

LAND AGENTS.

2^d Elizabeth II., No. XLVI.

No. 46 of 1953.

AN ACT to amend the Land Agents Act, 1921-1952.

[Assented to 29th December, 1953.]

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:—

Short title
and citation

1. (1) This Act may be cited as the *Land Agents Act Amendment Act, 1953*.

(2) In this Act the Land Agents Act, 1921-1952, Act No. 9 of 1922 as amended by Acts Nos. 40 of 1931, 54 of 1948 and 13 of 1952, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Land Agents Act, 1921-1953.

Commence-
ment.

2. This Act shall come into operation on the first day of January, one thousand nine hundred and fifty-four.

S. 2
amended.
Cf. No. 13 of
1952, s. 2 (a).

3. Section two of the principal Act is amended by substituting for the interpretation, "Institute" the following interpretation:—

"Committee" means The Land Agents Supervisory Committee of Western Australia constituted under this Act.

4. Section four of the principal Act is amended by substituting for the words, "five hundred pounds" where they appear—

in lines four and five of paragraph (a) of sub-section (3); and

in line one of paragraph (b) of that subsection: the words, "two thousand pounds".

S. 4 amended.

Cf. No. 40 of 1931, s. 2.

5. The principal Act is amended by adding after section twelve the following section:—

S. 12A added.

12A. (1) It is an offence for a person, whether a principal or agent or otherwise, and if an agent whether he is or is not licensed under this Act, to pay or give or receive, or to offer or promise or agree to pay or give or receive, a sum of money or other consideration—

Charging and paying for keys and for information relating to tenancies prohibited.
Cf. No. 50 of 1947, s. 6.

(a) for obtaining or making available a key of a house or other building or part of a house or other building; or

(b) for information relating

(i) to tenancy occupation or use, however described; or

(ii) to the possibility or likelihood of tenancy occupation or use, however described;

of the whole or part of a house or other building.

(2) Subsection (1) of this section does not

(a) apply to a person whose business is or includes the selling or cutting of keys at a reasonable charge; or

(b) affect the right of a person who is not precluded by section twelve of this Act from doing so, to sue for and recover commission, reward or remuneration for effecting a land transaction of leasing or letting, or acquiring under lease or letting, tenancy or occupation of the whole or part of a house or other building.

Penalty: Fifty pounds.

S. 14A
repealed.
Cf. No. 13 of
1952, s. 11.

6. Section fourteen A of the principal Act is repealed and the following sections are enacted in its stead:—

The Com-
mittee.

14A. (1) The Governor shall constitute a body by the name of The Land Agents Supervisory Committee of Western Australia by appointing

a member who shall be the Chairman of the Committee;

a qualified accountant and auditor who is a practising member of the Institute of Chartered Accountants in Australia or the Australian Society of Accountants, to be a member of the Committee; and

a licensee (who shall be nominated by the Real Estate Institute of Western Australia), to be a member of, and representative on, the Committee of licensees.

(2) The Governor may appoint deputies for the members of the Committee, to act in their places on the Committee, when they are not available to do so, the deputy for the Chairman to be a Stipendiary, Police, or Resident Magistrate, the deputy for the qualified accountant and auditor, as defined in subsection (1), to be a qualified accountant and auditor, and the deputy for the licensee to be a licensee.

(3) The decision of the Committee is that of the majority of the members of the Committee, or in case there is not agreement constituting a majority decision, that of the Chairman, or if his deputy is acting in his place, that of the Deputy Chairman.

(4) The members of the Committee and their deputies

(a) are entitled to such remuneration, expenses, and leave of absence as the Governor thinks fit; and

(b) may hold office as such for such time as the Governor thinks fit.

(5) The Governor may, on such terms and conditions as he thinks fit, appoint a person to be the Secretary of the Committee and such other persons as he considers necessary to assist the Committee in carrying out its functions under this Act.

(6) The remuneration of the members and the expenses of the Committee are payable out of such moneys as Parliament votes for the purpose.

(7) The Committee shall hold its first meeting at such time and place as the Minister directs and shall hold its subsequent meetings at such times and places as the Committee decides.

(8) The Committee shall keep proper records of its proceedings.

14B. (1) Where the Committee is informed or has reason to suspect that there are or may be grounds for objecting to the granting of a license or the renewal of a license or for applying for cancellation of a license, the Committee shall obtain such statements of the facts as are available and necessary to enable it to decide whether those grounds do or do not exist.

