

ZERO DRAFT – VALUERS BILL

An Act of Parliament to provide for the registration, regulation and conduct of Valuers; to establish the Valuers Board; to provide for the functions and management of the Board; and to provide for related matters.

PART I PRELIMINARY

Short title

1. This Act may be cited as the Valuers Act, 2016 and shall come into operation on such date as the Cabinet Secretary may, by Notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires

“Assistant valuer” means a person who is enlisted as assistant valuer under this Act;

“Board” means the Valuers Board established under this Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for lands or any other equivalent title;

“Certificate” means a practising certificate issued under this Act;

“Chairman” means the Chairman of the Board and includes a Vice Chairman or a person appointed to act as such;

“Client” means a person who requests for valuation and related services to be carried out by a registered valuer under this Act and shows proof of payment of professional fees as prescribed under this Act

“Comparable property” means a property that shares common features with the property under valuation;

“Consulting firm” means a sole proprietorship, partnership or limited liability company registered to carry out valuation under this Act;

“Director Valuations” means the person appointed as Director Valuations of the Government pursuant to Act

“Government valuer” means a valuer employed by the Central Government or County Government who discharges duties pursuant to Act

“Institution of Surveyors of Kenya – (ISK) means a body corporate with

perpetual succession and a common seal, in its corporate name as established under section 3 of institution of surveyors of Kenya Act.

“Public Valuer” means a Government Valuer or any other valuer employed by the public bodies and agencies.

“Land” has the same meaning assigned to it in Article 260 of the Constitution

“Practising valuer” means a registered valuer who hold a current annual practising lincense as issued by the board to carry out valuation under this Act and is in active practice;

“Property” means interests, rights and benefits related to physical land and improvements thereon, movable assets and immovable assets intangible and tangible assets

“Registered valuer” means a person registered as valuer to carry out valuation under this Act;

“Registrar” means a Registrar of the Board appointed pursuant to this Act;

“Valuer” means a person who is qualified and recognized under this act to render valuation and related services;

PART II THE CHIEF GOVERNMENT VALUER

The Chief government Valuer

- 3.** There shall be a Chief Government Valuer within the Ministry responsible for lands who shall be responsible for advising the Government on all matters relating to valuation practice and activities.
- 4.**-(1) The Chief Government Valuer shall be appointed by the Cabinet Secretary from amongst registered valuers.
 - (2) A person is qualified to be appointed as Chief Government Valuer if that person-
 - a) holds at least degree in land Economics or Real Estate or equivalent qualification in valuation from a recognized institution;
 - b) is a registered valuer as defined in this Act with at least 15 years post registration experience in the field of valuation; and
 - c) is of a proven probity, good standing and meets the requirement of chapter 6 of the constitution.
 - d) Certificate of good standing with the ISK.

Powers and functions of the Chief Government Valuer

- 5.-(1) The Chief Government Valuer shall be the principal advisor to the Government on all matters relating to valuation, and the Head of the Valuation Department within the Ministry, and shall have the following functions:
- a) to advise the Government on valuation matters and related activities;
 - b) to carry out research and maintain a valuation data bank for the use by valuers and members of the public;
 - c) to prepare and maintain a data base on property transaction or related data relating to the Government;
 - d) to prepare and submit to the Cabinet Secretary, quarterly reports on valuation activities;
 - e) notify the Board or other relevant authority on any professional misconduct committed by government valuers.
 - f) manage complaints arising out of Government valuation;
 - g) to perform any other related function as may be assigned by the appointing authority.
- (2) In performing functions under subsection (1), the Chief Government Valuer shall have powers to-
- a) impose fees in respect of services rendered by Government valuers as may be prescribed by the Cabinet Secretary;
 - b) appoint or approve government valuers for specific valuation assignment as may be required;

Appointment of other Government Valuers

6. -(1) There shall be established the offices of deputy chief government valuer and such other offices as may be deemed necessary.
- (2) There shall be Government valuers who shall be appointed or employed in accordance with the Public Service Act, and who shall undertake valuation functions in the public sectors in the Ministries, Departments, Government Institutions and County governments.
- (3) The Government valuers shall practice valuation under directives and supervision of the Chief Government Valuer.
7. -(1) There shall be a Director of Valuation for each county, who shall be appointed through recruitment procedures in terms of the Public Service Board Act;
- (2) A person is qualified to be appointed as a County Director of Valuation if that person is a valuer who possesses qualification set out in section
- a) holds at least degree in land Economics or Real Estate or equivalent qualification in valuation from a recognized institution;
 - b) is a registered valuer with at least 5 years post registration experience in the field of valuation; and
 - c) is of a proven probity, good standing and meets the requirement of chapter 6 of the constitution.
 - d) Certificate of good standing with the ISK

(3) The County Director of Valuation shall be located in such county headquarters and responsible for County Government valuations within that county;

(4) The County Director of Valuation shall maintain an up-to-date data base of sales transactions and other government valuations in his County of jurisdiction;

PART III VALUERS BOARD

Establishment of the Board

- 8.** (1) There is hereby established a Board, to be known as the Valuers Registration Board, which shall have the responsibility of regulating the activities and conduct of registered valuers in accordance with the provisions of this Act.
- (2) The Board shall be a body corporate with perpetual succession, common seal and in its name, be capable of -
- a) suing and being sued;
 - b) acquiring, holding and disposing of real and personal property;
 - c) entering into any contract or other transaction, and doing or suffering to do all such other acts and things which a body corporate may lawfully do;
 - d) exercising the powers and performing the functions conferred to it under this Act.

Composition of the board

- 9.** (1) The Board shall consist of nine members appointed by the Cabinet Secretary as recommended by the ISK —
- a) a chairperson who shall be Registered and Practising Valuer and full member of ISK shall be recommended by the ISK with the following qualifications.
 - i) holds at least degree in land Economics or Real Estate or equivalent qualification in valuation from a recognized institution;
 - ii) is a registered valuer with at least 15 years post registration experience in the field of valuation;
 - iii) is of a proven probity, good standing and meets the requirement of chapter 6 of the constitution.
 - iv) Certificate of good standing with the ISK
 - b) two persons who shall be public officers
 - c) one person who is a full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyor), a registered valuer and is in the service of a county government;
 - d) four persons who are full members of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyor) appointed from persons recommended by the Institution of Surveyors of Kenya, registered valuers and who are in private practice;

- e) one person who is a full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyor), a registered valuer and a senior lecturer in any of the Public Universities in Kenya

(2) The registrar shall be the secretary to the board;

(3) The board shall appoint a deputy chairman from amongst the board members;

(4) The Board may co-opt any other person to assist the Board on deliberation of any issue or matter that requires the person's skills, expertise or advice, but the co-opted person shall have no right to vote in any meeting of the Board or participate in any deliberation of the Board other than to which he was nominated.

Criteria for Board Members

- 10.** A person is qualified to be appointed as a member of the board if that person;
- a) has not less than 10 years post registration
 - b) is a members of good standing
 - c) meets requirements of chapter 6 of the constitution

Tenure of office

- 11.** (1) Members of the Board shall serve a renewable three (3) year term provided that a member can serve for a maximum of two terms
- (2)The office of a member of the Board including the chairperson shall become vacant
- (a) if he ceases or suspended for any reason to be a full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyor); or
 - (b) if he resigns his office by written notice addressed to the Cabinet Secretary; or
 - (c) at the end of three years from the date of his appointment.
 - (d) if he is declared unfit to hold a public office by a court of law
 - (e) if a member absents himself from three consecutive meetings of the Board without reasonable excuse;
 - (f) In case of misconduct, a board member can be removed by a two-thirds vote of the board
- (3) Any casual vacancy shall be filled by appointment as it arises.

