

KREDITILSYNET

The Financial Supervisory Authority of Norway

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This translation is for information purposes only. Legal authenticity remains with the official Norwegian version as published in Norsk Lovtidend.

Estate Agency Act (No. 53 of 16 June 1989)

Cf. *previous* Acts of 19 June 1931 (no. 7) and of 24 June 1938 (no. 13)

Chapter 1 General provisions

Section 1-1 *Scope of application*

(1) In this Act estate agency means acting as an intermediary, including handling of completion, in connection with

- 1 the sale and purchase of real property, including owner-occupied units and undivided interests in real property,
- 2 the entering into and transfer of leasehold contracts relating to real property,
- 3 the sale and purchase of share-ownership certificates (*aksjer, andelsbrev*), mortgage deeds or other title documents conferring a right to rent a dwelling unit or other space in a building,
- 4 the sale and purchase of interests in partnerships, cf. the Act concerning unlimited liability partnerships and limited partnerships (Partnerships Act) section 1-2 first paragraph a), or shares of private or public limited liability companies that are not listed on a stock exchange, provided the transaction is primarily intended to transfer property or rights as mentioned in no. 1 to 3.
- 5 the sale and purchase of timeshares coming under the Act on sale of timeshares in recreational dwellings (Timeshare Act, No. 37 of 13 June 1997).

(2) Anyone engaged in leasing activity for the purpose of arranging real property leasehold contracts is to be regarded as an intermediary under subsection (1) no. 2.

(3) Estate agency does not include the drawing up of agreements to let recreational dwellings or private dwellings or of rooms in such dwellings for recreational purposes, or the procuring of rooms in hotels, hostels etc., for overnight or longer stays. This exception does not apply to timeshares coming under the Act on sales of timeshares in recreational dwellings (Timeshare Act, No. 37 of 13 June 1997).

(4) For the purposes of this Act, the terms purchase, transaction, sale and the like also comprise the other acquisitions mentioned in subsection (1).

(5) The King may decide that this Act shall apply to Svalbard and Jan Mayen.

Section 1-2 *The right to carry on estate agency*

(1) Estate agency for reward may only be carried on

- 1 pursuant to a licence in accordance with the rules of section 2-1, or
- 2 pursuant to a Norwegian lawyer's licence provided the lawyer has furnished security as required by the Courts of Justice Act section 222.

(2) However, this does not apply to estate agency performed in isolated cases in connection with other financial business conducted on behalf of the client. Nor does this apply to banks handling completion as mentioned in section 1-1 first paragraph.

Section 1-3 *Scope of chapters 2 to 5*

(1) Except where otherwise stated or clear from the context, the provisions of chapters 2 to 5 apply to anyone engaged in estate agency pursuant to section 1-2 subsection (1).

Chapter 2 Licence, furnishing of security, supervision etc.

Section 2-1 *Licence to carry on estate agency*

(1) Kredittilsynet (the Financial Supervisory Authority of Norway) may grant a licence to carry on estate agency to:

- 1 persons holding an estate agent's certificate (cf. section 2-3),
- 2 general partnerships regulated by the Partnerships Act (No. 83 of 21 June 1985),
or
- 3 private limited liability companies regulated by the Private Limited Companies Act, and public limited liability companies regulated by the Public Limited Companies Act, whose share capital is fully paid up.

(2) Kredittilsynet may in individual cases grant a licence to carry on estate agency to a bank or housebuilding cooperative. Such licences may be subject to conditions. In such conditions exception may be made from the rules laid down in or pursuant to section 2-5 concerning the furnishing of security.

(3) A housebuilding cooperative may, where it is acting in the capacity of business manager, be instrumental in the sale of shares in an associated housing cooperative without holding a licence. In such case sections 2-4, 2-5 and 2-7 and chapters 3, 4 and 5 apply. Kredittilsynet may make exceptions from the rules issued in or pursuant to section 2-5.

(4) Persons or undertakings that are granted a licence to carry on estate agency must:

- 1 have a permanent place of business in Norway,
- 2 furnish security as stated in section 2-5,
- 3 be able to meet their financial obligations as they fall due, and
- 4 not be guilty of circumstances which could have resulted in withdrawal of their licences under section 2-8 subsection (2) no. 4 or 5.

Undertakings must in addition hold assets to a value exceeding their overall liabilities.

