

WESTERN AUSTRALIA.

REAL ESTATE AND BUSINESS
AGENTS ACT 1978.

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SCHEDULE

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WESTERN AUSTRALIA

REAL ESTATE AND BUSINESS AGENTS.

No. 72 of 1978.

AN ACT to make provision with respect to the Regulation and Supervision of Certain Persons acting in respect of Real Estate Transactions or certain Business Transactions, to repeal the Land Agents Act 1921-1974, and for related purposes.

[Assented to 20 October 1978.]

BE it enacted—

PART I—PRELIMINARY.

Short title.

1. This Act may be cited as the *Real Estate and Business Agents Act 1978*.

Commencement.

2. (1) Subject to subsection (2), the provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

(2) Section 5 shall come into operation on the appointed day^a.

[*S. 3 repealed by No. 29 of 1982, s. 3.*]

Interpretation and construction.

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

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

“agent” means a person who is a real estate agent or a business agent, or both a real estate agent and a business agent;

“agents code of conduct” means the agents code of conduct prescribed and published under section 101;

“appointed day” means the day fixed by the Minister pursuant to subsection (2);

“approved” means approved by the Board;

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

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

“Auditor General” means the person acting in the office of Auditor General under the Audit Act 1904;

“Board” means the Real Estate and Business Agents Supervisory Board;

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

“business” means the business of an agent but does not have that meaning in paragraph (a) of the interpretation “business transaction” and does not mean the business of a developer;

“business”, in paragraph (a) of the interpretation “business transaction” means any commercial undertaking or enterprise in respect of any profession, trade, employment, vocation, or calling;

“business agent” means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money’s worth, as commission, reward, or remuneration, in respect of a business transaction as defined by this section, but does not include a person whose business is to so act by reason that—

(a) he is appointed by a court as a receiver or receiver and manager of the business of another; or

- (b) he is an official receiver or trustee within the meaning of the Bankruptcy Act 1966, of the Commonwealth or any Act in amendment or substitution of that Act;

“business sales representative” means a person who on behalf of an agent negotiates a business transaction irrespective of whether or not the agent is the owner of the business involved, and includes—

- (a) a person who does so as a member of a firm that is a licensee and the holder of a current triennial certificate unless he is also a licensee and the holder of a current triennial certificate;
- (b) a person who does so as a director of a body corporate that is a licensee and the holder of a current triennial certificate, unless he is also a licensee and the holder of a current triennial certificate;

“business transaction”—

- (a) means a sale, exchange or other disposal and a purchase, exchange or other acquisition of a business and any share or interest in a business or the goodwill thereof; and
- (b) includes any sale, exchange, or other disposal and any purchase, exchange, and other acquisition of goods, chattels or other property relating to a business transaction of the kind specified in paragraph (a); and
- (c) also includes an option to enter into a business transaction; but
- (d) does not include the sale, exchange, or other disposal or a purchase, exchange, or other acquisition of a share in the capital of a body corporate carrying on a business or an option in respect thereof;

“certificate of registration” means a certificate of registration as a sales representative under this Act;

“Chairman” means the Chairman of the Board;

“code of conduct for sales representatives” means the code of conduct for sales representatives prescribed and published under section 101;

“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 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;

“developer” means a person whose business either alone or as part of or in connection with any other business, is to act on his own behalf in respect of the sale, exchange, or other disposal of real estate;

“District Court” means The District Court of Western Australia established under the District Court of Western Australia Act 1969;

“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;

“franchising agreement” means an agreement whereby a party to the agreement grants to another party to the agreement the right or privilege to carry on business in a manner, over a period, and in a place specified in the agreement;

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

“legal practitioner” means a certificated legal practitioner within the meaning of the Legal Practitioners Act 1893;

“licence” means the licence of an agent under this Act;

“licensed” means licensed as an agent under this Act;

“licensee” means a person licensed under this Act;

“member”—

(a) except in Part IXA, means a member of the Board; and

(b) in Part IXA, means a member of the Advisory Committee;

“Part” means a Part of this Act;

“prescribed percentage”, in relation to an agent’s trust account, means a percentage, not exceeding 65 per centum, from time to time prescribed for the purposes of Part IX;

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

“real estate agent” means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money’s worth, as commission, reward or remuneration, in respect of a real estate transaction as defined by this section but does not include a person whose business is to so act by reason that—

(a) he is appointed by a court as a receiver or receiver and manager of the business of another person; or

- (b) he is an official receiver or trustee within the meaning of the Bankruptcy Act 1966 of the Commonwealth or any Act in amendment or substitution of that Act;

“real estate sales representative” means a person who on behalf of an agent or a developer negotiates a real estate transaction irrespective in the case of an agent of whether or not the agent is the owner of the real estate involved, and includes—

- (a) a person who does so as a member of a firm that is a licensee and the holder of a current triennial certificate, unless he is also a licensee and the holder of a current triennial certificate; and
- (b) a person who does so as a director of a body corporate that is a licensee and the holder of a current triennial certificate unless he is also a licensee and the holder of a current triennial certificate;

“real estate transaction”—

- (a) means a sale, exchange, or other disposal and a purchase, exchange, or other acquisition of real estate and any exclusive right whether deriving from the ownership of a share or interest in a body corporate or partnership, or otherwise, to the use or occupation of real estate including the leasing, and letting, and the acquisition under lease or letting of tenancy or occupation of real estate; and
- (b) includes any sale, exchange, or other disposal and any purchase, exchange, or other acquisition of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a); and
- (ba) includes the collection of rents or other payments for use or occupation; and
- (c) also includes an option to enter into a real estate transaction;

“registered” and “registered sales representative” means registered as a sales representative under this Act;

“Registrar” means the Registrar of the Board;

“registration” means registration as a sales representative under this Act;

“renewal” means a renewal of a triennial certificate or of a certificate of registration, as the case requires;

“repealed Act” means the Act repealed by section 5;

“sales representative” means a person who is a real estate sales representative or a business sales representative, or both a real estate sales representative and a business sales representative;

“Schedule” means the Schedule to this Act;

“section” means a section of this Act;

“strata company” means a strata company constituted or deemed to be constituted under the Strata Titles Act 1985;

“subsection” means a subsection of the section wherein the term is used;

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

“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 an agent;

“Trust” means the Real Estate and Business Agents Deposit Trust established by section 126;

“Trust Interest Account” means the account referred to by that name in section 130.

(2) The Minister shall by notice published in the *Government Gazette* fix a day to be the appointed day” for the purposes of the provisions of this Act that refer to the appointed day.

(3) The collection by an agent for or on behalf of another person of moneys in respect of—

- (a) the consideration;
- (b) any terms payments;
- (c) any rent or other payment for use or occupation; or
- (d) any payments under a mortgage or other security,

relating to a transaction is deemed to be a service rendered by the agent in his capacity as an agent, and those moneys are deemed to be moneys received by the agent, in the course of his business, for and on behalf of the other person in respect of the transaction, irrespective of whether or not the agent negotiated the transaction or participated in the negotiation thereof.

(3a) For the purposes of this Act, moneys collected by an agent for or on behalf of a strata company are deemed to be moneys collected by the agent in respect of a real estate transaction.

(4) Nothing contained elsewhere in this Act applies to or in relation to—

- (a) a body corporate authorized by the law of any State, or of a Territory, of the Commonwealth to apply for and obtain a grant of probate of a will when exercising its power to do so or when exercising any other power conferred on it by such a law; or

- (b) stockbrokers who are members of a stock exchange within the meaning of the *Securities Industry (Western Australia) Code* when dealing in securities within the meaning of that Code.

[S. 4 amended by No. 74 of 1980, s. 3; No. 10 of 1982, s. 28; No. 29 of 1982, s. 4; No. 40 of 1985, s.8.]

Repeal.

- 5. The Land Agents Act 1921-1974 is hereby repealed.

PART II—REAL ESTATE AND BUSINESS AGENTS SUPERVISORY BOARD.

Division 1—General.

The Board.

- 6. (1) For the purposes of this Act there shall be a board to be known as the "Real Estate and Business 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.

Composition of Board.

- 7. (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 agent, shall be appointed to be a member and Chairman of the Board;
 - (b) one, being a person who is not a licensed agent, shall be a person who is experienced in commercial practice;
 - (c) one, being a person who is not a licensed agent, shall be a person who is a legal practitioner;
 - (d) one shall be a person who is a licensed agent nominated for appointment by The Real Estate Institute of Western Australia; and

- (e) one shall be a person who is a licensed agent and elected for appointment by licensed agents (hereinafter called an elective member).

(2) Prior to the first occasion on which an appointment is to be made to the office of a member referred to in subsection (1)(d), and on each occasion thereafter when such office becomes vacant, the Minister shall, in writing, request The Real Estate Institute of Western Australia to nominate to him in writing the name of a licensed agent who is willing to act as a member of the Board.

(3) Where a request has been made pursuant to subsection (2) the Minister may, if nomination is not made pursuant to that subsection within 21 days of the request being made, nominate for appointment to the office such licensed agent as the Minister thinks fit.

[Subsection (4) omitted under Reprints Act 1984, s. 7 (4) (e).]

(5) The Minister shall appoint a returning officer for each election of an elective member.

