

Western Australia

Settlement Agents Act 1981

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Settlement Agents Act 1981

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Western Australia

Settlement Agents Act 1981

**An Act to make provision with respect to the licensing, regulation,
and supervision of settlement agents, and for related purposes.**

Part I — Preliminary

1. Short title

This Act may be cited as the *Settlement Agents Act 1981*¹.

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

3. Interpretation

(1) In this Act unless the context otherwise requires —

“**Account**” means the Board Interest Account established under section 103(1);

“**appointed day**”² means the day fixed by the Minister pursuant to section 26(2);

“**approved**” means approved by the Board;

“**auditor**” means a person appointed under this Act to audit the trust accounts of a settlement agent;

“**bank**” means —

(a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth; or

(b) a bank constituted by a law of a State, a Territory or the Commonwealth;

“**Board**” means the Settlement Agents Supervisory Board;

“**business**” means the business of a settlement agent but does not have that meaning in paragraph (a) of the definition of “business transaction”, in paragraph (b) of the definition of “reward” or in section 45(a);

“**business**” in paragraph (a) of the definition of “business transaction” in paragraph (b) of the definition of “reward” and in section 45(a) means any commercial undertaking or

enterprise in respect of any profession, trade, employment, vocation, or calling within the State;

“business settlement agent” means any person who arranges or effects a settlement of a business transaction for reward or who, whether for reward or otherwise, carries on business arranging or effecting settlements of business transactions and whether or not that business is carried on in conjunction with or as part of or associated with any other profession, trade, occupation or employment, but does not include the exceptions specified in section 4(1);

“business transaction”—

- (a) means the disposal by sale or exchange, and the acquisition by purchase or exchange of a business and any share or interest in a business or the goodwill thereof within the State; and
- (b) includes any disposal by sale or exchange, and any acquisition by purchase or exchange of goods, chattels, or other property within the State relating to a business transaction of the kind specified in paragraph (a),

but does not include —

- (c) the sale, exchange, or other disposal or a purchase, exchange, or other acquisition of a share in the capital of a body corporate or an option in respect thereof;

“Chairman” means the Chairman of the Board;

“defalcation by a licensee” includes criminal or fraudulent conduct —

- (a) of a licensee;
- (b) of any one or more of the servants or agents of the licensee;
- (c) of a person who is a partner in the business of the licensee; or
- (d) where the licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body

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corporate, of any one or more of the directors, officers, servants, or agents of the body corporate, in the course of the business of the licensee and from which arises pecuniary loss or loss of property to any other person;

“fidelity guarantee fee” means the fee prescribed pursuant to section 92(1);

“Fidelity Guarantee Fund” or **“Fund”** means the fund established by section 87;

“General Purpose Fund” means the Education and General Purpose Fund established under section 102A(1);

“inspector” means an inspector of the Board appointed under this Act;

“legal practitioner” means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

“licence” means the licence of a real estate settlement agent or of a business settlement agent under this Act;

“licensed” means licensed as a settlement agent under this Act;

“licensee” means a person licensed under this Act;

“member” means a member of the Board;

“real estate” or **“land”** means land within the State and includes buildings or parts of buildings within the State;

“real estate settlement agent” means any person who arranges or effects the settlement of a real estate transaction for reward or who, whether for reward or otherwise, carries on business arranging or effecting settlements of real estate transactions and whether or not that business is carried on in conjunction with or as part of or associated with any other profession, trade, occupation or employment, but does not include the exceptions specified in section 4(1);

“real estate transaction” —

- (a) means the disposal by sale or exchange, and the acquisition by purchase or exchange of real estate; and
- (b) includes any disposal by sale or exchange, or any acquisition by purchase or exchange of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a);

“Registrar” means the Registrar of the Board;

“renewal” means renewal of a triennial certificate;

“reward” means any valuable consideration in money or moneys worth paid or received as commission or remuneration —

- (a) whether payable in cash or kind;
- (b) whether paid or received directly or indirectly; and
- (c) whether paid or received separately or as a component of a composite price or fee paid or received in respect of any transaction or service;

“settlement” means the completion of a real estate transaction or a business transaction (as the case may be) by payment of the balance of purchase price in respect to such real estate transaction or business transaction;

“settlement agent” means a person who is a real estate settlement agent or a business settlement agent or both a real estate settlement agent and a business settlement agent but does not include the exceptions specified in section 4(1);

“settlement agents’ code of conduct” or **“code of conduct”** means the code prescribed under section 82;

“supervisor” means a person appointed by the Board as supervisor of the business of a settlement agent;

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“transaction” means a real estate transaction or a business transaction or both a real estate transaction and a business transaction;

“Treasurer” means the Treasurer of the State;

“Treasury” means the State Treasury;

“triennial certificate” means a certificate granted under this Act to a licensee to carry on business as a settlement agent;

“trustee company” means a body corporate authorised by the law of any State or Territory of the Commonwealth to apply for and obtain, in its own name, a grant of probate or of letters of administration of the estate of a deceased person.

- (2) Where a reward is paid or received by a person by reason of, or in contemplation of, some other person arranging or effecting a settlement that reward shall, for the purposes of this Act, be deemed to be paid to or received by the person arranging or effecting the settlement.
- (3) Where 2 or more persons do acts which together constitute a settlement then each of those persons shall be deemed to have effected a settlement notwithstanding that the acts performed by any one of those persons do not constitute a settlement.
- (4) The fact that a payment, or a component of a price or fee, was not expressed, or was not acknowledged, to have been paid or received as commission or remuneration for any particular service, or was neither so expressed nor so acknowledged, shall not prevent that payment, or component of a price or fee, from being construed for the purposes of this Act as having been paid or received in respect of that service.

[Section 3 amended by No. 98 of 1985 s. 3; No. 59 of 1995 s. 58; No. 26 of 1999 s. 102(2); No. 65 of 2003 s. 66(2); No. 55 of 2004 s. 1081.]

4. Application and construction

- (1) Exceptions to the meaning of “**settlement agent**” in and for the purposes of this Act are as follows —
- (a) legal practitioners, when acting in the course of the practice of their profession as such;
 - (aa) real estate agents and business agents, as defined in the *Real Estate and Business Agents Act 1978*, who are currently carrying on business as such in accordance with that Act, when arranging or effecting settlements to which a current exemption under section 26A or 26B, as the case may be, applies;
 - (b) financial services licensees (within the meaning of the *Corporations Act 2001* of the Commonwealth), when dealing in securities (within the meaning of section 92 of that Act) that he or she is authorised to deal in by that licence; and
 - (c) regulated principals (within the meaning of section 1430 of the *Corporations Act 2001* of the Commonwealth), when dealing in securities that he or she is authorised to deal in by Part 10.2 Division 1 Subdivision D of that Act.
- (2) The provisions of section 29(1)(c), section 34(2)(a) and (b), section 35, Division 2 of Part IV, and Part V shall not apply to a bank in its capacity as a settlement agent, or to a trustee company.

[Section 4 amended by No. 10 of 1982 s. 28; No. 64 of 1982 s. 2; No. 59 of 1995 s. 59; No. 26 of 1999 s. 102(3); No. 10 of 2001 s. 222; No. 21 of 2003 s. 22.]

Part II — Settlement Agents Supervisory Board

Division 1 — General

5. The Board

- (1) For the purposes of this Act there shall be a board to be known as the “Settlement Agents Supervisory Board”.
- (2) The Board —
 - (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall be the licensing and supervisory authority for the purposes of this Act; and
 - (c) shall have the powers, duties, and functions, conferred, imposed, or prescribed by or under this Act.
- (3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Board the court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that —
 - (a) the seal is the common seal of the Board; and
 - (b) the common seal was duly affixed.

6. Composition of Board

- (1) Subject to this section the Board shall consist of 5 members appointed by the Governor of whom —
 - (a) one, being a person who is not a licensed settlement agent, shall be appointed to be a member and Chairman of the Board;
 - (b) one, being a person who is not a licensed settlement agent, shall be a person who is a legal practitioner;
 - (c) one, being a person who is not a licensed settlement agent, shall be a person who is experienced in commercial practice; and

- (d) 2 shall be persons who are licensed settlement agents and elected for appointment by licensed settlement agents (hereinafter called elective members).
- (2) Notwithstanding subsection 1(d), the Board as first constituted shall not include any member of the kind referred to in that paragraph, but shall include 2 persons who are settlement agents nominated for appointment by the Minister.
- (3) The Minister shall appoint a returning officer for each election of an elective member.
- (4) The election of an elective member shall be held and conducted in such manner and at such times as may be prescribed.
- (5) The expenses incurred in connection with the election of an elective member shall be paid out of the moneys appropriated by Parliament for the purposes of this Act.
- (6) The Governor may appoint as deputy of a member a person who has the like prescribed qualifications as those of the member and, where the case requires, who has been nominated or elected in the manner in which the member was nominated or elected.
- (7) A person so appointed is, in the event of the absence from a meeting of the Board of the member of whom he is the deputy, entitled to attend that meeting and, when so attending, has all the powers, functions, and duties of a member.

7. Term of office

- (1) Subject to this Act, each elective member shall hold office for a period of 4 years and is eligible for re-election and reappointment, and each member who is not an elective member shall hold office for such period not exceeding 4 years as is specified in the instrument of his appointment and is eligible for reappointment.
- (2) For the purposes of subsection (1) a person nominated for appointment by the Minister pursuant to section 6(2) is not an elective member.

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Part II Settlement Agents Supervisory Board

Division 1 General

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- (3) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.
- (4) The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.
- (5) If a member of the Board —
 - (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
 - (b) becomes permanently incapable of performing his duties as a member;
 - (c) resigns his office by writing under his hand addressed to the Minister;
 - (d) absents himself, except on leave duly granted by the Minister, from meetings of the Board for a period exceeding 8 weeks; or
 - (e) ceases to hold any qualification required for his becoming or being a member,

the office of that member becomes vacant.

- (6) Where the office of a member has become vacant otherwise than by effluxion of time, the Governor may appoint to the vacant office for the unexpired part of the term of the office which so became vacant a person who has the like prescribed qualifications, if any, as those of the member whose office has become vacant, and, where the case requires, who has been appointed or elected in the manner in which the member was appointed or elected.

8. Functions of the Board

- (1) The functions of the Board are —
 - (a) to advise the Minister as to the general administration of this Act;

- (b) to make recommendations and submit proposals to the Minister from time to time with respect to regulations to be made under this Act;
 - (c) to administer the scheme of licensing and registration established under this Act;
 - (ca) to conduct and promote education and provide advisory services for persons who are licensed or registered under this Act, or involved in the administration of this Act, and for members of the public on —
 - (i) matters relating to the operation of this Act;
 - (ii) matters relating to the policies of the Board;
 - (iii) matters relating to the operations of settlement agents; or
 - (iv) any other prescribed matter;and
 - (d) to carry out such other functions as are conferred upon the Board under this Act.
- (2) The Board has power to do all things as are necessary or convenient for or in connection with the performance of its functions.

[Section 8 amended by No. 59 of 1995 s. 60.]

9. Meetings of the Board

- (1) The Board shall hold meetings at such times and places as are necessary to enable it to discharge its functions and duties under this Act and the Minister may at any time require the Chairman to convene a meeting of the Board.
- (2) The Chairman shall preside at all meetings of the Board at which he is present and his deputy shall preside at all meetings at which he, but not the Chairman, is present, but where neither the Chairman nor his deputy is present at a meeting of the Board, the members present shall appoint one of their number present to act as chairman of that meeting.

- (3) At a meeting of the Board, 3 members constitutes a quorum.
- (4) Any question arising at a meeting of the Board shall be decided by a majority of the votes of the members present and voting.
- (5) At a meeting of the Board at which the Chairman or his deputy presides, the Chairman or his deputy shall have a deliberative vote, and in the event of an equality of votes being cast on any question, that question shall remain unresolved until a subsequent meeting.
- (6) The Board shall cause accurate minutes to be kept of its proceedings at its meetings.
- (7) To the extent that it is not prescribed the Board shall determine its own procedure.

10. Validity of acts of Board

No act, proceeding, or determination of the Board shall be invalid on the ground only of any vacancy in the office of any member of the Board or of any defect in the appointment of any member of the Board or in the appointment of any deputy of a member of the Board.

11. Remuneration and allowances

A member of the Board is to be paid from moneys standing to the credit of the General Purpose Fund such remuneration and allowances as are determined in the case of that member by the Minister on the recommendation of the Minister for Public Sector Management.

[Section 11 inserted by No. 59 of 1995 s. 61.]

12. The Registrar and other officers

- (1) There shall be a Registrar of the Board and there may be such Deputy Registrar, Assistant Registrars, inspectors and other officers of the Board as are necessary for its proper functioning.
- (2) The officers of the Board shall be appointed and shall hold office subject to and in accordance with Part 3 of the *Public Sector Management Act 1994*.

- (3) The officers of the Board may hold office as such in conjunction with any other office in the Public Service of the State.
- (4) Anything by this Act appointed or authorised or required to be done or signed by the Registrar may be done or signed by a Deputy or Assistant Registrar and shall be as valid and effectual as if done or signed by the Registrar.
- (5) All courts, judges, and persons acting judicially shall take judicial notice of the official signature of every person who is for the time being and every person who has at any time been Registrar, Deputy Registrar, Assistant Registrar, or inspector of the Board and of the fact that such person holds or has held such office.

[Section 12 amended by No. 32 of 1994 s. 3(2).]

12A. Consultants, etc.

The Board may engage, under a contract for services or other arrangement, any consultants and professional, technical or other assistance that it considers necessary to enable it to perform its functions.

[Section 12A inserted by No. 59 of 1995 s. 62.]

12B. Minister may give directions

- (1) The Minister may give directions in writing to the Board with respect to the performance of its functions, either generally or in relation to a particular matter, and the Board shall give effect to any such direction.
- (2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Board under section 66 of the *Financial Administration and Audit Act 1985*.

[Section 12B inserted by No. 59 of 1995 s. 62.]

12C. Minister to have access to information

- (1) The Minister is entitled —
 - (a) to have information in the possession of the Board; and
 - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
 - (a) request the Board to furnish information to the Minister;
 - (b) request the Board to give the Minister access to information;
 - (c) for the purposes of paragraph (b) make use of the staff of the Board to obtain the information and furnish it to the Minister.
- (3) The Board shall comply with a request under subsection (2) and make its staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) In this section —

“document” includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

“information” means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

[Section 12C inserted by No. 59 of 1995 s. 62.]

Division 1A — Corporate plan

[Heading inserted by No. 59 of 1995 s. 63.]

12D. Corporate plan

- (1) The Board shall prepare a corporate plan for each financial year.
- (2) A corporate plan for a financial year shall be prepared and submitted to the Minister for approval by 31 July in that year.

- (3) A corporate plan shall include —
- (a) a statement of the objectives of the Board;
 - (b) a statement of the policies and strategies that the Board intends to adopt in order to achieve the Board's objectives;
 - (c) an estimate of the Board's income and expenditure for the relevant financial year;
 - (d) the activities and improvements that the Board proposes to carry out; and
 - (e) the resources that the Board proposes to allocate to those activities and improvements.
- (4) The Board may, with the approval of the Minister, revise a corporate plan at any time.

[Section 12D inserted by No. 59 of 1995 s. 63.]

12E. Board to comply with corporate plan

The Board shall ensure that, to the extent that it is practicable to do so, the performance of its functions and the exercise of its powers are consistent with, and designed to give effect to, the current corporate plan.

[Section 12E inserted by No. 59 of 1995 s. 63.]

Division 2 — Powers of investigation and inquiry

13. Investigation and inquiry by Registrar and inspectors

The Registrar may, of his own motion, and shall at the direction of the Board, and an inspector shall, at the direction of the Board or the Registrar, make any investigation or inquiry that the Registrar or the Board considers necessary or expedient for the purpose of —

- (a) determining any application or any other matter before the Board;

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Division 2 Powers of investigation and inquiry

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- (b) determining whether or not settlement agents are acting in conformity with the special conditions, if any, of their licences and triennial certificates and are complying with the requirements of this Act; and
- (c) detecting offences against this Act.