(5) A licence to carry on estate agency may be refused where a partner or shareholder with a substantial owner interest in an undertaking as mentioned in section 2-1 subsection (1) no. 2 and 3 is not considered fit to ensure that the undertaking is operated in accordance with laws, regulations and good estate agency practice. Acquisition of a substantial ownership interest in an undertaking as mentioned in the first sentence may only take place after prior notification thereof has been sent to Kredittilsynet. In the case of general partnerships, the term “substantial ownership interest” means a direct or indirect ownership interest which enables the party in question to exercise substantial influence over the management of the undertaking. In the case of private limited liability companies and public limited liability companies, the term means a direct or indirect ownership interest that represents at least 10 per cent of the share capital or votes, or which otherwise enables the party in question to exercise substantial influence over the management of the undertaking. Kredittilsynet shall also be notified prior to any increase in a substantial ownership interest in a private limited company or public limited company as a result of which the portion of the share capital or votes of the party in question reaches or exceeds 20 per cent, 33 per cent or 50 per cent. Kredittilsynet may in regulations lay down rules concerning what is meant by “substantial ownership interest” in general partnerships and concerning the obligation to notify Kredittilsynet of any increase in such ownership interest. For the purposes of this provision, units or shares of parties related to the party in question are considered equivalent to the units or shares of the party himself, cf. the Securities Trading Act (No. 79 of 19 June 1997) section 1-4. Kredittilsynet shall, within three months of the date when it receives notification as mentioned in the second or third sentence, refuse such acquisitions if the partner or shareholder concerned is not considered fit to ensure that the undertaking is operated in compliance with laws, regulations and good estate agency practice. Kredittilsynet may in regulations lay down further rules on estate agencies’ obligation to report to Kredittilsynet the names of the undertaking’s partners or shareholders.

(6) In the case of undertakings mentioned in subsection (1) no. 2 and 3 and subsection (2), the person effectively in charge of the estate agency business shall be an estate agent or lawyer. Kredittilsynet may in regulations lay down further rules on this person’s duties and responsibilities, including requirements as to his actual presence on the premises and requirements as to preparation in writing of an internal control plan.

Section 2-2 *Branch offices (branches). Business abroad*

(1) A person or undertaking holding a licence in accordance with section 2-1 shall upon application to Kredittilsynet be granted authorisation to establish a branch office (branch) carrying on estate agency from a permanent place of business, provided the person effectively in charge of the branch holds an estate agent’s certificate or is a lawyer who has furnished security in accordance with the Courts of Justice Act section 222, and security has been furnished for the branch’s business.

(2) The ministry may issue further rules on the establishment of branch offices (branches) or subsidiaries abroad, or other business over which the licence holder has a dominant influence.

Section 2-3 *Estate agent's certificate and the titles of government-authorized estate agent and estate agent*

(1) An estate agent's certificate will be issued by Kredittilsynet to persons who:

- 1 have passed an approved estate agent's examination,
- 2 have at least two years' practical experience,
- 3 are of good repute,
- 4 are of legal age of majority,
- 5 can meet their financial obligations as they fall due, and
- 6 are not guilty of circumstances which could have resulted in withdrawal of their estate agent's certificate under section 2-9 subsection (2).

An estate agent may demand that the estate agent's certificate be issued on paper.

(2) The Ministry may lay down further rules regarding experience and educational requirements.

(3) The provisions of subsection (1) paragraph do not prevent the issue of an estate agent's certificate to persons entitled to carry on estate agency in another state that is party to the EEA agreement or in a state with which Norway has entered into an agreement regarding mutual recognition of estate agents, provided:

- 1 the person in question has passed a fit and proper test or completed a trial period in accordance with rules established by the ministry, and
- 2 the conditions of subsection (1) no. 3 to 6 are met.

The ministry may issue further rules concerning conditions for issuance of an estate agent's certificate to foreign estate agents.

(4) Only persons holding an estate agent's certificates have the right to use the title "government authorized estate agent" or "estate agent".

Section 2-4 *Journal of assignments. Entrusted funds.*

(1) Anyone carrying on estate agency pursuant to section 1-2 subsection (1) is obliged under regulations issued by the ministry to keep a journal of assignments received and executed.

(2) The ministry may issue regulations governing the management of entrusted funds.

Section 2-5 *Furnishing of security*

(1) Persons and undertakings licensed to carry on estate agency under section 2-1 and lawyers carrying on estate agency must have insurance cover for the liabilities they may

incur in the conduct of their estate agency business. The ministry is responsible for issuing further regulations concerning such insurance, including on a minimum amount per claim.