Functions of the board

- 12.** (1) the board shall perform the following functions:
- a) register valuers and enlist assistant valuers;
 - b) issue certificate to persons qualified to practice valuation;
 - c) publish in the Gazette and two daily newspapers of wide circulation in each year, a list containing the name, address and qualifications of all registered and practicing valuers on the Register;
 - d) exercise effective disciplinary control over the professional ethics and conduct of valuation practice;
 - e) promote and encourage educational advancement with regard to the practice of the valuation profession;

- f) in matters relating to valuation practise, to receive and determine complains raised any valuation
 - g) consult with institutions that train valuers and ISK with the view to ensuring adherence to rules of best practice;
 - h) organize in conjunction with ISK courses, conferences, seminars, discussions and consultations on matters relating to valuation;
 - i) create enabling environment that facilitates professional advancement of the valuation profession
 - j) conduct in conjunction with ISK regular Continuing Professional Education;
 - k) arrange for publication and dissemination of materials regarding the practice of valuation;
 - l) ensure that valuation practice is undertaken in conformity with laid down valuation standards;
- m) To determine fees for registration, issuance of valuer's certificate and issuance of annual Practising license;
 - n) To determine valuation fee charges with the approval of the Cabinet Secretary
 - o) To discipline valuers in accordance with the code of conduct.
 - p) To receive compaints against valuers take necessary measures thereafter.
- (2) In performing its functions under subsection (1), the Board shall-
- a) instill confidence in the operations and management of the valuation profession;
 - b) ensure that the operation of valuation practice is performed with uniform and by honest and competent persons;
 - c) protect the interests of consumers of valuation services;
 - d) enhance public knowledge, awareness and understanding of the valuation with particular reference to-
 - i) the rights and obligations of consumers of and valuers as providers of valuation services;
 - ii) the ways in which complaints and disputes may be resolved.

Committees of the Board

- 13.** -(1) For purpose of effective carrying out its functions under this Act, the Board may form such number of committees as it may deem appropriately.

Power to delegate functions

- 14.** -(1) The Board may delegate its functions under this Act to the Committee of the Board:
- a) Provided that no such delegation shall be made by the Board on functions or duties relating to-
 - b) admission of applicants for registration;
 - c) approval of annual budgets, work programmes or accounts;
 - d) disciplinary measures of valuers.

Meetings of the Board

15. (1) The chairman of the Board shall convene an ordinary meeting of the Board whenever it may be necessary or expedient, but at least once in every three months, for the transaction of its business and shall appoint a suitable time, place and date for holding the meeting.

(2) The chairman of the Board may convene a special meeting of the Board at any time, and shall cause a special meeting of the Board to be held within twenty one days after receiving a written request to do so signed by not fewer than three members of the Board.

Quorum at meetings of the Board

16. (1) The chairperson or vice-chairperson and five other members of the Board shall constitute a quorum at any meeting of the Board.

(2) All acts, matters and things authorized to be done by the Board shall be decided by an ordinary resolution at a meeting of the Board at which a quorum is present.

(3) A decision of the majority of members present and voting at a meeting of the Board shall be deemed to be a decision of the Board.

(4) Every member of the Board shall have one vote, and in the event of an equality of votes the person presiding shall have a second or casting vote in addition to his deliberative vote.

(5) Notwithstanding subparagraph (2), where the chairman so directs, a decision may be made by the Board without a meeting by circulation of relevant papers among all the members and expression in writing of their views, but any member may require that a decision shall be deferred for consideration at a meeting of the Board and in such a case no decision shall be made until there has been a meeting of the Board.

Minutes of meetings

17. (1) Minutes in proper form of each meeting of the Board shall be kept, and shall be confirmed by the Board at the next meeting and signed by the person presiding at the meeting.

(2) The Registrar shall be responsible for taking the minutes keeping the minutes of the meetings and performing such other secretarial duties as the Board may require.

Review of fees payable to the Board

18. (1) The Board shall set from time to time annual membership dues, application fees and Practising license fees. The Dues payable by Members shall from time to time be fixed by an affirmative vote of at least two-thirds (2/3) of the Board. Notice of the intention to increase Dues together with an explanation for the proposed increase shall be provided to the members sixty (60) days prior to the Board meeting at which time the vote is to be taken.

(2) The Registrar shall notify the Members of the Dues at any time payable by them at least sixty (60) days before such payment falls due. If a Member fails to pay their Dues when required which shall not be later than 15th day of February, the Registrar shall be entitled to designate the Member in default and such member shall not have his name Gazetted in that particular year. Publish in the gazette not later than end of March.

Secretariat

19. -(1) There shall be the Secretariat of the Board composed of the Registrar and such number of staff appointed or employed on such terms as the Board shall direct.

(2) Staff appointed or employed under this Act shall be responsible to the Registrar and shall discharge such functions as the Registrar may determine.

Sources of funds

20.- (1) Sources of funds of the Board shall consist of –

- a) any sums which the Board may receive by way of grant from any organization;
- b) fees received by the Board under this Act;
- c) any sums which may be provided to the Board by the government.

Accounts

21.- (1) The Board shall keep proper books of accounts.

(2) Subject to any directions given by the Board, the Registrar shall prepare in respect of each financial year, and not later than three months after the close of the financial year, a statement which shall include a report on the performance of the Board during that financial year.

(3) The statement prepared under subsection (2) shall comprise of-

- (a) statement of financial performance;
- (b) statement of financial position;
- (c) statement of cash flows;
- (d) statement of changes of equity; and
- (e) notes to the financial statements

Audit

22. -(1) The accounts of the Board shall, in respect of each financial year, be audited by the Auditor-General or by an Auditor appointed by the Auditor-General.

(2) The Board shall, within three months after the close of each financial year, submit to the Auditor-General for auditing the statement of accounts described in section 21 of this Act.

(3) The Board shall, as soon as practicable but not later than two months after receiving the audited report from the Auditor General, submit to the Cabinet Secretary the audited financial statements and a report of the Auditor General on such statements.

PART IV THE REGISTRAR AND THE REGISTER

Appointment of the registrar

23. -(1) The board shall appoint a qualified Registrar on a full time basis.

(2) A person is qualified to be appointed as the Registrar if that person-

- a) holds a bachelor's degree with at least 5 years of relevant experience .
- b) is of a proven probity, good standing and meets the requirement of chapter six of the constitution.

(3) The Registrar shall be the Chief Executive Officer, and shall be responsible for the day to day management of activities of the Board.

Functions of the registrar

24. (1) Functions of the registrar shall be to-

- a) head the secretariat
- b) effect registration of valuers and enlistment of assistant valuers as approved and directed by the Board;
- c) prepare various reports and other documents on valuation matters for deliberation by the Board;
- d) arrange and keep minutes of the Board;
- e) keep and maintain the Register under the directives of the Board;
- f) effect suspension or cancellation of certificates issued to registered valuers and assistant valuers as directed by the Board;
- g) facilitate communication on behalf of the Board between the Board and valuers, the Institution of Surveyors of Kenya and other institutions;
- h) liaise with Assistant Chief Government Valuer and Conty Directors of Valuation for the purposes of obtaining data under section 6(5)
- i) make available data or part thereof under 24(1)(h) to any registered valuer upon request
- j) perform other functions as may be from time to time specified by the Board.
- k) Keep the seal of the Board.

(2) In performing functions under this Act, the Registrar shall be responsible to the Board.

Register

25. -(1) The Registrar shall keep and maintain the Register of all registered valuers and firms in accordance with the provisions of this Act and directives of the Board.