(6) The election of an elective member shall be held and conducted in such manner and at such times as may be prescribed.

(7) 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.

(8) 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.

(9) 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.

Term of Office.

8. (1) Subject to this Act, each elective member shall hold office for a period of 4 years and is eligible for re-election and re-appointment, 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 re-appointment.

(2) The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

(3) The Governor may terminate the appointment of a member for inability, inefficiency, or misbehaviour.

(4) 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.

(5) 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 nominated or elected in the manner in which the member was nominated or elected.

[S. 8 amended by No. 74 of 1980, s. 4.]

Meetings of the Board.

9. (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 at the meeting.

(3) At a meeting of the Board, 3 members constitute 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.

Validity of acts of Board.

10. 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.

Remuneration of members.

11. The members of the Board shall be paid such fees and allowances as may from time to time be fixed by the Governor.

The Registrar and other officers.

12. (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 the Public Service Act 1978.

(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 authorized or required to be done or signed by the Registrar may be done or signed by any 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.

*Division 2—Powers of Investigation and Inquiry.***Investigation and inquiry by Registrar and inspectors.**

13. 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 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;
- (b) determining whether or not 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;
- (c) determining whether or not sales representatives and developers are complying with the requirements of this Act; and
- (d) detecting offences against this Act.

Police investigations.

14. (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.

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

15. (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 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 have the authority of a commissioner for declarations.

(3) A requirement made under subsection (1)(b)—

- (a) shall be made by notice in writing served on the person required to produce a document;
- (b) shall specify the time at or within which the document is to be produced; and
- (c) may, by its terms, require that the document be produced—
 - (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, the notice shall state that he is required under this Act to give the information, answer the question, or produce the document, 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 authorized 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.

Incriminating information, questions, or documents.

16. 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,

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, 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).

Failure to comply with requirement.

17. (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 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 at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$300.

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

- (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, 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.

Obstruction of Registrar or inspector.

18. 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.

Division 3—Proceedings before the Board.

Proceedings before the Board.

19. (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) in the case of an application for a certificate of registration, the Board proposes to grant the certificate without a formal hearing; or
- (c) in the case of an application for an inquiry into the conduct of an agent, or a sales representative, there is no allegation against him which would, if substantiated, enable the Board to exercise its powers of discipline under this Act.

(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: \$500.

(8) Where the Board is satisfied that for the purpose of protecting the business or interest of any person 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.

(9) Notwithstanding any other provision of this Act, the Board may, in a meeting at any time and place and without notice thereof to an applicant, grant a licence, a triennial certificate, or a certificate of registration, and where the Board does so, the Registrar shall forthwith deliver the licence, triennial certificate, or certificate of registration, as the case may be, to the applicant.

(10) A person appointed by the Board to assist the Board in proceedings before the Board or a person authorized 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 authorized is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

Powers of the Board.

20. (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;
- (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, including the person whose conduct is subject to an inquiry (whether he has been summoned to appear or not) to answer any relevant questions put to him by the Board, or by 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 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 \$500.

(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 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.

Orders for fines or costs.

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

(2) Where the Board makes an order for the payment of a fine or costs against a licensee or a sales representative, and the fine or costs is not or are not, paid within the time fixed by the Board, the Board may suspend his licence, or registration, as the case requires, until the fine or costs is or are paid, or for such period as the Board thinks fit.

(3) The power conferred on the Board by subsection (2) is in addition to and not in derogation of the powers conferred on the Board by Part VII.

Reasons for decision of Board to be given.

22. The Board may, and, on request by any party to the proceedings, shall, give to the parties reasons for its decision.

Appeals.

23. (1) Any person aggrieved by a decision or order of the Board in proceedings to which the person was a party shall, subject to this section, be entitled to appeal to the District Court against the decision or order of the Board.

(2) The appeal shall be instituted within one month of the making of the decision or order appealed against, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal shall be so instituted.

(3) The District Court may, on the hearing of the appeal, do one or more of the following, according to the nature of the case—

- (a) affirm, vary, or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for re-hearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

PART III—LICENSING OF AGENTS.

Application.

24. (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.

Objections.

25. (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.

Real estate and business agents to be licensed.

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

Penalty: \$2 000.

Grant of licence to a natural person.

27. (1) Subject to this Act, a person, not being a body corporate, who applies to the Board for a licence 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; and
- (d) he understands fully the duties and obligations imposed by this Act on agents.

(2) In subsection (1) (b) “fit and proper” includes being qualified in accordance with the Schedule but subject to the savings and exceptions provided therein and elsewhere in this Act.

Grant of licence to a firm.

28. Subject to this Act 2 or more persons constituting a firm who apply to the Board for a licence 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, an 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 licensed.

Grant of licence to body corporate.

29. Subject to this Act, a body corporate which applies to the Board for a licence 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, an agent's business;
- (b) that 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 or 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 licensed.

Effect of licence.

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

(2) A licence does not confer on a licensee the right to carry on business as an agent unless he holds a current triennial certificate in respect of the licence.

(2a) A licensee who does not hold a current triennial certificate in respect of his licence shall pay to the Board the prescribed annual fee and in default of such payment in accordance with the regulations the licence shall expire.

(3) 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.

[S. 30 amended by No 74 of 1980, s. 5.]

Triennial certificate and renewal thereof.

31. (1) Subject to this Act, the Board shall on the grant of a licence grant the licensee a certificate which confers on the licensee the right to carry on business as an agent 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 body corporate; or
- (b) by the person in *bona fide* control of the business of the licensee, if the licensee is a firm or a body corporate.

Periods of grace for renewal of triennial certificates.

32. (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.

Applications for renewals of triennial certificates in certain cases.

33. (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.

Conditions on licences and triennial certificates.

34. (1) A licensee shall comply with the provisions of this Act and the 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.

(3) A licensee shall comply with any special condition to which under subsection (2) his licence or triennial certificate is subject.

(4) Where the Board refuses to renew a triennial certificate the effect of the refusal shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do subject to such conditions as it may impose to protect the public.

Notice to Registrar.

35. A licensee shall, within 14 days after commencing or ceasing to carry on business as an agent, give to the Registrar notice in writing of that fact.

Registered office.

36. (1) A licensee shall, on and after the day on which he commences to carry on business as an agent, and for so long as he carries on that business, have a registered office in the State.

Penalty: \$100.

(2) Any summons, notice, order, or other document to be served on a licensee, 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.

Branch office.

37. (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: \$100.

(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: \$100.

(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 an agent on his own account.

Endorsements on triennial certificates.

38. (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.

Licence and triennial certificate not transferable.

39. (1) A person shall not hold more than one licence or more than one triennial certificate and shall not carry on more than one business as an agent thereunder.

(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: \$500.

Use of business name.

40. (1) The use of a business name by a licensee is not subject to the approval of the Board but—

- (a) subject to subsection (2), a licensee may carry on business as an agent under only one business name which shall be endorsed on his triennial certificate; and
- (b) all licensees carrying on the business of an agent under a business name shall have their surnames and initials on all correspondence from them in that business.

(2) A licensee who was, immediately before the appointed day^a, carrying on business as a real estate agent under a business name and as a business agent under another business name may continue to do so but so that he uses only one business name for the business of a real estate agent and only one business name for the business of a business agent, in which case both business names shall be endorsed on his triennial certificate.

(3) A licensee who alters the name, style, title, or designation under which he carries on business as an 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: \$100.

Notices at offices; particulars on correspondence and documents.

41. (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 and business agent, together with the name, style, title, or designation under which he carries on business as a real estate agent or a business agent, or both, if that business is, or those businesses are, 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 agent or business 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 real estate agent or business agent, or both, and the address of the branch office shall also be shown.

PART IV—REGISTRATION OF SALES REPRESENTATIVES.

Grant to natural persons only.

42. A certificate of registration as a real estate and business sales representative shall not be granted otherwise than to an individual natural person.

Application.

43. (1) An application for a certificate of registration 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) The information contained in the application shall be verified by statutory declaration of the applicant.

(3) 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.

(4) An applicant is a party to proceedings before the Board on his application.

Real estate sales representatives.

44. (1) On and after the appointed day^a, a person not being a licensee who is the holder of a current triennial certificate shall not act as, or carry out any of the functions of, a real estate sales representative unless he is the holder of a current certificate of registration and he acts, or carries out those functions, for and on behalf of a licensee who is the holder of a current triennial certificate, or for and on behalf of a developer.

Penalty: \$300.

(2) On and after the appointed day^a, a person not being a licensee who is the holder of a current triennial certificate shall not unless he is the holder of a current certificate of registration hold himself out by any means as a real estate sales representative or as being in the employment of, or as acting for or on behalf of a licensee who is the holder of a current triennial certificate as a real estate sales representative, or as being in the employment of, or acting for or on behalf of a developer as a real estate sales representative.

Penalty: \$300.

(3) On and after the appointed day^a, a real estate sales representative who is the holder of a current certificate of registration shall not hold himself out by any means as being in the employment of, or as acting for or on behalf of a licensee who is the holder of a current triennial certificate, or as being in the employment of, or as acting for or on behalf of a developer, unless that licensee or developer, as the case may be, is his employer, principal or partner.

Penalty: \$300.

Business sales representatives.

