

EXCELLENCE IN LAW

Clear thinking, clear fees,
clear choice

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Regulating the Sector: The Legislative Picture

Wednesday 6th March 2019



Background

- Property Services (Regulation) Act 2011
- *“To control and supervise the providers of property services”*
- PSRA: A young regulator but one with significant teeth

Unlicensed Provision of Services

- Section 28
- Prohibits, in the absence of a licence:
 - provision of property services;
 - holding oneself out as available to provide property services; and
 - representing oneself as available to provide property services, by advertisement.

Unlicensed Provision of Services

- Investigations conducted by PSRA inspectors
- Prosecuted in the District Court by the PSRA
- Summary Conviction: Class A fines or imprisonment, or both
- Three ongoing prosecutions
- Most recent successful prosecution: November 2018

Injunctions

- Where Authority is satisfied a non-licensee is:
 - Providing property services;
 - holding themselves out as available to provide property services; or
 - representing themselves as available to provide property services, by advertisement.
- Authority can apply to the High Court for an injunction to stop this

Protection of Client Accounts

- **Power to apply to the High Court for “freezing orders” where PSRA:**
 - Refuses to renew a licence;
 - Suspends or revokes a licence; or
 - Licensee has ceased to provide property services
- High Court can also order banks and other persons to provide information in relation to financial affairs of licensee/former licensee
- One freezing Order secured in 2018

Suspension of Licenses

- Power to apply to the High Court for an Order immediately suspending a licence
- Where necessary to protect clients of licensee or users of the property services
- Usually on notice to the licensee unless immediate risk of financial harm –if so an interim order can be obtained *ex parte*
- One suspension Order secured in 2018

Complaints & Investigations

- Anyone can make a complaint about a licensee or former licensee
- Allegations of improper conduct
 - Commission of an act rendering the licensee no longer a fit and proper person
 - Contravention by licensee of Act or regulations
 - Giving of clearly unreasonable statement of advised market value/letting value

Complaints & Investigations

- Inspectors appointed to investigate

Powers of Inspectors

- Enter, inspect and search premises/vehicles
- Enter, inspect and search dwellings (with consent or on foot of warrant)
- Require production of records
- Require provision of information, on oath
- Be accompanied by An Garda Síochána, if necessary

Complaints & Investigations

- Report of Inspectors considered by Authority
- Authority must determine if it is satisfied improper conduct has occurred/is occurring
- If it is, Authority must impose a major or minor sanction

Sanctions

➤ Major

- Revocation of licence and prohibition
- Suspension of licence
- Payment into Compensation Fund

➤ Minor

- Advice
- Caution
- Warning
- Reprimand

Supervisory Role of High Court

- Appeal to High Court of decision to impose major sanction
- If no appeal, Authority must apply to High Court to confirm
- Section 71: matters to be considered in imposing sanction

Appeals Board

- Property Services Appeals Board
- Independent of the Authority
- Hears appeals of:
 - Decisions of the Authority not to make grant from Compensation Fund
 - Decisions of the Authority to impose minor sanctions
 - Refusals to issue licences
 - Dismissals of complaints
- Appeal to the High Court on point of law

Compensation Fund

- Property Services Compensation Fund
- Shall make a grant where Authority is satisfied:
 - Client of a licensee
 - Has sustained a loss
 - As a result of dishonesty of licensee or principal officer/employee/agent of licensee
 - Arising from provision of property services

Compensation Fund

- Discretion to make or refuse to make a grant to a client in respect of a loss, where:
 - Licensee did not have a licence in force at time loss was sustained
 - Dishonesty or negligence on part of the client which contributed to the loss
 - Client has contributed to improper conduct by the licensee
 - No grant may be made in respect of loss made good

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Thank you

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