

REAL ESTATE AGENTS BILL 2012

Explanatory Notes

(This note does not form part of the Bill but is intended to explain its purpose and effect)

This Bill seeks to introduce the Real Estate Agents Authority to introduce and cover a relatively new industry to Tonga.

The relatively new industry to Tonga is the business being a middleman/agent between land holders and purchasers of various land interests such as leases, sub-leases and tenancy agreements.

The Bill also comes in the wake of the Royal Land Commissions inquiries into alleged unlawful land dealings via the internet that continues to occur mainly in Vava'u.

Section 2 defines what a real estate agent is and what land related transactions a real estate agent is authorised to partake in.

A new national Authority is set up under this Bill that will be known as the Tonga Real Estate Agents Authority. This Authority seeks to provide national governance that would oversee professional standards, membership, compliance, certification and disciplinary action for its members under this Bill.

The Authority shall be under the management of a Chairman who will be the Chief Executive Officer of the Ministry of Lands. He will act within a range of rules and guidelines laid out in this Bill toward assisting the formation and development of the Authority and its members over the coming two year transition period.

The Authority is to provide a two year transition period to enable the real estate agents industry to organise and establish sufficient qualified membership, training, financial support, offices, public notification of its intentions and to achieve other compliance objectives set out in this Bill.

At the end of two years, the Authority will cease to exist and a Society to be known as the Tonga Real Estate Agent's Society shall simultaneously come into existence and continue its functions.

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REAL ESTATE AGENTS BILL 2012

**AN ACT TO PROVIDE FOR REAL ESTATE AGENTS; FOR THEIR
PROFESSIONAL CONDUCT AND DISCIPLINE; FOR THE
ESTABLISHMENT OF THE TONGA REAL ESTATE AGENTS
AUTHORITY AND SOCIETY; AND RELATED PURPOSES**

Commencement []

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows:

PART I – PRELIMINARY

1 Short title

This Act may be cited as the Real Estate Agents Act 2012.

2 Commencement

This Act shall come into force on such date as the Minister may provide by
Notice in the Gazette, and different sections may be commenced upon different
dates.

3 Interpretation

In this Act unless the context otherwise requires –

“**Authority**” means the Tonga Real Estate Agents Authority established under section 4(1);

“**Certificate**” means a real estate agent certificate issued under section 12;

“**Chief Executive Officer**” means the Chief Executive Officer of the Ministry;

“**Member**” means -

- (a) all persons holding a current real estate agents Certificate;
- (b) persons elected by the Authority or Society as honorary members; or
- (c) such other persons for the time as are elected by the Authority or Society as members;

“**Minister**” means the Minister of Lands, Surveys, Natural Resources and Environment and “**Ministry**” has a corresponding meaning;

“**Real Estate Agent**” means a person qualified under this Act to act as such;

“**Registrar**” means the Registrar of the Tonga Real Estate Agents Authority and, upon ceasing to exist, will be the Registrar of the Society who is responsible for the registration of all licenced real estate agents and the administration of the Roll;

“**Roll**” means the Roll of real estate agents listed with the Registrar and filed with the Ministry;

“**Society**” means the Tonga Real Estate Agents Society established under section 9;

“**Transaction**” means any one or more of the following –

- (a) the sale, purchase, or other disposal or acquisition of any lawful interest in land under the Land Act;
- (b) the grant, sale, purchase, or other disposal or acquisition of a lease, sub-lease or tenancy agreement;
- (c) the grant, sale, purchase, or other disposal or acquisition of a licence that is authorised under the Land Act; or

- (d) the sale, purchase, or other disposal or acquisition of any business (either with or without any interest in land that may be subject to a tenancy agreement).

PART II – TONGA REAL ESTATE AGENTS AUTHORITY

4 Establishment of the Authority

- (1) There is hereby established an Authority to be known as the Tonga Real Estate Agents Authority.
- (2) The Authority shall function for a period of two years beginning from the commencement of this Act.
- (3) Upon the Authority ceasing to exist, all its powers and functions will be transferred to the Society together with any assets, property and all other interests.
- (4) The object of the Authority is to provide a two year transition period to enable the real estate agents industry to organise and establish sufficient qualified membership, training, financial support, offices, public notification of its intentions and to achieve other compliance objectives set out in this Act.

