

LAND AGENTS.

No. 40 of 1969.

AN ACT to amend the Land Agents Act, 1921-1966.

[Assented to 21st May, 1969.]

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

1. (1) This Act may be cited as the *Land Agents Act Amendment Act, 1969.*

Short title
and citation.

(2) In this Act the Land Agents Act, 1921-1966 is referred to as the principal Act.

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as amended
by Act No.
86 of 1966.

(3) The principal Act as amended by this Act may be cited as the Land Agents Act, 1921-1969.

Commence-
ment.

2. This Act or any provision thereof shall come into operation on such date or such dates as are respectively fixed by proclamation.

Amend-
ment to s. 2.
(Interpreta-
tion.)

3. Section two of the principal Act is amended—

(a) by adding after the interpretation “company” or “registered company”, an interpretation as follows—

“Fidelity Guarantee Fund” or “Fund” means the Land Agents Fidelity Guarantee Fund established under this Act; ; and

(b) by adding after the interpretation “Licensee” an interpretation as follows —

“stealing” has the same meaning as it has in section three hundred and seventy-one of The Criminal Code; .

Amend-
ment to s. 4.
(Application
for license.)

4. Section four of the principal Act is amended—

(a) by repealing subparagraph (ii) of paragraph (a) of subsection (3) and re-enacting it as follows—

(ii) has within the period of five years immediately preceding his application—

(I) held for a period of at least two years a license, or similar authority under a corresponding enactment of any other State or Territory of the Commonwealth to act as a land agent; and

(II) has in that other State or Territory for a period of at least two years acted as and carried out the functions of a land agent,

whether on his own behalf or on behalf of a firm or a company, not

being a license granted to him as being a person of the kind referred to in subparagraphs (v) or (vi) of this paragraph; ;

- (b) by adding after the word "application" in line two of subparagraph (iii) of paragraph (a) of subsection (3), the passage, "if the application is made at any time before or within a period of two years from and including the date of the coming into operation of the Land Agents Act Amendment Act, 1969" ;
- (c) by adding after the word "licensee" being the last word in subparagraph (iii) of paragraph (a) of subsection (3) the words "or a director of a company that is a licensee";
- (d) by deleting the passage, "and on deposit of a fidelity bond in the sum of two thousand pounds, in the form in the Second Schedule to this Act, from an insurance company carrying on insurance business under and in accordance with the Insurance Act, 1932, as amended from time to time, of the Parliament of the Commonwealth, or some other approved surety or sureties" in lines thirty-nine to forty-six of paragraph (a) of subsection (3);
- (e) by repealing paragraph (b) of subsection (3);
- (f) by repealing paragraph (c) of subsection (3);
- (g) by repealing paragraph (d) of subsection (3);
- (h) by repealing paragraph (e) of subsection (3); and
- (i) by repealing paragraph (f) of subsection (3).

5. The principal Act is amended by adding after section seven a section as follows—

7A. (1) A license authorises the licensee to carry on only one business of a land agent.

S. 7A added.

Licensee to conduct one land agents business only.

(2) A licensee may carry on the business of a land agent at more than one place.

(3) Where a licensee carries on the business of a land agent at two or more places that business shall be carried on at each place under the same name.

(4) Where a licensee carries on his business of a land agent at two or more places his principal place of business shall be deemed to be, for the purposes of this Act, the place of business as provided in subsection (1) of section seven of this Act, and each other place of business of the licensee shall be deemed to be a branch office.

(5) A licensee who—

(a) on the date of the commencement of this section carries on the business of a land agent at any branch office; or

(b) on or after that date commences to carry on such business at any branch office,

shall within twenty-one days after that date or after he so commences, as the case requires, by notice in writing advise the Committee of the address of the branch office and the name and address of the person who is in control of the business at the branch office.

(6) No person other than a licensee or a person who is the holder of a certificate of registration and who has been registered under this Act as a land salesman for at least two years shall be in control of the business of a land agent at an office or place of business of a land agent.

