



STATUTORY INSTRUMENTS.

S.I. No. 564 of 2020



PROPERTY SERVICES (REGULATION) ACT 2011 (MINIMUM
STANDARDS) REGULATIONS 2020

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PROPERTY SERVICES (REGULATION) ACT 2011 (MINIMUM STANDARDS) REGULATIONS 2020

The Property Services Regulatory Authority, in exercise of the powers conferred on it by section 95 of the Property Services (Regulation) Act 2011 (No. 40 of 2011), with the consent of the Minister for Justice (as adapted by the Justice and Equality (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 452 of 2020)) and after consultation with sector representative bodies, forum members appearing to it to be representative of substantial numbers of licensees and licensees hereby makes the following regulations:

Citation and Commencement

1. (1) These Regulations may be cited as the Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020.
- (2) These Regulations come into operation on 30 November 2020.

Definitions

2. In these Regulations—

“Act” means the Property Services (Regulation) Act 2011 (No. 40 of 2011);

“client”, for the purposes of these Regulations, includes—

- (a) a person for whom a property service is provided by a licensee, and
- (b) in the event of the death, insolvency or other incapacity of a person who falls within paragraph (a) (in this definition referred to as the “person concerned”)—
 - (i) any person having authority to administer the estate of the person concerned,
 - (ii) any beneficiary under a will, intestacy or trust of the person concerned, or
 - (iii) any other personal representative of the person concerned;

“written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information which is transmitted and stored by electronic means.

Registration of Business Name

3. (1) A licensee shall submit to the Authority, all business names used by the licensee in the provision of a property service, not later than 10 working days after the registration of the business name with the Companies Registration Office.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 4th December, 2020.

(2) Without prejudice to the generality of paragraph (1), where a business name is already registered with the Companies Registration Office, and is being used by the licensee and was not previously notified to the Authority, such business name, shall be notified to the Authority as part of the next licence renewal application.

Experience

4. A licensee shall not hold himself or herself out to a client or any other person as possessing experience, competence, training or resources, including financial resources, in respect of the provision of a property service, which he or she does not possess.

Conduct and Behaviour

5. (1) A licensee shall respond to all communications from a client by whatever means agreed with the client and within a reasonable timeframe.

(2) A licensee in the provision of a property service shall not act in a manner which is unlawful.

(3) Subject to paragraph (2), a licensee in the provision of a property service shall act in the interests of the client at all times.

(4) A licensee in the provision of a property service shall not exceed the authority granted by the client.

(5) A licensee shall, not later than 5 working days after receipt of a written request from a client, inform the client of the amount of money held in the client account of the licensee on behalf of that client, as at the date of the request.

(6) A licensee shall not maliciously do anything, directly or indirectly, to injure or undermine the reputation or business of another licensee.

Provision of Property Services by Unlicensed Persons

6. A property services employer, independent contractor or principal officer, shall not direct or facilitate in any way an individual, including a principal officer or employee, who is not licensed, to provide a property service except where the property service comes within the exemption provided for in section 3(1)(o) of the Act.

Inducement

7. (1) A licensee shall not seek or accept any form of inducement in respect of the provision of a property service.

(2) For the purposes of this Regulation, “inducement” means the promise, offer or giving, directly or through an intermediary, of a reward, advantage or enticement, or of a potential reward, advantage or enticement, whether monetary or otherwise, other than the fees agreed in the letter of engagement.

Expenses and Fees

8. (1) A licensee shall refund any unused advertising outlay to a client within the timeframe provided for in the letter of engagement or, if not specified, not later than 10 working days after the conclusion or termination of a property services agreement, or in exceptional circumstances, as soon as practicable thereafter.

(2) A licensee shall not charge any fee in respect of the sale or letting of land or incomplete sale or letting of land, including lease preparation, tenancy extension or tenancy renewal, to any person other than the licensee's client for the purposes of the property service concerned.

