

## **The Case for Regulation of Auctioneers and Estate Agents in the Republic of Ireland**

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Established in 1971, IPAV is the only representative body solely catering for the professional and educational requirements of almost 1,100 Auctioneers and Valuers practising throughout Ireland.

In the absence of an Irish Nation Action Plan on deregulation, IPAV has drafted this submission to support the case for Regulation in Ireland. IPAV feels that without regulation good practise and standards slip and are replaced by a variety of organisations and individuals, often acting in their own interest with very little knowledge or concern for professional standards or the consumer.

Ireland has long had a licensing regime in place for auctioneers and estate agents for which derives from the Auctioneers and House Agents Act, 1947, amended in 1967 and again in 1973. The Act required all agents to be licensed by the State and each agent was required to apply for a licence to a local district court on an annual basis. The procedure adopted was that the main company name was licensed and any employees of that company, who worked as auctioneers, were subsequently covered by that one licence. The cost was approximately €850 per annum and each applicant had to hold an insurance bond for €12,500, had to provide an up-to-date tax clearance certificate and a certificate of solvency from their accountant. This €12,500 was used as a compensation fund, limited to €12,500 per licence that clients of the company could claim from, in the event of misappropriation of funds.

Some licencees were members of self-regulated professional bodies who paid into a further compensation fund run by the body itself to cover any dishonest or fraudulent practices by the directors and employees of member firms. In addition, these professional bodies generally operated a code of disciplinary procedures for members.

Regulation was formally introduced into the Republic of Ireland with the passage into law of the Property Services (Regulation) Act 2011, which include regulation to drive an increase in standards, to improve consumer protection and to establish redress mechanisms. The Property Services Regulatory Authority (PRSA) was established under the Act to implement the provisions of the Act, drive compliance, improve standards and provide consumer protection for clients of property service providers. The Act came into effect in the Republic of Ireland on the 5th July 2012.

The establishment of the PRSA has supported the implementation of the aims of the 2011 Act. Under the Act, every person who provides a property service is licenced, including a company, a partnership or a sole trader and their employees who carry out a property service inside the entity and has an employee's licence linked to the employer's licence. The cost of this company licence is €1,000 per year and the cost of the employee's licence is €100 per year. There is a further cost to employers for membership of a compensation fund of €200 per year and €50 for an employee. Each licencee makes an annual application to the Property Services Regulator and not the

District Court. However, a tax clearance certificate or, a TCAN number as it is now known, must be included with each application.

### **Improve standards**

The first step in improving standards was the implementation of minimum qualification requirements on those who wished to be licensed. Those who did not wish to be licenced could no longer operate as auctioneers or estate agents. The standards are:

- (1) 120 ECTS minimum academic achievement in specific subjects at third level education in Ireland
- (2) the same minimum academic standard achieved outside of Ireland
- (3) three year's experience in the five years preceding 2012 gained with an already licenced agent (in Ireland or outside of Ireland), or
- (4) a combination of academic achievement and relevant experience. The academic achievements are in technical subjects relevant to real estate agents, including economics, valuation and contract law.

Each licensee is required to have a written agreement, which is known as PSRA Contract with each client which sets out, among other requirements, the service being provided, the agreed fees and all of the costs associated with that service and when those fees and costs become payable. These standards ensure that licensees and clients of licensees can enjoy a consistent standard of service and transparency when compared to an unregulated environment. In this regard, regulation supports and drives professionalism.

### **Consumer protection**

Licensees are required to provide a report from an accountant each year which shows that client money held by the licensee is protected by appropriate financial controls. There are statutory protections which accrue to money held in a client account in the event that the licensee is adjudicated bankrupt or goes into liquidation. Each licensee is required to be covered by a policy of Professional Indemnity Insurance (PII), with a minimum limit of €500,000 to meet claims of negligence against the licensee.