45. (1) On and after the appointed day^a, a person not being a licensee who is the holder of a current triennial certificate shall not act as, or carry out any of the functions of, a business sales representative unless he is the holder of a current certificate of registration and he acts, or carries out those functions for and on behalf of a licensee who is the holder of a current triennial certificate.

Penalty: \$300.

(2) On and after the appointed day^a, a person not being a licensee who is the holder of a current triennial certificate shall not unless he is the holder of a current certificate of registration hold himself out by any

means as a business sales representative or as being in the employment of, or as acting for or on behalf of a licensee who is the holder of a current triennial certificate.

Penalty: \$300.

(3) On and after the appointed day^a, a business sales representative who is the holder of a current certificate of registration shall not hold himself out by any means as being in the employment of, or acting for or on behalf of, a licensee who is the holder of a current triennial certificate unless that licensee is his employer, principal, or partner.

Penalty: \$200.

Partners and directors of licensees.

46. On and after the appointed day^a a person resident in the State, and not being a licensee who is the holder of a current triennial certificate—

- (a) shall not as a member of a firm that is a licensee and holds a current triennial certificate; or
- (b) shall not as a director of a body corporate that is a licensee and holds a current triennial certificate,

carry out the functions of a sales representative unless he is the holder of a current certificate of registration.

Penalty: \$200.

Grant of certificate of registration.

47. (1) Subject to this Act, an individual natural person who applies to the Board for a certificate of registration as a real estate and business sales representative and pays to the Board the prescribed fee for that certificate shall be granted and may hold a certificate of registration 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 certificate of registration;
- (c) he understands fully the duties and obligations imposed by this Act on persons involved in negotiating real estate transactions and business transactions.

(2) In subsection (1)(b) “fit and proper” includes having such qualification by way of experience or otherwise as is prescribed, or, if no qualification is prescribed, includes having such qualification by way of experience or otherwise as is approved.

Duration of certificate of registration and renewal thereof.

48. (1) Subject to this Act, a certificate of registration remains in force for a period of 12 months from the date specified therein as the day on which it first takes effect.

(2) Subject to this Act a certificate of registration may be renewed for subsequent periods of 12 months each by payment of the prescribed fee and delivery to the Board of an application signed by the sales representative.

Renewal of certificates of registration after expiry date.

49. (1) Where a certificate of registration is renewed within the period of one month immediately succeeding the day on which the certificate of registration expired, the renewal shall be deemed to take effect for the period of 12 months on and from the day next succeeding the day on which the certificate of registration expired.

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

(3) Where a certificate of registration 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.

(4) An application for renewal referred to in subsection (3) 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.

(5) The information contained in an application for renewal referred to in subsection (3) shall be verified by statutory declaration of the applicant.

(6) In respect of any particular application referred to in subsection (3) the applicant shall furnish the Board with such further information as the Board determines, verified if the Board so determines by statutory declaration.

(7) An applicant for a renewal referred to in subsection (3) is a party to proceedings on his application.

Conditions on certificates of registration.

50. (1) A registered sales representative shall comply with the provisions of this Act.

(2) The Board may grant a certificate of registration or a renewal thereof subject to such special conditions as it thinks fit.

(3) A registered sales representative shall comply with any special condition to which his certificate of registration is subject.

(4) Where the Board refuses to renew a certificate of registration the effect of the refusal shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do subject to such conditions as it may impose to protect the public.

Notice to Registrar.

51. A registered sales representative shall, within 14 days after commencing or ceasing in the employment of, or to act for or on behalf of, a licensee or a developer, as the case may be, as a sales representative, give to the Registrar notice in writing of that fact and such further particulars thereof as are prescribed or as are required by the Board.

Certificate of registration not transferable.

52. (1) A certificate of registration is not transferable.

(2) A registered sales representative shall not in any way permit or hold himself out as being willing to permit, another person to use the certificate of registration of the registered sales representative.

Penalty: \$300.

Surrender of certificate of registration.

53. A person may at any time surrender a certificate of registration held by him and shall do so if he ceases to have the qualifications for holding the certificate of registration.

Employment of sales representative.

54. (1) An agent shall not employ as a sales representative, or permit to carry out in the business of the agent any of the functions of a sales representative, any other person, not being a licensee who is the holder of a current triennial certificate, unless that other person is a registered sales representative.

Penalty: \$300.

(2) A developer shall not employ as a real estate sales representative, or permit to carry out in the business of the developer, any of the functions of a real estate sales representative, any other person, not being a licensee who is the holder of a current triennial certificate, unless that other person is a registered sales representative.

Penalty: \$300.

Sales representative to be in service of one person.

55. (1) A registered sales representative shall not accept or undertake employment, or be or remain in the service of, or by any means hold himself out as being in the service of, or act as sales representative for or on behalf of, any person who is an agent or a developer at any time when he is employed by, or in the service of, any other person who is an agent or a developer.

Penalty: \$300.

(2) A person who is an agent or a developer shall not employ, or have in his service as a sales representative, any person who is, to the knowledge of that person who is an agent or a developer, at that time employed by, or in the service of, any other person who is an agent or a developer.

Penalty: \$300.

(3) An agent or a developer shall not whether directly or indirectly give any commission, reward or other valuable consideration to any other person, not being a licensee who holds a current triennial certificate, for acting as, or performing any of the functions of, a sales representative unless the other person is a registered sales representative in the service of the agent or developer, as the case may be, as a sales representative.

Penalty: \$300.

(4) Nothing contained elsewhere in this section applies to or in relation to a director of a body corporate that is a developer when acting as, or carrying out the functions of, a real estate sales representative for the body corporate in its business as a developer.

PART V—GENERAL CONTROLS.**Franchising agreements.**

56. (1) A licensee shall not carry on business pursuant to a franchising agreement unless he has the approval of the Board to do so, and where he does so without such approval each party to the agreement commits an offence.

Penalty: \$2 000.

(2) Approval of the Board for a licensee to carry on business pursuant to a franchising agreement may be subject to such conditions as the Board sees fit to impose, and where those conditions are not complied with each party to the agreement commits an offence.

Penalty: \$2 000.

(3) Where a licensee carries on business pursuant to a franchising agreement—

- (a) each party to the agreement is liable to penalties imposed for failure to comply with the provisions of Part VI; and

- (b) all the parties to the agreement are jointly and severally liable for any defalcation of the licensee.

Principal place of business of a developer to be registered.

57. (1) A developer shall, on and after the day on which he commences to carry on business as a developer, and for so long as he carries on that business, have his principal place of business in the State registered with the Board by giving written notice of the situation of that place to the Registrar.

Penalty: \$100.

(2) Any summons, notice, order, or other document to be served on a developer, may be served by leaving it at his principal place of business or by sending it by registered post addressed to the developer at that place.

Change in principal place of business.

58. (1) Where there is any change in the situation of the principal place of business of a developer, he shall immediately give written notice of the new situation to the Registrar.

Penalty: \$100.

(2) Where written notice is given pursuant to subsection (1) the Registrar shall change the registration of the principal place of business of the developer accordingly.

Record of real estate transactions by a developer.

59. A developer shall keep a record of all real estate transactions in which he has been involved and that record shall be kept in such manner, shall include such details, and shall be preserved for such period as is approved.

Disability of unlicensed person.

60. (1) An agent is not entitled to receive any commission, reward, or other valuable consideration in respect of his services in that capacity unless—

- (a) he is licensed in that capacity and he holds a current triennial certificate in respect of his licence when he renders the services; and
- (b) he has a valid appointment to act in that capacity which is in writing signed by the person for whom the services are or are to be rendered or by some other person lawfully authorized to sign on behalf of the person for whom the services are or are to be rendered.

(2) An appointment to act as an agent is not valid unless—

(a) it is contained in a document which—

(i) clearly sets out the services that are or are to be rendered; and

(ii) where specific property is to be the subject of those services, clearly identifies the property;

(b) the document is not an offer or acceptance or a contract, or a document purporting to be an offer or acceptance or a contract, binding or purporting to bind a party thereto to a transaction; 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 person shall not demand or receive any commission, reward, or other valuable consideration in contravention of subsection (1) or (2), or both.

Penalty: \$500.

(4) Any commission, reward, or other valuable consideration received in contravention of subsection (1) or (2), or both, may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Remuneration of agents.

61. (1) The Board shall from time to time, by notice published in the *Government Gazette*, fix the maximum amounts of remuneration, by way of commission or otherwise, for services rendered by licensees in the course of and incidental to their business as agents and may do so by reference to the type of transaction negotiated and the value thereof or by reference to the type of service rendered and the value of the property in respect of which the service was rendered.

(2) The respective maximum amounts fixed under subsection (1) shall have effect on and after the date on which the notice fixing them is published in the *Government Gazette* or on and after such subsequent date as is specified in that notice.

(3) A licensee is not entitled to receive for any service rendered in his capacity as an agent, any commission, reward, or other valuable consideration that exceeds in value the amount fixed under subsection (1) in respect thereof.

(4) The remuneration of an agent for services rendered by him in his capacity as agent in respect of a transaction he has negotiated is payable only on settlement of the transaction unless there is a failure to settle the transaction and that failure is due to the fault of the agent's principal.

(5) A licensee shall not demand, receive, or hold any commission, reward, or other valuable consideration in contravention of this section.