(7) A licensee who permits any person other than a person specified in subsection (6) of this section to be in control of the licensee's business of land agent at any place at which that business is carried on, is guilty of an offence against this Act. .

(8) Nothing in this section—

(a) prohibits an employee of any company referred to in subsection (2b) of section four of this Act that is a licensee, from being

in control of the company's business of a land agent carried on at a branch office of the company; or

- (b) makes it an offence for the company to permit the employee to be so in control.

6. Section ten of the principal Act is amended by adding after subsection (2) a subsection as follows—

Amendment
to s. 10.
(When
license may
be
cancelled.)

(2a) Where a court is empowered under this Act, in its discretion, to cancel a license or where the Committee applies to a court pursuant to section fourteen D of this Act, for cancellation of a license, the court may, instead of cancelling the license or imposing any other penalty, impose on the licensee named therein a fine not exceeding five hundred dollars. .

7. The principal Act is amended by adding after section thirteen a section as follows—

S. 13A added.

13A. (1) Every advertisement in writing published, permitted or authorised to be published by a licensee or a person registered under this Act as a land salesman relating to or in connection with his business of a land agent or the business in which he is employed as a land salesman—

Advertise-
ments by a
licensee or
land
salesman.

- (a) shall in the case of a licensee, contain the name of the licensee, and the address of the principal place where the licensee conducts his business of land agent or the address of the branch office where the licensee's business of land agent to which the advertisement relates or is connected, is carried on, or the name under which he conducts his business of land agent and the address of the principal place thereof or the address of the branch office where the licensee's business of land agent to which the advertisement relates or is connected, is carried on; and

(b) shall, in the case of a person registered under this Act as a land salesman, contain the name and address of the licensee by whom the land salesman is employed or that name and the address of the branch office where the licensee's business of land agent to which the advertisement relates or is connected, is carried on.

(2) A licensee or person registered under this Act as a land salesman who publishes, permits or authorises the printing or publication of any such advertisement that does not comply with this section, is guilty of an offence.

Penalty: Two hundred dollars. .

Amendment
to s. 14A.
(The
Committee.)

8. Section fourteen A of the principal Act is amended by adding after subsection (1) the following subsection—

(1a) The Committee as constituted immediately prior to the date of the coming into operation of the Land Agents Act Amendment Act, 1969, and as constituted at any time thereafter, by force of this subsection—

- (a) is a body corporate with perpetual succession and shall have a common seal;
- (b) is capable in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued;
- (c) is capable of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer. .

Amendment
to s. 14G.
(Duty to
keep trust
accounts.)

9. Section fourteen G of the principal Act is amended by adding after subsection (21) subsections as follow—

Power of
Committee
to order
audit of
trust
account.

(22) Without prejudice to the operation of the foregoing provisions of this section, where the Committee is of opinion that it is in the public interest to do so, it may, at any time, cause the trust accounts of a licensee to be audited by an auditor nominated in writing by the Committee for that purpose.

(23) Every licensee shall, at all reasonable times at each place of business at which he carries on business as a land agent, keep open for inspection—

Licensee to produce books, etc., to auditor.

(a) by the auditor nominated by the Committee; 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.

(24) The cost of an audit carried out pursuant to subsection (22) of this section, shall be as agreed by the Committee and paid as the Minister in writing directs, either from the Fidelity Guarantee Fund or by the licensee whose trust accounts have been the subject of the audit.

(25) The provisions of subsection (16) of this section apply to an auditor nominated by the Committee under subsection (22) of this section or any person authorised by him under subsection (23) of this section, with such modifications as circumstances require.

10. Section fifteen A of the principal Act is amended—

Amendment to s. 15A (Land Salesman).