(2) The Register for valuers shall contain the following entries-

- (a) registration numbers;
- (b) the name and postal address of the Registered Valuer;
- (c) the qualifications of the Registered Valuer;
- (d) the date of the entry in the Register;
- (e) the category in which the Registered Valuer is registered;
- (f) duration of registration where applicable; and
- (g) any other information as may be prescribed by the Board.

(3) The register for firms shall contain-

- (a) name of the firm;
- (b) date of entry;
- (c) registration number;
- (d) postal and physical address;
- (e) names and shareholding of directors;
- (f) date and number of certificate of incorporation;
- (g) any other additional information as the Board may prescribe.

(4) All changes in the particulars registered under subsections (2) and (3) shall be entered on the register by the registrar.

PART V

RIGISTRATION OF VALUERS AND VALUATION CONSULTING FIRMS

Prohibition

26. -(1) A person or firm shall not undertake any activity relating to valuation under this Act without a certificate issued by the Board.

(2) A person or firm who contravenes this section commits an offence and shall, upon conviction, be liable to consequences under this Act;

Application for registration

27. -(1) A person who wishes to be registered as a valuer under this Act shall apply to the Board in a prescribed form and upon payment of a prescribed fee.

A person shall be eligible to be registered as valuer under this Act if the person-

- (a) is a holder of at least a first degree or equivalent specialization in valuation from a university or institute recognized by the Board as furnishing sufficient guarantee of the possession of the requisite knowledge and skill for the practice of valuation, and;
- (b) is a full member of ISK with good standing in the case of registered valuer and a graduate member of ISK in the case of assistant valuer
- (c) has complied with such addition requirements relating to the acquisition of practical experience in valuation and any other additional requirements specified by the Board.

A firm shall be eligible to be registered as a consulting firm if-

- (a) is incorporated as a body corporate under the Companies Act;
- (b) at least seventy five percent of the shareholding is held by registered valuer(s), of none valuer (if) any shall have shareholding less than any individual registered valuer within the firm

(2) The Board may require an applicant for registration under this section to satisfy the Board that his professional and general conduct renders him fit and proper person to be registered.

Refusal of registration

28. -(1) The Board may refuse an application if-

- (a) an application is defective in material particular;
- (b) the applicant has provided false or misleading information;

- (c) the applicant was convicted of any criminal offence relating to corruption, tax evasion or any other related offence and sentenced to imprisonment for a term of six months or more.
- (d) The valuer is working for a consulting firm that is not registered and recognised.
 - (2) Where the Board has refused an application, the Board shall within seven days from the date of its decision, notify the applicant in writing stating the reasons for such refusal.

Temporary practicing license

- 29.** (1) A person may be issued with a temporary license as a registered valuer after satisfying the Board that the person-
- (a) is not citizen of Kenya;
 - (b) intends to be employed in Kenya as a valuer for purpose of carrying out a specific valuation assignment for a period not exceeding one year;
 - (c) is of good standing and is a recognized valuer in a home country or in any prior country of practice.
 - (d) intends to partner with a local registered valuer or consulting firm in carrying out the specific valuation assignment
- (2) The Board may require an applicant for registration under this section to appear before it or produce documents relating to his education, work or employment, or other matter relevant to the application.
- (3) The registration of a person under this section shall be valid only while the person is engaged on the specific assignment in question, or for the period specified by the Board, as the case may be, and on his ceasing to be so engaged or on the expiry of the period, his registration shall cease to have effect but in any case not exceeding one year.
- (4) A person registered under this section shall be considered as registered in relation to the duration of the specific assignment or the period specified by the Board.
- (5) Such a person shall pay such fees as prescribed by the board

Removal of a name from register

- 30** (1) The Board may, at any time after being satisfied that a registered valuer has—
- (a) died; or
 - (b) failed to pay the prescribed fee; or
 - (c) requested his name to be removed from the register; or
 - (d) had his name entered in the register by mistake or by reason of any false or misleading information; or
 - (e) had his qualification under section 12 withdrawn or cancelled by the body through which it was acquired or by which it was awarded; or
 - (f) been adjudged bankrupt; or
 - (g) been found by the Board to be guilty of an act or omission contrary to the public interest or misconduct as is described in **section 24**; or
 - (h) been convicted of an offence under this Act; or
 - (i) being a company, been placed under receivership or in liquidation whether compulsorily or voluntarily,

(j) direct that the name of the registered valuer be removed from the register.

(k) if the registered valuer is found to be engaged in employment with unregistered consulting firms

(2) Except in the circumstances specified in subsection (1) (a) the removal of a person's name from the register shall be notified by the registrar to the registered person by a registered letter sent to the address appearing against his name in the register.

(3) The registrar shall cause to be published in the Gazette, as soon as practicable, the name, address and qualifications of a person whose name is removed from the register under this section.

Indemnity requirement

After the expiration of six months from the commencement of this Act, no person shall carry on business as a practising valuer unless there is in force in relation to his business a guarantee bond or a policy of insurance entered into or issued by an insurance company approved by the Board, so expressed as to guarantee that compensation shall be payable to persons suffering monetary loss through the professional negligence of the persons so practising.

For the purposes of subsection (1), the minimum guarantee bond or policy of insurance entered into or issued by an insurance company shall be—

(a) in the case of a business carried on by an individual registered valuer, a sum as prescribed by the board;

(b) in the case of a business carried on by two or more individuals, the sum specified in paragraph (a) multiplied by the number of registered valuers; and

(c) in the case of a business carried on by a body corporate the sum specified in paragraph (a) multiplied by the number of directors whose acts include the doing of acts of practice as registered valuers.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine of a sum as prescribed by the board or to imprisonment for a term not exceeding twelve months or to both.

ORGANIZATION AND GUIDANCE OF THE VALUATION PRACTICE & OTHER VALUER'S RELATED WORKS

DEFINITION OF TITLE

Organization and guidance refers to arranging the practice into a structured whole order. It aims at guiding the valuer throughout the entire process of his/her practice and other works that he/she may be involved in and recognized by this Act.

1. TYPES OF VALUATION & OTHER VALUER'S WORKS

a) Statutory valuations: These are valuations arising from a specific law or whose instructions or procedures are a result of a legal requirement.

b) Non statutory valuations: These are valuations which arise out of market demands or specific requirements/instructions and are not governed by any law.

C) Other specialized Valuations

- Valuation of businesses and business interests;
- Valuation of individual trade related properties;
- Valuation of plant, equipment and machinery;
- Valuation of intangible assets and intellectual property;
- Valuation of monuments arts and antiques;
- Valuation of portfolios, collections and groups of properties;
- Valuation of petrol stations;
- Valuation of hotels and other hospitality industries related properties or businesses;
- Valuation of amusement parks, entertainment gardens and public parks;
- Valuation of public institutions;
- Valuation of social and sporting facilities;
- Valuation for mineral and petroleum related purposes;
- Valuation of environment and natural resources;
- Valuation of library stocks;
- Valuations for real estate investment trust(rates)

d) Other Valuer's Works

The Act recognizes as well that the valuers may carry out other professional aspects not necessary related to valuation namely:

- i) Feasibility/ Viability Studies:** These are studies which aim to objectively and rationally uncover the strengths and weaknesses of an existing business or proposed investment, opportunities and threats present in the environment, the resources required to carry through within the estimated cost, and the viability for profits.
- ii) Project Management:** This is the application of processes, methods, knowledge, skills and experience to achieve the project objectives.
- iii) Environmental Studies:** This is a multidisciplinary field which systematically studies human interaction with the environment in the interests of solving complex

problems. Valuers are involved in assessment of the environmental impact of real estate projects.

iv) Master Plans: Valuers are also involved together with other professionals in the built environment such as urban planners, engineers, architects and surveyors in developing plans for cities and towns

v) Consultancy: Valuers provide professional advice in all matters involving real estate and land laws.

vi) Research: Valuers are involved in collection, analysis, interpretation and dissemination of data in the real estate field.

vii) Real estate housing and settlement

2. PURPOSE OF VALUATION

The purpose for which the valuation is being prepared shall be clearly stated. However a valuation can serve a number of purposes which should also be clearly indicated. The purpose of a valuation will determine the *basis of value*. It is important that valuation advice is not used out of context or for purposes for which it is not intended.