5 Executive Members of the Authority

The Authority shall consist of the following executive members –

- (a) the Chief Executive Officer who shall be the Chairman;
 - (b) three other members, one being an experienced law practitioner in the area of land law and two other persons with suitable real estate agent qualifications and experience, to be appointed by the Minister.
- (1) The executive members of the Authority shall be responsible for the administration of the Authority and exercise of its powers and functions under this Act.

- (2) The Chairman shall be the head of the Authority and shall be responsible for the efficient and effective operation of the Authority.
- (3) The Minister may remove a member of the Authority from office and appoint a successor.
- (4) An executive member of the Authority may resign by giving the Minister 3 month's written notice.
- (5) The Authority shall appoint officers of the Authority including a director as head of its secretariat and any such other officers as may be required.

6 Executive Meetings

- (1) The quorum for an executive meeting shall be 3 members, one of whom shall be the Chairman.
- (2) The Chairman shall —
 - (a) call and attend regular meetings of the Authority;
 - (b) preside over the meetings of the Authority; and
 - (c) co-opt any person from the public or specialist to any meeting of the Authority if he considers it necessary.
- (3) Subject to this Act, the Authority shall determine its own procedures.

7 Objects of the Authority

- (1) The objects of the Authority are to —
 - (a) promote the interests of the real estate profession and the interests of the public in relation to real estate and all land interests and property related matters;
 - (b) promote and encourage proper conduct among real estate agents;
 - (c) prevent illegal, dishonourable or improper practices by real estate agents; and
 - (d) maintain the integrity of the real estate agent profession.

- (2) Upon coming into existence, the Society shall continue to observe the same objects as the Authority.

8 Powers and Functions

- (1) The Authority shall have all such powers, rights, and authorities as are reasonably necessary or expedient for or conducive to the exercise of any of its functions.
- (2) Without prejudice to subsection (1), the Authority shall in addition to any other powers conferred on it by this or any other Act, have the following powers –
- (a) to appoint the Registrar;
 - (b) to administer the licensing regime for real estate agents;
 - (c) to ensure that the Roll is established, kept, and maintained;
 - (d) to make recommendations on any application made for a Certificate, membership or any other application made under this Act;
 - (e) to intervene in any application for a Certificate;
 - (f) to develop practice directions and make rules for regulating the professional practise, conduct and discipline of real estate agents;
 - (g) monitor, control and discipline the use of the internet for land deals by real estate agents;
 - (h) ensure that real estate agents are not involved in unlawful dealing with land and do not give legal advice to clients or landowners if they are not licensed to practise law in Tonga;
 - (i) cooperate with the Ministry in order to exchange information and make available to the public any agreement that involves a particular allotment of land;
 - (j) to set fees and levies;
 - (k) to investigate complaints of professional misconduct against real estate agents;
 - (l) to maintain and improve the standards of learning of real estate agents;
 - (m) to assist the Government and the public in all matters affecting real estate agents' affairs;
 - (n) to assist law reform and to represent the views, interests and wishes real estate agents in relation to law reform;

- (o) to borrow money required for any of the purposes of the Authority, and for the purpose of securing any money so borrowed, mortgage charge or pledge any right, title, estate or interest in any real or personal property vested in or owned by or being acquired by the Authority;
 - (p) to perform such other functions that are specified in this Act or that the Authority, with the approval of the Minister, decides are appropriate.
- (3) Upon coming into existence, the Society shall continue to perform the same powers and functions as the Authority.

PART III – TONGA REAL ESTATE AGENTS SOCIETY

9 Establishment of the Society

- (1) There is hereby established a Society to be known as the Tonga Real Estate Agents Society that shall come into force on the date the Authority ceases to exist under section 4(2).
- (2) Upon ceasing to exist, the Authority shall hand over to the Society all information, files, assets, interests in land within its control.
- (3) The Society is a body corporate with perpetual succession and a common seal and in its corporate name is capable of –
 - (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
 - (c) borrowing or lending money;
 - (d) entering into contracts; and
 - (e) doing anything which a body corporate may lawfully do or perform or which is calculated to facilitate the discharge of its functions.