(3) A licensee shall not express or imply, to any person that is not a client of the licensee, that fees, administration expenses or any other expenses due from the client to the licensee, in respect of the sale or letting of land, are to be borne by that person.

Service Provided Without Consideration

9. Where a licensee provides a service without consideration, that would otherwise be a property service were consideration provided, the person to whom the service is provided and any person who is making a payment to the licensee related to that service, shall be informed in writing that the service provided is not a property service within the meaning of the Act and will not be subject to any protections arising under the Act.

Provision of Information

10. (1) A licensee shall not knowingly produce, publish or circulate, or cause to be produced, published or circulated, by whatever means, false or misleading advertising information, including but not limited to, the following:

- (a) sales records;
- (b) sales prices achieved;
- (c) experience of the licensee or any licensed principal officer or employee;
- (d) fees charged or chargeable;
- (e) applicable commission rates.

(2) A licensee shall not knowingly produce, publish or circulate, or cause to be produced, published or circulated, by whatever means, misleading information in respect of land or property other than land, advertised for auction, sale or to let.

(3) A licensee shall on receipt of a request in writing from—

- (a) the vendor, prior to the sale of land or property other than land,
or
- (b) the purchaser following the sale of land or property other than land,

remove any advertisement relevant to the land or property other than land, including brochures, signage, websites and portals under the control of the licensee, as provided for in the letter of engagement or, if not specified, not later than 10 working days after receipt of the request, or as soon as practical thereafter.

(4) A licensee shall update any advertisement status relevant to land or property other than land, including brochures, signage, websites and portals under the control of the licensee, as provided for in the letter of engagement or, if not specified, not later than 10 working days after commencement of a tenancy or an unconditional contract for sale being completed, or as soon as practical thereafter.

(5) In the event of the termination of a property services agreement, a licensee shall remove any advertisements relevant to the land or property other than land, including brochures, signage, websites and portals under the control of the licensee, as provided for in the letter of engagement or, if not specified, not later than 10 working days after the termination of the property services agreement, or as soon as practical thereafter.

Breach of Letter of Engagement

11. A licensee shall not breach the terms of the letter of engagement, or other contract or agreement, or any terms of agency with his or her client, in respect of the provision of a property service.

Accepting Tenants

12. A licensee shall ensure that, where agreed with the client, prior to a tenant signing a tenancy agreement—

- (a) such references as have been agreed have been received, and
- (b) such reasonable checks as have been agreed have been conducted in respect of the validity of such references.

Timeframe to Transfer Payments in Relation to Tenancy

13. A licensee who receives a payment from a tenant on behalf of a client, shall transfer the payment to an account nominated by the client within such timeframe as agreed with the client in the letter of engagement or, if not specified, not later than 30 days after receipt of the payment. The payment shall be without deduction, unless instructed in writing by the client to make such deduction, or as otherwise provided for by contract or letter of engagement between the licensee and the client.

Notification of Termination of Tenancy

14. A licensee shall notify a client in writing, within a reasonable timeframe, on becoming aware that—

- (a) the client's tenant has indicated his or her intention to terminate the tenancy, or

- (b) the client's tenant has terminated the tenancy.

Offers to Purchase (Private Treaty) or to Rent

15. (1) Subject to paragraph (3), a licensee shall disclose to a client who has engaged the licensee for the purpose of the sale of land, other than by auction, or letting of land, by the means and within such timeframe as is agreed with the client, all offers to purchase or rent the land, including any conditions attaching to the offers, and all recorded price offers on the land, unless otherwise instructed in writing by the client.

(2) A licensee shall in respect of all offers to purchase land, other than by auction, or to rent land, provide written confirmation to each offeror on receipt of his or her offer.

(3) A licensee shall not express or imply to any person, including a client or his or her representative, that an offer has been received unless that offer has been received by the licensee.