The carrying out of valuation shall be for the following purposes:

- (a) Market value;
- (b) Sale or Purchase;
- (c) Mortgage;
- (d) Forced sale;
- (e) Rating;
- (f) Compensation/compulsory acquisition;
- (g) Land rent assessment;
- (h) Probate & administration;
- (i) Financial reporting/accounting;
- (j) Insurance;
- (k) Investment;
- (l) Rental value;
- (m) Capital gains tax;
- (n) Bail;

- (o) Stage valuations in construction developments;
- (p) Oil exploration;
- (q) Plant and machinery;
- (r) Litigation;
- (s) Stamp duty valuations;
- (t) Extension of lease;
- (u) Change of user;
- (v) Way leave and other public use acquisition; and
- (w) Any other purpose prescribed by the board.

3. VALIDITY OF A VALUATION REPORT

For a valuation report to be remain or considered valid, it has to be signed by a practising valuer. However, if the report has been prepared by a assistant valuer, the report should be co-signed with a practising valuer. A valuation prepared by a practising valuer remains valid

The valuer must physically inspect the property, a valuation report is not valid unless a physical inspection is done, aided inspection by use of scientific methods shall not make the report valid.

In the case of valuations meant for book keeping, financial records or such recognized uses, the validity of such reports and valuation would be determined by such practice and period stipulated by such users subject to a maximum period of 2 years.

Forged valuation report

Any person who forges or facilitates the forgery of a valuation report commits a criminal offence and upon conviction, be liable to a fine or imprisonment or both. Where such acts of forgery are proved by a court of law, the valuer whose report or letterhead is used shall not be held responsible or liable for any consequential loss that may arise from the usage of such a report by a third party.

OBJECTS & REASONS

This Amendment proposes the enactment of a new Act for purposes of regulating the valuation profession, practice and other valuer's works in Kenya. This is due to the fact that, for over three decades the valuation activities have been undertaken under the auspice of the Valuers Act (CAP 532).

The Valuers Act (1985) was solely for the purposes of registration of valuers but not the regulation of the practice hence considered to outdated and overtaken by new trends in the valuation practice.

The existing Act also lacks a comprehensive and self-contained legislation to regulate the valuation practices in the country. Hence this has culminated into serious challenges within the professional industry and the utility of such services by its consumers. Some of these challenges include the escalation of land use disputes throughout the country caused by unscrupulous and unethical valuers; the increasing number of cases of over and under valuation; the increasing number of unqualified valuers who have been undertaking valuation assignments and activities without possessing requisite academic qualifications. There has also been a sharp increase in undercutting of valuation fees thus infringement on the profession. It is important that strict measures are put in place to ensure the valuation fees are not compromised.

The above challenges amongst others have cascaded into causing delays in effecting compensation, the soaring of the relevant compensation, production costs of the relevant project and delay in undertaking the particular project or investment.

Thus, the enactment of the new Act amendment seeks to introduce a comprehensive legal and professional framework that will fill the gap and work as a solution in eliminating the preceding challenges and ensuring that land use in the country brings about positive impact in the welfare of individual users, external investors as well as the nation in general. The new Act also aims to cover and regulate other valuer's works.

DISCIPLINARY MECHANISM

A). OFFENCES BY UNQUALIFIED PERSONS ACTING AS VALUERS

I. Unqualified person not to act as a Valuer

- a) No unqualified person shall act as a Valuer, or purport to prepare a valuation report in respect to any movable or immovable assets for any purposes.
- b) Any person who contravenes subsection (a) shall-
 - i. Be incapable of maintaining any suit for any costs in respect of any valuation work carried out by him/her in course of so acting;
 - ii. Be required to refund any fees paid thereof;
 - iii. In addition be guilty of an offence;
- c) Any valuation report prepared by such person shall be invalid;
- d) Any value ascribed thereon shall not be used for any statutory purpose(s);
- e) Any unqualified person as per this act who willfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognized by law as qualified to act as a Valuer shall be guilty of an offense and shall be liable to a fine not exceeding Kshs 500,000 or imprisonment of not more than 2 Years or both.

II. Unregistered persons not to practice as Valuers

- a) No individual shall carry on business as a practicing Valuer unless he is a registered Valuer;
- b) No partnership shall carry on business as practicing Valuers unless all the partners thereon are registered Valuers;
- c) No body corporate shall carry on business as Valuers unless registered as consulting firms as per the provisions of this Act.
- d) Anybody who contravenes this, section is guilty of an offence and liable for a fine not exceeding Kshs 500,000 or imprisonment to a term not exceeding 12 months or both;
- e) In cases of body corporate the signatory (s) shall be liable as per section **d** above.

B). OFFENCES BY VALUERS

I) A Valuer shall be guilty of Professional Misconduct if he/she is deemed to have acted as follows:-

a) Practicing without a valid professional Indemnity;

- i) All Valuers shall ensure that they have a valid professional indemnity for an amount as may from time to time be determined by the Valuers Registration Board and from an insurance company registered with Insurance Regulatory Authority;
- ii) Any valuer who practices or purport to offer valuation services without a professional indemnity shall be guilty of an offense;
- iii) Any valuation report prepared by such a valuer shall be null and void;
- iv) Any valuation fees paid thereon may be recoverable summarily as a civil debt;

b) Practicing without a valid practicing certificate;

- i) All Valuer shall in every calendar year apply for a practicing certificate from the valuers board;
- ii) Any valuer who practices or purport to offer valuation services without a valid practicing license shall be guilty of an offence;
- iii) Any valuation report prepared by such a valuer shall be null and void;
- iv) Any valuation fees paid thereon may be recoverable summarily as a civil debt;

c) Over/Under Valuation – where such is intentionally done;

Any valuer who intentionally, over/ under values a property, whether for material benefit or not, shall be guilty of an offence;

d) Sharing of profits;

- i) Any Valuer who agrees to share his profits or fees in respect of any professional business, with any person not being a Valuer shall be guilty of an offence and liable to a fine equivalent to double the amount in question or a minimum of Kshs. 500,000 whichever is higher.
- ii) Such person(s) shall be liable for deregistration for such a period that the VB shall deem appropriate and in any case not more than twelve months.
- iii) Provided that this section shall not apply to the payment of any bonus to any of his employees by a Valuer, being a bonus based or calculated on the Valuer's total earnings or profits in respect of any period.

e) Soliciting for Valuation Instructions;

- 1) Any person who in consideration of any payment or other advantage to himself or any other person, procures or attempts to procure the services of a Valuer as such in any Valuation Assignment or solicits from a Valuer any such payment or advantage in consideration of such services shall be deemed to be liable to an offence under this Act.
- 2) VB may, if satisfied that any person has solicited for instructions, by order exclude such person from the employment by registered Valuer in his practice as such.

f) Undertaking to waive fees;

Any valuer who undertakes or accepts instructions for professional work on the basis that if successful results is not attained, a reduction of the fees laid down in the scale of charges will be made or that no fees will be charged is guilty of an offence;

g) Taking work entrusted to another Valuer;

Any valuer who solicits instructions in any manner whatsoever or knowingly proceeds with work entrusted to another valuer before communicating with that valuer shall be guilty of an offence;

h) Undercutting;

1. Any Valuer who holds himself out or allows himself to be held out, directly or indirectly and whether or not by his name, as being prepared to do professional business at less than the remuneration prescribed, by order, under this act shall be guilty of an offence.