14. Police investigations

- (1) The Commissioner of Police shall, at the request of the Board or the Registrar, cause his officers to make an investigation or inquiry and report relating to any matter that is the subject of investigation or inquiry pursuant to section 13.
- (2) The report shall be forwarded to the Registrar.
- (3) A member of the Police Force making an investigation or inquiry or report relating to any matter that is the subject of investigation or inquiry pursuant to section 13 shall, in addition to any power, authority, and immunity of such a member apart from this Act, have like powers, authorities, and immunities as an inspector of the Board appointed under this Act has in respect of a like matter, and the provisions of this Act relating thereto and relating to persons affected thereby shall be read and construed accordingly with such modifications as are necessary and in particular with the modification that for the purposes of section 15(6)(b) it shall be sufficient if the member of the Police Force identifies himself as such to the person, if any, affording him entry.

15. Power of Registrar and inspector to investigate inquire and obtain information

- (1) For the purposes of carrying out any investigation or inquiry in the course of carrying out his duties under this Act, the Registrar or an inspector may —
 - (a) require any person —
 - (i) to give him such information as he requires; and
 - (ii) to answer any question put to him,

- in relation to any matter the subject of such investigation or inquiry;
- (b) require any person to produce for inspection any document relating to any such investigation or inquiry;
 - (c) enter at all reasonable times and search any premises and inspect any documents that he finds thereon; and
 - (d) make a copy or abstract of any document produced to, or inspected by, him in pursuance of this section, or of any entry made therein and in the absence of proof to the contrary any such copy certified as correct by the Registrar or an inspector shall be received in all courts as evidence of, and of equal validity as, the original.
- (2) A requirement made under subsection (1)(a) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) shall specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to any place specified in the requirement;
 - (iii) in the case of written information or answers, be sent or delivered by any means specified in the requirement; and
 - (iv) be given on oath or affirmation or by statutory declaration for which purpose the Registrar or an inspector may administer an oath or affirmation and may witness a statutory declaration.
- (3) A requirement made under subsection (1)(b) —

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Division 2 Powers of investigation and inquiry

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- (a) shall be made by notice in writing served on the person required to produce a document for inspection;
 - (b) shall specify the time at or within which the document is to be produced for inspection; and
 - (c) may, by its terms, require that the document or a carbon copy thereof be produced for inspection —
 - (i) at any place specified in the requirement; and
 - (ii) by any means specified in the requirement.
- (4) Where, under subsection (1)(a) the Registrar or an inspector orally requires a person to give any information or answer any question, the Registrar or the inspector shall inform that person that he is required under this Act to give the information or answer the question, as the case may be.
- (5) Where under subsection (1)(a) or (b) a person is required by notice in writing to give any information, answer any question, or produce any document for inspection, the notice shall state that he is required under this Act to give the information, answer the question or produce the document for inspection, as the case may be.
- (6) Before entering any premises pursuant to this section the Registrar or an inspector —
- (a) shall obtain a warrant to do so from a Magistrate or Justice of the Peace which warrant the Magistrate or Justice of the Peace is authorised to issue upon being satisfied that the entry is sought in good faith for the purpose of carrying out any investigation or inquiry under this Act; and
 - (b) shall display to the person, if any, affording him entry —
 - (i) in the case of the Registrar, a document signed by the Minister and certifying that he is the Registrar; and
 - (ii) in the case of an inspector, a document signed by the Registrar and certifying that he is an inspector.

[Section 15 amended by No. 24 of 2005 s. 63.]

16. Incriminating information, questions or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 15 a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document for inspection,

he shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate him or render him liable to any penalty, but the information or answer given, or document produced for inspection, by him shall not be admissible in evidence in any proceedings against him other than proceedings in respect of an offence against section 17(1)(b).

17. Failure to comply with requirement

- (1) Where under section 15 a person is required by the Registrar or an inspector to give any information, answer any question, or produce any document for inspection and that person, without reasonable excuse (proof of which shall lie on him) —
 - (a) fails to give that information or answer that question at or within the time specified in the requirement;
 - (b) gives any information or answer that is false in any particular; or
 - (c) fails to produce that document for inspection at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$3 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the accused to show —

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- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 15, the Registrar or the inspector did not, when making the requirement, inform him that he was required under this Act to give the information or answer the question, as the case may be;
- (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 15, the notice did not state that he was required under this Act to give the information, answer the question, or produce the document for inspection, as the case may be;
- (c) that the time specified in the requirement did not afford him sufficient notice to enable him to comply with the requirement; or
- (d) that, in any case, the Registrar or the inspector did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation or inquiry being carried out.

[Section 17 amended by No. 59 of 1995 s. 85; No. 84 of 2004 s. 82.]

18. Obstruction of Registrar or inspector

A person shall not prevent or attempt to prevent the Registrar or an inspector from entering premises or otherwise obstruct or impede the Registrar or an inspector in the exercise of his powers under section 15.

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[Heading inserted by No. 55 of 2004 s. 1082.]

19. Proceedings before the Board

- (1) The Board shall give to any person who is a party to proceedings instituted before the Board reasonable notice of the

time and place at which it intends to conduct those proceedings, and shall afford any such person a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions to the Board unless —

- (a) in the case of an application for the grant of a licence, or of a triennial certificate, there is no objection and the licence or certificate is granted without any special conditions being imposed.

[(b) deleted]

- (2) If a person to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may conduct the proceedings in his absence.
- (3) The Board may appoint a person with such qualifications as it thinks fit to appear in proceedings before the Board to assist the Board.
- (4) An inspector may appear in any proceedings before the Board.
- (5) An inspector or any party to proceedings before the Board shall be entitled to appear personally or by counsel.
- (6) Any party to proceedings before the Board, may, by leave of the Board, be represented before the Board by a person other than a legal practitioner.
- (7) A person, other than a legal practitioner, shall not demand or receive any fee or reward for representing a party to proceedings before the Board.
Penalty: \$5 000.
- (8) The Board shall conduct its proceedings in public unless it is satisfied in any particular case that by reason of exceptional circumstances it is desirable that the proceedings or any part thereof be conducted in camera, the Board may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it.

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[(9) repealed]

- (10) A person appointed by the Board to assist the Board in proceedings before the Board or a person authorised by or under this Act to appear in proceedings before the Board for the purpose of representing another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court and, where the person so appointed or authorised is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

[Section 19 amended by No. 59 of 1995 s. 85; No. 55 of 2004 s. 1083(1).]

20. Powers of the Board

- (1) In the exercise of its powers and functions under this Act, the Board may —
- (a) by summons signed on behalf of the Board by the Registrar, require the attendance before the Board of any person;
 - (b) by summons signed on behalf of the Board by the Registrar, require the production of any books, papers, or documents for inspection;
 - (c) inspect any books, papers, or documents produced before it, and retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
 - (d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Board relating to any matter being inquired into by the Board (which oath or affirmation may be administered by a member of the Board or any officer of the Board); and
 - (e) require any person appearing before the Board (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Board, or any other person appearing before the Board.

- (2) Subject to subsection (3), if any person —
- (a) who has been served with a summons to attend before the Board fails without reasonable excuse (proof of which shall lie upon him) to attend in obedience to the summons;
 - (b) who has been served with a summons to produce for inspection any books, papers, or documents, fails without reasonable excuse (proof of which shall lie upon him) to comply with the summons;
 - (c) misbehaves himself before the Board, wilfully insults the Board, or interrupts the proceedings of the Board; or
 - (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,
- he is guilty of an offence and liable to a penalty not exceeding \$5 000.
- (3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents for inspection if their contents would tend to incriminate him.
- (4) In the course of any proceedings, the Board may —
- (a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact therefrom that it considers proper; or
 - (b) adopt, as in its discretion it considers proper, any findings, decision, or judgment of a court that may be relevant to the proceedings.
- (5) In any proceedings the Board shall act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms and it shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

[Section 20 amended by No. 59 of 1995 s. 85; No. 55 of 2004 s. 1083(2).]

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21. Orders for fines or costs

- (1) The Board may, upon the determination of any proceedings, make such orders for costs as the Board considers just and reasonable.

[(2), (3) repealed]

[Section 21 amended by No. 55 of 2004 s. 1083(3).]

[22. Repealed by No. 55 of 2004 s. 1083(4).]

23. Application for review

- (1) Any person aggrieved by a reviewable decision of the Board may apply to the State Administrative Tribunal for a review of the decision.

- (2) In subsection (1) —

“person aggrieved” means —

- (a) a person whose licence or triennial certificate is affected by a reviewable decision or who, under Part III, applies for or objects to the grant of a licence or applies for the renewal of a triennial certificate;
- (b) a person affected by a decision of the Board under Part IV Division 2;
- (c) a person claiming against, or seeking the leave of the Board to commence an action in relation to, the Fidelity Guarantee Fund; or
- (d) a person affected by an order of the Board for costs under section 21;

“reviewable decision” means —

- (a) a decision under Part III other than —
 - (i) a decision under section 35; or
 - (ii) a determination of the form in which an application or objection is made;
- (b) a decision under Part IV Division 2;

- (c) a decision under section 93 or 95; or
- (d) an order for costs under section 21.

[Section 23 inserted by No. 55 of 2004 s. 1084.]

Part III — Licensing

24. Application

- (1) An application for a licence shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.
- (2) Notice of the application shall be advertised in accordance with the regulations.
- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or a body corporate by the person who is to be in bona fide control of the business operated under the licence.
- (4) In respect of any particular application the applicant shall furnish the Board with such further information as the board determines, verified if the Board so requires by statutory declaration.
- (5) An applicant is a party to proceedings before the Board on his application.

25. Objections

- (1) An objection to the grant of a licence may be made by any person on the grounds that the applicant does not have all or any of the qualifications required under this Act for the grant of a licence.
- (2) Any objection made shall be in writing and in a form and manner determined by the Board and shall contain information in support of the grounds on which the objection is made.
- (3) The information contained in the objection shall be verified by statutory declaration of the person making the objection.

- (4) A person who makes an objection to the grant of a licence is, while he maintains the objection, a party to the proceedings on the application for the grant.

26. Settlement agents to be licensed

- (1) On and after the appointed day a person shall not carry on business, or by any means hold himself or itself out, as a real estate settlement agent, or a business settlement agent, or both a real estate settlement agent and a business settlement agent, unless he or it is licensed as such under this Act and holds a current triennial certificate in respect of the licence.

Penalty: \$20 000.

- (2) In subsection (1) “**appointed day**” means such day as is fixed by the Minister by notice published in the *Government Gazette* to be the appointed day² for the purposes of that subsection.

[Section 26 amended by No. 59 of 1995 s. 85.]

26A. Exemptions for real estate agents

- (1) Application may be made by a real estate agent licensed and carrying on business as such under the *Real Estate and Business Agents Act 1978* for an exemption under this section.
- (2) An application under subsection (1) shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.
- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or a body corporate by the person who is in bona fide control of the business.
- (4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.

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- (5) Subject to subsection (6), the Board may grant an application under subsection (1) if —
- (a) where the applicant is a person not being a body corporate, the Board is satisfied that, if the application were for a real estate settlement agent's licence, the requirements of section 27(1)(a), (b), and (d) would be fulfilled;
 - (b) where the applicants constitute a firm, the Board is satisfied that —
 - (i) if the application were for a real estate settlement agent's licence, the requirements of section 28(1)(a) would be fulfilled;
 - (ii) where the firm is constituted by not more than 3 persons at least one of them is currently exempted under this section or where the firm is constituted by more than 3 persons at least 2 of them are currently exempted under this section; and
 - (iii) the person in bona fide control of the business is ordinarily resident in the State and is currently exempted under this section;
- or
- (c) where the applicant is a body corporate, the Board is satisfied that —
 - (i) if the application were for a real estate settlement agent's licence, the requirements of section 29(1)(a) would be fulfilled;
 - (ii) unless for good cause shown by the applicant the Board otherwise determines, where there are not more than 3 directors of the body corporate at least one of them is currently exempted under this section or where there are more than 3 directors of the body corporate at least 2 of them are currently exempted under this section; and

- (iii) the person in bona fide control of the business is ordinarily resident in the State and is currently exempted under this section.
- (6) A person shall not at the same time be currently exempted under this section and licensed as a real estate settlement agent.
- (7) A current exemption under this section applies to a settlement arranged or effected by the person to whom the exemption was granted, but only if —
 - (a) the settlement is of a real estate transaction in respect of which the person acted in the course of business as a real estate agent;
 - (b) the settlement is not arranged or effected for reward; and
 - (c) before arranging or effecting the settlement the person gives to the person or, if there be more than one, to each person, for whom the settlement is to be arranged or effected, a notice in the prescribed form warning that, if settlement is so arranged or effected, no protection will be afforded by this Act.
- (8) An exemption under this section is current until —
 - (a) by notice in writing given to the Board, it is surrendered by the person to whom it was granted; or
 - (b) by notice in writing given to the person to whom it was granted, it is revoked by the Board.

[Section 26A inserted by No. 64 of 1982 s. 3.]

26B. Exemptions for business agents

- (1) Application may be made by a business agent licensed and carrying on business as such under the *Real Estate and Business Agents Act 1978* for an exemption under this section.
- (2) An application under subsection (1) shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.

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- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or a body corporate by the person who is in bona fide control of the business.
- (4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.
- (5) Subject to subsection (6), the Board may grant an application under subsection (1) if —
 - (a) where the applicant is a person not being a body corporate, the Board is satisfied that, if the application were for a business settlement agent's licence, the requirements of section 27(1)(a), (b), and (d) would be fulfilled;
 - (b) where the applicants constitute a firm, the Board is satisfied that —
 - (i) if the application were for a business settlement agent's licence, the requirements of section 28(1)(a) would be fulfilled;
 - (ii) where the firm is constituted by not more than 3 persons at least one of them is currently exempted under this section or where the firm is constituted by more than 3 persons at least 2 of them are currently exempted under this section; and
 - (iii) the person in bona fide control of the business is ordinarily resident in the State and is currently exempted under this section;

or

- (c) where the applicant is a body corporate, the Board is satisfied that —
 - (i) if the application were for a business settlement agent's licence, the requirements of section 29(1)(a) would be fulfilled;
 - (ii) unless for good cause shown by the applicant the Board otherwise determines, where there are not more than 3 directors of the body corporate at least one of them is currently exempted under this section or where there are more than 3 directors of the body corporate at least 2 of them are currently exempted under this section; and
 - (iii) the person in bona fide control of the business is ordinarily resident in the State and is currently exempted under this section.
- (6) A person shall not at the same time be currently exempted under this section and licensed as a business settlement agent.
- (7) A current exemption under this section applies to a settlement arranged or effected by the person to whom the exemption was granted, but only if —
 - (a) the settlement is of a business transaction in respect of which the person acted in the course of business as a business agent;
 - (b) the settlement is not arranged or effected for reward; and
 - (c) before arranging or effecting the settlement the person gives to the person or, if there be more than one, to each person, for whom the settlement is to be arranged or effected, a notice in the prescribed form warning that, if settlement is so arranged or effected, no protection will be afforded by this Act.

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- (8) An exemption under this section is current until —
- (a) by notice in writing given to the Board, it is surrendered by the person to whom it was granted; or
 - (b) by notice in writing given to the person to whom it was granted, it is revoked by the Board.

[Section 26B inserted by No. 64 of 1982 s. 3.]

27. Grant of licence to a natural person

- (1) Subject to this Act, a person, not being a body corporate, who applies to the Board for a real estate settlement agent's licence or a business settlement agent's licence, or both, and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board is satisfied that —
- (a) he is of or over the age of 18 years;
 - (b) he is a person of good character and repute and a fit and proper person to hold a licence;
 - (c) he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act;
 - (d) he is ordinarily resident in the State; and
 - (e) he understands fully the duties and obligations imposed by this Act on settlement agents.
- (2) In subsection (1)(b) “**fit and proper**” includes being qualified in accordance with Schedule 1 to this Act subject to the savings and exceptions provided therein and elsewhere in this Act, but nothing in that Schedule shall derogate from the discretion conferred on the Board by subsection (1) in the granting of a licence.

