



**Guidance on the Scope of Practice
Of
Property Service Providers**

JANUARY 2017

IMPORTANT NOTICE

This guidance note is issued for the benefit of Property Service Providers, their clients and third parties that they engage with in the course of the provision of property services. This document provides guidance only and should be read in conjunction with relevant legislation.

The Authority reserves the right to amend this document at any time.

INTRODUCTION

The **Property Services Regulatory Authority** ("the Authority") was established on 3 April, 2012 under the provisions of the Property Services (Regulation) Act 2011 for the purpose of regulating **Property Services Providers (PSPs)** in Ireland. The role of the Authority is multidimensional in that it includes:

- The licensing and regulation of the Property Services industry,
- Administering an independent system of investigation and adjudication of complaints made against those licensed by the Authority, and
- Promoting consumer awareness.

One of the main functions of the Authority is the licensing of all **PSPs**, to carry out property services. The licensing requirement applies to individuals providing property services either in the course of their employment or as independent contractors, companies or partnerships who employ persons to provide property services. In accordance with section 2(1) of the Act, and subject to some limited exemptions, every person who provides property services must be licensed.

The Authority in providing guidance on functions undertaken by property service providers which requires a licence, is aware of the wide ranging and varied functions which licensees and their staff undertake on a daily basis. This document offers guidance on those functions which both licensees and employees of licensees **may and may not** carry out in order to be compliant with the Act. Where employees of a property services employer are not licensed, it is important to stress that such employees do not directly engage with clients in relation to functions identified in this guidance document which must be provided by licensees.

This Guide has been prepared to assist Property Services Providers in determining services required to be delivered by a licensee and those that can be delivered by an unlicensed employee.

Section 3(1)(o) of the Act provides that the Act does not apply to a property service provided by an employee of a licensee where:

- the principal function of the employee is the provision of secretarial, reception, human resource management, information technology or financial services, or any combination thereof, for the licensee,
and
- the employee does not, in relation to the provision of that property service to a client of the licensee, directly engage with the client except to the extent necessary for the purposes of the performance of such principal function.

This document aims to provide clarity relating to functions which:

- require to be licensed,
- may be undertaken by employees of PSP's but with the licensee having direct oversight and
- may be undertaken by employees of PSP's which do not require direct oversight by the licensee but for which the licensee is responsible for their execution.

At no time should an unlicensed employee provide a property service function for which a licence is required.

To assist the reader by way of a guide to the (1) functions which may be undertaken by licensees and employees of licensees and (2) functions which may not be undertaken by employees of licensees are outlined in this document using a traffic light system:

- Functions of Property Service Providers requiring a licence (Red)

- Functions which may be delivered by employees of the licensee but must be delivered with the direct oversight of a licensed Property Service Provider (Orange)

- Functions not requiring direct oversight of a licensed Property Service Provider, but maybe undertaken by employees of the licensee for which the licensee has responsibility for their execution (Green)

IMPORTANT

It must be stressed that at all times the primary functions of the delivery of a Property Service by a Property Service Provider to a client, consumer or third party should be delivered by a Property Service Provider holding the relevant licence. Licensees delegating any duties to employees will be responsible for the delivery of such duties without exception. This Guide does not diminish or reduce the responsibility of the licensee but offers guidance as to the delegation of certain aspects of service delivery.

Contents

Page

1. Property Services in relation to Auction (other than Land)	7
2. Property Services in relation to Selling a House, Apartment, Land	8
3. Property Services in relation to Letting	9
4. Property Management Services – Multi Unit Development ..	11

1. Property Services in relation to Auctions other than Land

Functions to be undertaken only by Licensees

- Auction of the property
- Look for bids on property
- Sell the property under the hammer
- Take vendors' instructions
- Take solicitors' instructions
- Arrange deposit
- Sign contracts

Functions which employees may undertake, where direct oversight is not essential, but for which the licensee is responsible for its execution

- Read out conditions of sale
- Record bids on day of auction
- Receipt deposits/payments
- Prepare brochures

2. Property Services in relation to Selling a House, Apartment, Land

Functions to be undertaken only by Licensees

- Take instructions from a Vendor
- Negotiate and execute a Property Services Letter of Engagement
- Discuss offers with either vendors or prospective purchasers
- Discuss AMV, asking price or reserve with any party beyond those advertised
- Instruct solicitors
- Agree the payment of a booking deposit
- Dealing with any contract queries

Functions where Licensees may delegate tasks to employees to complete but where the Licensee must directly oversee

- Pass on offers to vendors only with permission of licensee
- Receive written offers from perspective purchasers on strictly without prejudice basis

Functions which employees may undertake, where direct oversight is not essential, but for which the licensee is responsible for its execution

- Provide directions to a property
- Compile brochures and advertising materials where the details to be included are provided by a licensee and the final proof signed off by the licensee
- Provide brochures and marketing material to prospective buyers, material provided by a licensee or any other third party
- Inform prospective buyers of how they can make an offer
- Show properties only
- Issue receipts for deposits where acceptance of the deposit payment has been expressly approved by the licensee

3. Property Services in Relation to Letting

Functions to be undertaken only by Licensees

- Liaise with client to agree terms of engagement and Letter of Engagement
- Advise client of “Advised Letting Value”
- Agree parameters for Lease Terms with the Client
- Negotiate and Agree Lease terms with a prospective tenant
- Approve or acknowledge that all relevant data / information / documentation has been obtained from prospective tenants
- Approve marketing of the property (to include BER rating data)
- Approve execution of the lease document
- Approve accounts to issue to the Client
- Notify the tenant in relation to procedures regarding the deposit refund on the expiry/termination of the lease