Committee has power to inquire.
Cf. Land Agents Act, 1925-1950 of S.A., ss. 29a-29f added by No. 49 of 1950, s. 7.
Cf. *Gazette*, 20th February, 1953, regulations 4, 5 and 8.

(2) In order to obtain satisfactory statements of those facts the Committee may, if it deems it necessary to do so, hold an enquiry at which it may take evidence on oath or affirmation; and for the purpose of the enquiry

- (a) may by summons signed by the Chairman or Deputy Chairman or Secretary of the Committee, require a person to attend before the Committee;
- (b) may by summons so signed require a person to produce to the Committee any books, papers or other documents;
- (c) require a person to take an oath or affirmation that he will truly answer questions put to him by the Committee relevant to a matter being inquired

into by the Committee, which oath or affirmation may be administered by a member or the Secretary of the Committee;

- (d) require a person appearing before the Committee, whether on summons or otherwise, to answer relevant questions put to him by a member of the Committee or by a person appearing before the Committee.

(3) If a person—

- (a) who has been served with a summons to appear before the Committee does not attend in obedience to the summons;
- (b) who has been served with summons to produce books or documents before the Committee does not comply with the summons;
- (c) when required by the Committee to take an oath or affirmation mentioned in subsection (2) of this section refuses to do so;
- (d) refuses to answer a relevant question put to him by a member of the Committee or by a person appearing before the Committee; or
- (e) misbehaves himself before the Committee,

he commits an offence.

Penalty: One hundred pounds.

(4) A person is not obliged to answer a question put to him at an enquiry conducted by the Committee if the answer to that question would tend to incriminate him.

(5) Where the Committee decides to hold an enquiry concerning a person, the Committee

- (a) shall give the person not less than seven days' notice of the time and place at which it intends to hold the enquiry;

(b) shall afford the person reasonable opportunity of cross-examining witnesses, calling evidence and making submissions to the Committee; and

(c) may adjourn the enquiry from time to time and place to place.

(6) If after having been given that notice the person concerned does not attend at the time and place, or does not attend at an adjournment of the enquiry, the Committee may proceed with the enquiry in his absence.

(7) The procedure at an enquiry held under this section is such as is determined by the Committee.

14C. At the request of the Committee the Commissioner of Police shall cause a member or members of the Police Force to make enquiries and reports relevant to any matter being, or about to be, inquired into by the Committee, and shall cause the reports to be sent to the Committee.

Enquiries by members of the Police Force.

Cf. S.A. Act, s. 29f.

14D. Where the Committee decides that there is just cause to do so, the Committee shall object to an application for a license, or the renewal of a license, or shall apply for the cancellation of a license or make and prosecute a complaint of an offence under this Act.

Duty of Committee to object to applications and apply for cancellations.
Cf. S.A. Act, s. 29d.

14E. The Committee may appoint an officer of the Committee to represent it generally or in a particular case at the hearing by a Court of Petty Sessions of an objection, application, or complaint, made by the Committee under section fourteen D of this Act, or may engage a legal practitioner so to represent it.

Appointment of Committee's representative in proceedings.

14F. Courts and other persons acting judicially, shall in absence of proof to the contrary, presume—

Presumption of proof of certain matters.

(a) that the Committee has been regularly constituted;

- (b) that the decisions of the Committee have been regularly made;
- (c) that proceedings brought by the Committee have been brought pursuant to the decision of the Committee; and
- (d) that a document which purports to have been signed on a specified day by the Chairman, Deputy Chairman, or Secretary of the Committee, has been regularly issued and signed by authority of the Committee on that day.

Interpre-
tation.

14G. (1) In this section, unless the context otherwise requires—

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

“trust accounts” means accounts relating to moneys received or held by a land agent for or on behalf of any other person;

“year” means a period of twelve months ending on the thirty-first day of December, subject however to the provisions of subsection (5) of this section.

Duty to keep
trust
accounts.

(2) (a) A land agent shall—

- (i) 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;
- (ii) 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;
- (iii) keep the accounts in such manner that they can be conveniently and properly audited;
- (iv) correctly balance the accounts at the end of each month.

(b) In this subsection, "business day" means a day other than Saturday, Sunday, or a public holiday.

(3) (a) When a land agent receives money for or on behalf of any other person he shall forthwith give to the person paying the money a receipt for it complying with this subsection and specifying briefly the subject matter or purpose in respect of which the money was received, and shall retain legible carbon duplicates of the receipt.

Receipts for money to be given and carbon and carbon duplicates kept.

(b) Receipts issued under this subsection shall be taken from bound books containing not less than one hundred receipts and arranged so that a carbon duplicate of each receipt issued shall be retained in the book.

