

LAND AGENTS.13^o Elizabeth II., No. XCIV.

No. 94 of 1964.

AN ACT to amend the Land Agents Act, 1921-1959.*[Assented to 14th December, 1964.]*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Land Agents Act Amendment Act, 1964*.

(2) In this Act the Land Agents Act, 1921-1959, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Land Agents Act, 1921-1964.

Short title
and citation.

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Acts
approved
for reprint
8th March,
1954 as
amended by
Act No. 29
of 1959.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Long title
amended.

3. The long title to the principal Act is amended by adding after the word, "Agents" in line two, the words, "and to make provision for the regulation of Land Salesmen and for incidental and other purposes".

S. 2
amended.

4. Section two of the principal Act is amended—

(a) by adding before the interpretation, "Committee", the following interpretation—

"certificate of registration" means a valid and current certificate of registration issued pursuant to section fifteen B of this Act and includes a renewal thereof. ;

(b) by adding after the interpretation, "Committee", the following interpretation—

"company" or "registered company" means any body corporate incorporated or registered under the Companies Act, 1961, or any other Act or under any corresponding previous enactment. ;

(c) by adding after the interpretation, "Land agent" the following interpretation—

"land salesman" means a person who, for or on behalf of a land agent, whether the land agent is or is not the owner of the land concerned or the estate or interest in land concerned, induces or attempts to induce, or negotiates with a view to inducing, a person to enter into a land transaction, or who holds himself out or represents himself as willing to so induce, or negotiate, and includes—

(a) a person who is a member of a firm that is a licensee, except the member who is the holder of the license on behalf of that firm; and

- (b) a person who is a director of a company that is a licensee, except a director who is the holder of the license on behalf of that company. ;

and

- (d) by adding after the interpretation, "License" the following interpretation—

"the Secretary" means the person appointed to the office of Secretary of the Committee, and includes the person for the time being duly acting as Secretary of the Committee. .

5. Section four of the principal Act is amended— ^{S. 4} amended.

- (a) by adding after the word, "resides" in line four of subsection (1), the words, "or carries on his business";
- (b) by repealing and re-enacting with amendments paragraph (a) of subsection (3) as follows—

(3) (a) Subject to subsection (4) of this section, if the Court is satisfied that the applicant—

- (i) has passed the prescribed examinations relating to the carrying on and conduct of the business of a land agent and the duties and liabilities of a land agent;
- (ii) has within the period of five years immediately preceding his application, held—

a license, or similar authority under a corresponding enactment of any other State or Territory of the Commonwealth to act as a land agent,

whether on his own behalf or on behalf of a firm or company, not being a license granted to him as

being a person of the kind referred to in subparagraph (v) of this paragraph;

- (iii) has during the two years immediately preceding his application, acted as and carried out the functions of a land agent and been a member of a firm that is a licensee;
- (iv) has, where his application is made at any time within one year of the date of the coming into operation of the Land Agents Act Amendment Act, 1964, within the period of four years immediately before that date, been engaged in full time employment as a land salesman for not less than three years or for periods amounting in the aggregate to not less than three years; or
- (v) is an executor, administrator or trustee of a deceased licensee and that his application is for the purpose of performing functions, exercising powers or carrying out duties as such,

the Court shall, on payment of a fee of seven pounds ten shillings, or such other amount as may be prescribed, and on deposit of a fidelity bond in the sum of two thousand pounds, in the form in the Second Schedule to this Act, from an insurance company carrying on insurance business under and in accordance with the Insurance Act, 1932, as amended from time to time, of the Parliament of the Commonwealth, or some other

approved surety or sureties, issue to the applicant a license in the form prescribed. ;

- (c) by repealing and re-enacting subsection (4) as follows—

(4) (a) Before granting an application for a license or transfer thereof, the Court shall require the production of sufficient evidence to satisfy it that the character, fitness and financial position of the applicant are such that he is, in the opinion of the Court, having regard to the interests of the public, a proper person to carry on business as a land agent.

(b) Where application for a license or transfer thereof is made by a person carrying on or proposing to carry on business as a land agent in partnership with any other person, the Court shall require the production of evidence as to the character, fitness and financial position of each of the partners.

(c) Where application for a license or transfer thereof is made on behalf of a company, the Court shall, unless in the circumstances it otherwise decides, require the production of evidence as to the financial position of the company, and as to the character and fitness of the directors and general manager, and of such other responsible officers of the company, as the Court thinks fit. ;

- (d) by adding after subsection (4), a subsection as follows—

(4a) (a) Upon the hearing of an application for a license, the applicant or, where the application is for a license on behalf of a company, a director or the secretary thereof or the officer in actual control of its business of a land agent and

any other officer, director or member thereof whom the Court may require to attend personally before the Court shall, if so required to attend, so attend and shall answer such questions with respect to the application as the Court may put or allow to be put to him.