28. Grant of licence to a firm

- (1) Subject to this Act, 2 or more persons constituting a firm who apply to the Board for a real estate settlement agent's licence or a business settlement agent's licence, or both, and pay to the

Board the prescribed fee for the licence shall be granted and may hold a licence if the Board is satisfied that —

- (a) all of the natural persons, if any, by whom the firm is constituted and all of the directors of, and all of the persons concerned in the management or control of, any body corporate by which the firm is constituted are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of, a settlement agent's business;
 - (b) the persons by whom or by which the firm is constituted have sufficient material and financial resources available to them to enable them to comply with the requirements of this Act;
 - (c) where the firm is constituted by not more than 3 persons, at least one of them is licensed or where the firm is constituted by more than 3 persons at least 2 of them are licensed; and
 - (d) the person in bona fide control of the business operated under the licence is —
 - (i) in the case of an application for a real estate settlement agent's licence, licensed as a real estate settlement agent and holds a current triennial certificate;
 - (ii) in the case of an application for a business settlement agent's licence, licensed as a business settlement agent and holds a current triennial certificate; and
 - (iii) ordinarily resident in the State.
- (2) The provisions of Clause 10 of Schedule 1 apply to a licence granted under this section.

29. Grant of licence to body corporate

- (1) Subject to this Act, a body corporate which applies to the Board for a real estate settlement agent's licence or a business

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settlement agent's licence, or both, and pays to the Board the prescribed fee for the licence shall be granted and may hold a licence if the Board is satisfied that —

- (a) all of the directors of the body corporate, and all of the persons concerned in the management or conduct of the body corporate, are persons of good character and repute and are persons fit to be concerned as directors of, or in the management and control of, a settlement agent's business;
 - (b) it has sufficient material and financial resources available to it to comply with the requirements of this Act;
 - (c) unless for good cause shown by the applicant the Board otherwise determines, where there are not more than 3 directors of the body corporate at least one of them is licensed where there are more than 3 directors of the body corporate at least 2 of them are licensed; and
 - (d) the person in bona fide control of the business operated under the licence is —
 - (i) in the case of an application for a real estate settlement agent's licence, licensed as a real estate settlement agent and holds a current triennial certificate;
 - (ii) in the case of an application for a business settlement agent's licence, licensed as a business settlement agent and holds a current triennial certificate; and
 - (iii) ordinarily resident in the State.
- (2) The provisions of Clause 10 of Schedule 1 apply to a licence granted under this section.

30. Effect of licence

- (1) Subject to this Act, a licence is continuous.

- (2) A licence as a real estate settlement agent does not confer on a licensee the right to carry on business as a real estate settlement agent unless he holds a current triennial certificate in respect of the licence.
- (3) A licence as a business settlement agent does not confer on the licensee the right to carry on business as a business settlement agent unless he holds a current triennial certificate in respect of the licence.
- (3a) A licensee ceases to be licensed if the licensee —
 - (a) does not hold a current triennial certificate in respect of the licence; and
 - (b) does not pay to the Board in accordance with the regulations the fee prescribed for the purposes of this subsection.
- (4) A person may at any time surrender a licence, and any triennial certificate in respect thereof, held by him and shall do so if he ceases to have the qualifications for holding the licence.
- (5) Despite the surrender by a person of a licence or triennial certificate, this Act applies, for the purpose of enabling the person to be investigated or otherwise dealt with for a matter arising before the surrender, as if the licence or certificate had not been surrendered.

[Section 30 amended by No. 56 of 1995 s. 50; No. 55 of 2004 s. 1085.]

31. Triennial certificate and renewal thereof

- (1) Subject to this Act, the Board shall on the grant of —
 - (a) a real estate settlement agent's licence, grant the licensee a certificate which confers on the licensee the right to carry on business as a real estate settlement agent; or
 - (b) a business settlement agent's licence, grant the licensee a certificate which confers on the licensee the right to carry on business as a business settlement agent,

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for the period of 3 years commencing on the date on which it is granted.

- (2) Subject to this Act, a triennial certificate may be renewed for subsequent periods of 3 years each by payment of the prescribed fee, and delivery to the Board of an application signed —
 - (a) by the licensee, if the licensee is a person other than a firm or a body corporate; or
 - (b) by the person in bona fide control of the business of the licensee, if the licensee is a firm or body corporate.
- (2a) The Board may refuse to renew a triennial certificate if the licensee has not met prescribed educational requirements.
- (3) At all times during the currency of the triennial certificate —
 - (a) if the licensee is a person other than a firm or body corporate, that person; or
 - (b) if the licensee is a firm or body corporate, the person in bona fide control of the business of the licensee,

shall remain ordinarily resident in the State.

[Section 31 amended by No. 62 of 1996 s. 4.]

32. Periods of grace for renewal of triennial certificate

- (1) Where a triennial certificate is renewed within the period of one month immediately succeeding the day on which the triennial certificate expired, the renewal shall be deemed to take effect for the period of 3 years on and from the day next succeeding the day on which the triennial certificate expired.
- (2) Where a triennial certificate is renewed more than one month but not more than 12 months after the day on which the triennial certificate expired and the licensee satisfies the Board that there is reasonable cause for the renewal to be deemed to take effect for the period of 3 years on and from the day next succeeding the day on which the triennial certificate expired, the Board shall so determine and the renewal shall take effect accordingly.

33. Applications for renewal of triennial certificates in certain cases

- (1) Where a triennial certificate expires and is not renewed within the period of 12 months thereafter an application for a renewal shall be made at least one month prior to the date on which it is intended the renewal shall take effect unless the applicant satisfies the Board that there is reasonable cause for the application being made out of time.
- (2) The application shall be made in writing and in a manner and form determined by the Board in respect of such an application and shall contain such information as is required by the Board in respect of such an application.
- (3) The information contained in the application shall be verified by statutory declaration of the applicant or where the applicant is a firm or body corporate by the person who is to be in bona fide control of the business operated under the licence.
- (4) In respect of any particular application the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so requires by statutory declaration.
- (5) An applicant is a party to proceedings before the Board on his application.

34. Conditions on licences and triennial certificates

- (1) A licensee shall comply with the provisions of this Act and the settlement agents' code of conduct.
- (2) The Board may grant a licence or grant or renew a triennial certificate subject to such special conditions as it thinks fit, and without limiting the generality of the foregoing any of those conditions may —
 - (a) relate to the holding of a policy of indemnity insurance or fidelity insurance in a specified amount; or

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- (b) relate to the payment of fees under this Act or to contributions to the Fund and may vary such prescribed fees or contributions.
- (3) A licensee shall comply with any special condition to which under subsection (2) his licence or triennial certificate is subject.
[Section 34 amended by No. 55 of 2004 s. 1086.]

34A. Unopposed applications

- (1) Subject to this Part, a licence may be granted and a triennial certificate may be granted or renewed, (as long as there is no objection in respect of a licence and special conditions are not imposed or changed) by —
 - (a) the Board, in a meeting at any time and place; or
 - (b) the Registrar, at any time or place,without notice to the applicant, and the performance of a function by the Registrar under this subsection is to be treated as performance by the Board.
- (2) Where the Board or Registrar performs a function under subsection (1), the Registrar shall forthwith deliver the licence or triennial certificate or the renewed triennial certificate, as the case may be, to the applicant.
- (3) Sections 27, 28, and 29 apply to the Registrar in the performance of a function under subsection (1) as if a reference in any of those provisions to the Board being satisfied as to a matter were a reference to the Registrar being satisfied as to the matter.

[Section 34A inserted by No. 55 of 2004 s. 1087.]

34B. Suspension of licence by State Administrative Tribunal

- (1) Where the State Administrative Tribunal makes an order against a licensee and payment is not made in accordance with the order or the order is otherwise not complied with or is breached, the State Administrative Tribunal may suspend the licence until the

payment is made, or for such period or upon such event occurring as the State Administrative Tribunal thinks fit.

- (2) The power conferred on the State Administrative Tribunal by subsection (1) is in addition to, and does not derogate from, the powers conferred on it by Part IV Division 3 or by the *State Administrative Tribunal Act 2004*.

[Section 34B inserted by No. 55 of 2004 s. 1087.]

35. Fidelity insurance and professional indemnity insurance in respect of triennial certificate

- (1) The Board may, from time to time, make arrangements for or in respect of the provision to licensees of fidelity insurance and professional indemnity insurance on such terms and conditions as the Board thinks fit and, for that purpose, may, from time to time, enter into a Master Policy Agreement with an insurer appointed by the Board and do all such acts or things that the Board deems necessary or expedient for giving effect thereto.
- (2) An arrangement in terms of subsection (1) may include provision with respect to any one or more of the following matters —
- (a) the terms and conditions of the fidelity insurance and professional indemnity insurance;
 - (b) subject to subsection (3), the amount or amounts of insurance cover to be provided;
 - (c) the amount or amounts payable by way of premiums;
 - (d) the period during which the insurance is to be provided;
 - (e) the issue of certificates of insurance to licensees and the form of those certificates; and
 - (f) any other matters in connection with the fidelity insurance and professional indemnity insurance.
- (3) The minimum insurance cover for each agent under a policy effected in accordance with subsection (1) for fidelity insurance

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and professional indemnity insurance shall be the sum of \$250 000 for each claim.

- (4) The Board may, from time to time, negotiate such rescission or variation of the arrangement referred to in subsection (1) as it considers necessary or expedient.
- (5) Where the Board has entered into a Master Policy Agreement in accordance with subsection (1) the Board shall, by notice published in the *Government Gazette*, advertise the fact that a policy has been effected under this section and of the details of the policy and thereupon the provisions of this section apply for so long as that Agreement remains in force.
- (6) Where the provisions of this section apply —
 - (a) the Board shall not grant or renew a triennial certificate unless the applicant is insured in accordance with this section;
 - (b) each licensee who is the holder of a triennial certificate shall —
 - (i) at all times remain insured under the Master Policy Agreement;
 - (ii) hold a current certificate of insurance;
 - (iii) pay all premiums payable by him under the Master Policy Agreement and certificate of insurance; and
 - (iv) comply with such of the provisions of the Master Policy Agreement and certificate of insurance as apply to him;
 - (c) the Board shall not grant or renew a triennial certificate unless the licensee has complied in all respects with the terms and conditions of this section and first produces to the Board a valid certificate of insurance for the period to which the triennial certificate or the renewal relates; and

- (d) where, at any time during the currency of a triennial certificate, the certificate of insurance in respect of it ceases to be of full force and effect, the licensee is deemed not to be the holder of a triennial certificate until another valid certificate of insurance is produced by him to the Board.

[(7) repealed]

- (8) Where the provisions of this section apply notwithstanding anything contained in this section, a condition imposed on a licence or the grant or renewal of a triennial certificate under section 34 may —
 - (a) relate to the holding of a policy of indemnity insurance or fidelity insurance for an amount which is greater or less than the amount specified in subsection (3); or
 - (b) waive the requirement of a particular licensee to hold a policy of indemnity insurance or fidelity insurance.
- (9) Nothing in this section affects the right of a settlement agent to take out additional fidelity insurance or professional indemnity insurance.

[Section 35 amended by No. 51 of 1986 s. 46.]

36. Notice to Registrar

- (1) A licensee shall, within 14 days after commencing or ceasing to carry on business as a settlement agent, give to the Registrar notice in writing of that fact.
- (2) A licensee shall give to the Registrar notice in writing —
 - (a) where the licensee is a body corporate, of any change in the directors or shareholding of the body corporate;
 - (b) the licensee is a firm and any of the persons by whom or by which it is constituted is a body corporate, of any change in the directors or shareholding of any such body corporate;

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- (c) where the licensee is a firm or body corporate, of any change in the person in bona fide control of the business operated under the licence held by the licensee,
within 14 days of the change.
- (3) In subsection (2)(a) and (b) **“body corporate”** does not include —
- (a) a corporation, shares in which are quoted on a prescribed financial market in Australia;
 - (b) a bank; or
 - [(c) deleted]*
 - (d) a trustee company.
- (4) In this section —
“prescribed financial market” has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth.

[Section 36 amended by No. 26 of 1999 s. 102(4); No. 21 of 2003 s. 23.]

37. Registered office

- (1) A licensee shall, on and after the day on which he commences to carry on business as a settlement agent, and for so long as he carries on that business, have a registered office in the State which shall be the place of business of the licensee in the State, or if he has more than one, then the principal place of business of the licensee in the State.
Penalty: \$1 000.
- (2) Any summons, notice, order, or other document to be served on a licensee pursuant to this Act, may be served by leaving it at his registered office or by sending it by registered post addressed to the licensee at that office.
- (3) An office may be registered by giving written notice of the situation of the office to the Registrar and a registration may be

transferred from one office to the other by written notice given to the Registrar.

[Section 37 amended by No. 59 of 1995 s. 85.]

38. Branch office

- (1) A licensee shall register any branch office of his business by giving written notice of the situation of the office to the Registrar on or before the day on which he commences to carry on business at that branch office.

Penalty: \$1 000.

- (2) A licensee shall nominate, and have at all times in his service at a registered branch office, as manager of that office, another licensee who is the holder of a current triennial certificate.

Penalty: \$1 000.

- (3) The manager shall not be a licensee nominated as manager by any other licensee or in respect of any other office, and shall not carry on business as a settlement agent on his own account.

[Section 38 amended by No. 59 of 1995 s. 85.]

39. Endorsements on triennial certificates

- (1) Each place of business of a licensee and the name of the other licensee who is manager of that place and any changes thereto shall be endorsed on the triennial certificate of the first-mentioned licensee.

- (2) The place of business of a branch office shall be endorsed on the triennial certificate of the licensee who is manager of that office.

40. Licence and triennial certificate not transferable

- (1) A person shall not —
 - (a) hold more than one real estate settlement agent's licence or more than one triennial certificate relating thereto and

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shall not carry on more than one business as a real estate settlement agent under that certificate; or

- (b) hold more than one business settlement agent's licence or more than one triennial certificate relating thereto and shall not carry on more than one business as a business settlement agent under that certificate.

- (2) A licence or a triennial certificate is not transferable.
- (3) A licensee shall not in any way permit, or hold himself out as being willing to permit, another person to use the licence or a triennial certificate of the licensee.

Penalty: \$20 000.

[Section 40 amended by No. 59 of 1995 s. 85.]

41. Use of business name

- (1) The use of a business name by a licensee is not subject to the approval of the Board but —
 - (a) a licensee may carry on business as a settlement agent under only one business name which shall be endorsed on his triennial certificate; and
 - (b) a licensee carrying on the business of a settlement agent under a business name shall, on all correspondence from him in that business, identify the person or persons constituting the licensee.
- (2) A licensee who alters the name, style, title or designation under which he carries on business as a settlement agent shall within 14 days after the day on which he first uses that altered name, style, title, or designation in connection with that business give notice in writing to the Registrar of the altered name, style, title, or designation.

Penalty: \$1 000.

[Section 41 amended by No. 59 of 1995 s. 85.]

42. Notices at offices; particulars on correspondence and documents

- (1) A licensee shall exhibit, and keep exhibited, in a prominent place at his registered office, and at every branch office of his business, so as to be easily read by persons entering therein —
 - (a) a notice of his name, and of the fact that he is a licensed real estate settlement agent or business settlement agent, or both, together with the name, style, title, or designation under which he carries on business as a settlement agent, if that business is not carried on in his own name; and
 - (b) in the case of a branch office, a notice of the name of the manager and the address of the registered office of the licensee.

- (2) On all correspondence, and on the outside of all documents prepared, in the course of business of a licensee at his registered office and every branch office —
 - (a) the licensee shall be identified as a real estate settlement agent or a business settlement agent, or both, and the registered office of his business shall be shown; and
 - (b) in the case of a branch office, the manager shall also be identified as a settlement agent and the address of the branch office shall also be shown.

Part IV — Controls

Division 1 — General

43. Entitlement to remuneration

- (1) A settlement agent is not entitled to receive any reward in respect of his services in that capacity unless he has a valid appointment to act in that capacity which is in writing signed, before the services are rendered, by the party to the transaction for whom the services are to be rendered or by some other person lawfully authorised to sign on behalf of the person for whom the services are to be rendered, who is not a real estate agent or other commission agent or a servant or agent thereof, acting for a party in the transaction and —
 - (a) where the service is rendered in relation to a real estate transaction, he is licensed as a real estate settlement agent and he holds a current triennial certificate in respect of his licence when he renders the services;
 - (b) where the service is rendered in relation to a business transaction, he is licensed as a business settlement agent and he holds a current triennial certificate in respect of his licence when he renders the services.
- (2) An appointment to act as a settlement agent is not valid unless —
 - (a) it is contained in a document which —
 - (i) clearly identifies the real estate transaction or the business transaction, as the case may be; and
 - (ii) contains such other information, if any, as is prescribed;
 - (b) if it is contained in an offer to purchase or in a contract for sale, it is separately and distinctly signed; and
 - (c) the person obtaining the signature to the document gives a true copy thereof to the signatory immediately after the

signing thereof (the onus of proof of which is upon the person obtaining the signature).