(2) The ministry may approve other satisfactory security instead of insurance prescribed in subsection (1).

Section 2-6 *Right to carry on other business activity*

(1) Persons or companies licensed under section 2-1 first paragraph may not carry on other business activity than estate agency.

(2) An estate agent who himself runs, or is employed by, an estate agency must not himself run or be employed by a person or undertaking carrying on other business activity, or be a member of the board of directors, corporate assembly or supervisory board of an undertaking carrying on other business activity.

(3) The ministry may in the individual case or in regulations make exceptions from subsections (1) and (2).

(4) A lawyer carrying on estate agency shall not accept assignments which may bring his personal financial interests into conflict with clients' interests or which may influence his independent position. The ministry may issue further rules in this connection.

Section 2-7 *Supervision of estate agency*

(1) Kredittilsynet oversees and supervises estate agency, cf section 1-1, in accordance with the Financial Supervision Act. Kredittilsynet may in that connection issue orders and otherwise determine the extent and methods of oversight to be carried out at any time.

(2) Persons and undertakings licensed to carry on estate agency are obliged to give Kredittilsynet such information as may be required concerning their business. They are also obliged to present and in the event surrender for inspection ledgers and other documents along with printouts of electronically stored information relating to their business.

(3) In the case of lawyers who carry on estate agency, the above applies in addition to the oversight and supervision rules contained in and issued pursuant to the Courts of Justice Act.

(4) Oversight and supervision under this section shall apply correspondingly to persons and undertakings whose right to carry on estate agency has been withdrawn, cf section 2-8, or that have voluntarily handed in their licences.

Section 2-8 *Lapse of right to carry on estate agency*

(1) Kredittilsynet shall withdraw a license to carry on estate agency if

- 1 a person or undertaking licensed to carry on estate agency becomes the subject of bankruptcy proceedings, or
- 2 a person licensed to carry on estate agency has his estate agent's certificate withdrawn.

(2) Kredittilsynet may withdraw a licence to carry on estate agency if a person or undertaking with such licence:

- 1 no longer meets the conditions of section 2-1 subsection (4), subsection (5) or conditions set for the licence,
- 2 no longer has a person effectively in charge who meets the requirements of section 2-1 subsection (6) or conditions set for the licence,
- 3 has failed to comply with an order issued by Kredittilsynet,
- 4 has grossly or repeatedly infringed duties imposed by law or regulations, or
- 5 is guilty of irregularities which give reason to fear that continuation of the estate agency business may be detrimental to the public interest.

(3) Kredittilsynet may set a deadline for circumstances as mentioned in subsection (2) to be put in order. If the circumstances in question are not rectified by the deadline, Kredittilsynet may withdraw the licence.

(4) Kredittilsynet may demand the termination of a lawyer's estate agency business if the lawyer:

- 1 is no longer licensed to practise as a lawyer,
- 2 is unable to meet his financial obligations as they fall due,
- 3 has failed to comply with an order issued by Kredittilsynet or the Supervisory Council for Legal Practice,
- 4 has grossly or repeatedly infringed duties imposed on him by law or regulations, or
- 5 is guilty of irregularities which give reason to fear that continuation of the estate agency business may be detrimental to the public interest.

Section 2-9 *Withdrawal of an estate agent's certificate*

(1) Kredittilsynet shall withdraw an estate agent's certificates if the estate agent no longer meets the requirements of section 2-3 subsection (1) no. 4 and 5.

(2) Kredittilsynet may withdraw an estate agent's certificate if the estate agent is considered unfit because he:

- 1 is guilty of a criminal offence and this must be assumed to weaken the public confidence needed for the conduct of the profession, or

- 2 has grossly or repeatedly infringed duties imposed on estate agents by law or regulations.

Section 2-10 *Suspension of the right to carry on estate agency*

(1) If a person or undertaking licensed to carry on estate agency is charged with an offence which may entail withdrawal of their licence, Kredittilsynet may suspend the licence until the criminal case has been completed. Such suspension may also be applied where the person effectively in charge of an undertaking's estate agent business is charged with an offence which may entail withdrawal of the undertaking's licence. Kredittilsynet may similarly determine that a lawyer's right to carry on estate agency shall be suspended until the criminal case has been completed.

Section 2-12 *Prohibition against own trading*

(1) This provision concerns estate agents and lawyers who themselves carry on estate agency, employees of undertakings carrying on estate agency, and owners and officers of such undertakings who normally participate in the day-to-day business without being employed.

