

REAL ESTATE AND BUSINESS AGENTS.

No. 29 of 1982.

AN ACT to amend the Real Estate and Business
Agents Act 1978-1980.

[Assented to 27 May 1982.]

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

1. (1) This Act may be cited as the *Real Estate and Business Agents Amendment Act 1982*. Short title and citation.

(2) In this Act the Real Estate and Business Agents Act 1978-1980 is referred to as the principal Act. Act No. 72 of 1978 as amended by Acts Nos. 74 of 1979 and 74 of 1980.

(3) The principal Act as amended by this Act may be cited as the Real Estate and Business Agents Act 1978-1982.

Commence-
ment.

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

Section 3
repealed.

3. Section 3 of the principal Act is repealed.

Section 4
amended.

4. Section 4 of the principal Act is amended in subsection (1) by—

(a) inserting, before the definition of “agent”, the following definition—

“ “Advisory Committee” means the Home Buyers Assistance Advisory Committee established by section 131H (1); ” ;

(b) inserting, after the definition of “approved”, the following definition—

“ “Assistance Fund” means the Home Buyers Assistance Fund established by section 131B (1); ” ;

(c) inserting, after the definition of “Board”, the following definition—

“ “building society” means society within the meaning of the Building Societies Act 1976; ” ;

(d) deleting the definition of “Fidelity Guarantee Fund” or “Fund” and substituting the following definitions—

“ “Fidelity Fund” means the Real Estate and Business Agents Fidelity Guarantee Fund referred to in section 107 (1);

“financial year” means the period of 12 months ending on 30 June in each year; ” ;

and

- (e) deleting the definition of "member" and substituting the following definition—

" "member"—

- (a) except in Part IXA, means a member of the Board; and
- (b) in Part IXA, means a member of the Advisory Committee; "

5. Section 109 of the principal Act is amended in paragraph (d) by inserting, after "Board", the following—

Section 109 amended.

" for the benefit of the Fidelity Fund "

6. Section 111 of the principal Act is amended in subsection (2) by deleting—

Section 111 amended.

- (a) "receipts and disbursements accounts" and substituting the following—

" a statement of income and expenditure " ; and

- (b) "those accounts" and substituting the following—

"that statement "

7. Section 115 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

Section 115 amended.

" (1) If at any time the Fidelity Fund is, in the opinion of the Board, not sufficient to satisfy the liabilities of the Board in relation thereto, the Board may by resolution—

- (a) impose on each holder of a current triennial certificate and each holder of a current certificate of registration for payment into the Fidelity Fund a levy of such amount as it thinks fit not exceeding the relevant amount referred to in subsection (2);

- (b) with the consent of the Minister—
- (i) increase the percentage of the balance referred to in section 130 (b) to be applied to the Fidelity Fund by such figure as it considers necessary; and
 - (ii) decrease the percentage of the balance referred to in section 130 (b) to be applied to the Assistance Fund by the same figure as that by which the percentage of that balance to be applied to the Fidelity Fund is increased under this paragraph,
- in respect only of the financial year next following the financial year in which that insufficiency arises, and section 130 (b) shall be construed as if it had been amended accordingly in relation to the first-mentioned financial year only; or
- (c) both impose a levy referred to in paragraph (a) of this subsection and effect an increase and decrease referred to in paragraph (b) thereof. ” .

Section 130
amended.

8. Section 130 of the principal Act is amended—

- (a) by inserting, after the semi-colon at the end of paragraph (a), the following—
“ then ” ; and
- (b) by deleting paragraphs (b) and (c) and substituting the following paragraph—
“ (b) subject to section 115 (1)—
 - (i) as to $33\frac{1}{2}$ per centum of the balance remaining after payment under paragraph (a) of this section to the Fidelity Fund;

- (ii) as to $33\frac{1}{3}$ per centum of the balance remaining after payment under paragraph (a) of this section to the Assistance Fund; and
- (iii) as to $33\frac{1}{3}$ per centum of the balance remaining after payment under paragraph (a) of this section to the establishment and maintenance of such educational facilities relating to the functions and duties of persons under this Act as are prescribed. ” .