(c) The land agent shall produce the retained duplicates in the appropriate books to the auditor at every audit, and at such other times as the auditor may reasonably require.

(d) The receipts and the duplicates thereof shall be so numbered and or lettered or both that every receipt can be identified and so that the receipt and duplicate have the same number or letter.

(e) This subsection does not apply in the case of a land agent if the auditor for the time being employed by the land agent certifies to the Minister that he is satisfied with the system employed by the land agent and that the receipt books are so kept and entered up as to enable the accounts to be properly and conveniently audited, and the Minister approves of the system employed by the land agent of recording the receipt of moneys.

(4) (a) Within three months after the end of each year, every person who carries on business as a land agent during the whole or any part of that year—

Duty of land agent to have trust accounts audited.

(i) shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an accountant duly qualified and approved under this section; and

(ii) shall forthwith after the completion of the audit obtain from the auditor a report of the result of the audit verified by the statutory declaration of the auditor in the form prescribed by the regulations; and

(iii) shall forthwith send or deliver the report, together with the declaration, to the Minister.

(b) The first audit under this section shall be conducted within three months after the thirty-first day of December, one thousand nine hundred and fifty-three, and shall be in respect of the period of six months commencing on the first day of July, one thousand nine hundred and fifty-three, which period of six months is deemed to be a year within the meaning of this section.

(c) Forthwith after completing an audit the auditor shall deliver his report and a signed copy of it to the land agent concerned.

(d) The land agent shall retain the signed copy of the report and produce it on demand pursuant to paragraph (b) of subsection (14) of this section.

Variation of
date of audit

(5) (a) Notwithstanding anything in this section, a land agent may apply in writing to the Minister to fix some date other than the thirty-first day of December, as the date up to which his trust accounts are to be audited, and the Minister may, in his discretion, permit the land agent to substitute such other date for the thirty-first day of December.

(b) The Minister may, upon giving not less than one year's notice to the land agent affected, revoke any permission granted under this subsection.

(c) When permission is granted under this subsection the Minister 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 Minister may think fit.

(d) So long as the permission remains in force, and subject to any conditions which may be imposed, this section shall, in relation to the land agent concerned, be read as if such other date was substituted for the thirty-first day of December.

(e) When any date has been substituted for the thirty-first day of December under this subsection, the date so substituted shall not be further changed except by permission of the Minister granted in accordance with this subsection.

(6) (a) No accountant shall be qualified to act as an auditor under this section unless he is approved by the Minister. Qualification and approval of auditors.

(b) Any accountant who—

(i) is a member of one or both of the societies or bodies following, that is to say—

The Institute of Chartered Accountants in Australia;

The Australian Society of Accountants; and/or

(ii) is registered under section four hundred and two of the Companies Act, 1943-1953, as qualified to act as an auditor; and

(iii) is of good character,

shall be approved by the Minister, but the Minister may refuse to approve—

an accountant who has not been continuously engaged, for at least three years, in practice as a public accountant in the State, either as a principal or as an employee in the office of a public accountant, or firm of public accountants; an accountant if it appears to the Minister that he is liable to

forfeit, or to be deprived of his membership of any of the societies or bodies aforesaid, or that there is any other sufficient reason for refusing the approval.

(c) When the principal office or place of business of a land agent is situated more than twenty miles from the General Post Office at Perth, the Minister may, if he thinks fit, give his approval to the audit of the accounts of that land agent by any person who is in the opinion of the Minister, competent to make the audit, and so long as that approval remains unrevoked, the person so approved shall be deemed to be an accountant approved by the Minister for the purpose of the audit of that land agent's accounts, but not further or otherwise.

(d) No person shall audit the accounts of a land agent if he is a clerk, servant, or partner of that land agent, or if he is a clerk or servant of any other land agent actually in practice, or if he is himself a land agent carrying on business as such.

Selection of
auditors.

(7) Subject to the provisions of this section the auditor by whom the audit of, and reports on, a land agent's trust accounts are to be made shall be selected and employed for that purpose by that land agent.

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

(8) In the event of a land agent carrying on business at more than one place the Minister may from time to time give such directions as he 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 Minister with respect to the examination of the trust accounts kept at any branch of the business.

Revocation
of approvals,
directions
and
authorities.

(9) The Minister may, if in his opinion just cause exists for doing so—

(a) revoke any approval granted by him to any person to act as auditor under this section;

- (b) vary or revoke any other approval, direction, permission, or authority granted or given by him under this section.