- (3) A settlement agent shall supply to a person for whom he is acting or who may wish to engage him to act, upon request by that person, a true copy of the scale of remuneration fixed under section 44 and a bona fide estimate of the cost of the services of the settlement agent in respect of the particular settlement to which the request relates.
- (4) A person may recover remuneration for services rendered as a settlement agent notwithstanding his failure to comply with subsection (1)(a) or (b) if subject to the provisions of Division 2 of Part IV, the person suing is the personal representative of a deceased or mentally incapable settlement agent or the trustee in bankruptcy or liquidator of a settlement agent.
- (5) A person may recover remuneration for services rendered as a settlement agent notwithstanding that he has no valid appointment as required by subsection (1) if —
 - (a) the party to the transaction for whom the services were rendered has certified that he is aware of the provisions of subsections (1), (2) and (3) and has ratified in writing the appointment of the settlement agent; or
 - (b) a court before which the claim for remuneration is heard is satisfied that in all the circumstances it would be unjust to deprive the settlement agent of all or a part of the remuneration.
- (6) Where an appointment of a settlement agent is terminated prior to settlement the settlement agent shall be entitled to recover such proportion of the prescribed remuneration as is reasonable in the circumstances.
- (7) A settlement agent is not entitled to claim a possessory or other lien over documents for his fees or otherwise.

- (8) A person shall not, whether directly or indirectly, demand, receive, or hold, any reward in contravention of this section.
Penalty: \$5 000 and in the case of conviction for a second or other subsequent offence the Board may call upon the settlement agent to show cause why his licence should not be cancelled or suspended.
- (9) Any reward received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

[Section 43 amended by No. 59 of 1995 s. 64 and 85.]

44. Remuneration of settlement agents

- (1) The Board may, with the approval of the Minister, by notice published in the *Government Gazette* fix the maximum amount of remuneration that a licensee is to receive for a service rendered by the licensee in performing the functions referred to in sections 46 and 47.
- (2) The Board may, with the approval of the Minister, by further notice published in the *Government Gazette*, amend or revoke a notice under subsection (1).
- (3) An amount fixed under subsection (1) takes effect on the date on which the notice fixing the amount is published in the *Government Gazette* or on such subsequent date as is specified in the notice.
- (3a) If an amount is fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to receive for that service, in the licensee's capacity as a settlement agent, any reward which exceeds that amount in value.
- (4) A licensee shall not, whether directly or indirectly demand, receive, or hold any reward in contravention of this section.
- (5) A person dissatisfied with the amount of any demand for remuneration rendered to him by a settlement agent may refer the matter to the Board which, with the consent in writing of both the settlement agent and the dissatisfied person, may

appoint a suitable person to determine the matter finally in summary manner; but nothing herein affects the right of a person to allege in other proceedings that work has not been properly performed or remuneration has not been duly and lawfully earned.

- (6) Any reward received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.
- (7) A person shall not, whether directly or indirectly, demand, receive or hold any reward for referring to a licensee any business involving the performance of the functions of a settlement agent.
- (8) A licensee shall not, whether directly or indirectly, pay or give any reward to any person referring to the licensee any business involving the performance of the functions of a settlement agent.
- (9) Upon conviction for an offence against this section a settlement agent and any other person directly concerned in the commission of the offence or who is liable to conviction pursuant to Chapter II of *The Criminal Code* is liable to —
 - (a) in the case of an offence against subsection (4), a penalty not exceeding \$5 000; and
 - (b) in any other case, a penalty not exceeding \$20 000.
- (10) Upon the conviction of a settlement agent for a second or subsequent offence under this section the Board may also call upon him to show cause why his licence should not be cancelled or suspended.

[Section 44 amended by No. 59 of 1995 s. 65.]

45. Conduct of business

A licensee shall —

- (a) keep records separate from the records of any other business; and

(b) carry on business in proper and adequate premises.

Penalty: \$5 000.

[Section 45 amended by No. 59 of 1995 s. 85.]

46. Functions of a real estate settlement agent

- (1) Subject to subsection (2), a licensee who holds a real estate settlement agent's licence and a current triennial certificate may arrange or effect a settlement of any real estate transaction that is in respect of land under the *Transfer of Land Act 1893* or the *Land Administration Act 1997*.
- (2) Notwithstanding any other provision of this section a licensee shall not arrange or effect a settlement of any real estate transaction if the land the subject of that real estate transaction —
 - (a) is not a lot or lots within the meaning of the *Planning and Development Act 2005*;
 - (b) is leasehold (other than land under the *Land Administration Act 1997*);
 - (c) is comprised in whole or in part of a business other than a business which is wholly that of farming (whether or not the land is conveyed separately); or
 - (d) comprises any mining tenement or mining licence.
- (3) A licensee who holds a current triennial certificate may act for either the vendor, the purchaser, or the mortgagee, in a settlement referred to in subsection (1) but may not act for more than one party to the real estate transaction in that settlement unless each of the parties for whom he is to act, in writing —
 - (a) acknowledges that he is aware that the licensee proposes to so act; and
 - (b) gives his prior consent to the licensee so acting.
- (4) In arranging or effecting a settlement referred to in subsection (1) a licensee may perform the functions set forth in clause 1(1) of Schedule 2 but in performing any or all of those

functions a licensee shall not give or attempt to give advice on a matter of law.

- (5) Notwithstanding the *Legal Practice Act 2003*, a licensee may draw or prepare the documents set forth in clause 1(2) of Schedule 2.
- (6)(a) A licensee may receive a mortgage or discharge of mortgage prepared by or on behalf of another person and arrange for its execution and stamping, and arrange and attend on settlement on behalf of that person and receive and disburse moneys in respect thereof.
- (b) In paragraph (a) “**discharge of mortgage**” includes a withdrawal of a caveat which notifies or protects an unregistered, equitable, or statutory mortgage or charge.

[Section 46 amended by No. 31 of 1997 s. 141; No. 65 of 2003 s. 66(3); No. 38 of 2005 s. 15.]

47. Functions of a business settlement agent

- (1) Subject to subsection (2), a licensee who holds a business settlement agent’s licence and a current triennial certificate may arrange or effect a settlement of a business transaction.
- (2) Notwithstanding any other provision of this section a licensee shall not arrange or effect a settlement of any business transaction if the business the subject of that business transaction —
 - (a) is comprised in whole or in part of real estate not being an interest in leasehold (except an interest in leasehold held from the Crown) whether or not the business is conveyed separately; or
 - (b) comprises any mining tenement or mining licence.
- (3) A licensee who holds a current triennial certificate may act for either the vendor or the purchaser in a settlement referred to in subsection (1) but may not act for more than one party to the

business transaction in that settlement unless each of the parties for whom he is to act, in writing —

- (a) acknowledges that he is aware that the licensee proposes to so act; and
 - (b) gives his prior consent to the licensee so acting.
- (4) In arranging or effecting a settlement referred to in subsection (1) the licensee may perform the functions set forth in clause 2 of Schedule 2 but in performing any or all of those functions a licensee shall not give, or attempt to give, advice on a matter of law.

Division 2 — Trust accounts

48. Interpretation

In this Division, unless the context otherwise requires —

“authorised financial institution” means a bank or other body that is prescribed or belongs to a class of bodies that is prescribed;

“bank account” means an account kept with a bank or other similar body;

“banker” means the manager, or other officer for the time being in charge of the office of a bank or other body in which any account of a settlement agent is kept;

“business day” means a day other than Saturday, Sunday or a public holiday;

“separate account” means a trust account referred to in section 49A(1);

“trust accounts” means accounts relating to moneys received or held by a settlement agent for or on behalf of any other person in respect of settlements to be arranged or effected, or arranged or effected, by the settlement agent;

“year” means a period of 12 months ending on 30 June, subject however to the provisions of section 52.

[Section 48 amended by No. 59 of 1995 s. 66; No. 26 of 1999 s. 102(5).]

49. Trust accounts

- (1) Every licensee who holds a current triennial certificate shall maintain one or more trust accounts, designated or evidenced as such in the prescribed manner and maintained exclusively for the purposes of this Act, with an authorised financial institution and shall, as soon as practicable, pay to the credit of that account or those accounts all moneys received by him for or on behalf of any other person in respect of settlements to be arranged or effected, or arranged or effected, by the settlement agent.
- (2) Moneys so paid into any such trust account shall not be available for the payment of the debt of any other creditor of the settlement agent, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditors.
- (3) A settlement agent may pay out of a trust account such of the proper charges relating to settlements as are payable by the persons on whose behalf the moneys are received but may do so only when those charges lawfully fall due.
- (4) Settlement moneys received by a settlement agent in the course of arranging or effecting a settlement shall not be withdrawn from a trust account except for the purpose of completing the settlement, or in accordance with the contract entered into between the parties to the transaction, or as otherwise authorised by this Act, or by the prior written consent of all parties to the transaction involved.
- (5) A settlement agent shall pay moneys withdrawn from a trust account to the person or persons lawfully entitled or authorised to receive them.
- (6) A settlement agent shall —

- (a) keep full and accurate accounts of all money received or held by him on account of any other person and of all payments made by him of that money;
- (b) before the end of the next business day after the day on which the money is received or paid, enter in the accounts particulars of the amount so received or paid and the person from whom it was so received or to whom it was so paid;
- (c) keep the accounts in such manner that they can be conveniently and properly audited; and
- (d) correctly balance the accounts at the end of each month and certify in records that this has been done.

[Section 49 amended by No. 59 of 1995 s. 67.]

49A. Person may request separate trust account

- (1) A person may request that moneys paid by that person to a settlement agent in respect of a transaction be deposited to the credit of a separate interest bearing trust account maintained in accordance with section 49.
- (2) A request shall be in writing.
- (3) A settlement agent shall, subject to subsection (4), comply with a request.
- (4) Where requirements are prescribed under subsection (6), a settlement agent shall only comply with a request if satisfied that those requirements have been met.
- (5) A settlement agent shall ensure that all interest credited to a separate account is paid to the person who requested the deposit of moneys in that account.
- (6) Regulations made under section 123 may prescribe requirements to be met before a request can be complied with and, without limiting this subsection, those requirements may relate to —

- (a) the amount of moneys paid to the settlement agent;
- (b) the type of transaction in respect of which the moneys are paid; or
- (c) the length of time for which the moneys are to be deposited.

(7) In this section —

“request” means a request under subsection (1).

[Section 49A inserted by No. 59 of 1995 s. 68.]

49B. Payment of interest on trust accounts

- (1) Every authorised financial institution with which a trust account is maintained shall pay to the credit of the Account interest on the balance of the trust account at the prescribed rate at such times as are prescribed.
- (2) Subsection (1) does not apply to a separate account.
- (3) Where a court convicts an authorised financial institution of an offence under subsection (1) and interest required to be paid under that subsection remains outstanding, the court may, in addition to imposing a penalty, order the institution to pay to the credit of the Account an amount equal to the amount of that interest, and any such order may be enforced as if it were a judgment of the court.
- (4) In regulations made under section 123 the prescribed rate referred to in subsection (1) may be prescribed by reference to a market rate indicator specified in the regulations.

[Section 49B inserted by No. 59 of 1995 s. 68.]

49C. Board to be given certain information in relation to trust accounts

- (1) When a settlement agent opens or closes a trust account, the settlement agent shall, as soon as is practicable, inform the

Board in writing of the opening or closure of the trust account and, in doing so, shall specify —

- (a) the name and number of the trust account; and
- (b) the name and address of the authorised financial institution with which the trust account is or was maintained.

(2) Subsection (1) does not apply to a separate account.

(3) If a settlement agent's trust account is overdrawn, both the settlement agent and the authorised financial institution with which the trust account is maintained shall, as soon as is practicable, inform the Board in writing of —

- (a) the name and number of the trust account; and
- (b) the amount by which the trust account is overdrawn.

[Section 49C inserted by No. 59 of 1995 s. 68.]

50. Receipts and accounting to principal

(1) When a settlement agent receives money for or on behalf of any other person, the agent shall —

- (a) unless the money is received by electronic transfer, immediately give to the person paying the money a receipt containing such information as is prescribed; and
- (b) keep a record of the money received.

(2) A record under subsection (1)(b) shall be kept in the prescribed manner and contain such information as is prescribed.

(3) The settlement agent shall produce records kept under subsection (1)(b) to the auditor at every audit, and at such other times as the auditor may reasonably require.

[(4) repealed]

(5) Subsection (3) does not apply in the case of a settlement agent if the settlement agent's auditor certifies to the Board that he is satisfied with the system employed by the settlement agent and

that the records of moneys received are so kept and entered up as to enable the accounts to be properly and conveniently audited, and the Board approves of the system employed by the settlement agent of recording the receipt of moneys.

- (6) On receipt of any moneys by a settlement agent in respect of a settlement, he shall render to the person on whose behalf the money is received an account in writing of all such moneys and of the application thereof.

[Section 50 amended by No. 59 of 1995 s. 69.]

51. Duty of settlement agent to have trust accounts audited

- (1) Every person who carries on business as a settlement agent during the whole or any part of a year shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an auditor duly qualified or approved under this Division.
- (2) The auditor shall conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate and in accordance with such other requirements as are determined by the Board.
- (3) The auditor shall within 3 months after the end of each year —
- (a) deliver to the Board a report of the result of the audit, verified by statutory declaration of the auditor, in an approved form; and
 - (b) deliver a copy of the report so verified to the settlement agent.
- (4) The settlement agent shall retain the copy of the report and produce it on demand pursuant to section 61(3).
- (5) The Registrar may, in circumstances he considers appropriate, extend the time limit for lodging reports but when he does so he shall advise the Board accordingly, and the Board may confirm or cancel the extension.

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- (6) The auditor shall deliver an interim report to the Board if at any time he discovers any irregularity in the trust accounts of the settlement agent or discovers any other matter in respect of those accounts which the auditor considers should be reported to the Board and he shall verify the interim report by statutory declaration and deliver a copy of the report so verified to the settlement agent.
- (7) The Board may require the auditor to furnish further information or carry out a further audit at any time, and the auditor shall comply with that requirement, and the cost of so doing shall be paid by the settlement agent if the Board so directs but otherwise shall be paid by the Board.
- (8) Apart from the annual audit and any interim audit provided for in this section, there shall be —
- (a) a quarterly audit in respect of the trust accounts of a settlement agent for the first 3 months during which he carries on business as such after the appointed day, and such quarterly audit shall be conducted in accordance with such provisions of this Division in respect of the annual audit as are capable of being applied to the quarterly audit, and the auditor shall within 2 months after the end of the first 3 months deliver to the Board a report of the result of such quarterly audit; and
 - (b) where for any reason the triennial certificate of an agent ceases to have effect under this Act, within the period of 3 months thereafter, a termination audit of the settlement agent's trust account, and the termination audit shall be arranged and conducted in accordance with such provisions of this Division in respect of the annual audit as are capable of being applied to the termination audit, and the auditor shall within 2 months after the end of that 3 month period deliver to the Board a report of such termination audit.

- (9) The Board may, if it thinks fit, waive in respect of a settlement agent's trust accounts the requirement of a quarterly audit mentioned in subsection (8).

52. Variation of date of audit

- (1) Notwithstanding anything else in this Division a settlement agent may apply in writing to the Board to fix some date other than 30 June, as the date up to which his trust accounts are to be audited, and the Board may, in its discretion, permit the settlement agent to substitute such other date for 30 June.
- (2) The Board may, upon giving not less than one year's notice to the settlement agent affected, revoke any permission granted under this section.
- (3) When permission is granted under this section the Board shall fix the period in respect of which the first audit shall be made, and the permission may be given upon such conditions, with respect to the time within which the first or any subsequent audit shall be made or otherwise, as the Board may think fit.
- (4) So long as the permission remains in force, and subject to any conditions which may be imposed, section 51 shall, in relation to the settlement agent concerned, be read as if such other date was substituted for 30 June.
- (5) When any date has been substituted for 30 June under this section, the date so substituted shall not be further changed except by permission of the Board granted in accordance with this section.

53. Qualification and approval of auditors

- (1) Subject to subsection (2), no person is qualified to act as an auditor under this Division unless he is a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth.