(a) by adding after subsection (3) a subsection as follows:—

(3a) Subject to subsections (4) and (5) of this section, a person resident in the State who—

(a) is a member of a firm that is a licensee, not being a member who is the holder of a license on behalf of that firm; or

(b) is a director of a company that is a licensee, not being a director who is the holder of the license on behalf of that company,

shall, while he continues to be such a member or such director, be the holder of a certificate of registration, whether or not he acts as or carries out any of the functions of, a land salesman. ;

(b) by substituting for subsection (5) a subsection as follows—

(5) A person to whom subsection (3a) of this section applies, is not required to be the holder of a certificate of registration under that subsection until after the expiration of a period of thirty days from—

(a) the date of the commencement of that subsection; or

(b) the date he becomes such a person,

whichever date is the later. .

Amendment
to s. 15B.
(Registration of land
salesmen.)

11. Section fifteen B of the principal Act is amended—

(a) by repealing subsection (3);

(b) by repealing subsection (4); and

(c) by repealing subsection (5).

Amendment
to s. 15F.
(Register of land
salesmen.)

12. Section fifteen F of the principal Act is amended by adding after subsection (3) subsections as follow—

(4) A person who is registered under this Act as a land salesman shall not at the same time be employed as a land salesman by more than one licensee or act as a land salesman for or on behalf of any person other than the licensee who is his employer, principal or partner.

(5) Where a person who is registered under this Act as a land salesman ceases to be employed as such by a licensee, the licensee shall within fourteen days thereafter notify the Committee in writing of the fact. .

13. Section sixteen of the principal Act is amended—

Amendment
to s. 16.
(Regula-
tions.)

(a) by substituting for the section number designation "16." the section number designation "35." ;

(b) by adding after paragraph (e) of subsection (3), paragraphs as follow—

(ea) may prescribe forms of notices to be given to the Committee in relation to claims against the Fidelity Guarantee Fund and the manner of making claims against the Fund and the manner of verifying any claim including a condition that the claim be verified by statutory declaration;

(eb) may prescribe generally for such other matters as may be considered necessary for the purpose of protecting the Fidelity Guarantee Fund or of giving full effect to the intent of the provisions of this Act relating to the Fund; .

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

S. 16 added.

16. (1) There is hereby established a fund to be called the Land Agents Fidelity Guarantee Fund.

Land Agents
Fidelity
Guarantee
Fund.

(2) The Fund shall be the property of the Committee and shall be held in trust to be applied for the purposes specified in this Act. .

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

S. 17 added.

17. All money belonging to the Fidelity Guarantee Fund shall pending the investment or application thereof, be paid into a bank in

Separate
Bank
account
for the
Fund.

the State to the credit of an account to be called the Land Agents Fidelity Guarantee Fund Account. .

S. 18 added.

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

Money payable into the Fund.

18. The Fund shall consist of—

- (a) all sums paid to or on account of the Fund by land agents and land salesmen by way of contribution or levy, in accordance with this Act;
- (b) the interest from time to time accruing from the investment of the Fund, as provided in this Act;
- (c) all money recovered by or on behalf of the Committee in the exercise of any right of action conferred by this Act;
- (d) any other money that may be lawfully paid into the Fund. .

S. 19 added.

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

Expenditure from the Fund.

19. There shall from time to time be paid out of 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 Committee under section thirty-one of this Act;
- (d) the cost of any audit pursuant to subsection (24) of section fourteen G of this Act or section twenty of this Act;
- (e) the expenses involved in the administration of the Fund;

- (f) all expenses incurred by the Committee in or in relation to appearances before courts of petty sessions with respect to applications for licenses or transfers thereof or cancellations of licenses under this Act; and
- (g) any other money payable out of the Fund in accordance with this Act. .

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

20. The accounts of the Fund shall be audited annually by the Auditor General, and in respect thereof the Auditor General has all the powers conferred on him by the Audit Act, 1904. . Audit.

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

21. The Fund shall be administered by the Committee. . Administra-
tion of
Fund.

20. The principal Act is amended by adding a section as follows— S. 22 added.

22. (1) Except as provided in section twenty-three of this Act— Contribu-
tions to
Fund.