Penalty: \$500.

(6) Any commission, reward, or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Advertisements by agents and developers.

62. (1) Any advertisement in respect of the business of an agent or a developer shall not be published without his authority.

(2) A duly authorized advertisement in respect of the business of an agent or developer shall contain such details as are sufficient to identify the agent or developer, as the case may be.

(3) A person who enters into a contract as a consequence of an advertisement which contravened subsection (2) is not thereby entitled to avoid the contract.

(4) In a proceeding under this Act for a contravention of subsection (1) or (2) it is a defence if the defendant establishes that he is a person whose business is to publish or arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to such a contravention.

Copy of offer, acceptance or contract.

63. Where a person signs any offer, acceptance, or contract, or any document purporting to be an offer, acceptance, or contract relating to any transaction that has been negotiated, or that is the subject of negotiation, wholly or in part by an agent, a developer, or a sales representative, in the course of his business or employment as such, the agent, developer, or sales representative, as the case may be, shall forthwith supply the person who has signed the offer, acceptance, contract, or document, with a true copy thereof (the onus of proof of which is upon the person obtaining the signature).

Conflict of interest.

64. (1) An agent shall not have, directly or indirectly, any interest, otherwise than in his capacity as an agent, in any transaction in which he acts or purports to act as agent, unless his principal has given prior written consent thereto.

Penalty: \$500 or imprisonment for 6 months.

(2) A sales representative or other person in the employment of an agent shall not have, directly or indirectly, any interest, other than an interest that exists by virtue only of his employment, in any transaction in which the agent acts or purports to act, unless the agent's principal has given prior written consent thereto.

Penalty: \$500 or imprisonment for 6 months.

(3) A court before which any person is convicted of an offence under this section may order that person to pay over to the agent's principal any profit that that person has made, or is, in the opinion of the court, likely to make from the transaction.

(4) An agent shall not, whether directly or indirectly, demand, receive, or hold any reward or other valuable consideration for or in relation to any transaction in respect of which the agent or an employee of the agent has an interest in contravention of this section.

(5) Any reward or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Apportionment of rates, taxes, and outgoings.

65. (1) Subject to subsections (2) and (3), where a real estate transaction has been negotiated by an agent it is the agent's duty to the purchaser to ascertain that all rates, taxes, and outgoings then payable, which are by statute a charge on the real estate, and which, as between the vendor and the purchaser, are payable by the vendor are paid by him, and that all such rates, taxes, and outgoings then accruing are duly apportioned between the vendor and purchaser.

(2) Subject to subsection (3), where a real estate transaction has been negotiated in part by one agent and in part by another, they are jointly and severally liable for the proper performance of the duty mentioned in subsection (1).

(3) An agent may, at his own expense, engage another person to perform, on behalf of the agent the duty mentioned in subsection (1), or if the agent's principal instructs him to engage another person to perform that duty or assist in its performance the agent may do so at the expense of his principal, but in either case the agent and the other person are jointly and severally liable for the proper performance of that duty and, where the case requires, are jointly and severally so liable with the other agent.

Charging and paying for keys and for information relating to tenancies prohibited.

66. (1) Any person who pays, gives, or receives, or offers, promises, or agrees to pay, give, or receive, a sum of money or other consideration—

(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,
commits an offence.

Penalty: \$500.

(2) Subsection (1) does not apply in relation to—

- (a) a person, other than a licensee or a sales representative, whose business is or includes the selling or cutting of keys at a reasonable charge; or
- (b) any commission, reward, or remuneration to which a licensee is entitled for effecting or arranging a real estate transaction of leasing or letting, or acquiring under lease or letting, tenancy, occupation, or use of the whole or part of a house or other building.

[S. 66 amended by No. 74 of 1980, s. 6.]

PART VI—AGENTS' TRUST ACCOUNTS.

Interpretation.

67. In this Part, unless the context otherwise requires—

“bank account” includes an account in a building society in the State investments in which are authorized trustee investments;

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

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

“trust accounts” means accounts relating to moneys received or held by an agent for or on behalf of any other person in respect of transactions;

“year” means a period of 12 months ending on 31 December, subject however to the provisions of section 71.

Trust accounts.

68. (1) Every agent who holds a current triennial certificate shall maintain at least one trust account, designated or evidenced as such, with a bank in the State, or with a building society in the State investments in which are authorized trustee investments, and shall, as soon as practicable, pay to the credit of that account all moneys received by him for or on behalf of any other person in respect of transactions.

(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 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) An agent may pay out of the trust account such of the proper charges relating to transactions 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) Moneys received by an agent for or on behalf of another person in respect of a transaction shall not be withdrawn from his trust account except for the purposes of the transaction, or as otherwise authorized by this Act, or as otherwise authorized by the person or persons lawfully entitled to the moneys.

(5) An agent shall pay moneys withdrawn from a trust account to the person or persons lawfully entitled or authorized to receive them.

(6) An 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.

Receipts and accounting to principal.

69. (1) When an agent receives money for or on behalf of any other person, he shall—

- (a) forthwith give to the person paying the money a receipt for it which shall comply with this section and specify briefly the subject matter or purpose for which the money was received; and

- (b) retain a legible carbon duplicate of the receipt.

(2) Receipts issued under subsection (1) shall be taken from bound books containing not less than 100 receipts and arranged so that a carbon duplicate of each receipt issued shall be retained in the book.

(3) The 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.

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

(5) Subsections (2) to (4), both inclusive, do not apply in the case of an agent if the agent's auditor certifies to the Board that he is satisfied with the system employed by the 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 Board approves of the system employed by the agent of recording the receipt of moneys.

(6) On receipt of any moneys by an agent in respect of a transaction, 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.

[S. 69 amended by No. 74 of 1980, s. 7.]

Duty of agent to have trust accounts audited.

70. (1) Every agent who holds a current triennial certificate 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 Part.

(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 a statutory declaration of the auditor, in an approved form; and

(b) deliver a copy of the report so verified to the agent.

(4) The agent shall retain the copy of the report and produce it on demand pursuant to section 80(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.

(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 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 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 agent if the Board so directs but otherwise shall be paid by the Board out of the Fidelity Fund.

(8) Apart from the annual audit and any interim audit provided for in this section, where, for any reason, the triennial certificate of an agent ceases to have effect under this Act, there shall, within the period of 3 months thereafter, be a termination audit of the agent's trust account,

and the termination audit shall be arranged and conducted in accordance with such provisions of this Part 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 months period deliver to the Board a report of such termination audit.

[S. 70 amended by No. 29 of 1982, s. 12.]

Variation of date of audit.

71. (1) Notwithstanding anything else in this Part, an agent may apply in writing to the Board to fix some date other than 31 December, as the date up to which his trust accounts are to be audited, and the Board may, in its discretion, permit the agent to substitute such other date for 31 December.

(2) The Board may, upon giving not less than one year's notice to the 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 70 shall, in relation to the agent concerned, be read as if such other date was substituted for 31 December.

(5) When any date has been substituted for 31 December under this section, the date so substituted shall not be further changed except by permission of the Board granted in accordance with this section.

Qualification and approval of auditors.

72. (1) Subject to subsection (2), no person is qualified to act as an auditor under this Part unless he is a registered company auditor within the meaning of the *Companies (Western Australia) Code*.

(2) In districts in respect of which the Board is satisfied that no registered company auditor within the meaning of the *Companies (Western Australia) Code* is available, such other persons with such other qualifications as are approved by the Board may act as auditors under this Part.

(3) An auditor shall disclose to the Board any close relationship by blood or marriage he has with an agent whose trust accounts he has been appointed to audit or any business dealings he has with or through such 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.

[S. 72 amended by No. 10 of 1982, s. 28.]

Appointment of auditor.

73. (1) Subject to the provisions of this Part the auditor by whom the audit of, and reports on, an agent's trust accounts are to be made shall be appointed and employed for that purpose by that agent.

(2) An 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.

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

74. In the event of an 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.

Alteration of rights under this Part.

75. 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 Part; or
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by it under this Part.

Determinations of Board to be subject to review by District Court.

76. (1) In the exercise of the discretions conferred by this Part the Board may inform its mind as it thinks fit.

(2) A person aggrieved by any decision or determination of the Board under this Part may apply to the Board in writing to refer that decision or determination to the District Court for review.

(3) Upon the application, the Board shall submit the facts to the District Court for its opinion or direction thereon, and shall abide by the decision of the District Court, which shall be final.

(4) When the Board submits the facts to the District Court pursuant to subsection (3), the Board shall serve a copy of its submission on the aggrieved person and the person shall have the right to make a submission to the District Court.

(5) The submission of the aggrieved person shall be made within one month of the service on him of a copy of the Board's submission and in such manner as the District Court directs, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the submission of the aggrieved person shall be made within that time.

Duties of agents with respect to audit.

77. (1) For the purposes of an audit or report under this Part every 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 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.

Duty of banker with respect to audit.

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

Contents of auditor's report.