- (2) In districts in respect of which the Board is satisfied that no person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth is available, such other persons with such other qualifications as are approved by the Board may act as auditors under this Division.
- (3) An auditor shall disclose to the Board any de facto relationship or any close relationship by blood or marriage he has with a settlement agent whose trust accounts he has been appointed to audit or any business dealings he has with or through such settlement agent at any time during his appointment as auditor, and the Board may, if it thinks fit, disqualify that auditor from acting in that particular case.

[Section 53 amended by No. 10 of 1982 s. 28; No. 59 of 1995 s. 70; No. 10 of 2001 s. 220; No. 28 of 2003 s. 181.]

54. Appointment of auditor

- (1) Subject to the provisions of this Division the auditor by whom the audit of, and reports on, a settlement agent's trust accounts are to be made shall be appointed and employed for that purpose by that settlement agent.
- (2) A settlement agent shall appoint his auditor at the time of applying for his licence.
- (3) Subject to this Act, an auditor's appointment under this section is continuous unless the Board approves a subsequent change in the appointment.

55. Power to give directions for audit of business carried on at more than one place

In the event of a settlement agent carrying on business at more than one place the Board may from time to time give such directions as it thinks fit for separate audits of the trust accounts in respect of the business carried on at each place, or for the acceptance by the auditor of the certificates of some person or

persons approved by the Board with respect to the examination of the trust accounts kept at any branch office of the business.

56. Alteration of rights under this Division

The Board may, if in its opinion just cause exists for doing so —

- (a) cancel or suspend the right of any person to act as auditor under this Division; or
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by it under this Division.

[57. *Repealed by No. 55 of 2004 s. 1088.*]

58. Duties of settlement agents with respect to audit

- (1) For the purposes of an audit or report under this Division every settlement agent shall, as and when the auditor requires, produce to the auditor his books and all papers, accounts, documents, and securities in his possession, custody, or power in any way relating to any moneys received by the settlement agent for or on behalf of any other person and shall furnish the auditor with all such information and particulars as he reasonably requires.
- (2) The auditor may examine such books, papers, accounts, documents, and securities at any time, either during, or after the end of, the period in respect of which the audit is made.

59. Duty of banker with respect to audit

Every banker of a settlement agent shall, on request of any auditor engaged in the audit of that settlement agent's trust accounts under this Division, produce to that auditor for inspection all such books, papers, accounts, documents and securities as may be considered by the auditor to be reasonably necessary for the purposes of the audit.

60. Contents of auditor's report

Every auditor of a settlement agent's trust accounts shall include in his report furnished pursuant to section 51 a statement as to the following matters —

- (a) whether the trust accounts of such settlement agent have in the opinion of the auditor been kept regularly and properly written up;
- (b) whether the trust accounts of such settlement agent have been ready for examination at the periods appointed by the auditor;
- (c) whether such settlement agent has complied with the auditor's requirements;
- (d) whether in the opinion of the auditor such settlement agent's trust accounts are, and have been during the period of the audit, in order or otherwise; and
- [(e) deleted]*
- (f) any matter or thing in relation to such trust accounts which should in the opinion of the auditor be communicated to the Board.

[Section 60 amended by No. 64 of 1982 s. 4; No. 59 of 1995 s. 71.]

61. Statement of moneys etc., held by settlement agent for or on behalf of other persons

- (1) Every settlement agent who holds a current triennial certificate shall prepare and certify under his hand and produce to the auditor who audits his trust accounts a statement setting forth in detail particulars of —
 - (a) moneys held, on the last day of the period to which the audit relates, by the settlement agent for or on behalf of any other person; and
 - (b) negotiable or bearer securities or deposit receipts in the name of the settlement agent which represent moneys

drawn from the settlement agent's trust accounts and which are held by the settlement agent on that day.

- (2) The auditor shall examine the statement and endorse on it a certificate as to whether or not it is correct, and deliver it to the settlement agent.
- (3) The statement so delivered shall be retained by the settlement agent and be produced on demand to the auditor making the next succeeding audit of the settlement agent's trust accounts together with a copy of the report of the last preceding audit of those accounts verified by statutory declaration of the then auditor.
- (4) Where a settlement agent's accounts are being audited for the first time or, where for any other reason, no statement containing the particulars set out in subsection (1) and relating to the previous period of audit is available for the purpose of audit the settlement agent shall in lieu thereof make out and produce to the auditor before the making of his report, a statement containing the like particulars as to moneys and negotiable securities held on the first day of the period to which the audit relates.
- (5) Every statement made under this section shall be verified by the statutory declaration of the settlement agent, or, in the case of a firm, by the statutory declaration of one of the partners, or, in the case of a body corporate, by the person in bona fide control of the settlement agent's business.

62. Auditor's report where settlement agent has not complied with Act, etc.

If an auditor in the course of auditing a settlement agent's trust accounts discovers that the accounts are not kept in such a manner as to enable them to be properly audited, or discovers any matter which appears to him to involve dishonesty or a breach of the law on the part of the settlement agent, or discovers loss or deficiency of trust moneys, or failure to pay or

account for any such moneys, or to comply with the provisions of this Act, he shall fully set out the facts so discovered by him in the report to be delivered to the Board.

63. Non-disclosure by auditors

- (1) Except where this Division provides otherwise an auditor shall not divulge to any person, or in any proceeding, any information which he has obtained in the course of conducting any audit under this Division.
- (2) An auditor is not guilty of a breach of subsection (1) by disclosing information —
 - (a) by means of or in a report made pursuant to this Division; or
 - (b) in or for the purpose of any legal proceedings arising out of any such report or instituted in connection with the trust accounts of the settlement agent to whom the information relates.

64. Right of persons beneficially interested to obtain information

- (1) On request by any person interested in any moneys or securities held or which ought to be held or which have been received by a settlement agent, the Board may disclose to such person or his solicitor such portion of any report of an auditor, or of any statutory declaration, statement, or other document delivered to the Board under this Division as affects or may affect such person.
- (2) A report of an auditor under this Division or a statutory declaration, statement, or other document delivered to the Board under this Division shall be available in the hands of the Board for inspection by any other auditor appointed to audit the accounts of the same settlement agent for the next succeeding year.

65. Penalty for breach

- (1) A person who contravenes or does not observe any of the foregoing provisions of this Division commits an offence.

Penalty:

- (a) in the case of an offence against section 49B(1), \$10 000;
- (b) in any other case, \$3 000.
- (2) If an offence against those provisions is committed by a body corporate the body corporate itself and every director, manager, secretary or other officer of the body corporate who commits, authorises or permits the act or omission constituting the offence, commits the offence.

[Section 65 amended by No. 59 of 1995 s. 72.]

66. Remuneration of auditor

Subject to the other provisions of this Division, the reasonable fees and expenses of an auditor for an audit under this Division shall be payable by the settlement agent.

67. Settlement agents having no accounts to audit

A settlement agent who holds a current triennial certificate but who, in the course of his business has in any year neither received nor held any money for or on behalf of any other person shall be deemed to have complied with this Division if within the period of 3 months after the end of that year he makes a statutory declaration to that effect and delivers it to the Board.

68. Accounts of firm or body corporate or settlement agent with branch office

- (1) Where trust accounts are kept by a firm of settlement agents an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to each

settlement agent who is a member of such firm and in relation to the settlement agent who is in bona fide control of the settlement agent's business of the firm.

- (2) Where trust accounts are kept by a body corporate an audit of those accounts under this Division and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to a settlement agent who is a director of that body corporate and in relation to the settlement agent who is in bona fide control of the settlement agent's business of the body corporate.
- (3) Where trust accounts are kept by a settlement agent who or which has a branch office an audit of those accounts, including the accounts of the branch office, under this Division and the certificates and reports of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to a settlement agent who is the manager of the branch office.

69. Power of Board to order audit of trust accounts

Without prejudice to the operation of the foregoing provisions of this Division, where the Board is of opinion that it is in the public interest to do so, it may, at any time, cause the trust accounts of a settlement agent to be audited by an auditor nominated in writing by the Board for that purpose.

70. Settlement agent to produce books, etc. to auditor

Every settlement agent shall, at all reasonable times at each place of business at which he carries on business as a settlement agent, keep open for inspection —

- (a) by the auditor nominated by the Board; or
- (b) by any other person authorised in writing in that behalf by that auditor,

all of his trust accounts that relate to the business carried on by him at that place of business and all other books, accounts and records relating to that business that are required by the auditor

for the purpose of carrying out an effective audit of the trust accounts of the licensee.

71. Cost of audit

- (1) The cost of an audit carried out pursuant to section 69 shall be as agreed between the Board and the auditor and paid as the Board in writing directs, either by the Board or by the settlement agent whose trust accounts have been the subject of the audit.
- (2) All moneys paid by the Board under subsection (1) shall be repaid to the Board from moneys standing to the credit of the Fidelity Guarantee Fund.

[Section 71 amended by No. 59 of 1995 s. 86.]

72. Application of section 63

The provisions of section 63 apply to an auditor nominated by the Board under section 69 or any person authorised by him under section 70 with such modifications as circumstances require.

73. Power of restraining dealing with trust accounts or other accounts

- (1) Where the Board, on an application made by it to the State Administrative Tribunal, shows by evidence on affidavit to the satisfaction of the State Administrative Tribunal that —
 - (a) there are reasonable grounds for believing that there is a deficiency in the trust account of any settlement agent;
or
 - (b) there has been undue or unreasonable refusal, neglect, or delay on the part of any settlement agent in paying moneys,
 - (i) which are, or may be, or have been payable out of the trust account of the settlement agent; or
 - (ii) which were required to be paid into the trust account by the settlement agent under the

provisions of this Division, to a person who is entitled thereto or is authorised to receive the moneys,

the State Administrative Tribunal may, if it thinks fit, make an order that the manager or other officer for the time being in charge of the bank or other body in which the trust account or any other account in the name of the settlement agent is kept be restrained, until the order is made absolute or discharged, from paying out, transferring or otherwise dealing with any moneys standing to the credit of the trust account or any other account kept at the bank or other body in the name of the settlement agent.

- (2) An order made under the provisions of this section may contain such terms and conditions as the State Administrative Tribunal in the circumstances thinks fit and the order may relate to all or any one or more of the trust or other accounts, as the State Administrative Tribunal determines.
- (3) The order shall be made in the first instance *ex parte*, without any notice to the settlement agent, and is an order to show cause only.
- (4) Unless the settlement agent referred to in the order shows to the State Administrative Tribunal within the time specified in the order sufficient cause to the contrary, the order, after proof of service as required by section 80, shall be made absolute.
- (5) In this section and in such provisions of other following sections of this Division as relate to this section or an order made under it —
 - (a) **“trust account”** includes a bank account, whether a general or a separate account into which account, moneys received or held by a settlement agent for or on behalf of any other person are or were required to be paid under this Division; and
 - (b) **“settlement agent”** includes a person who has carried on business as a settlement agent at any time within a

period of 12 months prior to the date of the making of
the application under subsection (1).

*[Section 73 amended by No. 59 of 1995 s. 84; No. 26 of 1999
s. 102(6); No. 55 of 2004 s. 1094.]*

74. Appointment of supervisor

- (1) Where the State Administrative Tribunal, on the application of the Board, notice whereof shall be given to the settlement agent, is satisfied that there are reasonable grounds for believing that a settlement agent is, for any reason incapable of properly conducting his business or is not conducting it in accordance with this Act, the State Administrative Tribunal may —
 - (a) suspend the settlement agent from carrying on his business for such period as may be specified in the order;
 - (b) restrain the settlement agent and his bankers and their respective servants and agents from dealing in all or any of the bank accounts of the settlement agent, subject to such terms and conditions as the State Administrative Tribunal thinks fit;
 - (c) authorise the Board to appoint a supervisor of the business of the settlement agent;
 - (d) authorise the Board to suspend the settlement agent from carrying on his business until further notice; and
 - (e) make such other and further orders as the State Administrative Tribunal thinks fit.

- (2) Where the State Administrative Tribunal is satisfied, on the application of the Board, that a sole settlement agent has died, the State Administrative Tribunal may —
 - (a) restrain the personal representative, and the former servants, agents, and bankers, of the deceased settlement agent, and the servants and agents of those former bankers from dealing in all or any of the bank accounts of the deceased settlement agent, subject to such terms

- and conditions as the State Administrative Tribunal thinks fit; and
- (b) authorise the Board to appoint a supervisor of the business of the settlement agent.
- (3) Where the State Administrative Tribunal authorises the Board to appoint a supervisor pursuant to the power conferred by subsection (1) or (2) the State Administrative Tribunal —
- (a) may order that the supervisor be empowered to withdraw moneys from any bank account of the settlement agent or deceased settlement agent; and
- (b) may order that the Board —
- (i) take possession of the moneys constituting the trust account of the settlement agent or deceased settlement agent or, where the case requires, the balance of such moneys;
- (ii) credit such moneys, or such balance, to a separate account at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*, in the name of the Board; and
- (iii) deal with those moneys according to law.
- (4) If an order is made under subsection (3)(b) —
- (a) the Board may, on the certificate of the supervisor, pay to him or as he directs in the certificate, out of the moneys credited to the separate account under the order, such amount or amounts as is or are specified in the certificate, without enquiring as to, or being liable in respect of, the correctness of the certificate or the application of any money paid on the certificate; and
- (b) the State Administrative Tribunal may, on the application of the Board, or any person interested, give such directions as the State Administrative Tribunal thinks fit for the payment by the Board of any part of the moneys credited to the separate account under the order.

[Section 74 amended by No. 59 of 1995 s. 86; No. 55 of 2004 s. 1094.]

75. Effect of orders under section 74

- (1) Where an order made under section 74 authorises the Board to appoint a supervisor, the Board during the currency of the order —
 - (a) may, on such terms and conditions as to remuneration and indemnity as the Board thinks fit appoint a person, licensed or unlicensed, as supervisor of the business of the settlement agent or deceased settlement agent referred to in the order;
 - (b) may authorise the supervisor to obtain an advance from the Treasurer on such terms and conditions as the Treasurer thinks fit, for the purpose of carrying on the business of the settlement agent or deceased settlement agent; and
 - (c) may determine what, if any, proportion of remuneration or other proper charges recovered on account of the settlement agent or deceased settlement agent, shall be paid to the settlement agent or the personal representative of the deceased settlement agent and what proportion shall be paid to the Board towards the expenses and remuneration of the supervisor and for reimbursement of advances made under paragraph (b).
- (2) An appointment of a supervisor shall be in writing and be signed by the Chairman or by 2 members of the Board.

[Section 75 amended by No. 98 of 1985 s. 3.]

76. Duties of supervisor

- (1) The supervisor shall carry on the business for the purpose of concluding or disposing of matters commenced but not concluded on behalf of clients of the business and, where necessary, for the purpose of disposing of, or dealing with,

documents relevant to those matters, and in the case of the business of a deceased settlement agent, shall carry on the business until it can otherwise be dealt with according to law.

- (2) The supervisor may, on production of his instrument of appointment —
- (a) require —
 - (i) the settlement agent to whom the appointment relates, or any of his clerks, servants, or agents, or in the case of a deceased settlement agent, his personal representative or any of the former clerks, servants, or agents of the deceased settlement agent to produce to the supervisor any books, files, papers, or documents relating to the practice that, in the opinion of the supervisor, may be reasonably necessary for the purposes of carrying on the business; and
 - (ii) the manager or principal officer of a bank or other body in which the settlement agent or deceased settlement agent to whom the appointment relates has or had deposited money, notwithstanding any law, or rule of law, or contractual obligation, to the contrary, to disclose every account of that settlement agent or deceased settlement agent that, in the opinion of the supervisor, may be relevant to the carrying on of the business and to permit the making of a copy or extracts of any such account;
- and
- (b) enter upon any premises of the settlement agent to whom the appointment relates, or, in the case of a deceased settlement agent, his former premises, and take possession of all books, files, papers, documents, and other things relating to the business, and that, in the opinion of the supervisor, may be relevant to or necessary for the carrying on of the business.

[Section 76 amended by No. 59 of 1995 s. 84; No. 26 of 1999 s. 102(7).]

77. Offence

A person who, being required to do anything by a supervisor pursuant to the powers conferred on the supervisor by this Act, without lawful excuse of which the proof lies on him, refuses or fails to do the thing required or who hinders or obstructs the supervisor in the exercise of his powers or hinders or obstructs the supervisor, or any person employed by him, in the performance of his duties commits an offence.

