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THE PARADOX OF THE REN: A LOOK AT REAL ESTATE NEGOTIATOR (REN) PRACTICES IN MALAYSIA

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Abstract

This paper explores the findings of a focus group discussion held to examine the current state of Real Estate Negotiator (REN) practice in Malaysia. RENs, acting as representatives of estate agencies, play a crucial role in facilitating property transactions. However, the discussion revealed significant ambiguities surrounding their responsibilities, ethical considerations, and the efficacy of the REN Tag system. Participants recounted instances of misrepresentation of property details, inflated rental/prices, and deceptive marketing activities. This highlighted the need for stronger measures to promote ethical conduct within the profession, including awareness campaigns, stricter disciplinary measures, and a robust complaint mechanism.

Keywords: Estate Agency Practice, Real Estate Agents, Real Estate Negotiators

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INTRODUCTION

A dynamic network of players i.e. property consultants, Real Estate Agents (REAs) and Real Estate Negotiators (RENs) drives the Malaysian real estate agency landscape. Among these, Real Estate Negotiators (RENs) occupy a curious space. Acting as representatives of REAs, they are the frontliners at the forefront of property transactions, yet their role remains shrouded in ambiguity, burdened by issues of legitimacy and ethical conduct.

On the surface, RENs play a crucial role – they are the liaisons between buyers and sellers, navigating the complexities of property viewings, negotiations and legal documents. As representatives of REAs, they are entrusted with promoting properties to let/sale, securing deals, and ultimately, contributing to the financial success of the agency. However, their obligations towards this role are surprisingly minimal. Compared to real estate agents, who undergo rigorous training and hold licenses, RENs require only a two-day certification course and registration with the Board of Valuers, Appraisers, Estate Agents and Property Managers (BOVAEP). This minimal barrier to entry raises concerns about the quality of service and the potential for unethical practices.

BACKGROUND TO REAL ESTATE NEGOTIATORS (RENs)

To regulate the profession, all new potential candidates who wish to become negotiators are required to attend a two-day course known as the Negotiator Certification Course (NCC). Upon successful completion of the course, the candidates will need to apply for REN Tags as official identification that they are legitimate negotiators employed by REAs. The introduction of REN Tags aims to legitimize the negotiators and weed out illegal brokers. By making RENs readily identifiable, the system promotes transparency and accountability. In theory, landlords, tenants, buyers and sellers can verify the credentials of any negotiator they encounter through the BOVAEP on-line database, safeguarding themselves from unscrupulous individuals. However, the effectiveness of REN Tags is hampered by the lack of stringent entry requirements. Without proper vetting procedures, the system remains vulnerable to infiltration by individuals with questionable ethics or limited knowledge of the industry.

This vulnerability manifests in the form of integrity issues and misconduct. Cases of misrepresentation, inflated property rentals/values, and even outright fraud tarnish the reputation of the entire profession. The absence of clear roles and functions for RENs further exacerbates the problem. Their responsibilities often overlap with those of estate agents, creating confusion and ambiguity that can be exploited by unscrupulous individuals. This lack of clarity also makes it difficult to hold RENs accountable for their actions, further perpetuating the cycle of misconduct.

Despite these challenges, the role of RENs remains vital as intermediaries to the Malaysian real estate market. Their frontline efforts drive

sales, connect buyers and sellers, landlords and tenants and so reducing the information asymmetry arising from the imperfect property market.

LITERATURE REVIEW

Real estate negotiators are taking major roles in the present structure of estate agency practice in Malaysia. According to the Malaysian Estate Agency Standards (MEAS), a REN is a person who is employed or engaged by an estate agent to assist him/her in the estate agency practice. A Negotiator shall include Real Estate Negotiators (RENs) and Probationers who shall always be under the immediate direction and supervision of a registered estate agent. Except for the probationary estate agent, RENs are not subjected to any academic or professional qualifications. Anyone interested in becoming a REN is required to attend a 2-day Negotiator Certification Course (NCC) conducted by a firm or institution recognized by the Board. With the certification, the individual can apply to the Board to obtain a REN registration number and also a tag before they can be employed as real estate negotiators.

Negotiators means a person who is employed by a registered estate agent in the estate agency practice (s22c(2A), Act 242). The Board gives each Real Estate Negotiator a REN number upon his application being approved. They are usually salespersons who are paid a fee or commission based upon the conclusion of a successful estate agency transaction, usually not more than 40% of the professional fees. Negotiators can also be under the direct employment of registered estate agents and be paid salaries rather than fees or commissions. Except with the express permission of the Board, no estate agent shall have more than 50 Negotiators at any time; the estate agents should keep a register of all their Negotiators with the dates of their respective appointments and fees or commissions paid. The number of negotiators can be increased to 100 with the permission of the Board if the past/track record of the REA is good. Table 1 illustrates the roles of registered estate agents and negotiators.

Table 1: Roles of Real Estate Agents (REAs) and Real Estate Negotiators (RENs)

REAs	RENs
Governed by the Act	Function as assistants to REAs
Manages the agency company	Work according to the Malaysian Estate Agency Standards
Operates a proper agency office	Can be employed/engaged under 'Contract of Service' or 'Contract for Service'
Fiduciary duties to their clients	Must be registered by the agency firm to the Board
Operates Clients account	
Trains and manages RENs	
Accountable for any misconduct/ misdemeanors by RENs under REAs employment	

(Source: Author)

RESEARCH METHODOLOGY

The Focus Group Discussion was conducted on the 24th of September 2019 at the Concorde Hotel, Shah Alam (9 am to 1 pm). Nine out of twelve invited experts attended the discussion:

- i. To examine whether the code of conduct (1986) is still applicable in modern estate agency times.
- ii. To obtain industry feedback on the practices of REAs and RENs in particular.