(4) When disclosing an offer to purchase or to rent to a client under this Regulation, a licensee shall notify the client in writing that the offeror is—

- (a) the licensee,
- (b) a principal officer of the licensee,
- (c) an employee of the licensee,
- (d) the employer of the licensee,
- (e) an employee of the licensee's employer, or
- (f) a connected relative of any person referred to in subparagraphs (a) to (e),

where the licensee knows or has reasonable grounds to believe that this is the case.

Deposits

16. (1) Where a licensee holds a security deposit (or any part thereof), in relation to the letting of land, which is due to be paid to a client or returned to a tenant, the licensee shall make such payment to the client or tenant as provided for in the letter of engagement or, if not specified, not later than 10 working days after the day the tenant vacates the property, save in exceptional circumstances.

(2) Where a licensee holds a booking deposit in relation to the sale of land (or any part thereof), which is due to be paid to the client, the licensee shall make such payment on written instruction from the client or the client's solicitor, not later than 10 working days after receipt of the instruction, save in exceptional circumstances.

(3) Where a licensee holds a booking deposit in relation to the sale of land (or any part thereof) which is due to be refunded to a person other than a client, the licensee shall make such payment not later than 10 working days after the

day on which the refund is due to be refunded, save in exceptional circumstances.

(4) A licensee shall not hold more than one booking deposit in relation to the sale of the same land at any given time, without reasonable cause.

Service Charges and Sinking Fund Contributions

17. (1) A licensee who is administering the collection of service charges or sinking fund contributions, on behalf of a management body of a multi-unit development, shall take all reasonable steps to collect the service charges and sinking fund contributions, as provided for in the letter of engagement or, if not specified, as instructed in writing by the client.

(2) A licensee who administers the collection of service charges or sinking fund contributions, on behalf of a management body of a multi-unit development, shall transfer all such monies to the relevant account of the management body, within the timeframe provided for in the letter of engagement or, if not specified, not later than 30 days after receipt of the monies.

Director of a Management Body of a Multi-Unit Development

18. (1) A licensee or a principal officer or employee of a licensee, shall not be a director of a management body of a multi-unit development, where property management services are provided to that management body by—

- (a) the licensee,
- (b) an employee of the licensee,
- (c) the employer of the licensee,
- (d) an employee of the licensee's employer, or
- (e) a licensee who is a beneficial owner of a company which is providing the property service.

(2) Where a licensee, or a principal officer or employee of a licensee is, on the making of these Regulations, a director of a management body of a multi-unit development, and is in a position which would place him or her in breach of paragraph (1), the licensee shall resign as director at the earliest opportunity, but no later than the next annual general meeting of the body.

(3) Nothing in paragraph (1) or (2) shall prevent a licensee or a principal officer or employee of a licensee who is a unit owner in a multi-unit development from becoming a director of, or providing a property service to, the management body of that development.

Financial or Other Services

19. A licensee shall not make the sale of land to a person conditional upon the licensee, or a subsidiary or associated body of the licensee, providing a financial service or other service relating to land, to that person.

Engagement of Legal Advisors

20. A licensee shall not make the provision of any of the following—

- (a) the auction of property other than land,
- (b) the purchase or sale, by whatever means, of land,
- (c) the letting of land, or
- (d) the provision of property management services,

conditional on the vendor, purchaser, lessor, lessee, tenant or directors of a management body of a multi-unit development, being represented by any particular legal advisor or firm of legal advisors.

Conflict of Interest

21. A licensee shall inform the client in writing, as soon as is reasonably possible on becoming aware of any conflict of interest, or potential conflict of interest, in relation to the provision of a property service.

The Minister for Justice consents to the making of the foregoing Regulations.



GIVEN under my Official Seal,
27 November, 2020.

HELEN MCENTEE,
Minister for Justice.

Given under the seal of the Property Services Regulatory Authority
27 November, 2020

MAEVE HOGAN,
Chief Executive, Property Services Regulatory Authority.

GERALDINE CLARKE
Chairperson, Property Services Regulatory Authority.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations lay down standards to be observed by licensed property services providers under the Property Services (Regulation) Act 2011 in the provision of property services.

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