2. No Valuer shall charge or accept, otherwise than part payment, any fee or other consideration in respect of professional business which is less than the remuneration prescribed, by order under this act.
3. Any valuer who tenders or quotes fees outside the scales laid down by this act shall be guilty of an offence;

i) Providing erroneous information knowingly;

Any valuer who knowingly, prepares or certifies any statement which is false, incorrect or misleading by reason of misstatement, omission or suppression of material fact or otherwise shall be guilty of an offence;

I) Advertising;

- a) Any valuer who seeks professional engagements by way of advertising in the media (Newspapers, Billboards, Television, Online advertisements, Bulk mails) or any other channels shall be guilty of an offence;
- b) Notwithstanding the provisions of section (I) (a) above, a valuer may place an advert notifying his clients of:-
 - i. Change of business address;
 - ii. Closure of business premises;
 - iii. Opening of new branches;
 - iv. Any significant change in Principal partners;

J) Adverse Comments against Valuation professional services or Valuers;

Any Valuer who offers, expresses or communicates to the public any criticism or adverse comment on the professional services or conduct of another registered valuer shall be guilty of an offence;

K) Conflict of Interest;

- a) Any valuer who gives expert evidence in courts or before other judicial bodies while having financial interest, however remote, in the proceedings other than proper and reasonable fees payable for his services shall be guilty of an offence;
- b) Any valuer who prepares a valuation report in respect of any asset that he has an interest, or advises a client on a matter that he has a financial interest, however remote shall be guilty of an offence;

L) Practicing with unregistered assistant Valuers;

- a) All registered valuers must ensure that all the assistant valuers working under them, are registered as per provisions of this act.

- b) Any registered valuer who works with an unregistered assistant for a period exceeding six (6) months shall be guilty of an offence;

M) Employment by a Valuer of persons struck off the register or suspended

- i). Persons struck off the valuations board register are not allowed to practice valuation and any registered consulting firm who knowingly employs such a person shall be guilty of an offence.

ii) **complaints against Valuers**

Complaints against valuers may be filed to VB by the following parties:-

- a) ISK on its own volition written complaint from a grieved party ;
- b) Fellow Valuers under written complaint;
- c) Client as defined under this Act;

iii) **Dispute Resolution Procedures;**

- 1) Any complaint against a valuer must be in the prescribed form and accompanied by the following:-
 - a) Prescribed fees (VB);
 - b) Sworn Affidavit;
 - c) Any supporting documents;
 - d) Original valuation report where a valuation was carried out;
 - e) Copy of Valuation instructions;
 - f) Proof of payment for the valuation fees as prescribed by the act;
- 2) The board may require the complainant to file such further particulars of any of the matters complained of as it may deem fit and such further particulars shall be supported by an affidavit;
- 3) Upon receipt of a complaint against a registered valuer, and when satisfied that the complaint merits further action, the board shall
 - a. Notify the concerned Valuer, giving the grounds of the complaint and Such letters shall be sent to his last known address, and a follow through done via telephone;
 - b. Cause a statement to be prepared setting out the allegation of professional misconduct to be investigated;
 - c. The registrar shall transmit to each member of the Board and to the Valuer whose conduct is subject of investigation a copy of the statement prepared in pursuant to subsection (ii);

- d. The registrar shall give notice of the date, time and place fixed for the inquiry to the valuer whose conduct is the subject of the inquiry;
 - e. Where the valuer whose conduct is the subject of the inquiry fails to appear either personally or by his advocate at the time and place fixed in the notice served to him, the inquiry may proceed notwithstanding his absence;
 - f. The board may on its own motion or upon request by the valuer whose conduct is the subject of the inquiry adjourn the hearing upon such terms as it deems fit;
 - g. The chairman of the board shall take or cause to be taken a note of all the proceedings before the board;
 - h. Every member of the board shall record his judgement, *logica latio*, and the chairman shall read the majority decision;
 - i. The valuer shall be entitled to a copy of the judgement of the board;
- 4) If the valuer is aggrieved by the decision of the board, he may within 21 days appeal to the Board on the first instance, setting out any mitigating facts/arguments and the board shall determine the appeal within the shortest time possible and in any case, in not more than six (6) Months;
- 5) The earlier decision of VB shall be held in abeyance, until the determination of the appeal;
- 6) If the Valuer is not satisfied by the decision of the Board on appeal, he may lodge an appeal with the High Court.
- 7) Unless otherwise directed by the court, the determination of VB shall hold until the case is heard and determined by the court;

IV) **Penalty/Deterrents**

If a valuer is convicted of an offence under this Act, or is, after due inquiry held by VB, found to have been guilty of an act or omission amounting to professional misconduct, VB may—

- a) Admonish or censure the valuer; or
- b) Suspend the practicing license of the Valuer for a period not exceeding one (1) year; or
- c) Deregister the Valuer for a period not exceeding two (2) years; or
- d) Impose a fine not exceeding Kenya shillings 200,000/00; or

- e) Bar the valuer from the valuation practice; or
- f) A combination of any of the above as VB may deem fit;

V) **Disciplinary measures against Assistant Valuer:-**

If an assistant valuer is convicted of an offence under this Act, or is, after due inquiry held by the Board of Valuation, found to have been guilty of an act or omission amounting to professional misconduct or activities contrary to the public interest the Board of Valuers may—

- a) Caution or censure the assistant valuer; or
- (b) Direct that the membership of the assistant valuer with the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors) be suspended for a period not exceeding three years or such period as may be specified from time to time by the institution (provided that such period of suspension will not count as part of any period required to qualify the person for any license or class of membership; or
- (c) Cause the assistant valuer to be barred from valuation practice for a period as the board may specify; or
- (d) Impose a fine not exceeding 50,000.00 shillings.

Vi) **Protection of a valuer against vexatious disciplinary proceedings**

1. Any disciplinary proceedings against a valuer who has been accused of professional malpractices can only be carried out by VB;
2. Any decision, so as to negatively affect the remuneration of such a valuer, whether by a private or a public institution, must be in accordance with VB's recommendation;

C) ASSISTANT VALUERS

Subject to this act, a person shall be entitled to be considered an assistant Valuer if they meet the following criteria:-

- a) A graduate member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors); or
- b) A full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors), but not registered and licensed to practice as a valuer; or

- c) A holder of a degree or diploma from any university or college which is recognized for the time being by the Institution of Surveyors of Kenya and qualifies him to be a graduate/ full member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors).
- d) Notwithstanding the fact that he has sufficient qualifications under subsection (1), the Institution of Surveyors of Kenya may require an applicant to satisfy it of the fact that his /her professional and general conduct has been such that, in the opinion of the Institution, he is a fit and proper person to be admitted into the Institution and may postpone the registration of an applicant until it is so satisfied.

Assistant Valuers obligations

- a) Any person intending to practice as an assistant valuer will be guilty of an offence if he/she remains unregistered by the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors) for the three months preceding employment.
- b) Assistant valuers may only practice valuation under the supervision or guidance of a registered and practising valuer.
- c) An assistant valuer shall be bound to disclose all information to the best of their knowledge on any valuation assignment and may not purposely misguide or give erroneous information.
- e) An assistant valuer will be obliged to disclose all information on any sums of money received for a valuation work payable directly towards the settlement of valuation fees or any other tokens of appreciation received from a consumer of a valuation report.
- f) Notwithstanding any provisions in this act, an assistant valuer will be bound by the professional misconduct procedures as set in the act (sec...)