(10) (a) In the exercise of the discretions conferred by this section the Minister may inform his mind as he thinks fit.

Determinations of Minister to be subject to review by Judge.

(b) A person aggrieved by any decision or determination of the Minister under this section may apply to the Minister in writing to refer that decision or determination to a Judge of the Supreme Court for review.

(c) Upon the application, the Minister shall submit the facts to a Judge for his opinion or direction thereon, and shall abide by the decision of the Judge, which shall be final.

(11) (a) For the purposes of an audit or report under this section every land 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 land agent for or on behalf of any other person and shall furnish the auditor with all such information and particulars as he reasonably requires.

Duties of land agents with respect to audit.

(b) 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.

(12) Every banker of a land agent shall, on request of any auditor engaged in the audit of that land agent's trust accounts under this section, produce to that auditor all such books, papers, accounts, documents and securities as may be reasonably necessary for the purposes of the audit.

Duty of banker with respect to audit.

(13) Every auditor of a land agent's trust accounts shall include in his report furnished pursuant to subsection (4) of this section a statement as to the following matters—

Contents of auditor's report.

- (a) whether the trust accounts of such land agent have in the opinion of the auditor been kept regularly and properly written up;

- (b) whether the trust accounts of such land agent have been ready for examination at the periods appointed by the auditor;
- (c) whether such land agent has complied with the auditor's requirements;
- (d) whether such land agent's trust accounts are in order or otherwise;
- (e) any matter or thing in relation to such trust accounts which should in the opinion of the auditor be communicated to the Minister.

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

(14) (a) Every land agent 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—

- (i) moneys held, on the last day of the period to which the audit relates, by the land agent for or on behalf of any other person; and
- (ii) negotiable or bearer securities or deposit receipts in the name of the land agent which represent moneys drawn from the land agent's trust accounts and which are held by the land agent on that day.

(b) 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 land agent.

(c) The statement so delivered shall be retained by the land agent and be produced on demand to the auditor making the next succeeding audit of the land agent's trust accounts together with a signed copy of the report of the last preceding audit of those accounts.

(d) Where a land agent's accounts are being audited for the first time or where for any other reason no statement containing the particulars set out in paragraph (a) of this subsection and relating to the previous period of audit, is available for the purpose of audit, the land 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.

(e) Every statement made under this subsection shall be verified by the statutory declaration of the land agent, or, in the case of a firm of land agents, by the statutory declaration of one of the partners, or in the case of a company, by the persons holding a land agent's license on behalf of the company pursuant to subsection (3) of section three of this Act.

(15) If an auditor in the course of auditing a land 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 land 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 section, he shall fully set out the facts so discovered by him in the report to be delivered to the Minister, and shall furnish signed copies of the report to the land agent concerned.

Auditor's report where land agent has not complied with rules, etc.

(16) (a) Except where this section 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 section.

Non-disclosure by auditors.

(b) An auditor is not guilty of a breach of this subsection by disclosing information—

- (i) by means of, or in a report made pursuant to this section; or
- (ii) 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 land agent to whom the information relates.

(17) (a) 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 land

Right of persons beneficially interested to obtain information.

agent, the Minister 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 Minister under this section as affects or may affect such person.

(b) A report of an auditor under this section or a statutory declaration, statement or other document delivered to the Minister under this section shall be available in the hands of the Minister for inspection by the auditor appointed to audit the accounts of the same land agent for the next succeeding year.

Breach of this section.

(18) (a) A person who contravenes or does not observe any requirement of this section commits an offence.

Penalty: Fifty pounds.

(b) If an offence against this section is committed by a company, the company itself and every director, manager, secretary or other officer of the company who commits, authorises or permits the act or omission constituting the offence, commits the offence.

Remuneration of auditor.

(19) The fees payable by a land agent to an auditor for an audit under this section shall be such as are agreed on between the land agent and the auditor.

Land agents having no accounts to audit.

(20) A land agent 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 section if within the period of three months after the end of that year he makes a statutory declaration to that effect and delivers the same to the Minister.

Accounts of firm.

(21) Where trust accounts are kept by a firm of land agents an audit of those accounts under this section 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 land agent who is a member of such firm.

7. The Second Schedule to the principal Act is amended by substituting for the words, "five hundred pounds" in line eleven the words, "two thousand pounds".

Second
Schedule
amended.
Cf. No. 40 of
1931, s. 3.

8. The long title to the principal Act is amended by adding after the word, "Licensing" the words, "and Supervision".

Long title
amended.