(2) If persons as mentioned in subsection (1) have or acquire a personal or financial interest in the transaction to which the assignment relates, the individual or undertaking in question shall refuse to accept the assignment or shall relinquish it as soon as such interest arises. The same applies in relation to parties related to persons as mentioned in subsection (1).

(3) Kredittilsynet may in regulations lay down rules supplementing the provision of subsection (2), including establishing who is to be regarded as a related party. Kredittilsynet may in regulations or by individual decision make exceptions from subsection (2).

Chapter 3 The assignment and its execution

Section 3-1 *Duty to exercise care*

(1) The estate agent shall carry out assignments in accordance with good estate agency practice, without undue delay and taking due care of both parties' interests.

(2) The estate agent shall provide the buyer and seller with advice and information of significance to the transaction and its execution.

Section 3-2 *Form of the assignment*

(1) Agreements concerning assignments shall be entered into on a form prescribed by the ministry. The agreement document shall contain information on:

- 1 the estate agent's and the client's name and address,
- 2 the nature of the transaction (sale, purchase, letting/renting or other transaction),
- 3 in an assignment to sell, the property to which the transaction relates,

- 4 what has been agreed regarding payment to the estate agent, including what
payment the estate agent will be entitled to if the transaction is not completed,
- 5 what has been agreed regarding the estate agent's right to have his expenses
covered, cf 4-4,
- 6 the duration of the assignment and the conditions agreed on in respect of its
termination,
- 7 the estate agent's right, if any, to payment for transactions completed through
others or without an intermediary and, in such event, the further conditions under
which such right shall apply.

The customer may ask to have the assignment form issued on paper.

- (2) When prescribing a form as mentioned in the first paragraph, the ministry may decide that the agreement document shall contain further information.
- (3) The estate agent cannot base a claim on the client on an assignment which does not meet the conditions following from subsection (1) and from rules issued in pursuance of subsection (2). This applies even if the transaction is concluded through the estate agent.

Section 3-3 *Duration of the assignment*

- (1) An assignment shall be given for a specific period which cannot exceed six months. An assignment may be renewed for up to six months at a time. Renewal shall be in writing.
- (2) Where clients other than individual consumers are concerned, assignments may be given and renewed for a period longer than that mentioned in subsection (1).
- (3) An assignment may be terminated without notice by either party. Termination should be in writing.
- (4) The estate agent is entitled to reasonable payment for work done if the assignment is terminated by the client. The estate agent may claim coverage of expenses in accordance with the agreement regardless of such termination, cf section 4-4.

Section 3-4 *Free choice of estate agent. Prohibition against tie-in arrangements*

- (1) Agreements concerning business other than estate agency cannot stipulate that estate agency assignments be given to particular estate agents. An agreement containing such a stipulation is never the less binding in other respects.
- (2) Estate agency assignments may not be made conditional on the client entering into an agreement concerning performance that is not reasonably connected with the assignment.

Section 3-5 *Authority of the estate agent*

- (1) An estate agent may not bind a client in relation to a third party without special authorisation.

Section 3-6 *The buyer's right to information*

(1) The estate agent is required, before a transaction is completed, to give the buyer a written statement containing as a minimum the following information on the property:

- 1 registration number and address,
- 2 ownership,
- 3 encumbrances,
- 4 appurtenant rights,
- 5 land area,
- 6 floor space of the building, its age and mode of construction,
- 7 tax assessed value and municipal taxes,
- 8 where the property stands in relation to finally adopted public plans for the immediate neighbourhood and concession legislation.

(2) In connection with the transfer of a share in or right to use real property or of documents of title conferring the right to use real property (cf section 1-1 subsection (1) no. 3), the estate agent shall also provide information on rights and obligations pursuant to applicable agreements and statutes. If the transfer involves an interest in a joint property or partnership, the estate agent shall also provide information on the accounts and, where applicable, the budget.

Section 3-7 *The estate agent's obligation to obtain and check information*

(1) The estate agent shall, in so far as is reasonable, obtain and check all necessary information about the property. If the estate agent has failed to obtain and check all necessary information, the buyer shall be informed, before the transaction is completed, of the reason why this was not done.

Section 3-8 *The estate agent's duties in connection with the making of a contract*

(1) The ministry may issue regulations concerning bidding, and concerning the right of access to information on bids and bidders.

(2) Unless the buyer and vendor wish otherwise, the estate agent shall set up a written contract of sale containing all relevant conditions for the transaction. Where more than one estate agent has been involved, this responsibility shall rest with the vendor's estate agent. The contract of sale may be prepared electronically provided both buyer and vendor have expressly approved that this be done.