(b) In order to assist the Court in forming the opinion referred to in subsection (4) of this section, the Court may, in respect of an application for a license or a transfer thereof, invite the Committee, if it so desires, to appear on the hearing of the application and to be heard by an officer of the Committee or by its counsel. ; and

(e) by adding after subsection (5) a subsection as follows—

(6) Where a license is granted at any time after the thirty-first day of March in any year, the Treasurer may remit to the licensee such proportion of the fee for the license as the number of months, that have elapsed from the last preceding thirty-first day of December to the date of the issue of the license, bears to twelve months. .

S. 5
amended.

6. Section five of the principal Act is amended by substituting for the words, "Under Treasurer"—

(i) in line three of subsection (2);

(ii) in line two of subsection (3); and

(iii) in line six of subsection (5),

the words, "the Secretary".

S. 7
amended.

7. Subsection (2) of section seven of the principal Act is amended by substituting for the words, "Under Treasurer" in line three, the words, "the Secretary".

8. Section ten of the principal Act is amended by substituting for the words, "Under Treasurer"—

S. 10
amended.

(a) in the last line of subsection (4); and

(b) in the first line of subsection (5),

the words, "the Secretary".

9. Section eleven of the principal Act is amended by adding after the word, "agent" in line two, the words, "or land salesman".

S. 11
amended.

10. The principal Act is amended by adding after section fifteen a section as follows—

S. 15A
added.

15A. (1) A person not being a licensee, shall not act as, or carry out any of the functions of, a land salesman, unless he is the holder of a certificate of registration and he so acts, or carries out those functions for and on behalf of a licensee.

Land
salesmen.

Penalty: Fifty pounds.

(2) A person not being a licensee, shall not, unless he is the holder of a certificate of registration, represent, expressly or impliedly, that he is a land salesman, or that, he is in the employment of, or is acting for or on behalf of, a licensee as a land salesman.

Penalty: Fifty pounds.

(3) A land salesman who is the holder of a certificate of registration shall not represent expressly or impliedly, that he is in the employment of, or is acting for and on behalf of, a licensee as a land salesman, unless that licensee is his employer, principal or partner.

Penalty: Fifty pounds.

(4) This section does not apply to any land salesman who is a director or employee of—

(a) a pastoral company in respect of which an exemption granted under section eleven of the Banking Act, 1959, of the Parliament of the Commonwealth, or that Act as amended

from time to time, is in force, if the director or employee is acting for and on behalf of the pastoral company; and

- (b) a company whose business relating to that of a land agent, is in the opinion of the Committee, a minor part of the business generally carried on by the company and is declared by the Committee by notice published in the *Gazette*, to be such a company for the purposes of this section.

(5) This section shall come into operation three months after the date of the coming into operation of the Land Agents Act Amendment Act, 1964. .

S. 15B
added.

11. The principal Act is amended by adding a section as follows—

Registration
of land
salesmen.

15B. (1) Application for registration or renewal of registration as a land salesman shall be made to the Committee and shall be made in the form prescribed accompanied by the fee prescribed.

(2) Subject to subsection (3) of this section, the Committee on the receipt of an application for registration or renewal thereof, shall—

- (a) in the case of registration, cause the name of the applicant to be registered by entering his name together with the particulars prescribed in the register kept pursuant to section fifteen F of this Act; and
- (b) in the case of a renewal of registration, cause the registration to be renewed by entering in the register particulars showing that the registration has been renewed,

and issue to the applicant a certificate of registration or renewal thereof in the form prescribed.

(3) The Committee shall not issue a certificate of registration or renewal thereof, unless the fidelity bond referred to in subsection (4) of this section has been lodged with the Committee and is in force.

(4) The fidelity bond shall be a bond—

- (a) from an insurance company of the kind referred to in subsection (3) of section four of this Act;
- (b) in the form prescribed; and
- (c) in the sum of five hundred pounds or such other sum as may be prescribed,

and the provisions of subsection (3) of section four of this Act, with such modifications as circumstances require, apply to the fidelity bond.

(5) An application for registration as a land salesman in the first instance shall, in the case of a person to whom paragraph (b) of the interpretation, “land salesman” refers, be made, where the company of which he is a director becomes a licensee after the coming into operation of the Land Agents Act Amendment Act, 1964, within twenty-eight days after the company becomes a licensee. .

12. The principal Act is amended by adding a section as follows—

S. 15C
added.

15C. (1) Subject to this Act, a certificate of registration remains in force for a period of twelve months from the date specified therein as the day on which the certificate was issued.

Duration of
certificate of
registration
and renewal
thereof.

(2) A certificate of registration may be renewed at any time within a period of thirty days before it is due to expire, and on each renewal thereof shall, subject to this Act, be in force for a further period of twelve months. .

13. The principal Act is amended by adding a section as follows—

S. 15D
added.

15D. (1) A certificate of registration may not be granted otherwise than to a single individual.

Certificate of
registration
personal and
not trans-
ferable.

(2) A certificate of registration is not transferable. .

S. 15E
added.

14. The principal Act is amended by adding a section as follows—

Power of
Committee
to investigate
applicant.

15E. The Committee may if it thinks fit, take such steps as it thinks necessary for the purpose of satisfying itself as to the identity of the person making an application under the Act for registration as a land salesman. .