Penalty: \$4 000.

[Section 77 amended by No. 59 of 1995 s. 85.]

78. Power of settlement agent to apply for discharge or variation of order

A settlement agent or the personal representative of a deceased settlement agent, whose account is the subject of an order made under the provisions of section 73 or 74 may apply to the State Administrative Tribunal to discharge or vary the order and to award such costs upon the application as it thinks fit and the State Administrative Tribunal is hereby empowered to discharge or vary the order and to make such further order as it thinks fit.

[Section 78 amended by No. 55 of 2004 s. 1094.]

79. Power of State Administrative Tribunal to make further orders and give directions

- (1) The State Administrative Tribunal may, on the application, of the Board, the Treasurer, or the settlement agent, or the personal representative of a deceased settlement agent, referred to in an order made under the provisions of section 73, 74 or 78, make further orders —
 - (a) discharging or varying any order so made; and

- (b) directing that any moneys in any account affected by an order so made shall be paid to the Treasurer by the bank or other body on such terms and conditions as the State Administrative Tribunal thinks fit.
- (2) The Treasurer, on receiving moneys paid pursuant to an order made under subsection (1)(b) —
- (a) shall cause the moneys to be credited to a separate account to be kept at the Treasury as part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*;
- (b) may prepare a scheme for distributing the moneys as compensation to each person who claims compensation at any time within 6 months after the Treasurer receives the money, and proves to the satisfaction of the Treasurer that the person has, in respect of any transaction or prospective transaction, sustained loss through any act or omission of the settlement agent, or deceased settlement agent or his personal representative, in respect of whose accounts the order was made; and
- (c) may, if the moneys are not sufficient to pay all proved claims, apportion the moneys among claimants in proportion to their proved claims and show in the scheme for distribution how the moneys are so apportioned.
- (3) Where the Treasurer prepares a scheme for distribution he shall apply to the State Administrative Tribunal for approval of the scheme and for directions in respect thereof.
- (4) The State Administrative Tribunal may give such directions in respect of the separate account at the Treasury, the moneys standing to the credit of the account, the persons to whom and in what amounts the whole or any portion of the moneys standing to the credit of the account shall be paid by the Treasurer, and as to the payment of the balance of the moneys then standing to the credit of the account, if any, as it thinks fit.

[Section 79 amended by No. 59 of 1995 s. 84 and 86; No. 26 of 1999 s. 102(8); No. 55 of 2004 s. 1094.]

80. Service of orders. Penalty for non-compliance therewith

- (1) The Board shall, as soon as practicable after any order is, on the application of the Board, made under the provisions of section 73, 74 or 79 serve or cause to be served a copy of the order —
 - (a) on the manager or other officer for the time being in charge of the office of the bank or other body in which any account referred to in the order is kept;
 - (b) on the settlement agent or the personal representative of a deceased settlement agent in whose name the account is kept; and
 - (c) where it is an order under section 79(1)(b), on the Treasurer.

- (2) A settlement agent, or the personal representative of a deceased settlement agent, shall, as soon as practicable after any order is, on his application, made under the provisions of section 78 or 79, serve or cause to be served a copy of the order —
 - (a) on the manager or other officer for the time being in charge of the office of the bank or other body in which any account referred to in the order is kept;
 - (b) on the Board; and
 - (c) where it is an order under section 79(1)(b), on the Treasurer.

- (3) The Treasurer shall, as soon as practicable after any order is, on his application, made under the provisions of section 79, serve or cause to be served a copy of the order —
 - (a) on the manager or other officer for the time being in charge of the office of the bank or other body in which any account referred to in the order is kept;

- (b) on the settlement agent, or the personal representative of a deceased settlement agent, in whose name the account is kept; and
 - (c) on the Board.
- (4) Every person on whom an order is served shall comply with the order and shall permit others affected thereby to do so.
- (5) A person, in addition to any other penalty or liability he may incur in failing to comply with the order or failing to permit others affected thereby to do so, who omits to do that which he is required under the order to do, or does that which he is prohibited under the order from doing, commits an offence against this Act.
- Penalty: \$4 000.
- (6) This section is sufficient authority and indemnity for complying with an order so made and served.

[Section 80 amended by No. 59 of 1995 s. 84 and 85; No. 26 of 1999 s. 102(9)-(11).]

81. Duty of managers of financial institutions

Where the Registrar, an inspector, a supervisor or a member of the Police Force duly authorised to make an investigation or inquiry for the purposes of this Act has reasonable cause to believe that a settlement agent has deposited any money with a bank or other financial institution, whether in an account in the name of the settlement agent or in some other account, he may by notice in writing addressed to the manager or other officer for the time being in charge of the bank or other institution concerned and nominating the accounts to be examined, require that those accounts be disclosed to him, and the manager or other officer for the time being in charge of the bank or other institution named in the requisition shall without requiring any warrant other than the production of the credentials under this Act of the Registrar, inspector, supervisor, or member of the Police Force, whether or not the person in whose name the

account is held consents, and notwithstanding any law, or rule of law, or contractual obligation to the contrary, permit the Registrar, inspector, supervisor, or member of the Police Force to inspect, and make and take away with him a copy or extract of, the nominated accounts and any book, document, or other record that relates thereto and is in the possession or control of that bank or other institution.

[Section 81 amended by No. 26 of 1999 s. 102(12); No. 74 of 2003 s. 109.]

81A. Power of Registrar to obtain information relating to trust accounts

- (1) The Registrar may require —
- (a) a settlement agent to give the Registrar such information as the Registrar requires in relation to trust accounts maintained or formerly maintained by that agent; or
 - (b) the manager or other officer for the time being in charge of an authorised financial institution to give the Registrar such information as the Registrar requires in relation to trust accounts maintained or formerly maintained with that institution,

including, without limiting this subsection, information as to the balances of and amounts of interest paid on such accounts.

- (2) A requirement under subsection (1) —
- (a) shall be given by notice in writing to the person required to give the information;
 - (b) shall specify the time at or within which the information is to be given;
 - (c) may, by its terms, require that the information be —
 - (i) given in writing;
 - (ii) certified as correct by a person who is registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations*

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Act 2001 of the Commonwealth and is specified in the requirement;

- (iii) given at or sent or delivered to any place specified in the requirement;
- (iv) sent or delivered by any means specified in the requirement; and
- (v) given on oath or affirmation or by statutory declaration;

and

- (d) shall state that the person to whom the notice is given is required under this Act to give the information.

- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: \$3 000.

- (4) A person shall not give information in response to a requirement under subsection (1) that the person knows is false or misleading in a material particular.

Penalty: \$3 000.

- (5) It is a defence in proceedings for an offence against subsection (3) for the person to show that —

- (a) the notice under subsection (2)(a) did not state that the person was required under this Act to give the information; or
- (b) the time specified in the requirement did not give the person sufficient notice to enable compliance with the requirement.

- (6) Where a person is required to give information under subsection (1), the person shall not refuse to comply with that requirement on the ground that the information may tend to incriminate the person or render the person liable to any penalty.

- (7) Despite subsection (6), information given under this section is not admissible in evidence in any proceedings against the

person other than proceedings in respect of an offence against subsection (4).

- (8) The power conferred by subsection (1) is in addition to any other powers of the Registrar under this Act.

[Section 81A inserted by No. 59 of 1995 s. 73; amended by No. 10 of 2001 s. 220.]

Division 3 — Discipline

82. Settlement agents' code

The Board may, with the approval of the Minister, make rules prescribing a code of conduct for settlement agents.

83. Disciplinary proceedings against settlement agents

The Board may allege to the State Administrative Tribunal that there is proper cause for disciplinary action, as mentioned in section 84(2).

[Section 83 inserted by No. 55 of 2004 s. 1089.]

84. Powers on inquiry

- (1) If, in a proceeding commenced by an allegation under section 83 the State Administrative Tribunal is satisfied that proper cause exists for disciplinary action, the State Administrative Tribunal may do any one or more of the following things —

- (a) reprimand or caution the settlement agent;
- (b) impose a fine not exceeding \$10 000 on him;
- (c) suspend or cancel his licence and any triennial certificate in respect thereof and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the State Administrative Tribunal or until the further order of the State Administrative Tribunal, from holding a licence or triennial certificate, or both.

- (2) There shall be proper cause for disciplinary action if —

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- (a) the State Administrative Tribunal is satisfied that the settlement agent improperly obtained a licence or triennial certificate;
 - (b) the settlement agent, or any person acting with the authority or upon the instructions of the settlement agent has, in the course of any dealings with a party, or a prospective party, to a transaction, been guilty of conduct that constitutes a breach of any law other than this Act and that prejudices or may prejudice any rights or interests of the party, or prospective party, to the transaction;
 - (c) the settlement agent is acting or has acted in breach of —
 - (i) a special condition of his licence or triennial certificate;
 - (ii) the requirements of this Act; or
 - (iii) the settlement agents' code of conduct;or
 - (d) any other cause exists that, in the opinion of the State Administrative Tribunal renders the settlement agent unfit to hold a licence.
- (3) Where the State Administrative Tribunal suspends or cancels a licence or triennial certificate, or both —
- [(a) deleted]*
 - (b) the licence or triennial certificate as the case requires shall be immediately delivered to the Registrar by the settlement agent.
- (4) No penalty provided for elsewhere in this Act in relation to the conduct of a settlement agent is to be taken to limit the powers exercisable by the State Administrative Tribunal under subsection (1).

[Section 84 amended by No. 59 of 1995 s. 74 and 85; No. 55 of 2004 s. 1090.]

85. Automatic cancellation of licence and triennial certificate

If a licensee is convicted of an offence involving —

- (a) defalcation by the licensee;
- (b) the fraudulent rendering of an account, knowing it to be false in any material particular, in respect of money or other property entrusted to him by or on behalf of another person in the course of the licensee's business; or
- (c) a breach of any one or more of the provisions of Division 2 of Part IV relating to the proper payment in and out of the trust account of the licensee of money entrusted to him by or on behalf of another person in the course of the licensee's business,

his licence and any triennial certificate in respect thereof is thereby cancelled, and the registrar of the court convicting him shall forthwith notify the Registrar of the Board accordingly.

[Section 85 amended by No. 59 of 2004 s. 141.]

86. Special offence

- (1) A person who —
 - (a) has had his licence cancelled under this Act; or
 - (b) has been convicted of an offence against this Act on at least 2 occasions,

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

Penalty: \$10 000.

- (2) If a licensee in his business as such knowingly has, without the written permission of the Board as an employee or a partner, or being a body corporate has as a director, a person who —
 - (a) has had his licence cancelled under this Act; or

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- (b) has been convicted of an offence against this Act on at least 2 occasions,

the licensee commits an offence against this Act.

Penalty: \$5 000.

- (3) For the purposes of this section, a person is deemed to be an employee of another person if he receives remuneration from the other person by way of salary, wages, commission, a share of profits, or otherwise.

[Section 86 amended by No. 59 of 1995 s. 85.]

Part V — Fidelity Guarantee Fund

87. Settlement Agents Fidelity Guarantee Fund

- (1) There is hereby established a fund to be called “Settlement Agents Fidelity Guarantee Fund” which shall be administered by the Board.
- (2) The Fidelity Guarantee Fund is to be kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.

[Section 87 amended by No. 59 of 1995 s. 75.]

88. Moneys constituting Fidelity Guarantee Fund

The Fidelity Guarantee Fund shall consist of and there shall be credited to the Fund —

- (a) all sums paid to the credit of the Fund by settlement agents by way of contribution or levy pursuant to this Act;
- (b) income derived from the investment, under section 89, of moneys standing to the credit of the Fidelity Guarantee Fund;
- (c) all moneys transferred to the Fidelity Guarantee Fund under section 105(b);
- (d) all money recovered by or on behalf of the Board in the exercise of any right of action conferred by this Act; and
- (e) any other money that may be lawfully credited to the Fidelity Guarantee Fund.

[Section 88 amended by No. 59 of 1995 s. 76 and 86.]

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89. Investment of Fidelity Guarantee Fund

- (1) Moneys standing to the credit of the Fidelity Guarantee Fund may, until required for the purposes of section 90, be invested in the same manner as —
- (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.
- (2) Income derived from any such investment is to be credited to the Fidelity Guarantee Fund.

[Section 89 inserted by No. 59 of 1995 s. 77.]

90. Expenditure from the Fund

There shall from time to time be charged to the Fund, as required —

- (a) the amount of all claims, including costs, allowed or established against the Fund;
- (b) all legal expenses incurred in defending claims made against the Fund, or otherwise incurred in relation to the Fund;
- (c) all premiums payable in respect of contracts of insurance entered into by the Board under section 99;
- (d) the expenses involved in the administration of the Fund;
- (e) the cost of any audit that may be charged to the Fund pursuant to Division 2 of Part IV; and
- [(f) deleted]*
- (g) any other money chargeable to the Fund in accordance with this Act.

[Section 90 amended by No. 59 of 1995 s. 78 and 86.]

[91. Repealed by No. 98 of 1985 s. 3.]

92. Contribution to Fund

- (1) Each person who makes application in any year for a licence or the renewal of a triennial certificate shall, in addition to all other fees payable in respect thereof, pay to the Board a sum of \$150 or such other sum as the Board approves, and no such licence or renewal of a triennial certificate shall be issued until the appropriate payment has been made to the Board.
- (2) The amounts paid to the Board under this section shall forthwith be credited by the Board to the Fund.
- (3) Where a person makes a payment under this section and the licence or renewal of a triennial certificate is not granted, the Board shall refund the payment to him.

[Section 92 amended by No. 59 of 1995 s. 86.]

93. Application of Fund and notice of claim

- (1) Subject to this Act, the Fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss or loss of property by reason of any defalcation by a licensee during any period when he was the holder of a current triennial certificate, but reimbursing only to the extent of the defalcation of the licensee.
- (2) The Board is to disallow a claim against the Fund unless —
 - (a) notice of the claim is given in writing to the Board within 3 years after the day on which the claimant became aware of the defalcation; or
 - (b) the Board —
 - (i) has been given notice in writing of the claim within 6 years after the day on which the claimant became aware of the defalcation; and
 - (ii) considers that it is just and reasonable in the circumstances to deal with the claim even though

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notice was not given within the time referred to in paragraph (a).

[Section 93 amended by No. 3 of 2000 s. 7(1)³.]

94. Levies

- (1) If at any time moneys standing to the credit of the Fund are in the opinion of the Board not sufficient to satisfy the liabilities of the Board in relation thereto, the Board may by resolution, impose on each holder of a current triennial certificate for payment to the credit of the Fund, a levy of such amount as it thinks fit not exceeding the sum of \$20 in any one year.
- (2) The amount of the levy shall become payable on a date and in a manner to be fixed by the Board, and notice thereof shall be sent by the Board to each holder of a current triennial certificate.
- (3) A person who fails to comply with any notice sent to him under subsection (2) is guilty of an offence against this Act.

[Section 94 amended by No. 59 of 1995 s. 86.]

95. Claims against Fund

- (1) The Board may receive and, subject to section 93(2), settle any claim against the Fund at any time after the defalcation in respect of which the claim arose has occurred, but no person is entitled, without the leave of the Board, to commence any action in relation to the Fund, unless the Board has disallowed his claim and unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting licensee or any other person in respect of the loss suffered by the claimant.
- (2) A person is not entitled to recover from the Fund an amount greater than the balance of the actual loss suffered by him after deducting from the total amount of his loss, the amount or value of all money or other benefits received or receivable by him from any source other than the Fund in reduction of his loss,

including any benefits received by reason of services rendered or payments made by the defaulting licensee.

- (3) No amount shall be charged or be chargeable to the Fund as interest on the amount of any judgment obtained or of any claim admitted against the Fund.
- (4) No right of action lies in relation to the Fund in respect of any loss suffered by any person by reason of any defalcation by a licensee at any time after the claimant has received a notice in writing from the board warning him against the employment or continued employment of that licensee which notice the Board is hereby empowered to send.
- (5) No right of action lies in relation to the Fund in respect of any loss suffered by the spouse or de facto partner of a licensee by reason of any defalcation by that licensee, or in respect of any loss suffered by any licensee by reason or any defalcation in the course of the licensee's business by any one or more of the persons in the class of persons specified in the definition of "defalcation by a licensee" in section 3.

[Section 95 amended by No. 59 of 1995 s. 86; No. 3 of 2000 s. 8; No. 28 of 2003 s. 182.]