9. Section 131 of the principal Act is amended in subsection (2) by deleting— Section 131 amended.

(a) “receipts and disbursements accounts” and substituting the following—

“ statements of income and expenditure ” ; and

(b) “those accounts” and substituting the following—

“ those statements ” .

10. The principal Act is amended by inserting, after Part IX, the following Part— Part IXA inserted.

“ PART IXA.—ASSISTANCE TO HOME BUYERS.

131A. In this Part, unless the contrary intention appears— Interpretation in Part IXA.

“applicant” means person on whose behalf an application has been lodged under section 131L (1);

“assisted person” means applicant to whom a grant has been made under section 131M (3);

“dwelling” includes—

- (a) lot within the meaning of the Strata Titles Act 1966; and
- (b) except in the case of a dwelling which is a lot referred to in paragraph (a) of this definition, land on which the dwelling concerned is erected or is being erected, as the case requires;

“incidental expenses”, in relation to a purchase, or purchase and completion, referred to in section 131L (1), includes—

- (a) stamp duty;
- (b) registration fees;
- (c) the remuneration of a real estate settlement agent within the meaning of the Settlement Agents Act 1981;
- (d) the costs of a certificated practitioner within the meaning of the Legal Practitioners Act 1893;
- (e) valuation fees;
- (f) inspection fees;
- (g) any fees payable to the bank or building society lodging an application under section 131L (1) on behalf of the applicant concerned to assist him in that purchase or purchase and completion; and
- (h) any mortgage guarantee fee or mortgage insurance premium.

(2) The assets of the Assistance Fund are the property of the Board, but the Board shall—

- (a) keep those assets separately from all other property of the Board; and
- (b) hold those assets in trust for the purposes set out in this Part.

131C. (1) Pending the application of the moneys in the Assistance Fund, the Board may invest those moneys—

Invest-
ment of
Assistance
Fund.

- (a) on deposit with a bank in the State, bearing interest at a rate agreed between the bank and the Board;
- (b) on loan to the Treasurer at a rate of interest not less than the maximum rate of interest for the time being payable under Division 2A of Part VI of the Rural and Industries Bank Act 1944 to a depositor within the meaning of that Division; or
- (c) on deposit with a building society in the State, investments in which building society are authorized trustee investments bearing interest at a rate agreed between the building society and the Board.

(2) The Treasurer shall repay on demand any moneys lent to him under subsection (1).

131D. There shall be placed to the credit of the Assistance Fund—

Moneys to
be paid into
Assistance
Fund.

- (a) all moneys paid to the Assistance Fund under section 130;
- (b) the interest from time to time accruing from the investment of moneys in the Assistance Fund under section 131C;

- (c) all moneys recovered by or on behalf of the Board for the benefit of the Assistance Fund in the exercise of any right of action conferred by this Act; and
- (d) any moneys, other than moneys referred to in paragraphs (a), (b) and (c) of this section, that may lawfully be paid into the Assistance Fund.

Expenditure
from
Assistance
Fund.

131E. There shall from time to time be paid out of the Assistance Fund, as required—

- (a) the amounts of all grants made by the Board under section 131M (3);
- (b) all legal expenses incurred in relation to the Assistance Fund;
- (c) the expenses involved in the administration of the Assistance Fund;
- (d) the cost of every audit made under section 131F; and
- (e) any moneys, other than moneys referred to in paragraphs (a), (b), (c) and (d) of this section, that may lawfully be paid out of the Assistance Fund under this Act.

Board to
maintain
accounts of
Assistance
Fund.

131F. (1) The Board shall maintain accounts of all moneys received and payable to the credit of, and paid out of, the Assistance Fund and shall cause those accounts—

- (a) to be so maintained as to disclose their true position and to enable them readily and conveniently to be audited; and
- (b) to be audited under subsection (2).