79. Every auditor of an agent's trust accounts shall include in his report furnished pursuant to section 70 a statement as to the following matters—

- (a) whether the trust accounts of such agent have in the opinion of the auditor been kept regularly and properly written up;
- (b) whether the trust accounts of such agent have been ready for examination at the periods appointed by the auditor;
- (c) whether such agent has complied with the auditor's requirements;
- (d) whether in the opinion of the auditor such agent's trust accounts are, and have been during the period of the audit, in order or otherwise;
- (da) whether such agent has complied with the requirements of section 127; and
- (e) any matter or thing in relation to such trust accounts which should in the opinion of the auditor be communicated to the Board.

[S. 79 amended by No. 74 of 1980, s. 10.]

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

80. (1) Every 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 agent for or on behalf of any other person; and
- (b) negotiable or bearer securities or deposit receipts in the name of the agent which represent moneys drawn from the agent's trust accounts and which are held by the 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 agent.

(3) The statement so delivered shall be retained by the agent and be produced on demand to the auditor making the next succeeding audit of the 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 an 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 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 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 agent's business.

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

81. If an auditor in the course of auditing an 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 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.

Non-disclosure by auditors.

82. (1) Except where this Part 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 Part.

(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 Part; 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 agent to whom the information relates.

Right of persons beneficially interested to obtain information.

83. (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 an 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 Part as affects or may affect such person.

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

Penalty for breach.

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

Penalty: \$300.

(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, authorizes or permits the act or omission constituting the offence, commits the offence.

Remuneration of auditor.

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

Agents having no accounts to audit.

86. An 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 Part 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.

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

87. (1) Where trust accounts are kept by a firm of agents an audit of those accounts under this Part 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 agent who is a member of such firm and in relation to the agent who is in *bona fide* control of the agent's business of the firm.

(2) Where trust accounts are kept by a body corporate an audit of those accounts under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to an agent who is a director of that body corporate and in relation to the agent who is in *bona fide* control of the agent's business of the body corporate.

(3) Where trust accounts are kept by an agent who or which has a branch office an audit of those accounts, including the accounts of the branch office, under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to an agent who is the manager of the branch office.

Power of Board to order audit of trust account.

88. Without prejudice to the operation of the foregoing provisions of this Part, 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 an agent to be audited by an auditor nominated in writing by the Board for that purpose.

[S. 89 repealed by No. 74 of 1980, s. 9.]

Cost of audit.

90. (1) The cost of an audit carried out pursuant to section 88 shall be as agreed between the Board and the auditor and paid as the Board in writing directs, either by the Board out of the Fidelity Fund or by the agent whose trust accounts have been the subject of the audit.

(2) Where the cost of an audit referred to in subsection (1) is payable by the agent, the Board may in the first instance pay it out of the Fidelity Fund, but thereupon the amount of that cost is a civil debt recoverable summarily in any court of competent jurisdiction by the Board on behalf of the Fidelity Fund.

[S. 90 amended by No. 29 of 1982, s. 12.]

Application of s. 82.

91. The provisions of section 82 apply to an auditor nominated by the Board under section 88 or any person authorized by him under section 89 with such modifications as circumstances require.

Power of restraining dealing with trust accounts or other accounts.

92. (1) Where the Board, on an application made by it to the District Court, shows by evidence on affidavit to the satisfaction of the District Court that—

- (a) there are reasonable grounds for believing that there is a deficiency in the trust account of any agent; or
- (b) there has been undue or unreasonable refusal, neglect, or delay on the part of any agent in paying moneys,
 - (i) which are, or may be, or have been payable out of the trust account of the agent; or
 - (ii) which were required to be paid into the trust account by the agent under the provisions of this Part,

to a person who is entitled thereto or is authorized to receive the moneys,

the District Court may, if it thinks fit, make an order that the manager or other officer for the time being in charge of the bank or building society in which the trust account or any other account in the name of the 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 building society in the name of the agent.

(2) An order made under the provisions of this section may contain such terms and conditions as the District Court 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 District Court determines.

(3) The order shall be made in the first instance *ex parte*, without any notice to the agent, and is an order to show cause only.

(4) Unless the agent referred to in the order shows to the District Court within the time specified in the order sufficient cause to the contrary, the order, after proof of service as required by section 99 shall be made absolute.

(5) In this section and in such provisions of other following sections of this Part 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 an agent for or on behalf of any other person are or were required to be paid under this Part; and

- (b) "agent" includes a person who has carried on business as an agent at any time within a period of 12 months prior to the date of the making of the application under subsection (1).

Appointment of supervisor.

93. (1) Where the District Court, on the application of the Board, notice whereof shall be given to the agent, is satisfied that there are reasonable grounds for believing that an agent is, for any reason incapable of properly conducting his business, or is not conducting it in accordance with this Act, the District Court may—

- (a) suspend the agent from carrying on his business for such period as may be specified in the order;
- (b) restrain the agent and his bankers and their respective servants and agents from dealing in all or any of the bank accounts of the agent, subject to such terms and conditions as the District Court thinks fit;
- (c) authorize the Board to appoint a supervisor of the business of the agent;
- (d) authorize the Board to suspend the agent from carrying on his business until further notice; and
- (e) make such other and further orders as the District Court thinks fit.

(2) Where the District Court is satisfied, on the application of the Board, that a sole agent has died, the District Court may—

- (a) restrain the personal representative, and the former servants, agents, and bankers, of the deceased agent, and the servants and agents of those former bankers from dealing in all or any of the bank accounts of the deceased agent, subject to such terms and conditions as the District Court thinks fit; and
- (b) authorize the Board to appoint a supervisor of the business of the agent.

(3) Where the District Court authorizes the Board to appoint a supervisor pursuant to the power conferred by subsection (1) or (2) the District Court—

- (a) may order that the supervisor be empowered to withdraw moneys from any bank account of the agent or deceased agent; and
- (b) may order that the Board—
 - (i) take possession of the moneys constituting the trust account of the agent or deceased agent or, where the case requires, the balance of such moneys;
 - (ii) deposit such moneys, or such balance in a separate account at the Treasury 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 deposited in the separate account under the order, such amount or amounts as 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 District Court may, on the application of the Board, or any person interested, give such directions as the District Court thinks fit for the payment by the Board of any part of the moneys deposited in the separate account under the order.

Effect of orders under s. 93.

94. (1) Where an order made under section 93 authorizes 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 agent or deceased agent referred to in the order;
- (b) may authorize the supervisor to obtain an advance from the Treasurer, which the Treasurer is hereby authorized to make on such terms and conditions as the Treasurer thinks fit, for the purpose of carrying on the business of the agent or deceased agent; and
- (c) may determine what, if any, proportion of remuneration or other proper charges recovered on account of the agent or deceased agent, shall be paid to the agent or the personal representative of the deceased agent and what proportion shall be paid to the Board towards the expenses and remuneration of the supervisor and for re-imbursement 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.

Duties of supervisor.

95. (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 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) by notice in writing require the agent to whom the appointment relates, or any of his clerks, servants, or agents, or in the case of a deceased agent, his personal representative or any of the former clerks, servants, or agents of the deceased 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

- (b) enter upon any premises of the agent to whom the appointment relates, or, in the case of a deceased 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.

Offence.

96. 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: \$400.

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

97. An agent or the personal representative of a deceased agent, whose account is the subject of an order made under the provisions of section 92 or 93 may apply to the District Court to discharge or vary the order and to award such costs upon the application as it thinks fit and the District Court is hereby empowered to discharge or vary the order and to make such further order as it thinks fit.

Power of District Court to make further orders and give directions.

98. (1) The District Court may, on the application of the Board, the Treasurer, or the agent, or the personal representative of a deceased agent, referred to in an order made under the provisions of section 92, 93, or 97 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 building society on such terms and conditions as the District Court 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 paid into a separate account to be kept at the Treasury;
- (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 agent, or deceased 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 District Court for approval of the scheme and for directions in respect thereof.

(4) The District Court may give such directions in respect of the separate account at the Treasury, the moneys therein, 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 remaining in the account, if any, as it thinks fit.

Service of orders and penalty for non-compliance therewith.

99. (1) The Board shall, as soon as practicable after any order is, on the application of the Board, made under the provisions of section 92, 93, or 98 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 building society in which any account referred to in the order is kept;
- (b) on the agent or the personal representative of a deceased agent in whose name the account is kept; and
- (c) where it is an order under section 98(1)(b) on the Treasurer.

(2) An agent, or the personal representative of a deceased agent, shall, as soon as practicable after any order is, on his application, made under the provisions of section 97 or 98 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 building society in which any account referred to in the order is kept;
- (b) on the Board; and
- (c) where it is an order under section 98(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 98 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 building society in which any account referred to in the order is kept;

- (b) on the agent, or the personal representative of a deceased 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: \$400.

(6) This section is sufficient authority and indemnity for complying with an order so made and served.

Duty of managers of financial institutions.

100. Where the Registrar, an inspector, a supervisor or a member of the Police Force duly authorized to make an investigation or inquiry for the purposes of this Act has reasonable cause to believe that an agent has deposited any money with a bank, building society, or other financial institution, whether in an account in the name of the 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, building society 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, building society, 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, permit the Registrar, inspector, supervisor, or member of the Police Force to inspect, and make 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, building society, or other institution.

PART VII—DISCIPLINE OF AGENTS AND SALES REPRESENTATIVES.

Codes of conduct.

101. The Board may from time to time prescribe, and publish in the manner prescribed by the regulations—

- (a) a code of conduct for agents; and
- (b) a code of conduct for sales representatives.

