

The Valuers, Appraisers and Estate Agents (Amendment) Act 2017

IN THIS ARTICLE, DING MEE KIONG CONSIDERS THE AMENDMENT MADE TO THE VALUERS, APPRAISERS AND ESTATE AGENT ACT 1981 WITH REGARDS TO PROPERTY MANAGERS.

Introduction

The Valuers, Appraisers and Estate Agents (Amendment) Act 2017 (“**Amendment Act**”), which came into force on 2 January 2018, amended the **Valuers, Appraisers and Estate Agents Act 1981** (“**Principal Act**”) by inserting, among others, a new Part VB which relates to property managers.

The Amendment Act

Prior to coming into force of the Amendment Act, only a registered valuer, appraiser or estate agent duly authorised by the Board of Valuers, Appraisers and Estate Agents (as it was then known) was permitted to undertake property management.

After the coming into force of the new Part VB (Property Managers), subject to the provisions of the Principal Act, every person shall be entitled to have his name entered under **Part IV** of the Register of Valuers, Appraisers, Estate Agents and Property Managers (“**Register**”) to practise property management upon making an application to the Board of Valuers, Appraisers, Estate Agents and Property Managers (“**Board**”) and proving to the satisfaction of the Board that he:

- a. has attained the age of 21 years and is of sound mind, good character and has not been convicted of any offence involving fraud, dishonesty or moral turpitude during the five years immediately preceding the date of his application;
- b. is not an undischarged bankrupt;
- c. has not made a statement, or affirmed or attested a document that is false or misleading in a material particular;
- d. has not dishonestly concealed material facts;
- e. has not furnished false information;
- f. has been registered as a probationary property manager under the Principal Act and has obtained the practical experience and has passed the Test of Professional Competence prescribed by the Board or any equivalent test or examination recognised by the Board;
- g. has made a declaration in the form and manner prescribed by the Board;
- h. has paid the fees prescribed by the Board; and
- i. is not under suspension from valuation or estate agency practice nor has his name been cancelled from the Register.

Notwithstanding paragraph (i), a person who is disqualified from valuation or estate agency practice may, if the Board considers him fit to practise property management, have his name entered under Part IV of the Register as a property manager.

Under the Principal Act:

“**Property management**” means the management and control of any land, building and any interest in the land or building, excluding the management of property based businesses, on behalf of the owner for a fee.

“Property-based business” includes a hotel, motel, hostel, plantation, quarry, marina, port, golf course, cinema, stadium, sports complex and hospital.

“Property manager” means a person, a firm or a company who, on behalf of the owner of any land, building and any interest therein, manages or maintains or controls such land, building and interest.

The property management practice referred to in the Principal Act includes the following:

- a. enforcing the terms of leases and other agreements pertaining to the property;
- b. preparing budgets and maintaining the financial records for the property;
- c. monitoring outgoings for the property and making payments out of the income from the property;
- d. advising on sale, purchase and letting decisions;
- e. advising on insurance matters;
- f. advising on the opportunities for the realisation of development or investment potential of the property;
- g. advising on the necessity for upgrading the property or for the merging of interests;
- h. managing and maintaining the building and facilities attached to the building; and
- i. making or checking of inventories of furniture, fixtures, trade stocks, plant or machinery, or other effects.

No person (or a firm) shall, unless he is a registered property manager and has been issued with an authority to practise under section 16 of the Principal Act:

- a. practise or carry on business or take up employment under any name, style or title containing the words “Property Manager”, “Managing Agent”, 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 property manager or he is engaged in property management practice or business;
- b. act as a property manager;
- c. carry on business or take up appointment or engagement as a property manager;
- d. display any signboard or poster, 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 property manager or he is engaged in property management practice or business;
- e. undertake for a fee or other consideration any of the property management practice mentioned above; or
- f. be entitled to recover in any court any fee, commission, charge or remuneration for any professional advice or services rendered as a property manager.

The owner of any land, building and any interest therein who manages such land, building and interest is allowed to act as property manager. For this purpose, “**owner**” in relation to any land, building and any interest in the land or building means:

- a. the registered owner;
- b. the beneficiary of any estate or trust of a deceased person; and
- c. a lessee whose interest is registered under the **National Land Code [Act 56 of 1965]**, the **Sarawak Land Code [Sarawak Cap. 81]** and the **Sabah Land Ordinance [Sabah Cap. 68]**.

A registered owner or a lessee may be an individual or a company but shall not include any shareholder in the company owning such land, building and interest in the land or building unless such land, building and interest is wholly owned by the company.

Conclusion

The amendment to the Principal Act allows any person (whether or not he is a registered valuer, appraiser or estate agent) to practise property management if he proves to the Board the required conditions under the Principal Act have been satisfied.

DING MEE KIONG
REAL ESTATE PRACTICE GROUP

This article is presented for information purpose only and covers legal issues in a general way. The contents are not intended to constitute advice on any specific matter and should not be relied upon as a substitute for detailed legal advice.

© 2018 Shearn Delamore & Co. All rights reserved.

For further information regarding financial services matters, please contact our Real Estate Practice Group.