by warrant, search and seizure without warrant, list of things seized, penalty for other offences, immunity of board, agmonsts others. The board of valuers, appraisers and estate agents regulates the works of estate agents in Malaysia. The act therefore explains estate agency practice as means of acting or holding oneself out to the public as ready to act, for a commission, fee, reward or other consideration, as an agent in respect of the sale or other disposal of land and buildings and of any interest therein or the purchase or other acquisition of land and buildings and of any interest therein or in respect of the leasing or letting of land and buildings and of any interest therein.

Subject to section 22A, an estate agent can be registered if 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, he is not an undischarged bankrupt; he satisfies the requirements of section 22D, he has made a declaration in the form and manner prescribed by the Board, he has paid the fees prescribed by the Board and he is not under suspension from valuation or estate agency practice nor has his name been cancelled from the Register. Subject to the provisions of this Act, section 22B explains that a registered estate agent who has been issued with an authority to practise by the Board shall be entitled to practise his profession and shall be authorised to undertake estate agency practice. Subject to subsection (2), no registered estate agent shall carry on property management.

According to section 22C No person shall unless he is a registered estate agent and has been issued with an authority to practise under section 16 is allowed to 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 which may reasonably be construed to imply that he is a registered estate agent, he is also not allowed to 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, an estate agent is not allowed to 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 shall be made by or through an estate agent practising and

residing in Malaysia. An estate agent is qualified when he has complied with section 22D of the Act which states that, any person who has 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 to pass the Test of Professional Competence prescribed by the Board or any equivalent test or examination recognized by the Board. Where a probationary estate agent has complied with the requirements of subsection (3), he may apply to the Board to have his name entered in the Register. Under section 24, if an estate agent has contravened or failed to comply with any of the provisions of this Act or of any of the rules made thereunder and 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 shall suspending his practice for a eriod not exceeding three years or 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. The valuers, appraisers and estate agents act 1981 regulates the affairs of estate agents in malaysia and the act is regulated by the board of valuers, appraisers and estate agents. The board in general does not allow the practise of unregistered estate agent unless he is registered under the board as an estate agent and actions are taken when a registered estate agent fails to complie with the provisions of the act . In other words, estate agency in malaysia is recognised under the valuers, appraisers and estate agents act 1981.

**Estate Agents Act 1980 (Australia)**

Estate Agents Act 1980 of Australia comprises of 9 parts and 102 sections. The first part writes on the introduction and definitions, the second part consists of the Estate Agents Council, the third part addresses licences of estate agents , the fourth part consists of the agents and agents' representatives, the fifth part addresses builders and subdividers of land, the sixth part consists of accounts, audit and monitoring of estate agency business, the seventh part addresses victorian property fund, the eighth part consists of miscellaneous and lastly the ninth part addresses on transitional and savings. The activities of an estate agent is regulated by the estate agents council.

Section 6B of the act states the functions of the council, to monitor the operation of this Act and the regulations, also to monitor the provision of services by estate agents and developments in the real estate industry generally and to monitor and evaluate the effectiveness of any procedures set up to deal with disputes between estate agents or between estate agents and persons dealing with estate agents relating to services or the charging of commission. Subject to section 12 of this Act an individual shall not either by himself or as a member of partnership exercise or carry on or advertise notify or state that he exercises or carries on or is willing to exercise or carry on the business of an estate agent, or act as an estate agent, or in any way hold himself out to the public as ready to undertake for payment or other remuneration (whether monetary or otherwise) any of the functions of an estate agent unless he is a licensed estate agent.

A person (other than a corporation) under section 14 shall not be eligible to be granted an estate agent's licence unless he is not less than eighteen years of age and he has passed any courses of instruction or examinations prescribed by the regulations and during the 3 years immediately before applying for the licence been engaged in full-time employment as an agent's representative for not less than one year or for periods amounting in the aggregate to one year; or part-time employment as an agent's representative for not less than the equivalent of one year of full-time employment or for periods amounting in the aggregate to the equivalent of one year of full-time employment or he has within the period of five years immediately preceding his application held an estate agent's licence; or she or he has met any other requirements establishing competency set out in the regulations.

Therefore Despite subsection (1), a person is eligible to be granted an estate agent's licence if he or she satisfies the Authority that he or she has been licensed or otherwise authorised under the laws of another place or country to carry on a business in that place or country and also he has an adequate knowledge of Victorian estate agency law, practice and procedure, including accounting. Subject to section 16 a person is eligible to be employed as an agent's representative if she or he is at least 18 years of age and has passed any prescribed courses of instruction or examination; and has not, within the last 10 years in Australia or elsewhere, been convicted or had found proven against him or her any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more.

Section 99 gives the power to the Governor in Council to may make regulations, requiring estate agents to give consumers of their services information in relation to those services in a form specified by the regulations or approved by the Director and the responsibilities of the officer in effective control of the estate agency business of a licensed estate agent that is a corporation with respect to the supervision and control of that business. 2. 9. 4 The Estate Agents Act (Chapter 533) Kenya Estate Agents Act cap 533 of Kenya comprises of 7 parts and 27 sections. The first part writes on preliminary and interpretation of terms, the second part consists of the establishment of the board, the third part addresses the registrar and the register, the fourth part consists of the registration of estate agents, the fifth part addresses restriction on practice, the sixth part consists regulation of conduct and lastly the seventh part addresses miscellaneous provisions. The activities of estate agents in kenya is regulated by the Estate Agents Registration Board.