Inquiries into conduct of agents and sales representatives.

102. (1) The Board may on the application of the Registrar, an inspector, or any other person—

- (a) hold an inquiry into the conduct of any agent for the purpose of determining whether or not the agent is or has been acting in conformity with the special conditions, if any, of his licence and triennial certificate and with the agents code of conduct and is or has been complying with the requirements of this Act; and
- (b) hold an inquiry into the conduct of any sales representative for the purpose of determining whether or not he is or has been acting in conformity with the special conditions, if any, of his registration and with the code of conduct for sales representatives and is or has been complying with the requirements of this Act.

(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.

(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, if any, and the agent or sales representative, as the case may be, are parties to an inquiry held under subsection (1).

(6) Notwithstanding the expiry of the certificate of registration of a sales representative, an application under subsection (1) in respect of the conduct of a sales representative may be made to the Board not later than 12 months after the day on which his certificate of registration expired and, upon consideration of such an application, the Board may hold an inquiry under this section into the conduct of that sales representative and exercise the powers conferred by section 103, other than the powers of suspension or cancellation of registration.

[S. 102 amended by No. 74 of 1980, s. 10.]

Powers on inquiry.

103. (1) If after conducting an inquiry under section 102 (1) into the conduct of an agent the Board is satisfied that proper cause exists for disciplinary action, the Board may do any one or more of the following things—

- (a) reprimand or caution the agent;
- (b) impose a fine not exceeding \$1 000 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 Board or until the further order of the Board, from holding a licence or triennial certificate, or both.
- (2) There shall be proper cause for disciplinary action against an agent if—
- (a) the agent improperly obtained a licence or triennial certificate;
 - (b) the agent, or any person acting with the authority or upon the instructions of the 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 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 agents code of conduct; or
 - (d) any other cause exists that, in the opinion of the Board, renders the agent unfit to hold a licence.
- (3) If after conducting an inquiry under section 102 (1) into the conduct of a sales representative the Board is satisfied that proper cause exists for disciplinary action, the Board may do any one or more of the following things—
- (a) reprimand or caution the sales representative;
 - (b) impose a fine not exceeding \$200 on him;
 - (c) suspend or cancel his registration and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any condition which may be imposed by the Board or until the further order of the Board, from being registered.
- (4) There shall be proper cause for disciplinary action against a sales representative if—
- (a) the sales representative improperly obtained registration;
 - (b) the sales representative, or any person acting with the authority or on the instructions of the sales representative 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 prejudices or may prejudice any rights or interest of the party, or prospective party, to the transaction;
 - (c) the sales representative is acting or has acted in breach of—
 - (i) a special condition of his registration;
 - (ii) the requirements of this Act; or
 - (iii) the code of conduct for sales representatives; or

- (d) any other cause exists that, in the opinion of the Board, renders the sales representative unfit to hold a certificate of registration.

(5) Where the Board suspends or cancels a licence or a triennial certificate, or both, or suspends or cancels the registration of a sales representative—

- (a) the suspension or cancellation shall take effect immediately, and shall not be deferred by reason of any proposed or pending appeal to the District Court under this Act unless the District Court otherwise orders, which it may do if it thinks fit subject to such conditions as it may impose to protect the public; and
- (b) the licence, triennial certificate, or certificate of registration, as the case requires shall be immediately delivered to the Registrar by the agent or sales representative, as the case requires.

Automatic cancellation of licence and triennial certificate.

104. 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 Part VI 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, or the clerk of petty sessions, as the case may be, of the Court convicting him shall forthwith notify the Registrar of the Board accordingly.

Discretionary disciplinary powers of a Court.

105. (1) Where a licensee who has been convicted of any other offence against this Act is within 12 months thereafter convicted of a second or any subsequent offence of any kind against this Act, or where a licensee is convicted, whether summarily or on indictment of an offence involving moral turpitude, or dishonouring him in the public estimation, the Court convicting him may, if it thinks fit, in addition to any other penalty, do any one or more of the following things—

- (a) reprimand or caution the licensee;
- (b) impose a fine not exceeding \$1 000 on him;

- (c) suspend or cancel his licence or any triennial certificate in respect thereof and, in addition, disqualify him either temporarily or permanently, or until the fulfilment of any conditions which may be imposed by the Court or until further order of the Court, from holding a licence or triennial certificate or both,

and when the Court does so, the Registrar of the Court, or the clerk of petty sessions, as the case may be, shall forthwith notify the Registrar of the Board accordingly.

(2) The disciplinary powers conferred on a Court by subsection (1) are concurrent with the disciplinary powers conferred on the Board by this Part, but those respective powers shall not both be exercised in respect of particulars of an offence or offences of the licensee that are substantially the same.

Special offence.

106. (1) A person who—

- (a) has had his licence cancelled under this Act;
- (b) has had his certificate of registration cancelled under this Act on at least 2 occasions; or
- (c) 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 a developer, or he is the employer, employee, or partner of a licensee or a developer, as such.

Penalty: \$500.

(2) If a licensee or a developer 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;
- (b) has had his certificate of registration cancelled under this Act on at least 2 occasions; or
- (c) has been convicted of an offence against this Act on at least 2 occasions,

the licensee or developer, as the case may be, commits an offence against this Act.

Penalty: \$500.

(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 commission or a share of profits.

PART VIII—FIDELITY GUARANTEE FUND.

Real Estate and Business Agents Fidelity Guarantee Fund.

107. (1) On the date of the coming into operation of this section the Land Agents Fidelity Guarantee Fund established by the repealed Act is continued by the name Real Estate and Business Agents Fidelity Guarantee Fund under this Act, as if it were established under this Act, and all right, title and interest in any asset of the Land Agents Fidelity Guarantee Fund under the repealed Act existing immediately before that date is transferred to the Board.

(2) The assets of the Fidelity Fund are the property of the Board but shall be kept separately from all other property and shall be held in trust for the purposes set out in this Act.

[S. 107 amended by No. 29 of 1982, s. 12.]

Investment of Fund.

108. (1) Pending the application of moneys in the Fidelity Fund the Board—

(a) may deposit them—

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

(b) may invest them in the manner authorized by law for the investment of trust moneys.

(2) Any moneys lent to the Treasurer pursuant to subsection (1) shall be repayable on demand.

[S. 108 amended by No. 29 of 1982, s. 12.]

Money payable into the Fund.

109. There shall be placed to the credit of the Fidelity Fund—

- (a) all sums paid to or on account of the Fidelity Fund by agents and sales representatives by way of contribution or levy, in accordance with this Act;
- (b) all moneys paid to the Fidelity Fund pursuant to section 130;

- (c) the interest from time to time accruing from the investment of the Fidelity Fund, as provided in this Act;
- (d) all money recovered by or on behalf of the Board for the benefit of the Fidelity Fund in the exercise of any right of action conferred by this Act; and
- (e) any other money that may be lawfully paid into the Fidelity Fund.

[*S. 109 amended by No. 29 of 1982, ss. 5 and 12.*]

Expenditure from the Fund.

110. There shall from time to time be paid out of the Fidelity Fund, as required—

- (a) the amount of all claims, including costs, allowed or established against the Fidelity Fund;
- (b) all legal expenses incurred in defending claims made against the Fidelity Fund, or otherwise incurred in relation to the Fidelity Fund;
- (c) all premiums payable in respect of contracts of insurance entered into by the Board under section 121;
- (d) the expenses involved in the administration of the Fidelity Fund;
- (e) the cost of any audit that may be paid from the Fidelity Fund pursuant to Part VI;
- (f) the cost of every audit pursuant to section 111; and
- (g) any other money payable out of the Fidelity Fund in accordance with this Act.

[*S. 110 amended by No. 29 of 1982, s. 12.*]

Board to maintain accounts of Fund.

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

- (a) be so maintained as to disclose their true position and enable their being readily and conveniently audited; and
- (b) be audited, as provided by subsection (2), by the Auditor General.

(2) The Board shall cause a statement of income and expenditure and a balance sheet for each financial year to be prepared and audited and shall deliver a copy of that statement and the balance sheet to the Minister, and the Minister shall have them presented to both Houses of Parliament.

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

[S. 111 amended by No. 29 of 1982, ss. 6 and 12.]

Administration of Fund.

112. The Fidelity Fund shall be administered by the Board.

[S. 112 amended by No. 29 of 1982, s. 12.]

Contribution to Fund.

113. (1) Each agent, on making 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, but limited to an increase in any one year of 6.7 per cent, and no such licence or renewal of a triennial certificate shall be issued until the appropriate payment has been made to the Board.

(2) Each sales representative, 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 Board a sum of \$15 or such other sum as the Board approves, but limited to an increase in any one year of 20 per cent, and no such certificate of registration or renewal thereof shall be issued until the appropriate payment has been made to the Board.

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

[S. 113 amended by No. 29 of 1982, s. 12.]

Where Fund exceeds specified amount.

114. No agent or sales representative who has contributed to the Fidelity Fund a sum of \$150 or \$45 respectively, and in respect of whom no claim has been made or sustained against the Fidelity Fund, is liable to pay any further contribution under section 113 at any time while the amount of the Fidelity Fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fidelity Fund, exceeds one million dollars, or such other amount as is prescribed.