S. 15F
added.

15. The principal Act is amended by adding a section as follows—

Register of
land
salesmen.

15F. (1) The Committee shall cause a register to be kept containing the name and address of each person registered under this Act, as a land salesman and such other particulars as the Committee may direct.

(2) The Secretary shall enter in the register the cancellation of each certificate of registration and particulars of all convictions of a salesman registered under this Act, for offences against this Act.

(3) Any member of the public may search the register without fee during the usual office hours of the Secretary. .

S. 15G
added.

16. The principal Act is amended by adding a section as follows—

Power of
Committee
with respect
to cancella-
tion of
certificate of
registration.

15G. (1) A land salesman who is the holder of a certificate of registration may be summoned in writing by the Committee to appear before it to show cause why his certificate of registration should not be cancelled on the ground that—

(a) he improperly obtained his certificate of registration;

(b) he has been convicted of an offence against this Act, or any offence involving dishonesty or fraud, whether the conviction took place before or after the commencement of this section;

"This Act"
includes
regulations.
See s. 4
No. 30 of
1918.

- (c) he has been guilty, whether before or after the commencement of this section, of any dishonest or fraudulent conduct;
- (d) he is not a person of good fame and character; or
- (e) he has been guilty of such conduct as a land salesman as renders him not a fit and proper person to be the holder of a certificate of registration.

(2) Where the Committee is satisfied that any of the grounds referred to in subsection (1) of this section is proved the Committee—

- (a) may order that the certificate of registration be delivered to the Secretary and cancelled and that the land salesman be disqualified, either permanently or for such period as the Committee specifies in the order from being registered under this Act as a land salesman; or
- (b) may impose on the land salesman a fine not exceeding ten pounds.

(3) Sections fourteen B, fourteen C and fourteen E, of this Act with such modifications as circumstances require, apply in relation to any proceedings under this section or section fifteen H of this Act.

(4) Where a fine is imposed pursuant to paragraph (b) of subsection (2) of this section, it may be recovered by the Committee in a court of competent jurisdiction as a debt due to the Crown.

(5) A person who fails to deliver up his certificate of registration to the Secretary in accordance with the terms of an order made in that behalf by the Committee, commits an offence against this Act. .

S. 15H
added.

17. The principal Act is amended by adding a section as follows—

Appeal
against
cancellation.

15H. (1) Where the Committee makes an order cancelling a certificate of registration, the person to whom the certificate was granted may, within twenty-eight days after the date the order is made, appeal to a Court of Petty Sessions in Perth against the making of the order.

(2) An appeal under this section shall be in the nature of a rehearing and the Court of Petty Sessions may, on the hearing of the appeal, confirm, vary or cancel the order appealed against or make such order, including an order as to costs, as it thinks fit.

(3) The decision of the Court of Petty Sessions hearing the appeal is final and conclusive. .

S. 15I
added.

18. The principal Act is amended by adding a section as follows—

Offence.

15I. (1) A person who—

- (a) has had his license cancelled under section ten of this Act;
- (b) has had his certificate of registration cancelled under this Act on two occasions; or
- (c) has been convicted of an offence against this Act on two occasions,

commits an offence against this Act, if without the written permission of the Committee, he becomes or remains a director of any company, that is a licensee, or is the employer, employee or partner of a licensee, as such.

Penalty: Fifty pounds.

(2) For the purposes of this section, a person who is remunerated by a licensee by way of commission or by a share of profits, shall be deemed an employee of the licensee. .

19. The principal Act is amended by adding a section as follows—

S. 15J
added.

15J. In any proceedings for an offence against this Act by a land salesman, a certificate purporting to be signed by the Chairman of the Committee and stating that any person described in the certificate was or was not at the date specified in the certificate, the holder of a certificate of registration, is evidence of the matter stated in the certificate. .

Evidentiary
provisions.

20. The principal Act is amended by adding a section as follows—

S. 15K
added.

15K. (1) A person who—

Penalty for
offences
generally.

(a) does that which by or under this Act he is forbidden to do;

(b) does not do that which by or under this Act he is required to do; or

(c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly provided as the penalty or punishment for the offence, or if a penalty or punishment is not so provided, to a penalty, not exceeding fifty pounds. .

21. The principal Act is amended by adding a section as follows—

S. 15L
added.

15L. Notwithstanding anything in any other Act, the time limited for making complaint of an offence against section eight, nine or fourteen G of this Act, is two years from the time when the matter of the complaint arose, and in respect of any offence against any other section of this Act, is one year from that time. .

Limitation
of time for
complaint.
See Act
No. 11 of
1902, s. 51.

S. 16
amended.

22. Subsection (3) of section sixteen of the principal Act is amended—

- (a) by deleting the word, “and” between paragraphs (d) and (e); and
 - (b) by adding after the word, “Act”, being the last word in the subsection, the following passage,
 - “; and
 - (f) may prescribe penalties not exceeding fifty pounds for any breach of the regulations” .
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