THE SCHEDULE
VALUERS BILL
SUBSIDIARY LEGISLATION.

GUIDELINE PROFESSIONAL FEES

(i).The fees that a registered value may charge include a fee based on the assessed value of real estate or any other asset that a value has been formally attached to. An extra fee shall also be charged for time, travelling, accommodation costs and other actual expenditure that a Valuer shall reasonably incur in carrying out valuation.

(ii) All valuations must be fully completed unless specifically otherwise instructed by the client not to complete and the time spent drafting such reports should be charged as per the provisions of this Act;

(iii) The fees do not include value added tax or any other tax which may be imposed by the Government. This shall be charged as an addition to the fees.

(iv) Registered and practicing valuers must ensure that their instructions regarding valuations are clearly defined. Preferably, the instructions should be reduced in writing.

1.0 PROFESSIONAL FEES FOR VALUATIONS

1. Urban and agricultural properties (Land and Buildings)

First Kshs.2,000,000	at 1.0 per cent
Residue Value	0.25 per cent

2. Plant and Machinery and automobiles

First Kshs.5,000,000	at 1.5 per cent
Residue Value	0.5 per cent

3.Oil, Gas and Minerals

a) Where there is a defined value of the oil, gas or minerals)

First Kshs.2,000,000	at 2.0 per cent
Residue Value	0.25 per cent

(b)Where there is no defined value for the valuation exercise of the oil, gas or minerals).

Registered Valuer	Kshs.50,000 per manday
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Assistant Valuer/Valuer trainee	Kshs.3,000 per manday
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More consulatations to be done

4.Motor Vehicle valuation for insurance valuation (annual valuation)

0.5 percent of the insurable value of the motor vehicle, but not less than Kshs.2500 per motor vehicle.

5. Feasibility Studies/Market studies

a) Where there is a defined value, Capital Value of the recommended project 2 percent of the projected value with a minimum of Ksh.100,000

6. Preparation of Valuation Roll

This should be based on the guided estimated time lines for such an exercise.

Registered Valuer	Kshs.50,000 per manday
Assistant Valuer/Valuer trainee	Kshs.30,000 per manday

7. Project Management

2 Percent of the Capital Value of the project

8. Fees for Retrospective Valuations

Fees up to 3 times scale of fees be charged

Such valuations should not apply to land acquisition valuations.

9. Compulsory acquisition

First Kshs.2,000,000	at 2.0 per cent
Residue Value	0.5 per cent

10. Furniture, fittings, equipment, trading stock and going concerns valuations

First Kshs.1,000,000	at 5.0 per cent
Residue Value	2.5 per cent

11. Rental assessments (urban and rural/agriculture)

First Kshs.400,000 of the gross rent	at 10 per cent
Residue annual gross rent	2.5 per cent

12. Where more than one Valuation is required

Where a client requires more than one value for a property the valuer shall charge a fee based on the market value or charge a fee against the projected value of the completed construction.

13. Continuous and separate valuations

Where a client instructs a registered person, in one instruction, to prepare continuous valuations, the registered person shall charge a fee based upon the total of the continuous valuation at the relevant tariff fee. Continuous valuation means the valuation of two or more properties having similar attributes.

14.Revaluations

Where a registered person is instructed to revalue a property which he or she has valued within the preceding period of 12 months, and the property or the interest therein has not changed materially since the first valuation, the fee should be as follows:

50% of the scale of fees stated under each category either plant or machinery . As long as is under the minimum fee set under this act

15.Valuation of part of a property

Where a registered person is required to value a portion of, or an undivided share in, a property and it is necessary to value the whole property in order to determine the value of the part, or the share, the fee shall be based on the value of the whole property.

16.Time Based consultancy fees

This schedule shall not apply for all tendered jobs, but for any other consultancy jobs where no other scale of fees applies and where the valuation exercise will not generate to a valuation figure.

The guideline charges per day, or part thereof, are as follows:

Professional Valuer More than 10 years' experience:	Kshs.50,000 per monday
With less than 10 years' experience:	Kshs.30,000 per monday
Associate Valuer	Kshs.25,000 per monday

18.Fees for attending court, arbitration or other proceedings, enquiries or meetings to give evidence or for consultations and when appointed as a member of any such court or proceedings.

A fee of one and a half times the scale set out in the particular schedule may be charged for preparing for and attending any court, arbitration or other proceedings, enquiries or meetings or to give evidence and for consultation and attending on attorneys and counsel, time taken in research, making enquiries and preparing evidence.

In the event of such attendance at courts, arbitrations or other proceedings, enquiries or meetings being postponed, cancelled, settled by mutual consent or by legal process at any time during any day, fees for a minimum of Ksh 10,000 should be charged appearance in court for that day, even if no hearing is attended.

19. Fees for acting as an arbitrator, mediator, member of a tribunal or assessor in court proceedings

a) A registered persons may charge a minimum fee of Kshs.10,000 per hour, or part thereof, when acting as an arbitrator, mediator, member of a revision court/board, valuation court/board for rating purposes or as an assessor in any court/board proceedings.

20. Valuation associated Allowances

In addition to the remuneration set out above, the following transport allowance may be claimed in all cases in which the valuation (including court, arbitration or other proceedings, enquiries or meetings to give evidence, or for consultations) has to be performed at a place other than the place of business of a registered person:

- I. When own transport is used – the AA of Kenya applicable rate per kilometer
- II. When Taxi is hired – the actual cost.
- III. Where a flight is taken – the actual cost
- IV. Where, in the course of one journey, valuations are performed on the instruction of two or more persons, the transport allowance claimed in respect of that journey should be recovered pro rata from the persons concerned.
- V. In addition to the remuneration and transport allowance set out above, the following may be claimed:
 - For the time spent travelling to and from the place of valuation and necessary detention while not engaged in the valuation, the time charge as set out in the remuneration schedule.
 - Accommodation expenses, meals, and refreshments at cost.

21. Disbursements and costs

Disbursements and costs incurred by registered persons may be charged as follows:

- I. Purchase and preparation of plans and drawings – at cost
- II. Typing and secretarial fees – at 15% of the applicable time charge set out in 2....
- III. Postage, telephone calls, photocopies, photographs and other incidentals – at cost
- IV. All other necessary expenses related to valuation not specifically listed – at cost.

22. Interest on overdue accounts

Registered persons are entitled to charge interest on overdue accounts at a rate of 3% above the prevailing bank lending rate..

23. Deposits for valuation

Registered persons may, at their discretion, require a client or the representative of the client, to pay an agreed sum as deposit against payment of fees prior to commencement of an assignment.

24. Valuation for environment:

4. BASIS OF VALUATION

The valuation basis must be appropriate for the purpose. The source of the definition of any *basis of value* used and all assumptions used in arriving at the values shall be cited or the basis explained.

Basis of valuation include:

(a) Open market;

(b) Cost;

(c) Income

Where the valuer relies on any additional assumption, whether basing on the instructions or his own opinion, the valuer shall state such additional assumptions in writing and reasons thereof.

5. METHODS OF VALUATION

In the valuation process the valuer shall apply the appropriate method of valuation including but not limited to:

a) Comparable Approach

b) Income/Investment Approach

c) Contractors'/Cost Approach

d) Profits Method

e) Residual Method

Where the registered valuer relies on any additional assumption, whether basing on the instructions or his own opinion, the valuer shall state such additional assumptions in writing and reasons thereof.