96. Defences to claims against Fund

In any action brought against the Board in relation to the Fund, all defences that would have been available to the defaulting licensee are available to the Board.

97. Subrogation of rights

On payment out of moneys standing to credit of the Fund of any money in settlement in whole or in part of any claims under this Act, the Board shall be deemed to be subrogated, to the extent of that payment, to all rights and remedies of the claimant against the licensee in relation to whom the claim arose or in the event of the death or insolvency or other disability of the licensee, against his personal representatives or other persons

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having authority to administer his estate, and to all other rights and remedies of the claimant in respect of the defalcation to which the claim relates.

[Section 97 amended by No. 59 of 1995 s. 86.]

98. Insufficiency in Fund

- (1) Subject to section 99, the moneys standing to the credit of the Fund are the only property of the Board available for the satisfaction of any judgment obtained against the Board in relation to the Fund, or for the payment of any claim allowed by the Board, but if at any time the moneys standing to the credit of the Fund are not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, be charged against the future accumulations of the Fund.
- (2) The Board may determine the order in which the judgments and claims charged against the Fund as provided in subsection (1) shall be satisfied, and may, if the amount accumulated is not sufficient to wholly satisfy all those judgments and claims, satisfy any of those judgments or claims in whole or in part.
- (3) Without limiting the discretion of the Board, the Board shall in applying the Fund towards the settlement of any of the judgments and claims referred to in subsection (2), have regard to the following rules —
 - (a) it shall take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants in the event of their claims against the Fund not being satisfied in whole or in part;
 - (b) claims for amounts not exceeding \$2 500 shall, except in special circumstances, be satisfied in full before claims for amounts exceeding \$2 500 are satisfied to a greater extent than \$2 500;
 - (c) where all other considerations are equal, claimants shall have priority as between themselves, according to the

dates of the judgments or the dates when the claims were admitted by the Board, as the case may be.

[Section 98 amended by No. 59 of 1995 s. 79 and 86.]

99. Power of Board to enter into contracts of insurance

- (1) Notwithstanding anything to the contrary in this Act, the Board may enter into any contract of insurance with any person carrying on fidelity insurance business in the State, by which the Board will be indemnified to the extent and in the manner provided by the contract against liability to pay claims under this Act.
- (2) Any such contract may be entered into in relation to licensees generally who are holders of current triennial certificates, or in relation to any licensees named therein who are holders of current triennial certificates, or in relation to licensees generally who are holders of current triennial certificates excluding particular licensees named therein.
- (3) The Board may publish the fact that a policy has been effected under this section and of the details of the policy.
- (4) An action does not lie against the Board or against a member or servant of the Board for damage alleged to have been suffered by a licensee by reason of the publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to him.

[Section 99 amended by No. 51 of 1986 s. 46(2).]

100. Application of insurance money

A claimant against the Fund has no right of action against any person with whom a contract of insurance is made under section 99 in respect of that contract and has no right to claim any money paid by the insurer in accordance with any such contract; but all such moneys shall be credited to the Fund and shall be applied in or towards the settlement of relevant claims.

[Section 100 amended by No. 59 of 1995 s. 86.]

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101. Advertisement relating to defaulting settlement agent and claims

- (1) The Board may cause to be published a notice in a newspaper circulating in the district in which the defaulting licensee is or was carrying on business as a settlement agent, and the notice shall fix a date not being earlier than 3 months after the publication of the notice, within which claims shall be made.
- (2) Any claim not made in writing to the Board on or before the date so fixed is barred unless the Board otherwise determines.
- (3) After the date so fixed the Board is at liberty to distribute in accordance with this Act, the sum from time to time available to be applied in reimbursement under sections 93 and 95, having regard only to judgments and claims allowed against the Fund.

102. Power of Board to demand securities, and documents

The Board may at any time and from time to time require production and delivery to it of securities and documents necessary to support any claim made, or available for that purpose, or for the purpose of exercising its rights against any defaulting licensee and may on default of delivery of those securities or documents reject the claim.

Part VA — Education and General Purpose Fund

[Heading inserted by No. 59 of 1995 s. 80.]

102A. Education and General Purpose Fund established

- (1) An account called the “Education and General Purpose Fund” is to be established and kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.
- (2) The General Purpose Fund is to be administered by the Board.

[Section 102A inserted by No. 59 of 1995 s. 80.]

102B. Moneys credited to General Purpose Fund

There are to be credited to the General Purpose Fund —

- (a) income derived from the investment, under section 102D, of moneys standing to the credit of the General Purpose Fund;
- (b) all moneys transferred to the General Purpose Fund under section 105(b);
- (c) fees, costs and other moneys lawfully received by or payable to the Board;
- [(d) deleted]*
- (e) fines, other than those imposed by the State Administrative Tribunal, that are imposed for offences under this Act; and
- (f) any moneys, other than moneys referred to in paragraphs (a), (b), (c) and (e), that may lawfully be credited to the General Purpose Fund.

[Section 102B inserted by No. 59 of 1995 s. 80; amended by No. 55 of 2004 s. 1091.]

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102C. Application of General Purpose Fund

There are to be charged to the General Purpose Fund —

- (a) the costs incurred in the administration of the General Purpose Fund;
- (b) the remuneration and allowances payable to members of the Board;
- (c) the costs associated with the provision of secretarial, clerical or other administrative support to the Board in the performance of its functions under this Act;
- (d) the costs incurred in, or in connection with, the administration and enforcement of this Act except such costs, if any, as are excluded by the regulations; and
- (e) all other expenditure lawfully incurred by the Board in the performance of its functions under this Act.

[Section 102C inserted by No. 59 of 1995 s. 80.]

102D. Investment of General Purpose Fund

- (1) Moneys standing to the credit of the General Purpose Fund may, until required for the purposes of section 102C, be invested in the same manner as —
 - (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.
- (2) Income derived from any such investment is to be credited to the General Purpose Fund.

[Section 102D inserted by No. 59 of 1995 s. 80.]

Part VI — Board Interest Account

[Heading inserted by No. 59 of 1995 s. 81.]

103. Board Interest Account established

- (1) An account called the “Board Interest Account” is to be established and kept —
 - (a) at the Treasury forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) with the approval of the Treasurer, at a bank.
- (2) The Account is to be administered by the Board.

[Section 103 inserted by No. 59 of 1995 s. 81.]

104. Moneys credited to Account

There are to be credited to the Account —

- (a) all moneys paid to the credit of the Account under section 49B;
- (b) income derived from the investment, under section 106, of moneys standing to the credit of the Account; and
- (c) any moneys, other than moneys referred to in paragraphs (a) and (b), that may lawfully be credited to the Account.

[Section 104 inserted by No. 59 of 1995 s. 81.]

105. Application of Account

Moneys standing to the credit of the Account are to be applied at such times as are prescribed —

- (a) first, in payment of the costs involved in administering the Account; and

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- (b) as to the balance remaining after payment under paragraph (a), by transfer in equal shares or such other proportions as are prescribed to the credit of —
 - (i) the Fidelity Guarantee Fund; and
 - (ii) the General Purpose Fund.

[Section 105 inserted by No. 59 of 1995 s. 81.]

106. Investment of Account

- (1) Moneys standing to the credit of the Account may, until required for the purposes of section 105, be invested in the same manner as —
 - (a) public moneys may be invested under section 38 of the *Financial Administration and Audit Act 1985*; or
 - (b) trust funds may be invested in accordance with Part III of the *Trustees Act 1962*.
- (2) Income derived from any such investment is to be credited to the Account.

[Section 106 inserted by No. 59 of 1995 s. 81.]

[107, 108. Repealed by No. 59 of 1995 s. 81.]

[109. Repealed by No. 98 of 1985 s. 3.]

Part VII — Miscellaneous

110. Registers

- (1) The Registrar shall keep the following registers —
 - (a) a register of licensees; and
 - (b) a register of holders of current triennial certificates.
- (2) The Registrar shall record in the registers any prescribed particulars.
- (3) The Registrar shall cause to be removed from the registers the name of every licensee or holder of a current triennial certificate who dies or ceases for any reason to be licensed or to hold a current triennial certificate.
- (4) The Registrar shall, upon receipt of the prescribed fee from a person desiring to inspect the registers, make them available for the inspection of that person.

111. Lists and certificates

- (1) A list of the names and descriptions of all persons holding licences and current triennial certificates on a date specified therein together with such of the particulars appearing in the registers as the Registrar thinks fit, shall be published in the *Government Gazette* annually.
- (2) The Registrar may cause supplementary lists to be published.
- (3) A certificate under the hand of the Registrar that any person is or is not, or was or was not, licensed or the holder of a current triennial certificate on the date of, or a date referred to in, the certificate, or as to any other matter contained in a register, shall, in the absence of proof to the contrary, be taken as proof of the matter so certified.
- (4) The Registrar shall, upon receipt of a request in writing by any person, and payment of the prescribed fee, issue a certificate as to any of the contents of the register.

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112. Application of *Financial Administration and Audit Act 1985*

- (1) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Board and its operations.
- (2) The Board's annual report is to include details of —
 - (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the Board or the Registrar; and
 - (ii) matters that have been brought before the State Administrative Tribunal under this Act;
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
 - (c) any trends or special problems that may have emerged;
 - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
 - (e) any proposals for improving the operation of the Board.

[Section 112 inserted by No. 98 of 1985 s. 3; amended by No. 59 of 1995 s. 82; No. 55 of 2004 s. 1092.]

113. Further reports

The Board shall, from time to time, submit a report to the Minister as to the opinion of the Board on —

- (a) the effectiveness or otherwise of current provisions for the purpose of providing protection to the public against any defalcations by a licensee; and
- (b) the desirability or otherwise of having further or alternative measures for that purpose,

and where, in the opinion of the Board it is desirable to have such further or alternative measures, the board shall include in the report details of a scheme to implement those measures.

114. Refund of fees

The Board may in special circumstances refund the whole or part of any fee paid for a licence or triennial certificate or any sum paid to the Board by way of contribution or levy to the Fund.

115. Immunity of Board and officers

No liability shall attach to a member or the deputy of a member, or the Registrar, an inspector, or any other officer, of the Board for any act or omission by him, or by the Board, in good faith and in the exercise or purported exercise of his or its powers or functions, or in the discharge or purported discharge of his or its duties under this Act.

116. Secrecy

- (1) This section applies to any person who is, or has been, a member or the deputy of a member, or the Registrar, an inspector, or any other officer, whether permanent or temporary, of the Board.
- (2) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act, make a record of, or divulge or communicate to any person, any information concerning the affairs of any other person acquired by him by reason of his office or employment under or for the purposes of this Act.
Penalty: \$5 000.

117. Liability of directors of body corporate

Where a licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, all persons who are directors of the body corporate at the time of any defalcation by the licensee are jointly and severally liable in respect of that defalcation.

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118. Other rights or remedies

Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting, or otherwise affecting any right or remedy a person would have had if this Act had not been enacted.

119. No waiver of rights

A person is not competent to waive any rights conferred on him by this Act.

120. General penalty

- (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.
- (2) A person who commits an offence against this Act for which no other penalty is expressly provided in this Act is liable to a penalty of \$2 000.

[Section 120 amended by No. 59 of 1995 s. 85.]

121. Proceedings

- (1) Proceedings for an offence against this Act may be taken by the registrar or an inspector.
- (2) Notwithstanding the provisions of any other Act, proceedings for an offence against this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.
- (3) An allegation in a charge of an offence against this Act that a person named therein was or was not licensed or the holder of a current triennial certificate at the time specified therein shall, in the absence of proof to the contrary, be taken as proved.

[Section 121 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]

122. Forms

In addition to the forms for purposes expressly mentioned elsewhere in this Act, the Board may determine the forms to be used for other purposes under this Act and the information to be contained therein and may require that such information be verified by statutory declaration.

123. Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as he considers necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1) the regulations may —
 - (a) prescribe the procedure of the Board;
 - (b) provide for the enforcement of orders of the Board for costs under section 21;
 - (c) provide for the advertising of notices of applications for licences;
 - (d) provide for all matters relating to the effecting of a Master Insurance Policy pursuant to section 35;
 - (e) provide for the conduct of the business of a settlement agent during any period in which that business temporarily is not under his supervision and control and provide that the person temporarily conducting the business in accordance with the regulations so made does not commit an offence under section 26;
 - (f) prescribe, and provide for the recovery of any fee for the purposes of this Act, but not in connection with the initiation of a proceeding before the State Administrative Tribunal;
 - (g) prescribe the particulars to be recorded in the registers required to be kept under this Act;

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- (h) prescribe a body or class of bodies for the purposes of the definition of “authorised financial institution” in section 48;
- (i) prescribe a rate of interest and the times at which such interest is to be paid for the purposes of section 49B(1);
- (ia) prescribe the information to be contained in a receipt for the purposes of section 50(1)(a);
- (ib) prescribe the manner in which a record is to be kept, and the information to be contained in a record, for the purposes of section 50(2);
- (ic) prescribe the times at which and the proportions in which moneys are to be paid or transferred under section 105;
- (j) prescribe the manner of making claims against the Fidelity Guarantee Fund and the manner of verifying any claim including a condition that the claim be verified by statutory declaration;
- [(k) deleted]*
- (l) prescribe penalties not exceeding \$1 000 for any breach of the regulations.

[Section 123 amended by No. 65 of 1987 s. 43; No. 59 of 1995 s. 83 and 85; No. 55 of 2004 s. 1093.]

[Part VIII (s. 124-126) omitted under the Reprints Act 1984 s. 7(4)(g).]

Schedule 1

Qualifications for grant of licence

[Sections 27, 28 and 29]

1. Real estate settlement agent

(1) A person —

- (a) who has passed, subject to approved exemptions, the prescribed examinations relating to the carrying on and conduct of the business of a real estate settlement agent and the duties and liabilities of a real estate settlement agent and who satisfies the Board that he has had during a period of 2 years immediately preceding his application for a licence, sufficient practical experience (whether as a principal or as an employee) in arranging and effecting settlements of real estate transactions to enable him to carry on the business of a real estate settlement agent satisfactorily;
- (b) who is a legal practitioner;
- (ba) who, at the time of applying under section 27 for the grant of a real estate settlement agent's licence, is the holder of a current exemption under section 26A;
- (c) who is an executor, administrator, or trustee of a deceased licensee and his application is for the purpose of performing functions, exercising powers, or carrying out duties as such; or
- (d) who is a spouse or child of a deceased or incapacitated licensee, or a de facto partner of such a licensee (and has been for not less than 2 years immediately before the death or incapacity of the licensee), and is seeking a licence to conduct the business of that licensee until other arrangements can be made for the lawful conduct thereof but not for any period exceeding 3 years,

is, subject to this Act, qualified for the grant of a real estate settlement agent's licence.

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- (2) Until a date 3 years after the appointed day a person —
- (a) who satisfies the Board that he has had sufficient, and not less than 2 years, continuous practical experience (whether as a principal or an employee) in arranging and effecting settlements of real estate transactions immediately prior to the appointed day and further sits for and passes such written and oral examinations as are set by the Board; or
 - (b) who satisfies the Board that he has had sufficient and not less than 5 years continuous practical experience (whether as a principal or an employee) in arranging and effecting settlements of real estate transactions immediately prior to the appointed day,

is, subject to this Act, qualified for the grant of a real estate settlement agent's licence.

[Clause 1 amended by No. 64 of 1982 s. 5(a); No. 28 of 2003 s. 183(1).]

2. Business settlement agent

- (1) A person —
- (a) who has passed, subject to approved exemptions, the prescribed examinations relating to the carrying on and conduct of the business of a business settlement agent and the duties and liabilities of a business settlement agent and who has satisfied the Board that he has had during a period of 2 years immediately preceding his application for a licence, sufficient practical experience (whether as a principal or as an employee) in arranging and effecting settlements of business transactions to enable him to carry on the business of a business settlement agent satisfactorily;
 - (b) who is a legal practitioner;
 - (ba) who, at the time of applying under section 27 for the grant of a business settlement agent's licence, is the holder of a current exemption under section 26B;
 - (c) who is an executor, administrator, or trustee of a deceased licensee and his application is for the purpose of performing functions, exercising powers, or carrying out duties as such; or

- (d) who is a spouse or child of a deceased or incapacitated licensee, or a de facto partner of such a licensee (and has been for not less than 2 years immediately before the death or incapacity of the licensee), and is seeking a licence to conduct the business of that licensee until other arrangements can be made for the lawful conduct thereof but not for any period exceeding 3 years,

is, subject to this Act, qualified for the grant of a business settlement agent's licence.