10 Council

- (1) The affairs of the Society shall be managed by a Council consisting of –
-

- (a) Chairman;
 - (b) Vice-Chairman;
 - (c) Treasurer; and
 - (d) three other members of the Society.
- (2) The Council shall be elected annually from within the Society's members and shall hold office until the election of its successor.
 - (3) In the absence of the Chairman, the Vice Chairman shall act in his place.
 - (4) In the absence of the Vice-Chairman the Council may appoint another member of the Council to act as Vice-Chairman.
 - (5) If any vacancy occurs in the office of a member the Council shall appoint a member of the Society in his place.

PART IV – REGULATING REAL ESTATE AGENTS

11 Real Estate Agents

- (1) Save as provided in this Act, no person shall operate as a real estate agent unless -
 - (a) he has in force a valid Certificate; and
 - (b) his name is on the Roll;
- (2) Subject to subsection (3), a person shall be deemed to practise as a real estate agent if for gain or reward, whether directly or indirectly, they do any of the following –

Fakatatau ki he kupu si'i (3), kuo pau ke lau 'oku ngaue ha taha ko ha fakafofonga tu'uaki 'api 'o kapau 'oku ne ma'u ha me'a pe totongi, pe 'oku fakahangatonu pe 'ikai fakahangatonu, mei ha'ane fakahoko ha taha 'o e ngaahi me'a ni -

 - (a) represent any person or party in any transaction including all transactions authorised under the Land Act; or

- (b) otherwise act as an intermediary in a transaction to facilitate interaction between the parties for payment of a commission or fee.
- (3) A person shall not be deemed to be operating as a real estate agent in respect of an act carried out by him –
Kuo pau 'e 'ikai lau 'oku ngaue fakafofonga tu'uaki 'api ha taha koe'uhi ko ha'ane fakahoko eni -
 - (a) in the course of his duty as a public officer;
 - (b) incidentally to his practice in a related profession including, but not limited to law, accountancy, engineering, architecture and surveying.

12 Real Estate Agent Certificate

- (1) An application for a Certificate shall be made to the Authority in the prescribed form together with payment of the prescribed fee.
- (2) The Authority shall consider the application and make a recommendation to the Chairman.
- (3) The Chairman may approve or refuse the application after considering the application and whether the applicant satisfies the following requirements –
 - (a) he is at least 21 years of age;
 - (b) he has no criminal record;
 - (c) he is not suspended from practicing as a real estate agent;
 - (d) he satisfies the Authority that he has sufficient experience or training in the real estate business.
- (4) A Certificate shall be issued in the Form provided in Schedule 1.
- (5) A person who is issued with a Certificate shall have his name registered on the Roll by the Registrar.

13 Keeping the Roll

- (1) The Registrar shall keep a Roll on which he shall register the name of all persons who have been issued with a Certificate.

- (2) The Roll may be kept by means of a computer provided the Registrar makes it available for inspection in legible form during office hours, without payment, by any person who applies to inspect it.
- (3) Any person may inspect a hard copy during office hours without payment.
- (4) The Registrar shall ensure that a copy of the Roll is filed with the Ministry.
- (5) The Registrar shall once in every calendar year cause to be published in the Gazette a list of all persons who have been issued with a Certificate.

PART V - DISCIPLINARY COMMITTEE

14 Disciplinary Committee

- (1) The Authority shall appoint from among its members a Disciplinary Committee.
- (2) The Committee shall, in accordance with this Act, hear and determine complaints relating to the professional conduct of real estate agents.
- (3) The Committee shall consist of a chairman and four other members.
- (4) The chairman shall preside at all meetings of the Committee.
- (5) Three members, who must include the chairman, constitute a quorum.
- (6) Questions before the Committee shall be decided by a majority of votes of the members present at the meeting.
- (7) The chairman has a deliberative vote and, in the event of an equality of vote, also has a casting vote.
- (8) Subject to this Act, the Committee shall regulate its meetings, proceedings and conduct as it thinks fit.

15 Complaints to Disciplinary Committee

- (1) Any person may make a complaint in writing to the Committee relating to the professional conduct of a real estate agent.

- (2) The Council may appoint one of its members to assist a complainant in the presentation of his complaint to the Committee.
- (3) Before hearing any complaint the Committee shall serve a copy of the complaint against the real estate agent in question and shall give him adequate time to investigate the complaint and to submit a written response to the Committee.
- (4) The rules of natural justice shall apply to the hearing of a complaint by the Committee and in particular the complainant and real estate agent are entitled -
 - (a) to be present throughout the hearing;
 - (b) to examine witnesses or cross-examine them as the case may be;
 - (c) to produce witnesses;
 - (d) to make oral submissions to the Committee;
 - (e) to have a legal representative.