6. GENERAL CONTENTS OF A VALUATION REPORT

The general contents of a valuation report are:

(a) Terms of reference

For a valuation to be undertaken, the valuer must have received written and unambiguous instructions with clear guidelines on the purpose of the valuation.

(b) Purpose of the valuation

Refer to *Section 2* above.

(c) Identification of the asset or liability/interest to be valued

Clarification may be needed establish and confirm the property to be valued in the valuation instruction is actually what is on the ground. Its right of use may also need to be clarified and restrictions thereof.

If the valuation is of a property that is utilized in conjunction with other assets/properties, it will be necessary to clarify whether those assets/properties are included in the valuation report, excluded but assumed to be available or excluded and assumed not to be available.

When valuing a property that is subject to a tenancy, it may be necessary to identify any improvements undertaken by tenants and to clarify whether or not these improvements are to be disregarded on renewal, or review, of the lease, or even if they may give rise to a compensation claim by the tenant when vacating the property.

(d) Situation/ Location of property

A valuation report should clearly describe the situation or location of a property. The situation should be clear and unambiguous enabling any user of the valuation to access the property from the given directions.

Every valuer should utilize the most appropriate tools of identifying a location of a property under valuations namely the relevant survey maps, registry index maps, mutation forms. The Act recognizes innovations arising from geographical and other scientific new technologies that have brought about the use of geo-referencing which should be adopted whenever appropriate. In this case the valuer should the geographical coordinates.

(e) Basis of value

Refer to *Section 3* above.

(f) Valuation date

It is presumed to be the date which the inspection is undertaken and not the date the valuation report is completed/ concluded with the exemption of the special cases below.

The date of inspection refers to the exact date where the valuer physically goes to the ground to inspect the property. If the inspection takes a number of days; all those days should be reflected in the date of inspection from the day of commencement to the day of completion.

Special Cases

- a) In the case of a revaluation where there is valid proof and confirmation that no physical changes have been done on the property from an independent and unbiased

source hence little or no need for re-inspection; the valuation date could be the date where the valuation report is completed.

- b) In the case of a retrospective or futuristic valuation where current values are back tracked to a date in the past or predicted for a time in the future; the valuation date is presumed to be that date stipulated in the past or future according to the instructions given while the date of inspection remains as the actual present date of inspection.

(f) Assumptions and special assumptions

All assumptions and any special assumptions that are to be made in the conduct and reporting of the valuation shall be recorded.

Assumptions are matters that are reasonable to accept as fact in the context of the valuation assignment without specific investigation or inspection. They are matters that, once stated, are to be accepted in understanding the valuation or other advice provided.

A special assumption is an assumption that either assumes facts that differ from the actual facts existing at the valuation date. They are often used to illustrate the effect of changed circumstances on value. Examples of special assumptions include:

- that a proposed building had actually been completed on the valuation date;
- that a specific contract was in existence on the valuation date which had not actually been completed;
- that a financial instrument is valued using a yield curve that is different from that which would be used by a market participant.

Only assumptions and special assumptions that are reasonable and relevant having regard to the purpose for which the valuation assignment is required shall be made.

(g) Limiting Conditions

These may include: Restrictions on use, distribution or publication.

It is important that the limiting conditions are harmonized and appropriate to the valuation practice.

(h) Ownership

The ownership of the property should be clearly stated and their effect on the value if any. Some common forms of ownership include:

(i) **Joint Tenancy:** Property is owned by two or more persons at the same time in equal shares. Unity of time, title, interest, and possession is vested in each joint tenant (four unities). Each joint tenant has an undivided right to possess the whole property and a proportionate right of equal ownership interest.

(ii) **Tenancy in the Entirety:** This is a special form of joint tenancy when the joint tenants are husband and wife, with each owning a one-half interest. Neither spouse can sell the property without the consent of the other.

(iii) **Sole Ownership:** Property is owned entirely by one person. Words in the deed of a single person establish the title as sole ownership.

(iii) **Tenancy in common:** Property is owned by two or more persons at the same time. The proportionate interests and right to possess and enjoy the property between the tenants in common need not be equal. Upon death, the decedent's interest passes to his/her heirs named in the will, who then become new tenants in common with the surviving tenants in common. None of the tenants in common automatically receives the share of the decedent. There is no right of survivorship as with joint tenants.

(iv) Sectional Properties: This is where division of buildings into units is undertaken to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property and connected purposes.

(i) Property title searches: Every valuer undertaking valuation for whatever purposes should use the ownership legally verifications available. Search of titles at the land registries is mandatory unless the valuer has written proof that such properties are unregistered.

(j) Verification and authentication of property titles: It is the responsibility of every valuer undertaking a property valuation to verify and authenticate its validity for the valuation purposes by applying the most appropriate legal verification instruments in use.

(k) Description of the property

The property should be described clearly as at it state during the time of inspection.

(l) Signatories

For a valuation report to be valid it has to be signed by a registered valuer whose name appears in the gazette valuer's annual list by the Valuers Registration Board. However, if the valuer due to reasons stipulated and known to the Board is removed from the list of registered valuers; the reports that he/she signed during the period that he/she was registered remain valid until proven otherwise by the Board or a court of law.

Wherever a report has been prepared by a trainee/associate/graduate valuer, (who should be qualified as per the provisions of this Act), such a report should be co-signed with a registered valuer under whom the trainee/associate/graduate valuer is assigned.

The qualifications of a trainee/associate/ graduate valuer at the time of carrying out the valuation should be indicated and are:

- a) a graduate/ student member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors);
- b) the holder of a degree or diploma from any university or college which is recognized for the time being by the Board or a student thereof and qualifies him to be a graduate/student member of the Institution of Surveyors of Kenya (Chapter of Valuation and Estate Management Surveyors).

By signing, the valuer accepts full responsibility and any liability that may arise where such a report is relied upon by a third party.

No valuations shall be considered valid for all legal use if the provisions of this section are missing.

7. INSPECTION & ACCESS TO LAND AND BUILDINGS

It is a mandatory requirement that a proper inspection is undertaken during a valuation.

In cases where a valuer is mandated to carry out any or legally originated valuation instructions and requires access into the property or premise at all reasonable hours and inspect the same, the valuer should be granted such access without inhibitions without liability for trespass.

He/she may also put either verbally or in writing to the owner or his agent or the person in occupation or in charge of that land, building or premise, any relevant question to enable him to perform his functions professionally.

The valuer may also inspect any document from any person for the purpose of carrying out his duties

Any person who, after being informed of the intention of the registered valuer in desiring to access and inspect the land, building or premises, or in putting the questions or in seeking to inspect such documents relevant to the performance of his practice:

(a) refuses or fails to allow such entry or inspection;

(b) refuses or willfully omits to answer to the best of his knowledge or belief any such question either verbally or in writing as the questioner may have requested;

(c) willfully makes any false statement in reply to that question; or

(d) refuses to allow such books, documents or papers to be inspected or extracts taken; or

(e) authorizes or facilitates the above to be done, commits an offence and shall, upon conviction, be liable to a reasonable fine or jail term.

In the case of a valuation of a contentious property, forced sale or one in conflict, the valuer where necessary should be accompanied by able security personnel or administrative authority during inspection.

Where a valuer's life, family or/and property feels threatened with relevant proof thereof before, during and after the inspection is undertaken; necessary security provisions and measures should be made to ensure the valuer's life, family or/and property is safeguarded.

Any person who authorizes or/and facilitates the above commits an offence and shall, upon conviction, be liable to a reasonable fine or jail term. It is important that a more hefty penalty is stipulated compared to the offences in (a) – (e) above due to the seriousness of this offence.