- (2) Until a date 3 years after the appointed day a person —
 - (a) who satisfies the Board that he has had sufficient, and not less than 2 years, continuous practical experience (whether as a principal or an employee) in arranging and effecting settlements of business transactions immediately prior to the appointed day and further sits for and passes such written and oral examinations as are set by the Board; or
 - (b) who satisfies the Board that he has had sufficient, and not less than 5 years, continuous practical experience (whether as a principal or an employee) in arranging and effecting settlements of business transactions immediately prior to the appointed day,

is, subject to this Act, qualified for the grant of a business settlement agent's licence.

[Clause 2 amended by No. 64 of 1982 s. 5(b); No. 28 of 2003 s. 183(2).]

3. Licence by reason of qualification under clauses 1(1)(c) and 2(1)(c)

Such a licence shall not be effective any longer than is necessary for the licensee to perform his functions, exercise his powers, and carry out his duties as executor, administrator, or trustee of the deceased licensee.

4. Licence by reason of qualification under clauses 1(1)(d) and 2(1)(d)

Such a licence is to be granted at the discretion of the Board and shall be effective only for such period not exceeding 3 years as is

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determined by the Board and no further such licence shall be granted to the same person in respect of the same circumstances.

[Clause 4 amended by No. 28 of 2003 s. 183(3).]

5. Death or incapacity of agent

- (1) A person who is not —
- (a) an executor, administrator, trustee or child of a deceased licensee, or who was not the spouse or de facto partner, within the meaning of clause 1(1)(d) or 2(1)(d) as is relevant, of a deceased licensee immediately before the licensee's death; or
 - (b) in respect of an incapacitated licensee, the spouse or de facto partner of the licensee, within the meaning of clause 1(1)(d) or 2(1)(d) as is relevant, of the licensee,

may, with the written permission of the Registrar, conduct the business of that licensee for such period not exceeding 3 months as is specified in the written permission notwithstanding that he is not otherwise qualified to hold a licence.

- (2) The Registrar shall not give his written permission for the purposes of subclause (1) unless —
- (a) the Registrar receives an application in writing signed by the person seeking to carry on the business; and
 - (b) the Registrar is satisfied that the person is of good character and repute and fit to be concerned temporarily in the management and control of the deceased or incapacitated licensee's business and that it is in the interests of that business that the person should be so concerned.
- (3) While a person carries on the business of a deceased or incapacitated licensee pursuant to this clause he is deemed to be a licensee and the holder of a current triennial certificate and the business is deemed to have carried on without interruption by reason of the death or incapacity.

[Clause 5 amended by No. 28 of 2003 s. 183(4).]

Disqualification

[Sections 27, 28 and 29]

6. Definition of “business licence”

In clauses 7, 8, and 9 “**business licence**” means the licence of a finance broker under the *Finance Brokers Control Act 1975*, the licence of a real estate agent or a business agent under the *Real Estate and Business Agents Act 1978*, the permit of a business agent under that Act, the licence of a land agent under the *Land Agents Act 1921*⁴, or a similar licence or authority held under a law of another State or a Territory of the Commonwealth regulating the business of finance brokers, real estate agents or business agents.

7. Disqualification of natural persons

The Board shall not grant a licence on the application of a person if within the period of 5 years immediately preceding the date of the application —

- (a) a business licence held by the applicant has been suspended or cancelled by reason of any offence or misconduct connected with the operation of the business carried on pursuant to the licence;
- (b) a business licence held by a body corporate or a firm has been suspended or cancelled by reason of any offence or misconduct connected with the operation of the business carried on pursuant to the licence and at the time of the occurrence of any of the acts leading to the suspension or cancellation the applicant was a director of the body corporate, or a member of the firm, or was otherwise personally involved in those acts; or
- (c) the applicant has been struck off the roll of legal practitioners in this State or elsewhere in the Commonwealth.

8. Disqualification of bodies corporate

The Board shall not grant a licence on the application of a body corporate if —

- (a) any director of the body corporate would have been disqualified under clause 7 from obtaining a licence in his own right if the application had been made by him;
- (b) within the period of 5 years immediately preceding the date of the application a business licence held by the applicant has

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been suspended or cancelled by reason of any offence or misconduct connected with the operation of the business carried on pursuant to the licence; or

- (c) within the period of 5 years immediately preceding the date of the application a business licence held by a body corporate or a firm has been suspended or cancelled by reason of any offence or misconduct connected with the operation of the business carried on pursuant to the licence and at the time of the occurrence of any of the acts leading to the suspension or cancellation the applicant was a director of the body corporate or a member of the firm.

9. Disqualification of firms

The Board shall not grant a licence on the application of a firm if—

- (a) any member of the firm would have been disqualified under clause 7 or 8 from obtaining a licence in his or its own right if the application had been made by him or it; or
- (b) within the period of 5 years immediately preceding the date of the application a business licence held by the applicant, or by a firm that was in the opinion of the Board substantially the same as the applicant, has been suspended or cancelled by reason of any offence or misconduct connected with the operation of the business carried on pursuant to the licence.

Temporary arrangements

[Sections 28 and 29]

10. Death or withdrawal of partner in a firm or director of a body corporate

- (1) Where a firm or body corporate is licensed and the holder of a current triennial certificate but subsequently by reason of a death or withdrawal it ceases to be qualified in terms of section 28(1)(c) and (d) or section 29(1)(c) and (d) the firm or body corporate shall immediately give to the Registrar written notice to that effect, and the firm or body corporate may, on such terms as the Board may notify to the firm or body corporate, carry on the business for a period of 3 months after the death or withdrawal or until other arrangements are made to comply with the Act, whichever is the sooner.

- (2) Where a firm or body corporate carries on business pursuant to this clause the business is deemed to have been carried on by a licensee and the holder of a current triennial certificate without interruption by reason of the death or withdrawal.

Schedule 2

Functions of a settlement agent

[Sections 46 and 47]

1. Real estate settlement agent

- (1) A licensee who holds a real estate settlement agent's licence and a current triennial certificate may perform the following functions —
- (a) searching land titles and dealings thereon at the Department within the meaning of the *Transfer of Land Act 1893* and searching for caveats lodged with that Department against such dealings;
 - (b) searching and inquiring at other Government offices and at the offices of statutory authorities and local governments, and obtaining certificates therefrom, in respect of records, plans and policies and making inquiries with respect to adjustment of rates, taxes and other outgoings of a periodical nature in respect of the real estate the subject of the transaction involved in a settlement;
 - (c) preparing a settlement statement and an authority for the payment or receipt of moneys in respect of the transaction involved in a settlement;
 - (d) arranging the payment of duty imposed under the *Stamp Act 1921*, and any other imposts or fees on documents in respect of the real estate transaction;
 - (e) arranging and attending on settlement, including exchanging documents and receiving and disbursing moneys to effect the settlement;
 - (f) lodging documents in respect of the real estate transaction at the Department within the meaning of the *Transfer of Land Act 1893* or other Government offices or the offices of statutory authorities for registration;
 - (g) uplifting such documents from the Department within the meaning of the *Transfer of Land Act 1893* or other Government offices or the offices of statutory authorities;
 - (h) completing powers of attorney in such form and subject to such conditions as are prescribed;

- (i) subject to any conditions imposed by the code of conduct, drawing or preparing and arranging the execution of the documents set forth in subclause (2);
 - (j) reporting on the progress of the settlement to the party to the transaction by whom the licensee was appointed to arrange or effect the settlement.
- (2) A licensee who holds a real estate settlement agent's licence and a current triennial certificate may draw or prepare the following documents —
- (a) an offer and acceptance form in such form and subject to such conditions as are prescribed;
 - (b) requisitions on title in such form and subject to such conditions as are prescribed;
 - (c) such documents that are to be registered or lodged under or for the purposes of the —
 - (i) *Land Act 1933*⁵;
 - (ii) *Registration of Deeds Act 1856*;
 - (iii) *Strata Titles Act 1985*; or
 - (iv) *Transfer of Land Act 1893*,as are prescribed and subject to such conditions as are prescribed;
 - (d) a statutory declaration to support any of the documents that are referred to in paragraphs (a) and (b) or that are prescribed under paragraph (c);
 - (e) a declaration to confirm that a power of attorney remains unrevoked.

[Clause 1 amended by No. 58 of 1995 s. 98; No. 14 of 1996 s. 4; No. 62 of 1996 s. 5(1); No. 81 of 1996 s. 153(1).]

2. Business settlement agent

A licensee who holds a business settlement agent's licence and a current triennial certificate may perform the following functions —

- (a) searching and inquiring at Government offices and at the offices of statutory authorities and local governments, in respect of records, registers, plans and policies relating to the

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- business the subject of the transaction involved in a settlement;
- (b) making inquiries in respect of adjustments for long service leave or holiday pay, rent, leased or hired plant or equipment, rates, taxes and other outgoings of a periodical nature;
 - (c) arranging the employment of a stocktaker;
 - (d) arranging the transfer of facilities and services provided to the business the subject of the transaction involved in a settlement;
 - (e) arranging the payment of duty imposed under the *Stamp Act 1921*, and any other imposts or fees on documents in respect of the business transaction;
 - (f) arranging and attending on settlement, including exchanging documents and receiving and disbursing moneys to effect the settlement;
 - (fa) drawing or preparing such documents that are to be registered or lodged under the *Bills of Sale Act 1899* as are prescribed and subject to such conditions as are prescribed;
 - (g) lodging documents in respect of the business transaction at Government offices or the offices of statutory authorities for registration;
 - (h) subject to such conditions as are imposed by the code of conduct, preparing and arranging the execution of an application for transfer of a business name under the *Business Names Act 1962*;
 - (i) reporting on the progress of the settlement to the party to the transaction by whom the licensee was appointed to arrange or effect the settlement.

[Clause 2 amended by No. 14 of 1996 s. 4; No. 62 of 1996 s. 5(2); No. 81 of 1996 s. 153(2).]

Notes

- ¹ This is a compilation of the *Settlement Agents Act 1981* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Settlement Agents Act 1981</i>	33 of 1981	26 May 1981	1 Jul 1981 (see s. 2 and <i>Gazette</i> 26 Jun 1981 p. 2285)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Settlement Agents Amendment Act 1982</i>	64 of 1982	19 Oct 1982	19 Oct 1982
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>State Government Insurance Commission Act 1986</i> s. 46(2)	51 of 1986	5 Aug 1986	1 Jan 1987 (see s. 2 and <i>Gazette</i> 19 Dec 1986 p. 4859)
<i>Acts Amendment (Legal Practitioners, Costs and Taxation) Act 1987</i> Pt. XVI	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>R & I Bank Act 1990</i> s. 45(1)	73 of 1990	20 Dec 1990	1 Jan 1991 (see s. 2(2) and <i>Gazette</i> 28 Dec 1990 p. 6369)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 3(2)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994</i> s. 4	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Business Licensing Amendment Act 1995</i> Pt. 9	56 of 1995	20 Dec 1995	1 Jul 1996 (see s. 2(2) and <i>Gazette</i> 1 Jul 1996 p. 3179)
<i>Strata Titles Amendment Act 1995</i> s. 98	58 of 1995	20 Dec 1995	14 Apr 1996 (see s. 2 and <i>Gazette</i> 15 Mar 1996 p. 981)

Settlement Agents Act 1981

Short title	Number and year	Assent	Commencement
<i>Real Estate Legislation Amendment Act 1995</i> Pt. 4 ⁶	59 of 1995	20 Dec 1995	1 Jul 1996 (see s. 2 and <i>Gazette</i> 25 Jun 1996 p. 2902)
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Reprint of the <i>Settlement Agents Act 1981</i> as at 23 Sep 1996 (includes amendments listed above)			
<i>Settlement Agents Amendment Act 1996</i>	62 of 1996	11 Nov 1996	24 May 1997 (see s. 2 and <i>Gazette</i> 23 May 1997 p. 2417)
<i>Transfer of Land Amendment Act 1996</i> s. 153(1) and (2)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> s. 141	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 102	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Real Estate Legislation (Fidelity Guarantee Funds) Amendment Act 2000</i> Pt. 3 ³	3 of 2000	12 Apr 2000	12 Apr 2000 (see s. 2)
Reprint of the <i>Settlement Agents Act 1981</i> as at 3 Nov 2000 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220 and 222	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 13 ⁷	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 53	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 66	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 109</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 118⁸</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 3: The Settlement Agents Act 1981 as at 8 Jul 2005 (includes amendments listed above)			
<i>Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005 s. 63</i>	24 of 2005	2 Dec 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244)
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15</i>	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Land Information Authority Act 2006 s. 158⁹</i>	60 of 2006	16 Nov 2006	To be proclaimed (see s. 2(1))

Consumer Protection Legislation Amendment and Repeal Act 2006 Pt. 11¹⁰ 69 of 2006 13 Dec 2006 To be proclaimed (see s. 2)

² The appointed day is 1 Nov 1982, see *Gazette* 29 Oct 1982 p. 4322.

³ The *Real Estate Legislation (Fidelity Guarantee Funds) Amendment Act 2000* s. 7(2) and (3) read as follows:

“

(2) A person may give notice of a claim under section 93(2) as amended by this section even if the time within which that notice was to be given under that section before that amendment had expired.

(3) Where a person may give notice of a claim under section 93(2) as amended by this section, notice of the claim given by the person previously in writing to the Board (whether or not dealt with by the Board) is to be taken to be notice of the claim for the purposes of that section.

”

⁴ Repealed by the *Real Estate and Business Agents Act 1978* s. 5.

⁵ Repealed by the *Land Administration Act 1997* s. 281.

⁶ The *Real Estate Legislation Amendment Act 1995* s. 65(2) and 87 are saving and transitional provisions that are of no further effect.

⁷ The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

2. Commencement

(1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.

(2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

3. Interpretation

In this Part —

“**Financial Services Reform Act**” means the *Financial Services Reform Act 2001* of the Commonwealth;

“**FSR commencement time**” means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

“**statutory rule**” means a regulation, rule or by-law.

4. Validation

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
 - (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
 - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,

is taken not to be valid, and to never have been valid.

”.

⁸ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁹ On the date as at which this compilation was prepared, the *Land Information Authority Act 2006* s. 158 had not come into operation. It reads as follows:

“

158. Settlement Agents Act 1981 amended

- (1) The amendments in this section are to the *Settlement Agents Act 1981*.
- (2) Schedule 2 clause 1(1) is amended as follows:
 - (a) by deleting paragraph (a) and inserting instead —

“

- (a) searching land titles and dealings in the records of the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5 (the “**Authority**”) and searching for caveats against any of those dealings;

”;

- (b) in paragraph (f), by deleting “at the Department within the meaning of the *Transfer of Land Act 1893*” and inserting instead —

“ with the Authority ”;

- (c) in paragraph (g), by deleting “Department within the meaning of the *Transfer of Land Act 1893*” and inserting instead —

“ Authority ”.

”.

¹⁰ On the date as at which this compilation was prepared, the *Consumer Protection Legislation Amendment and Repeal Act 2006* Pt. 11 had not come into operation. It reads as follows:

“

Part 11 — Settlement Agents Act 1981 amended

35. The Act amended

The amendment in this Part is to the *Settlement Agents Act 1981*.

36. Section 49 amended

After section 49(5) the following subsections are inserted —

“

- (5a) If —
 - (a) a settlement of a real estate transaction or a business transaction is completed;

- (b) the settlement agent who arranged or effected the settlement received moneys in respect of the real estate transaction or business transaction in the course of arranging or effecting the settlement; and
- (c) the settlement agent is authorised in writing by the vendor to make a payment from those moneys to an agent as payment of the whole or part of the commission, reward or remuneration to which the agent is entitled for arranging the real estate transaction or business transaction to which the settlement relates,

the settlement agent may, despite subsections (4) and (5), pay to the agent from those moneys such sum as the settlement agent is so authorised to pay.

(5b) In subsection (5a) —

“**agent**” means an agent as defined in section 4(1) of the *Real Estate and Business Agents Act 1978* who is entitled to a commission, reward or remuneration for arranging the real estate transaction or business transaction to which a settlement relates;

“**vendor**” means the person or persons lawfully entitled to receive the purchase price in respect of a real estate transaction or business transaction.

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