Table 2: List of Experts for FGD

Organisation	Number of representatives
PEPS	1
RISM	1
EAPC, BOVAEP	1
MIEA	1
MIPEAC	1
UM - Academic	2
UiTM - Academic	1
Practicing REA	4
Total	12

ANALYSIS AND DISCUSSION

The Real Estate Negotiator (REN) landscape in Malaysia is like a bustling marketplace – full of activity, potential, and, as our focus group revealed, a few lingering uncertainties. While RENs act as the face of estate agencies, engaging in property viewings, negotiations, and paperwork, their responsibilities and obligations remain surprisingly undefined. This ambiguity, coupled with some concerns about the current REN Tag system and ethical practices, raises some key questions for consideration:

A. Real Estate Negotiators (RENs)

1. The REN Identity: Blurred Lines and Minimal Obligations

One key concern raised by FGD participants was the minimal barrier to entry for RENs. The existing two-day certification course and registration with the BOVAEP were perceived as insufficient safeguards against unqualified or unethical individuals entering the profession. This lack of stringent vetting procedures was linked to concerns about the quality of service offered by RENs and the potential for misrepresentation and misconduct in the property market.

2. REN Accountability

Furthermore, the focus group highlighted the lack of clearly defined roles and responsibilities for RENs. The overlap with estate agent duties was seen as a

source of confusion and ambiguity, hindering accountability, and potentially enabling unethical practices. This lack of clarity was further exacerbated by the introduction of the REN Tag system, which, while aiming to legitimize the profession and identify authorized negotiators, was perceived as ineffective due to the aforementioned minimal entry requirements.

3. Ethical Conduct of RENs

The Focus Group revealed concerns about unethical practices and misconduct among some RENs, including misrepresentation, inflated rental/price, and even fraud.

Participants emphasized the need for awareness campaigns and stricter disciplinary measures to promote ethical conduct throughout the industry.

As one participant aptly summarized, "RENs have the potential to be the backbone of the real estate market. Let's equip them with the tools and standards for negotiators to be trusted and accountable."

B. Real Estate Agents (REAs)

The REAs are allowed to employ 50 RENs under each REA. The REAs are responsible to supervise and monitor the conduct and practice of the RENs under their supervision. The estate agency firms are responsible for providing training and knowledge transfer to RENs.

One central theme from the FGD participants involved the responsibility for upholding ethical standards. While some participants advocated for REAs, as license holders, to actively impose ethical frameworks within their firms and organizations, others pointed out the limitations of this approach. The lack of disciplinary action towards RENs was seen as a loophole that could potentially undermine ethical efforts.

Another key concern revolved around the limited oversight exercised by estate agents over REN activities. Participants described situations where RENs operated with minimal supervision, potentially engaging in misrepresentation of properties or unfair negotiation practices. This lack of monitoring was perceived as a breeding ground for unethical behaviour and a violation of client trust.

The issue of imbalance commission sharing between REA and REN also emerged as a significant ethical concern. Participants shared experiences of REAs neglecting established commission structures with RENs to as low as 10:90 ratio leaving REAs feeling undervalued and financially exploited. This lack of transparency and fairness was another factor eroding trust and confidence within the system.

Furthermore, participants expressed concern about the unethical practice of estate agents sub-letting their licenses, essentially outsourcing their professional obligations for personal gain. BOVAEP should publicise such

breaches of the code of conduct and take serious actions or penalties to deter similar misconduct in the future.

Suggestions

To address these concerns, the focus group proposed several potential solutions:

- a) Strengthening entry requirements: This could involve mandatory exams, experience criteria, and ongoing training programs that would ensure a higher standard of competence among RENs.
- b) Defining clear roles and responsibilities: A clear delineation of duties between RENs and estate agents would address overlap and enhance accountability.
- c) Promoting ethical conduct: Regular training, awareness campaigns, and a robust complaints and enforcement system would foster a culture of professionalism and integrity within the profession.
- d) Strengthened monitoring mechanisms to ensure that estate agents effectively oversee the activities of RENs within their firms.
- e) Mandatory ethical training programs for both REAs and RENs, focusing on professional ethics, code of conduct, transparency, accountability, fair commission practices, and fair employment practices through diversity, equity, and inclusion (DEI).
- f) Enhanced enforcement of existing disciplinary actions, including consequences for agents who sub-let licenses or disregard the commission sharing ratio.
- g) Exploration of alternative regulatory frameworks that go beyond the current reliance on estate agents to hold RENs accountable.

CONCLUSION

The current state of REN practice in Malaysia presents a paradox. While RENs are essential players in the real estate market, their minimal obligations, the issues surrounding REN Tags, and the lack of defined roles create an environment susceptible to unethical practices. Addressing these challenges through stricter regulations, clearer roles, and a relentless focus on ethical conduct is vital to unlocking the true potential of RENs and ensuring a robust and trustworthy real estate market in Malaysia.

However, to unlock their full potential and foster a truly ethical and professional environment, several key steps are necessary. Firstly, strengthening the entry requirements for RENs through stricter vetting procedures and ongoing training programs is crucial. Secondly, defining clear roles and responsibilities for RENs within the larger framework of estate agency operations will ensure accountability and prevent overlap. Finally, promoting ethical conduct through awareness campaigns and stricter disciplinary measures will send a strong message of professionalism throughout the industry.

By addressing key issues, Malaysia can build a more robust and transparent REN ecosystem, benefiting both clients and the real estate industry as a whole.

In conclusion, the focus group discussion unveiled significant ambiguities and ethical dilemmas within the current REN practice in Malaysia. By addressing the concerns raised, including strengthening entry requirements, clarifying roles and responsibilities, and promoting ethical conduct, Malaysia can create a more professional, sustainable and trustworthy REN ecosystem.

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