

SETTLEMENT AGENTS.

No. 64 of 1982.

AN ACT to amend the Settlement Agents Act 1981-1982.

[Assented to 19 October 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 *Settlement Agents Amendment Act 1982*. Short title and citation.

(2) In this Act the Settlement Agents Act 1981-1982 is referred to as the principal Act. Act No. 33 of 1981 amended by No. 10 of 1982.

(3) The principal Act as amended by this Act may be cited as the Settlement Agents Act 1981-1982.

Section 4
amended.

2. Section 4 of the principal Act is amended in subsection (1) by inserting before “and” after paragraph (a) the following paragraph—

“ (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; ” .

Sections 26A
and 26B
inserted.

3. After section 26 of the principal Act, the following sections are inserted—

Exemptions
for real
estate
agents.

“ 26A. (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.

(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.

26B. (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.

Exemptions
for business
agents.

(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.

(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.

(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 60
amended.

4. Section 60 of the principal Act is amended in paragraph (e) by deleting "106" and substituting the following—

" 105 " .

Schedule 1
amended.

5. Schedule 1 to the principal Act is amended—

(a) in clause 1, by inserting after paragraph (b) of subclause (1) the following paragraph—

" (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; " ; and

(b) in clause 2, by inserting after paragraph (b) of subclause (1) the following paragraph—

" (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; " .