Section 3-9 *The estate agent's duties in carrying out the transaction*

(1) Unless the buyer and vendor wish otherwise, the estate agent shall see to:

- 1 the drafting and registration of the deed,
- 2 the setting up and where applicable the registration of other documents relating to the transaction.
- 3 any application for a concession and other applications, declarations or the like,
- 4 the completion of the financial settlement.

Chapter 4 The estate agent's remuneration

Section 4-1 *On remuneration in general*

(1) The estate agent may demand remuneration from his client on the conditions and to the extent agreed in connection with the assignment, cf section 3-2. It cannot be agreed that anyone other than the client shall pay the estate agent's remuneration, including expenses.

(2) If the remuneration agreed is a percentage of the purchase price (commission), the provisions of section 4-2 and section 4-3 apply unless the assignment indicates otherwise.

(3) If called for by conditions with respect to the sale of real property, the King may issue further regulations on estate agents' remuneration.

Section 4-2 The estate agent's right to commission

(1) If the remuneration agreed is a percentage of the purchase price (a commission), the estate agent is entitled to commission if the transaction is finalised in the assignment period. This applies even if finalisation of the transaction is not due to the effort of the estate agent.

(2) The estate agent is also entitled to commission if the transaction is finalised within three months of the end of the assignment period with someone

- 1 with whom the estate agent has negotiated during the assignment period, or
- 2 who, on inquiry, has received information about the property from the estate agent during the assignment period.

(3) In regard to purchasing assignments, the provisions of subsection (1) second sentence and subsection (2) only apply if this has been especially agreed in the assignment.

(4) A transaction is finalised once the parties are finally bound.

Section 4-3 *Payment of commission*

(1) Payment of commission is due once the transaction has been finalised, cf section 4-2 subsection (4).

Section 4-4 *Recovery of expenses*

(1) In the agreement concerning an assignment, the estate agent may stipulate recovery of documented expenses of specific kinds incurred by him in carrying out the assignment, irrespective of and, as the case may be, in addition to remuneration as mentioned in section 4-1.

(2) The estate agent may demand reimbursement of his expenses as and when their payment by him falls due.

Section 4-5 *Sharing of remuneration*

(1) Remuneration cannot be shared with the buyer or vendor or with anyone who is not himself entitled to carry on estate agency.

Section 4-6 *Reduction of claims for remuneration*

(1) A claim for remuneration may be reduced or entirely cancelled if the undertaking is in material breach of its obligations towards the buyer or vendor.

(2) If the obligation to provide information under section 3-1 subsection (3)¹ has not been fulfilled, the claim for compensation is void.

Chapter 5 Concluding provisions

Section 5-1 *Duty of secrecy*

(1) The estate agent, his employees and other assistants are obliged not to disclose to unauthorised persons any information to which they become privy in the course of their estate agency business concerning anyone's personal circumstances or operating or business circumstances. The Public Administration Act section 13a to 13e provides supplementary provisions.

Section 5-2 *Penalties*

(1) Wilful or negligent violation of provisions contained in or issued pursuant to section 1-2, section 2-2 subsection (2), section 2-3 subsection (4), section 2-4, section 2-6, section 2-7, section 4-1 subsection (3) or section 5-1, is punishable by fines or by imprisonment of up to three years, or up to six years in especially aggravating circumstances. The same applies to non-compliance with orders, injunctions or conditions imposed in pursuance of the provisions mentioned. Aiding and abetting is liable to the same penalties.

Section 5-3 *Commencement*

(1) This Act shall come into force on such date as the King decides.

Section 5-4 *Transitional provisions*

(1) A licence to carry on estate agency under the Estate Agency Act (No. 13 of 24 June 1938) that was issued before the present Act comes into force shall be regarded as an estate agent's certificate of the purposes of section 2-3.

(3) The provisions of the Act apply to assignments received by the estate agent after the Act comes into force. The same applies to assignments renewed after the Act comes into force.

(4) Further transitional rules may be laid down by the King.

¹ (Translator's note). The correct reference is section 3-1 subsection (2). Section 3-1 subsection 3 has been revoked but, inadvertently, not the reference.

Section 5-5 Repeal and amendment of other Acts

(1) The following amendments to other Acts will apply as from the commencement of the present Act:

- 1 The Estate Agency Act (No. 13 of 24 June 1938) to be repealed,