(2) The Board shall cause a statement of income and expenditure and a balance sheet for each financial year to be prepared and to be audited by the Auditor General, and shall deliver a copy of that statement and the balance sheet to the Minister.

(3) The Minister shall cause the copy of the statement and balance sheet delivered to him under subsection (2) to be presented to both Houses of Parliament.

(4) The Auditor General has in respect of the accounts of the Assistance Fund like powers to those he has under the Audit Act 1904 in respect of accounts referred to therein.

131G. The Board shall administer the Assistance Fund.

Administra-
tion of
Assistance
Fund.

131H. (1) There is hereby established a committee to be known as the Home Buyers Assistance Advisory Committee.

Constitution
and member-
ship of Home
Buyers
Assistance
Advisory
Committee.

(2) The Advisory Committee shall consist of 3 members of whom—

- (a) one shall be the Registrar of Building Societies *ex officio*;
- (b) one shall be the Chairman *ex officio*;
and
- (c) one shall be an officer of The State Housing Commission appointed by the Minister on the nomination of The State Housing Commission.

(3) The Minister may appoint a person to be the deputy of the member who is—

- (a) the Registrar of Building Societies on the recommendation of the Registrar of Building Societies;

- (b) the Chairman on the recommendation of the Chairman; and
- (c) an officer of The State Housing Commission on the recommendation of The State Housing Commission.

(4) A person appointed under subsection (3) to be the deputy of a member is, when the member of whom he is the deputy is absent from a meeting of the Advisory Committee, entitled to attend that meeting and, when so attending, is deemed to be a member and has all the powers, functions and duties of a member.

Functions
and
procedure of
Advisory
Committee.

131I. (1) The functions of the Advisory Committee are—

- (a) to consider applications lodged under section 131L (1) and to make recommendations to the Board thereon;
- (b) to make recommendations to the Board on the formulation of criteria under section 131O (2); and
- (c) to consider any proposals, matters or questions concerned with this Part that may be referred to the Advisory Committee by the Board and to advise the Board thereon.

(2) The Advisory Committee shall determine its own procedure.

Chairman
and Deputy
Chairman of
Advisory
Committee.

131J. (1) The members shall elect one of their number to be the Chairman of the Advisory Committee and another of their number to be the Deputy Chairman of the Advisory Committee.

(2) The Deputy Chairman of the Advisory Committee shall, when the Chairman of the Advisory Committee is absent from a meeting of the Advisory Committee, act as chairman of the Advisory Committee.

131K. (1) Subject to this section, a member or deputy of a member referred to in section 131H (2) (c) shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment and is, on the expiry of that period, eligible for reappointment.

Tenure of office as member of Advisory Committee of State Housing Commission representative.

(2) If a member or deputy of a member referred to in section 131H (2) (c)—

- (a) resigns his office by writing signed by him and delivered to the Minister;
- or
- (b) ceases to be an officer of The State Housing Commission,

the office of that member or deputy becomes vacant.

131L. (1) A bank or building society which has made a loan to a person in order to assist the person to purchase through the agency of a licensed real estate agent carrying on business in the State—

Making of application for assistance.

- (a) the first dwelling to be owned by the person in the State; or
- (b) a partially erected dwelling, being the first dwelling to be owned by the person in the State, and to complete that dwelling,

may on behalf of the person lodge with the Registrar of Building Societies an application in the prescribed form for the granting to the person of the whole or any part of the amount of the incidental expenses incurred or to be incurred by the person in connection with a purchase or purchase and completion referred to in this subsection.

(2) A reference in this section to a dwelling in relation to the making of a loan is a reference to a dwelling that is, or is intended to be, used by the person to whom the loan is made as a home for—

- (a) that person and his or her spouse;

- (b) that person and his or her spouse and the dependent children of either or both of them; or
- (c) that person and his or her dependent children.

(3) In subsection (2)—

“spouse”, in relation to a person, includes a person living with the first-mentioned person on a permanent and *bona fide* domestic basis.

Processing of applications for assistance.