The Authority has established under the Act, the Property Services Compensation Fund, which is fully paid for by contributions from licensees, to make good losses which arise from the dishonesty of licensees (PII policy does not cover dishonesty). The Authority conducts investigations of licensees to check if the licensee is meeting their obligations to their clients and that the standards set down by the Authority are complied with.

The Authority is developing a mandatory Code of Practice to be observed by licensees in their everyday work. Included will be the introduction of minimum standards in relation to ethical and professional conduct and behaviour.

### **Redress**

The Authority has a complaints investigation function which requires the Authority to investigate complaints of improper conduct which are made against licensees. Having an administrative rather than a court-based remedy is less expensive for all involved in a dispute. The sanctions

which can be imposed by the Authority range from advice to the revocation of a licence and a fine of up to €250,000.

The investigation function (including the investigations which take place without a complaint being made) is an integral part of improving standards and consumer protection.

In the absence of a regulated environment poor and sharp practise would inevitably develop and as the unregulated person will often believe that substandard service provision has no consequences.

### **Persons from EU Member States**

As is noted earlier, when assessing a licence application the same standard is used to assess Irish and non-Irish applicants. Academic qualifications in third level colleges outside of Ireland are given the same weight as if the same course had been undertaken in Ireland. The relevant licence experience gained outside of Ireland is valued as if the experience was gained within Ireland. The only issue is of the person being properly qualified to be licensed rather than where s/he got the qualification (academic or experience).

In order to protect consumers and to ensure that there is a level playing field for both Irish and non-Irish people, there are a number of safeguards in place.

A person is entitled to apply to practice in the Republic of Ireland who meets the following criteria:

- is licensed (or has some other authorisation) from another Member State to provide a service
- wishes to provide a corresponding service in Ireland
- is not prohibited from providing the service in Ireland
- is subject to a scheme for the protection of client money which is similar to that in Ireland
- is a “relevant person” and is therefore, allowed to provide corresponding services in Ireland (which they are licensed to provide in their “home” Member State) without being licensed in Ireland.

They are also subject to other requirements which apply to Irish licensees such as the entering written agreements with their client and being subject to the Authority’s investigation function.

A person who is not a “relevant person” does not have a similar client protection scheme in place for the protection of client money or is not subject to a licensing regime in their “home” Member State. A person who is not a “relevant person” and who is not licensed by the Authority is prohibited from providing real estate agency services in Ireland. Again, consumer protection is at the heart of this procedure.

Were a situation to arise where any person from another Member State could provide real estate services in Ireland without being a “relevant person” (or being licensed by the Authority), then such persons would have an unfair advantage over licensees. Such persons would not have the cost associated with being licensed (i.e. a licence fee, contribution to the Compensation Fund,

accountant's fees, reports on client money, PII and all the costs associated with complying with a regulatory environment as well as being subjected to an investigation).

### **Market solution**

Real estate agents are involved in some of the biggest transactions that a citizen will ever undertake in his or her lifetime. In the absence of a regulatory environment which eliminates poor practice by estate agents (or improves them to a minimum standard) and given the infrequent use of real estate agents by most citizens clients (a relatively small number of times in a lifetime), the chance of picking a good and reputable estate agent is no better than the chance of picking a poor one in an unregulated marketplace. It is not desirable to leave a so significant matter to the market forces as the risk to the individual consumer is too high (without such guarantees as PII or a fund to compensate for dishonest or fraudulent practice).

There is the risk that some (less honest) licensees may decide to move to another Member State where there is no licensing regime or client money protection in place in order to circumvent the consumer protections inherent under the Irish system. The risk of a poor outcome for the consumer is significant in such a "race to the bottom".

### **Regulatory Environment**

This paper highlights the strengths of the regulatory environment in the provision of property services. Ireland and IPAV strongly supports and believes in such a regime and considers that any diluting of these standards, established under the 2011 Act, will have negative consequences for standards and compliance in the sector and dilutes the robust safeguards for the protection of consumers which are now in place.