The Board shall be charged with the responsibility of registering estate agents and of ensuring that the competence and conduct of practicing estate agents are of a standard sufficiently high to ensure the protection of the public, and for that purpose may exercise the powers conferred, and shall perform the duties imposed, upon the Board by the provisions of this Act. Estate agents are registered by the baord under sections 6; 7, the Minister shall appoint a public officer as the registrar of the Board whoshall keep and maintain a register in which the name of every Person accepted by the Board for registration under this Act shall be entered showing the date of the entry in the register, the address of the person registered and the qualifications of



the person. The register shall be published in the Gazette, at the beginning of each year, a list containing the names, addresses and qualifications of all registered estate agents.

Subject to part iv (section 13) of the Act, a person who is a citizen of Kenya shall be entitled, on making application to the Board to be registered under this Act and have his name enter in the register if he is a member of the Institution of Surveyors of Kenya, or a corporate member of the Royal Institution of Chartered Surveyors and he is qualified to be or is a member of the Institution of Surveyors of Kenya or the holder of a degree, diploma or license from any university or college or school which is recognized for the time being by the Board or a person who is the holder of a degree, diploma or license of a university or college or school or a member of an institution the membership of which is recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training for practice as an estate agent and has had, to the satisfaction of the Board, practical post-qualification experience in such practice of not less than two years of which not less than six months has been in Kenya. Notwithstanding the fact that he has sufficient qualifications under subsection (1), the Board may require an applicant for registration as an estate agent under this Act to satisfy if that his professional and general conduct has been such that, in the opinion of the Board, he is a fit and proper person to be registered under this Act and the Board may direct the registrar to postpone the registration of an applicant until it is so satisfied.

Part v (section 18) of the Act writes on the restriction on practice and it states that no individual shall practice as an estate agent unless he is a

registered estate agent also no partnership shall practice as estate agents unless all the partners whose activities include the doing of acts by way of such practice are registered estate agents, therefore any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings to imprisonment for a term not exceeding two years or to both. Under section 23, if a registered estate agent is convicted of an offence under this Act or is after due inquiry found to have been guilty of an act or omission contrary to the public interest or amounting to professional misconduct the Board will have his registration under the Act suspended or caution the person and may also order that such caution shall be entered on the register or impose a fine not exceeding five thousand shillings upon that person or Order that the name of the person shall be deleted from the register.

The comparative study on the laws of the different countries shows that estate agents are recognised in their respective institutions and the activities of an estate agent is regulated by the respective Boards or Councils. However in Nigeria, estate agency activities are not regulated by any legislation. In addition, there are no provisions for regulating estate agent activities by the Estate Surveyors and Valuers registration Board in Nigeria and the regulating law of Estate Surveying and Valuation profession : “ Estate Surveyors and Valuers (Registration, ETC. ) Act 1975” of Nigeria did not make any provisions for regulating how estate agency should be practised in Nigeria. Subject to section 18 of Estate Surveyors and Valuers (Registration, ETC. ) Act, 1975, every Estate Surveyor and Valuer shall be issued with a Seal and Stamp on registration and all professional duties

performed by and/or emanating from his office or under his hand shall bear the Stamp and Seal issued by the Board.

### **The Real Estate Profession**

The Estate Surveyor and Valuer is any person duly registered by the Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) to practice the profession of Estate Surveying and Valuation throughout the Federation of Nigeria. ESVARBON as established by the Estate Surveyors and Valuers Registration Act No. 24 of 1975 (now CAP HI Laws of the Federation of Nigeria 1990) is the regulatory body of the Estate Surveying and Valuation profession in Nigeria, and the only body legally authorized to register persons fit and qualified to practice the profession.

Therefore practices in the profession constitutes; Land Economy, Real Estate and Allied Matters, Valuation and Appraisal of Plant, Machinery and Business Assets, Land and Facilities Management, Building Maintenance, Property Development and Investment, as well as Land Administration Systems. The professional duties of the Estate Surveyor and Valuer in practice as enunciated by the Nigerian institution of Estate Surveyors and Valuers (NIESV), which is the umbrella association for all Estate Surveyors and Valuers in Nigeria include:

1. Determining the value of all descriptions of landed property and of the various interests therein;
2. Managing and developing Real Estates and business concerned with the Management of landed property.
3. Securing the optimal use of land and its associated resources to meet social and economic needs.

4. Surveying the structure and conditions of buildings and their services and advising on their maintenance alteration and improvement.
5. Determining the economic use of resources of the construction industry and the Financial appraisal and measurement of construction work.
6. Selling (whether by Public Auction or otherwise) buying or letting, as an agent, real or personal property or any interests therein, and to maintain and promote 'the usefulness of the profession for the public advantage.

2. 10. 1Requirements for Qualification as an Estate Surveyor and Valuer The practice of estate agency is a very delicate one, anyone who is an estate agent must be a professional in the practice and the set rules which regulate and guide the conduct of the practitioners.

Therefore a professional estate agent is expected to keep and maintain a high degree of intelligence, honesty, competence and ethical responsibility standard for integrity is the watchword of estate management practice in general. A professional estate agent must have undergone a period of training in the field of estate management, passing five 'Ordinary Level credits in subjects like Mathematics, English Language, Economics and two sciences subjects which would facilitate an admission to study Estate Management in accredited polytechnics or universities. After the completion of either Higher National Diploma (HND) or a B. Sc degree in Estate Management, a graduate HND holder, from an accredited polytechnic, will sit for the Professional Qualifying Examination Stage 3 (PQE 3) while graduates of non-accredited university or polytechnic will sit for PQE 2.

Success in the PQE examination will enhance participation in the Professional Practice Examination (PPE) which will be followed by the writing of a Critical Analysis subject to the approval of a synopsis. The Professional Practice Examination (PPE) and the Critical Analysis writing stage, however, is the entry point for a university graduate with a B. Sc degree in Estate Management. Those that scaled through the Critical Analysis Stage (either through HND or B. Sc entry point) will now face the Membership Committee of the NIESV for an interview to become an Associate Member of the