131M. (1) On receiving an application lodged with him under section 131L (1), the Registrar of Building Societies shall, after satisfying himself that that application is in order, lay that application before the Advisory Committee at its next meeting.

(2) The Advisory Committee shall consider each application laid before it under subsection (1) and, if in its opinion that application contains information sufficient to enable the Board properly to assess the merits of that application, forward that application to the Board together with the recommendation of the Advisory Committee thereon.

(3) On receiving an application and recommendation forwarded to it under subsection (2), the Board may, in accordance with the current criteria formulated under section 131O (2)—

- (a) make a grant to the applicant of the whole or any part of the amount of the incidental expenses sought by that application up to a maximum amount of \$1 000; or
- (b) refuse that application.

Disposal of assistance granted.

131N. (1) The Board shall, after it has made a grant under section 131M (3), pay the amount of the grant to the bank or

building society which lodged the relevant application out of moneys placed to the credit of the Assistance Fund.

(2) On receiving an amount paid to it under subsection (1), a bank or building society shall hold that amount until the assisted person concerned is required to pay the incidental expenses to which that amount relates, whereupon the bank or building society shall on behalf of that assisted person pay or distribute, as the case requires, that amount to or among the person or persons to whom those incidental expenses are payable.

(3) Whenever the amount of a grant has been paid to a bank or building society under subsection (1) and the assisted person to whom the grant has been made by the Board under section 131M (3) ceases for any reason to be required to pay—

- (a) the whole of the incidental expenses to which the grant relates, the bank or building society shall repay to the Board the whole of the grant; or
- (b) any part of the incidental expenses to which the grant relates, the bank or building society shall, if that part exceeds the amount, if any, by which the whole of those incidental expenses is greater than the amount of the grant, repay to the Board the amount of that excess.

(4) If a bank or building society is required by subsection (3) to repay an amount to the Board and the whole or part of that amount has been paid or distributed under subsection (2), the bank or building society may by action in a court of competent jurisdiction recover that whole or part from the person or persons to or among whom that whole or part has been paid or distributed.

Board to formulate criteria for granting of assistance.

131O. (1) The Advisory Committee may of its own motion or shall at the request of the Board, after consulting—

- (a) the person holding or acting in the office of the President of the body known as the Associated Banks in W.A.;
- (b) the person holding or acting in the office of the Chairman of the Commonwealth Banking Corporation Board constituted under the Commonwealth Banks Act 1959 of the Parliament of the Commonwealth;
- (c) the person holding or acting in the office of the Chairman of The Commissioners of the Rural and Industries Bank of Western Australia;
- (d) the person holding or acting in the office of the President of the body known as the Western Australian Permanent Building Societies Association (Inc.); and
- (e) the person holding or acting in the office of the Director of the body known as the Federation of Building Societies,

make recommendations to the Board on the formulation of criteria under subsection (2).

(2) The Board shall from time to time, with the approval of the Minister and after considering any recommendations made to it under subsection (1), formulate the criteria in accordance with which applications forwarded to the Board under section 131M (2) are to be decided. ” .

Section 145 amended.

11. Section 145 of the principal Act is amended in subsection (2) by deleting—

- (a) “Guarantee” in paragraph (i); and

(b) in paragraph (j)—

- (i) "Guarantee Fund" and substituting the following—
" Fund " ; and
- (ii) "the Fund" and substituting the following—
" the Fidelity Fund " .

12. The provisions of the principal Act specified in the Schedule to this Act are amended by inserting, before "Fund" wherever it occurs, in each case the following—

Amendment
of references
to "the
Fund".

" Fidelity " .

SCHEDULE.

(Section 12)

AMENDMENT OF REFERENCES TO "THE FUND"

Sections 70 (7), 90 (1) and (2), 107 (2), 108 (1), 109, 110, 111 (1) and (3), 112, 113 (3), 114, 116 (1) and (2), 117 (1), (2), (3), (4) and (5), 118, 119, 120 (1), (2) and (3), 122, 123 (3) and 136A.