16 Powers of the Committee

- (1) Where -
 - (a) the Committee is satisfied after hearing a complaint against a real estate agent that he has been guilty of professional misconduct; or
 - (b) a real estate agent is convicted by a court of an act involving dishonesty or is sentenced to a term of imprisonment of 2 years or more,the Committee may exercise its powers under subsection (2).
- (2) The Committee may recommend to the Council -
 - (a) that the name of the real estate agent be struck off the Roll;
 - (b) that the Certificate of the real estate agent be suspended for such time as the Committee may determine;
 - (c) that except in the circumstances referred to above in subsection (1)(b), the imposition on the real estate agent of a fine not exceeding \$5,000;
 - (d) to censure the real estate agent.
- (3) Where the Committee has made a recommendation under subsection (2) the Council may, after the disposition of any appeal under this Act or at the expiration of the time limited for such appeal -

- (a) order that the name of the real estate agent be struck from the Roll; or;
 - (b) suspend the real estate agent's Certificate, for such time as deemed proper; or
 - (c) fine the real estate agent any sum not exceeding \$5,000;
 - (d) impose such conditions with respect to the real estate agent's Certificate as deemed proper.
- (4) The Committee may in its discretion award costs of a hearing to or against the complainant, the real estate agent or the Authority.
- (5) The Authority may in its discretion pay any costs awarded against a complainant.
- (6) Any fine imposed under this section shall be paid into the general revenue of the Kingdom.
- (7) Where;
- (a) a complainant;
 - (b) the real estate agent; or
 - (c) the Authority,

is aggrieved by a decision of the Council under this Act he or it may appeal within 14 days of receipt by him of notice to the Supreme Court.

PART VI – OFFENCES

17 Offence to operate without a Certificate

- (1) Any person who;
- (a) practices as a real estate agent; or
 - (b) in any way holds himself out as entitled by law to practise as a real estate agent,

without having in force a valid Certificate, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

- (2) Without prejudice to any proceedings under subsection (1), failure by an enrolled real estate agent in practice to have in force a Certificate may be treated as professional misconduct. The person would commit an offence and shall be liable on conviction to be imprisonment for any period not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

18 Unqualified person not to pretend to be a real estate agent

Any person who is not on the Roll and who either by himself or together with others, wilfully and fraudulently -

- (a) pretends to be a real estate agent; or
- (b) takes or uses any name, title, addition or description implying that he is a real estate agent,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

PART VI – COSTS

19 Recovery of costs

A real estate agent is entitled in respect of services rendered as a real estate agent to sue for, and recover -

- (a) his taxed costs; or
- (b) in the case of an agreement as to costs in terms of section 20, the amount of such agreed commissions and costs.

20 Agreement on costs

A real estate agent may make a written agreement with his client regarding the amount and manner of payment of costs for the whole or any part of any past, present or future services rendered or to be rendered as a real estate agent.

21 Taxation of costs

- (1) The Supreme Court on application by a real estate agent or his client may tax any costs in respect of services rendered by the real estate agent -
 - (a) in an account rendered and not yet paid; or
 - (b) in an account already paid, on application within six months of payment.

- (2) For the purposes of such a taxation the Court may call on any person to render accounts relating to those services.

PART VII – MISCELLANEOUS

22 Saving for jurisdiction of courts

Nothing in this Act shall affect the jurisdiction exercisable by any court over a real estate agent.

23 Regulations

The Minister may, in consultation with the Authority, with the consent of Cabinet, make regulations for the better carrying out of the purposes of this Act, including, without limiting this generality -

- (a) prescribing anything which may or shall be prescribed under this Act;
- (b) regulating the fees and commissions charged by a real estate agent.

Passed by the Legislative Assembly this _____ day of _____ 2012.

SCHEDULE 1

(Section 12(4))

REAL ESTATE AGENT'S CERTIFICATE

No. dated the day of 20....

.....of is hereby authorised to act as a real estate agent in the Kingdom of Tonga for the period..... pursuant to the Real Estate Agents Act 2012 and subject to such conditions or restrictions as are set out hereunder.