Delegated Functions under direct supervision

- Handover keys to tenants of licensee
- Prepare Lease Agreement within the terms provided by licence holder

Functions which employees may

- View property and refer to marketing information

undertake, where direct oversight is not essential, but for which the licensee is responsible for its execution

- Obtain House Rules from OMC where property is a unit within a MUD and provide copy of house rules to tenant
- Notify the tenant of the “point of contact” as per Residential Tenancies Act
- Liaise with tenant on any property related queried following the execution of the lease
- Receipt monies and documentation received from the tenant in relation to the letting
- Process registration of tenancy with RTB
- Undertake reference checks
- Provide the contact details of client and tenant to the Owner Management Company as per the MUD Act if the property is a MUD property

4. Property Management Services to Multi-Unit Developments

Functions to be undertaken only by Licensees

Accounting Services

- To advise the OMC on the establishment of a sinking fund in accordance with section 19 of the Multi-Unit Developments Act 2011

Corporate Services

- To attend directors' meetings to include General Meetings of the OMC as agreed
- To arrange, under the instruction of the OMC's Company Secretary, the General Meetings of the OMC and prepare, produce and circulate the necessary reports and notices (once approved by the OMC) in accordance with sections 17, 18, 19 and 23 of the Multi-Unit Development Act 2011
- Carry out the OMC's instructions to comply with its legal obligations

Insurance Management

- Identify potential insurance providers/brokers to provide necessary insurance cover to include building reinstatement; fire and perils; lift engineering; public liability; employer/employee liability; directors and officers; alternative accommodation cover
- Liaise with insurance provider/broker in procuring cover on the basis of appropriate professional advice
- Liaise with the insurance provider/broker on renewal of all policies, as directed by the OMC.
- Preparation of insurance claims on behalf of the OMC and/or its members under the OMC's relevant policy when requested by the OMC
- Negotiation of premium payment schedule with insurance provider/ broker

Estate Management

- To identify, on an annual basis, all maintenance and possible refurbishment programmes including fire safety and other equipment, for consideration by the OMC
- To arrange delivery of planned maintenance as decided by the OMC (including contractors whose engagement did not involve the Agent)
- Compile work schedule for janitor/caretaker and oversee the work
- Advise the Board of the OMC immediately of any defect that could impact the working of the emergency warning systems within the development. Arrange for this defect to be repaired without delay

Functions where Licensees may delegate tasks to employees to complete but where the Licensee must directly oversee

Accounting Services

- To prepare an estimate in respect of annual service charges in accordance with section 18 of the Multi-Unit Developments Act 2011, for consideration by the OMC
- To apportion the amount of contribution (charges), (based on the budget adopted by the OMC) payable by each unit owner, in accordance with section 19 of the Multi-Unit Development Act 2011 and regulations made thereunder
- To administer the imposition of penalties for late payments as directed by the OMC where permissible
- To prepare a report when requested for the OMC directors on overdue accounts
- To administer the OMC's finances in accordance with the provisions of the Property Services (Regulation) Act 2011 and regulations made thereunder
- To provide reports on all income and expenditure for the OMC on an agreed frequency basis
- To reconcile bank statements and provide reconciliation reports to the OMC
- To pay invoices for goods and services in accordance with the approved service charge budget up to an agreed value on behalf of the OMC (other than where the Agent is the payee) upon written instruction from the OMC as approved and minuted at a meeting of the board of directors
- Prepare and provide the relevant accounting records for the OMC's accountants and auditors

Corporate Services

- To prepare the necessary returns to comply with the Companies Act 2014
- To maintain the register of the OMC Unit ownership (in accordance with section 8(3) of the Multi Unit Developments Act)
- To record and process alleged breaches of lease conditions, covenants or house rules and to report such breaches to the OMC
- To prepare supporting material used at meetings (agenda, accounts, reports on the management of the complex or proposed budget)
- Prepare draft minutes of meetings
- To distribute communications to directors'/unit owners as appropriate
- To maintain records of work carried out, tender exercises and other records related to service provision

- Ongoing communication with unit owners and residents to include newsletters
- Prepare draft returns to the Revenue Commissioners for the OMC

Estate Management

- Conduct as frequently as agreed, visual inspections to identify repairs and renewals
- To arrange necessary repairs
- Monitor contractors to ensure the contracted services are delivered to specification (including contractors whose engagement did not involve the Agent)
- Provide access to prospective contractors to the development to enable comprehensive tenders to be completed
- To maintain the OMC's equipment inventory/asset register
- To keep safe any warranties or guarantees
- Arrange for breaches of the house rules to be communicated with the unit owner and tenant if applicable

Functions which employees may undertake, where direct oversight is not essential, but for which the licensee is responsible for its execution

Accounting Services

- To issue each unit owner with a statement of demand for service charges and sinking fund contribution together with a copy of the approved budget and the calculations used to arrive at the charge payable by each unit owner
- To collect service charges and sinking fund contributions approved by the OMC
- To administer the issuing of reminders for service charge and sinking fund payments as directed by the Board of the OMC
- To answer queries from unit owners on service charges and sinking fund contributions
- To arrange for the collection of arrears as directed by the Board of the OMC
- To provide receipts for all cash received
- To provide, on request, the unit owner with annual statement of unit owner's services, charges payments and sinking fund contributions
- Respond to accountants and auditors on questions arising from the preparation and audit of the OMC's accounts

Corporate Services

- To request contact details of owners in compliance with Section 8(3) of the Multi-Unit Developments Act 2011
- To provide or make available memorandum and articles of association to unit owners.
- To arrange unit ownership certificates to new unit owners
- To distribute minutes of general meetings to unit owners

Insurance Management

- To record and receive insurance settlements on behalf of the OMC
- To notify the insurers of interested parties as advised