Advanced Technology in property inspection

The advancement of technology has also brought about methods where physical inspection could be done with the assist of machines such as cameras ported in aerial equipments is recognized by this Act. Such situations are envisaged by the Act where the valuer is required to inspect a vast piece of land or a property where the safety of the valuer is not guaranteed or where humanly access is deemed impossible. Such access inadequacies should be explained the report.

8. CONFLICT OF INTERESTS

A valuer shall consider and examine if there exists any present or future conflict of interest when carrying out his practice. In presence of such a conflict, the valuer should refrain from

carrying out his duties unless all parties are informed of the situation and give independent consent to continue with the valuation.

9. CONFIDENTIALITY

Information in respect of many business assets will be confidential. Valuers should use their best endeavors to preserve such confidentiality, particularly in relation to information obtained in respect of comparable assets. Where required by the client, business valuers will comply with any requests to enter into non-disclosure or similar agreements. However, he may disclose information if required by the board or law.

10. SUBMISSION OF INFORMATION

The registered valuer may require the submission to him by any person of any relevant information necessary for the carrying out of his functions

The information required may include-

- (a) details of sales,
- (b) purchases,
- (c) results of auctions and tenders, lettings and leases; and such other information as the valuer think necessary for the carrying out of his functions.

Any person who refuses to submit the information under this section within the prescribed period or willfully supplies any false information, commits an offence and shall, upon conviction, be liable to a reasonable fine or imprisonment or both such fine and imprisonment.

11. MANDATORY REQUIREMENTS

- a) The valuer must have written and unambiguous instructions.
- b) The valuer must inspect the property or qualify such acts s provided in this Act.
- c) Prior to inspection, the valuer must have relevant registry index maps, topocadastral maps, survey maps and mutation forms or any other geo-referenced materials as provided in this Act.
- d) The valuer must undertake due diligence on ownership and other statutory data.
- e) The valuer must have the relevant tools not exhaustively being compass, GPS, camera, etc.
- f)The valuer must ensure no conflict of interest with the client or property to be valued.

12. FIXTURES IN VALUATION

A fixture, as a legal concept, means any physical property that is permanently attached to real property (usually land) whereby any efforts to remove would cause damage to the real

property or fixture involved. Fixtures are treated as a part of real property, particularly in the case of a security interest. It is important to establish the role of fixtures in the valuation practice giving clear guidelines distinguishing between chattels and fixtures.

In the case of compulsory acquisitions, it is important to note and consider the worth of all improvements on land as of the valuation date.

13. REAL ESTATE INVESTMENT TRUST (REIT)

A REIT is a type of security that invests in real estate through property or mortgages and often trades on major exchanges like a stock. REITs provide investors with an extremely liquid stake in real estate. They receive special tax considerations and typically offer high dividend yields.

REIT(s) are a new area in Real Estate and hence there's a need to establish how valuation of such trusts should be undertaken especially considering the stake of a single person or group as part in the whole trust.

14. VALUATION FOR PUBLIC USE ACQUISITIONS

These valuations are mainly conducted for compensation of compulsory acquisition of property for public use. Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that owner of the land acquired should be no worse or better off in financial terms after the acquisition than was before.

When dealing with land for which there is a general market or demand, compensation is based on the market value of the land. In exceptional circumstances, such as specialized land for which there is no general market, compensation may be assessed by considering the cost of providing an equivalent reinstatement of the property.

The most suitable methods discussed in *Section 4* above shall be used for the valuation or as provided by other Acts of Parliaments.

Severance, Injurious Affection and Disturbance

Severance occurs when the land acquired contributes to the value of the land which is retained, so that when severed from it, the retained land loses value. Severance damages are generally measured by the reduction in value of the remaining property. It should be noted that this general measure of damages can be replaced by a cost-to-cure approach when the cost is less than the decreased value of the remainder.

Injurious affection refers to a deleterious effect on the value of land caused by something done or proposed to be done on the land or nearby. In the context of a compulsory acquisition of land, the expression applies to land other than the land acquired from that person. It refers to any reduction of the value of adjoining land of the person caused by the carrying out of, or the proposal to carry out, the public work for which the land was acquired.

Disturbance on the other hand is used to mean a person's monetary loss caused by disruption to the person, including to the person's business, arising from a taking of the person's land or part thereof.

The Land Acquisition Act (Cap 295) mentions injurious affection; severance damages and disturbance as likely heads of claim to compensation and then quantifies disturbance

payable at 15 percent of the market value of the land. The Act leaves injurious affection and severance to be proofed by the compensation claimant. However, the act provides where the government is of the opinion that a claim for compensation which a person interested in the land has made on account of the severing of the land to be acquired from his other land is unreasonable or excessive, the government may, at any time before taking possession of the land, in writing direct that the whole or any portion of the remaining land shall be acquired.

It is important to note that severance and injurious affection relate to land retained by a person after other land is compulsorily acquired from that person. Both relate to a reduction of value of retained land.

The **total compensation** value therefore is the summation of market value of the property (including all improvements on land); disturbance cost quantified as 15% of market value; injurious affection and severance where there is valid proof that the property is affected by injurious affection or severance or both.

15. REVALUATION

A revaluation is a valuation done for a previously valued property in a certain timeframe.

Where the client advises that there have been material changes, or if the valuer is otherwise aware or has good reason to believe that such changes have taken place, the valuer must inspect the property.

In all other cases, the interval between inspections is a matter for the professional judgment of the valuer who will, among other considerations, have regard to its type and location.

For forced sale valuations, it is important that re-inspection is done with or without proof of any material changes on the property due to the thorough nature of the valuation at hand.

The recommended time for revaluation of a property for book/ financial purposes is one year. However, this is subject to change. Different institutions and individuals have various stipulated timelines for revaluation.

It is also important to note the scale of fees to be charged for revaluation of property and the conditions thereof.

Revaluation without re-inspection (Commonly referred to as "Desktop Valuations")

It is recognized that the client may need the valuation of its property updated at regular intervals and that re-inspection on every occasion may be unnecessary. Provided that the valuer has previously inspected the property, and the client has confirmed that no material changes to the physical attributes of the property and the area in which it is situated have occurred, a revaluation may be undertaken.

A revaluation without a re-inspection of real property previously valued by the valuer must not be undertaken unless the valuer is satisfied that there have been no material changes

to the physical attributes of the property, or the nature of its location, since the last inspection.

Where a different valuer undertook the inspection, he/she must confirm in writing that there have been no material changes. The assumption that no material changes have been made has to be clearly stated in the valuation report and while a different valuer conducted the inspection, the written confirmation should be attached.

The valuer must obtain from the client information of current or anticipated changes in rental income from investment properties and any material changes to the non-physical attributes of each property, such as other lease terms, planning consents, statutory notices, change of user, subdivision etc.

If the valuer believes that it is inappropriate to undertake a revaluation without re-inspection because of material changes, the passage of time or other reasons, the valuer may nevertheless accept an instruction to proceed without inspection providing the client confirms in writing, prior to the delivery of the report, that it is required solely for internal management purposes, that no publication or disclosure will be made to third parties, that the client accepts responsibility for the associated risk. A statement declaring this position and that the report must not be published must be set out unequivocally in the report. In this case a valuer is not liable to any errors arising in value from the material changes or other reasons thereof.

Sample Valuation Letter

Instruction Reference Number

Date

Recipient's Address

Client's Address

Salutation

RE: VALUATION OF SUBJECT PROPERTY

INTRODUCTION

Often stipulates the purpose of the valuation.

BODY

Should contain the following:

Values required

Contents of the valuation report

Other information relevant to the valuation

Signatories