- (a) each land agent, on making application in any year for a license or renewal thereof, shall, in addition to all other fees payable in respect thereof, pay to the Committee a sum of twenty dollars;
- (b) each land salesman, on making application for a certificate of registration or a renewal thereof, shall in addition to all other fees payable in respect thereof, pay to the Committee a sum of eleven dollars,

and no such license or renewal thereof or no such certificate of registration or renewal

thereof shall be issued until the appropriate payment has been made to the Committee.

(2) Where a person to whom—

(a) paragraph (a) of subsection (1) of this section applies has paid to the Committee pursuant to that paragraph, a sum of sixty dollars; or

(b) paragraph (b) of subsection (1) of this section applies has paid to the Committee pursuant to that paragraph a sum of thirty-three dollars,

and no claim has been made, or no claim that has been made has been sustained against the Fund in respect of such person, such person shall, after paying the sum of sixty dollars or thirty-three dollars, as the case may be, pay annually a contribution of four dollars or two dollars respectively, at the time provided in subsection (1) of this section.

(3) The amounts paid to the Committee under this section shall forthwith be paid by the Committee into the Fund. .

S. 23 added.

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

Accumulated Fund not to exceed \$150,000.

23. No land agent or land salesman who has contributed to the Fund a sum of sixty dollars or thirty-three dollars respectively, is liable to pay any contribution under subsection (2) of section twenty-two of this Act, at any time while the amount of the Fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fund, exceeds one hundred and fifty thousand dollars. .

S. 24 added.

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

Levies.

24. (1) If at any time the Fund is in the opinion of the Committee not sufficient to satisfy the liabilities of the Committee in relation thereto, the Committee may by resolution,

impose on each licensee and each holder of a certificate of registration for payment into the Fund, a levy of such amount as it thinks fit not exceeding the relevant amount specified in subsection (2) of this section.

(2) The amount of the levy shall not exceed—

(a) in the case of a licensee, the sum of ten dollars in any one year;

(b) in the case of a holder of a certificate of registration, the sum of five dollars in any one year.

(3) The amount of the levy shall become payable on a date and in a manner to be fixed by the Committee, and notice thereof shall be sent by the Committee to each licensee and each holder of a certificate of registration.

(4) A person who fails to comply with any notice sent to him under subsection (3) of this section is guilty of an offence against this Act. .

23. The principal Act is amended by adding a section as follows:— S. 25 added.

25. Any money in the Fund that is not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorised to invest trust funds. . Investment of Fund.

24. The principal Act is amended by adding a section as follows:— S. 26 added.

26. (1) Subject to this Act, the Fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of any stealing by a licensee or by a partner of a licensee or a servant or agent of a licensee, or where the licensee is a company, by a director or officer or servant or agent of the company, of any money or other property capable of being stolen, entrusted to the licensee, or to the servant, agent, director or officer of the licensee, in the course of the licensee's business of a land agent. Application of Fund.

(2) A person shall not have a claim against the Fund in respect of any stealing committed before the date of the coming into operation of the Land Agents Act Amendment Act, 1969, and in respect of any stealing committed after that date, a person shall not have a claim against the Fund, unless notice of the claim is given in writing to the Committee within one year after the claimant has become aware of the stealing. .

S. 27 added.

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

Claims
against
Fund.

27. (1) The Committee may receive and settle any claim against the Fund at any time after the stealing in respect of which the claim arose, has occurred but no person is entitled, without the leave of the Committee, to commence any action in relation to the Fund, unless the Committee 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 land agent 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 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 land agent.

(3) Any amount shall not be paid or be payable out of the Fund as interest on the amount of any judgment obtained or of any claim admitted against the Fund.

(4) A right of action does not lie in relation to the Fund in respect of any loss suffered by any person by reason of any stealing by a land agent at any time after the claimant has received a notice in writing from the Committee warning him against the employment or continued employment of that land agent.