[S. 114 amended by No. 74 of 1980, s. 11; No. 29 of 1982, s. 12.]

Levies.

115. (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 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).

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

- (a) in the case of a holder of a current triennial certificate, the sum of \$20 in any one year;
- (b) in the case of a holder of a current certificate of registration, the sum of \$10 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 Board, and notice thereof shall be sent by the Board to each holder of a current triennial certificate and each holder of a current certificate of registration.

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

[S. 115 amended by No. 29 of 1982, s. 7; No. 77 of 1984, s. 3.]

Application of Fund.

116. (1) Subject to this Act, the Fidelity 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) A person shall not have a claim against the Fidelity Fund, unless notice of the claim is given in writing to the Board within one year after the claimant has become aware of the defalcation.

[S. 116 amended by No. 29 of 1982, s. 12]

Claims against Fund.

117. (1) The Board may receive and settle any claim against the Fidelity 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 Fidelity 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 Fidelity 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 Fidelity 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 paid or be payable out of the Fidelity Fund as interest on the amount of any judgment obtained or of any claim admitted against the Fidelity Fund.

(4) No right of action lies in relation to the Fidelity 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 Fidelity Fund in respect of any loss suffered by the spouse of a licensee by reason of any defalcation by that licensee, or in respect of any loss suffered by any licensee by reason of 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 interpretation "defalcation by a licensee" in section 4.

[S. 117 amended by No. 29 of 1982, s. 12.]

Defences to claims against Fund.

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

[S. 118 amended by No. 28 of 1982, s. 12.]

Subrogation of rights.

119. On payment out of the Fidelity Fund of any money in settlement in whole or in part of any claims under this Act, the Board shall 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 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.

Insufficiency in Fund.

120. (1) The Fidelity Fund is the only property of the Board available for the satisfaction of any judgment obtained against the Board in relation to the Fidelity Fund, or for the payment of any claim allowed by the Board; but if at any time the Fidelity 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 Fidelity Fund.

(2) The Board may determine the order in which the judgments and claims charged against the Fidelity 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 Fidelity 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 events of their claims against the Fidelity Fund not being satisfied in whole or in part;
- (b) claims for amounts not exceeding \$1 000 shall, except in special circumstances, be satisfied in full before claims for amounts exceeding \$1 000 are satisfied to a greater extent than \$1 000;
- (c) where all other considerations are equal, claimants shall have the 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.

[S. 120 amended by No. 28 of 1982, s. 12.]

Power of Board to enter into contracts of insurance.

121. (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 sales representatives generally who are the holders of current certificates of registration or in relation to any licensee who is the holder of a current triennial certificate or any sales representative who is the holder of a current certificate of registration.

(3) The Board may publish the fact that a policy has been effected under this section and of the details of the policy.

(4) Notwithstanding any provision of the State Government Insurance Office Act 1938, the State Government Insurance Office is authorized to undertake liability under a policy or policies of insurance effected under this section.

Application of insurance money.

122. A claimant against the Fidelity Fund has no right of action against any person with whom a contract of insurance is made under section 121 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 Fidelity Fund and shall be applied in or towards the settlement of relevant claims.

[S. 122 amended by No. 29 of 1982, s. 12.]

Advertisement relating to defaulting agent and claims.

123. (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 an 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 116 and 117, having regard only to judgments and claims allowed against the Fidelity Fund.

[S. 123 amended by No. 29 of 1982, s. 12.]

Power of Board to demand securities, etc.

124. 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 IX—DEPOSITS TRUST.**Rights of clients not affected.**

125. Nothing in this Part affects the rights and remedies of clients of a licensee against a licensee or *inter se* in the event of any pecuniary loss or loss of property suffered by them by reason of any acts and defaults by the licensee, and anyone or more of the persons in the class of persons specified in the interpretation “defalcation by a licensee” in section 4, in respect of the proper application of trust funds received by the licensee from or on behalf of those clients; and, for the purpose of determining rights as between those clients, moneys deposited by a licensee with the Trust pursuant to this Part are deemed to be moneys held by him in a trust account.

Real Estate and Business Agents Deposit Trust.

126. There is hereby established a trust called "Real Estate and Business Agents Deposit Trust" which shall be administered by the Board on trust for the purposes set out in this Part.

Licensees to deposit certain trust moneys with Trust.

127. (1) Subject to subsection (3), every licensee who is the holder of a current triennial certificate shall, within 14 days after the conclusion of the financial year during which this section comes into operation, deposit to the credit of the Trust an amount, being not less than the prescribed percentage of the lowest balance of his trust account, or, where he maintains more than one, of the lowest sum of the balances of his trust accounts occurring on a day during that financial year.

(2) Subject to subsection (3), every licensee who is the holder of a current triennial certificate shall maintain on deposit to the credit of the Trust an amount that is not less than the prescribed percentage of the sum of—

- (a) the lowest balance of his trust account, or where he maintains more than one, the lowest sum of the balances of his trust accounts, occurring on a day during the current financial year or during the last preceding financial year; and
- (b) the amount standing on deposit by him to the credit of the Trust on the day on which the lowest balance, or the lowest sum of the balances, mentioned in paragraph (a) occurred.

(3) The provisions of this section do not apply to a licensee, while during the relevant period, the lowest balance of his trust account or, where he maintains more than one, the lowest sum of the balances of his trust accounts, together with the amount (if any) then standing on deposit by him with the Trust, is less than \$2 000, and he makes and delivers to the Registrar, a statutory declaration to that effect.

(4) The moneys required to be deposited with the Trust under the provisions of this section may, for that purpose, be lawfully withdrawn from the trust account or accounts of the licensee.

(5) Where the Board has reasonable grounds for believing that a licensee has not deposited with the Trust part or all of the moneys required to be deposited with the Trust under the provisions of this section, it may require the licensee to, and a licensee so required shall, attend before it and produce documentary evidence of the amount or amounts in his trust account or accounts for such preceding period, not exceeding 2 years, as the Board thinks fit.

(6) A licensee who fails to comply with the provisions of this section commits an offence.

Deposits with Trust repayable on demand.

128. (1) Subject to his compliance with section 127 (2), and with the regulations, and subject to subsection (2), a licensee may, at any time, withdraw moneys deposited by him to the credit of the Trust.

(2) For the purposes of section 92 and such provisions of other following sections of Part VI as relate to section 92 or an order made under it, moneys deposited by a person to the credit of the Trust are deemed to be moneys held by him in a bank account being a trust account within the meaning of section 92 and the Board as administrator of the Trust is deemed to be his banker.

Investment of moneys deposited with Trust.

129. (1) Pending the withdrawal or application of those moneys under the provisions of section 128, the Board shall invest all moneys deposited with the Trust by a licensee—

- (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, pursuant to 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 are authorized trustee investments, bearing interest at a rate agreed by the building society and the Board.

(2) Any moneys lent to the Treasurer pursuant to subsection (1) shall be repayable by him on demand.

Application of moneys resulting from investments.

130. (1) The Board shall pay all moneys resulting from investments made pursuant to section 129 to the credit of an account called the "Trust Interest Account"; and moneys in that account shall, from time to time, as may be prescribed, be applied—

- (a) firstly in payment of the costs and expenses of administering the Trust, including the cost of every audit pursuant to section 131;
- (b) as to the balance remaining after payment under paragraph (a), in payment, in equal shares or such other proportions as are prescribed—
 - (i) to the Fidelity Fund;
 - (ii) to the Assistance Fund; and
 - (iii) for the establishment and maintenance of such educational facilities relating to the functions and duties of persons under this Act as are prescribed.

(2) Regulations shall not be made under section 145 to prescribe the proportions in which moneys are to be paid under subsection (1) (b) except on the recommendation of the Minister, and the Minister shall make such recommendation only after he has consulted the Board thereon.

[Subsections (3) and (4) omitted under Reprints Act 1984, s. 7 (4) (e).]

[S. 130 amended by No. 29 of 1982, s. 8; No. 77 of 1984, s. 4.]

Board to maintain accounts.

131. (1) The Board shall maintain accounts of all moneys deposited with the Trust, and deposited by the Board pursuant to section 129 and those accounts shall—

- (a) be so maintained as to disclose their true position and enable their being readily and conveniently audited; and
- (b) be audited, as provided by subsection (2), by the Auditor General.

(2) The Board shall cause statements of income and expenditure and balance sheets of the Trust to be prepared and audited for the periods ending on 30 June and 31 December, in every year, and shall deliver a copy of those statements and balance sheets to the Minister and the Minister shall have them presented to both Houses of Parliament.

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

[S. 131 amended by No. 29 of 1982, s. 9.]

PART IXA—ASSISTANCE TO HOME BUYERS.

Interpretation in Part IXA.

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

“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 1985; 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.

[S. 131A inserted by No. 29 of 1982, s. 10.]

Establishment and assets of Home Buyers Assistance Fund.

131B. (1) There is hereby established a fund to be called the Home Buyers Assistance Fund.

(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.

[S. 131B inserted by No. 29 of 1982, s. 10.]

Investment of Assistance Fund.

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

- (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).

[S. 131C inserted by No. 29 of 1982, s. 10.]

Moneys to be paid into Assistance Fund.