(5) A right of action does not lie in relation to the Fund in respect of any loss suffered by the spouse of a land agent by reason of any stealing by that land agent, or in respect of any loss suffered by any land agent by reason of any stealing by any partner of that land agent, or by reason of any stealing by a servant of the land agent or a servant of any firm of land agents in which the land agent is a partner or, where the land agent is a company by a director, an officer, or a servant of the company.

(6) An action for damages does not lie against the Committee or any member or the Secretary thereof for any notice given in good faith and without malice for the purpose of subsection (4) of this section. .

26. The principal Act is amended by adding a section as follows— S. 28 added.

28. In any action brought against the Committee in relation to the Fund, all defences that would have been available to the defaulting land agent are available to the Committee. . Defences to claims against Fund.

27. The principal Act is amended by adding a section as follows— S. 29 added.

29. On payment out of the Fund of any money in settlement in whole or in part of any claims under this Act, the Committee shall be subrogated, to the extent of that payment, to all rights and remedies of the claimant against the land agent in relation to whom the claim arose or in the event of the death or insolvency or other disability of the land agent, against his personal representatives or other persons having authority to administer his estate, and to all other rights and remedies of the claimant in respect of the stealing to which the claim relates. . Subrogation of rights.

S. 30 added.

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

Insufficiency
in Fund.

30. (1) The Fund is the only property of the Committee available for the satisfaction of any judgment obtained against the Committee in relation to the Fund, or for the payment of any claim allowed by the Committee; but if at any time the Fund is 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 Committee may determine the order in which the judgments and claims charged against the Fund as provided in subsection (1) of this section 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 Committee, the Committee shall in applying the Fund towards the settlement of any of the judgments and claims referred to in subsection (2) of this section, 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 one thousand dollars shall, except in special circumstances, be satisfied in full before claims for amounts exceeding one thousand dollars are satisfied to a greater extent than one thousand dollars;
- (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 Committee, as the case may be. .

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

S. 31 added

31. (1) Notwithstanding anything to the contrary in this Act, the Committee may enter into any contract of insurance with any person carrying on fidelity insurance business in the State, by which the Committee will be indemnified to the extent and in the manner provided by the contract against liability to pay claims under this Act.

Power of Committee to enter into contracts of insurance.

(2) Any such contract may be entered into in relation to licensees generally or the holders of certificates of registration generally or in relation to any licensee or holder of a certificate of registration named therein.

(3) An action does not lie against the Committee, or against any member or the Secretary thereof for injury alleged to have been suffered by any land agent by reason of the publication in accordance with fact of a statement that a contract of insurance entered into under this section does or does not apply to that land agent. .

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

S. 32 added.

32. A claimant against the Fund has no right of action against any person with whom a contract of insurance is made under section thirty-one of this Act, 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 money shall be paid into the Fund and shall be applied in or towards the settlement of relevant claims. .

Application of insurance money.

S. 33 added.

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

Advertisement relating to defaulting land agent and claims.

33. (1) The Committee may cause to be published a notice in a newspaper circulating in the district in which the defaulting land agent is or was carrying on business as a land agent, and the notice shall fix a date not being earlier than three months after the publication of the notice, within which claims shall be made.

(2) Any claim not made in writing to the Committee on or before the date so fixed is barred unless the Committee otherwise determines.

(3) After the date so fixed the Committee is at liberty to distribute in accordance with this Act, the sum from time to time available to be applied in reimbursement under section twenty-seven of this Act, having regard only to judgments and claims allowed against the Fund.

(4) An action for damages does not lie against the Committee or any member or the Secretary thereof or the owner, employee of the owner or publisher of any newspaper for any notice published in good faith and without malice for the purposes of this section.

S. 34 added.

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

Power of Committee to demand securities, etc.

34. The Committee 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 land agent and may on default of delivery of those securities or documents reject the claim.

Second Schedule repealed.

33. The Second Schedule to the principal Act is repealed.