131D. There shall be placed to the credit of the 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), that may lawfully be paid into the Assistance Fund.

[S. 131D inserted by No. 29 of 1982, s. 10.]

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), that may lawfully be paid out of the Assistance Fund under this Act.

[S. 131E inserted by No. 29 of 1982, s. 10.]

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.

[S. 131F inserted by No. 29 of 1982, s. 10.]

Administration of Assistance Fund

131G. The Board shall administer the Assistance Fund.

[S. 131G inserted by No. 29 of 1982, s. 10.]

Constitution and membership of Home Buyers Assistance Advisory Committee.

131H. (1) There is hereby established a committee to be known as the 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.

[S. 131H inserted by No. 29 of 1982, s. 10.]

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.

[*S. 131I inserted by No. 29 of 1982, s. 10.*]

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.

[*S. 131J inserted by No. 29 of 1982, s. 10.*]

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

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.

(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.

[*S. 131K inserted by No. 29 of 1982, s. 10.*]

Making of application for assistance.

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—

- (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 firstmentioned person on a permanent and *bona fide* domestic basis.

[S. 131L inserted by No. 29 of 1982, s. 10.]

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.

[S. 131M inserted by No. 29 of 1982, s. 10.]

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.

[S. 131N inserted by No. 29 of 1982, s. 10.]

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.

[S. 131O inserted by No. 29 of 1982, s. 10]

PART X—MISCELLANEOUS.

Supervision and control of unlicensed assistants.

132. The work of unlicensed persons engaged in assisting in the conduct of the business of a licensee shall be constantly supervised and controlled by a licensee, and for that purpose—

- (a) where the licensee of the business involved is not a firm or a body corporate—
 - (i) the licensee shall give substantial time and attention to the business and shall ensure that the managers of all branch offices of the business respectively give substantial time and attention to the business of the respective branch offices; and
 - (ii) the manager of a branch office of the business shall give substantial time and attention to the business at that office; and
- (b) where the licensee of the business involved is a firm or a body corporate—
 - (i) the partners of the firm or the directors of the body corporate, as the case requires, shall ensure that the person in *bona fide* control of the business gives substantial time and attention to the business;
 - (ii) the person in *bona fide* control of the business shall give substantial time and attention to the business;
 - (iii) the partners of the firm or the directors of the body corporate, as the case requires, and the person in *bona fide* control of the business shall ensure that the man-

agers of all branch offices of the business respectively give substantial time and attention to the business of the respective branch offices; and

- (iv) the manager of a branch office of the business shall give substantial time and attention to the business at that office.

Registers.

133. (1) The Registrar shall keep the following registers—

- (a) a register of licensees;
- (b) a register of holders of current triennial certificates; and
- (c) a register of holders of current certificates of registration.

(2) The Registrar shall record in the registers any prescribed particulars.

(3) The Registrar shall cause to be removed from the relevant register or registers the name of every licensee or holder of a current triennial certificate or holder of a current certificate of registration who dies or ceases for any reason to be licensed or to hold a current triennial certificate or a current certificate of registration.

(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.

Lists and certificates.

134. (1) A list of the names and descriptions of all persons holding licences and a current triennial certificate and of all persons holding a current certificate of registration 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 or the holder of a current certificate of registration 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.

Annual report.

135. (1) The Chairman shall, on behalf of the Board, as soon as practicable after 1 July in each year, submit to the Minister a report on the activities under this Act of the Board for the year ending on 30 June last preceding.

(2) The Minister shall cause the report to be laid on the Table of each House of Parliament within 14 days of its receipt, or if at that time Parliament is not in session, then within 14 days of the commencement of the next session of Parliament.

Futher reports.

136. 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.

Refund of fees.

136A. 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 Fidelity Fund.

[S. 136A inserted by No. 74 of 1930, s. 12. Amended by No. 29 of 1982, s. 12.]

Immunity of Board and officers.

137. 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.

Secrecy.

138. (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: \$500.

Liability of directors of body corporate.

139. 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.

Other rights or remedies.

140. 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.

No waiver of rights.

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

General penalty.

142. (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 \$200.

Proceedings.

143. (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) Without limiting the application of section 72 of the Justices Act 1902 in relation to a complaint for an offence against this Act, in any proceedings for an offence against this Act an allegation in the complaint that a person named therein was or was not licenced 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.

Forms.

144. 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.

Regulations.

145. (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 judgements and orders of the Board;
- (c) provide for the advertising of notices of applications for licences;
- (d) prescribe, and provide for the recovery of, any fee for the purposes of this Act;
- (e) prescribe the particulars to be recorded in the registers required to be kept under this Act;
- (f) prescribe the percentage, not exceeding 65 per centum, of the lowest balance of a licensee's trust account, or of the lowest sum of his trust accounts occurring on a day of a financial year, for the purposes of Part IX;
- (g) specify the occasions upon which moneys accruing to the credit of the Trust Interest Account shall be applied as provided by section 130;
- (ga) subject to subsection (2) of section 130, prescribe the proportions in which moneys are to be paid under subsection (1) (b) of that section;
- (h) prescribe the educational facilities to which part of the moneys accruing to the credit of the Trust Interest Account shall be applied in the establishment and maintenance thereof as provided by section 130 and the persons or classes of persons to whom all or any of those facilities shall be available;
- (i) prescribe the manner of making claims against the Fidelity Fund and the manner of verifying any claim including a condition that the claim be verified by statutory declaration;
- (j) prescribe generally for such other matters as may be considered necessary for the purposes of protecting the Fidelity Fund or of giving full effect to the intent of the provisions of this Act relating to the Fidelity Fund;

- (k) prescribe a scale of costs for proceedings before the Board; and
- (l) prescribe penalties not exceeding \$100 for any breach of the regulations.

[S. 145 amended by No. 29 of 1982, s. 11; No. 77 of 1984, s. 5.]

PART XI—SAVINGS AND TRANSITIONAL.

Modifications of other Parts.

146. The provisions of the other Parts of this Act shall be read and construed with such modifications as are necessary by reason of the saving and transitional provisions of the Schedule.

Interpretation Act 1918 not affected.

147. The saving and transitional provisions of the Schedule do not affect the operation of the Interpretation Act 1918^b.

SCHEDULE.

QUALIFICATIONS FOR GRANT OF LICENCE (S. 27).

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 an agent and the duties and liabilities of an agent and has had sufficient practical experience in negotiating transactions to enable him to carry on the business of an agent satisfactorily;
- (b) who has within a period of 5 years immediately preceding his application—
 - (i) held for a period of at least 2 years a licence, or similar authority, under an approved corresponding enactment of any State or Territory of the Commonwealth to act as an agent or the approved equivalent thereof; and
 - (ii) in that State or Territory for a period of at least 2 years acted as and carried out the functions of an agent,whether on his own behalf or on behalf of a firm or a body corporate, not being a licence, or similar authority, granted to him as being a person of the kind referred to in paragraphs (c) and (d);
- (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 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 licence.

2. For the purposes of paragraph (a) of clause 1, but without limiting the generality of the provision in that paragraph in respect of practical experience, a person has had sufficient practical experience in negotiating transactions if he has, during a period of 2 years immediately preceding his application for a licence—

- (a) lawfully and satisfactorily performed the functions of a sales representative on behalf of a person who lawfully carried out the functions of an agent, during that period or on behalf of a firm which did so; or
- (b) lawfully and satisfactorily performed the functions of a business agent on his own behalf or on behalf of a firm, or a body corporate, which lawfully carried on the business of a business agent during that period.

Licence by Reason of Qualification under Clause 1 (c).

3. 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.

Licence by Reason of Qualification under Clause 1 (d).

4. Such a licence shall be effective only for such period not exceeding 3 years as is determined by the Board and no further such licence shall be granted to the same person in respect of the same circumstances.

Death or Incapacity of Agent.

5. (1) A person who is not an executor, administrator, trustee, spouse, or child of a deceased licensee or who is not a spouse or child of an incapacitated 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 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.

Death or Withdrawal of Partner in a Firm or Director of a Body Corporate.

6. (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 (c) and (d) or section 29 (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 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.

SAVINGS.

Continuation of Licences in Force under the Repealed Act.

7. (1) Licences in force under the repealed Act immediately preceding the appointed day shall continue in force as if granted under this Act and as if the licensees were qualified under this Act, and the Board shall, on receipt of an application signed by the licensee, and without payment of any fee by him, grant a triennial certificate in respect of the licence and approve the appointment of an auditor for the business of that licensee, and the triennial certificate shall, subject to this Act, expire on the day the licence under the repealed Act would have expired if that Act had remained in force.

(2) In respect of a firm or a body corporate on behalf of which a licence was in force under the repealed Act immediately preceding the appointed day, subclause (1) shall be applied so that both the person who held the licence and the firm or body corporate—

- (a) are licensed under this Act as if they were qualified under it; and
- (b) on application pursuant to that subclause, shall be granted a triennial certificate which shall expire as provided in that subclause,

and so that the appointment of an auditor for the business of the firm or body corporate shall be approved.

(3) Contributions made to the Land Agents Fidelity Guarantee Fund under the repealed Act in respect of licences that have been continued under this clause shall be credited to the licensee, and in the case of a firm or body corporate, to both the person who held the licence under the repealed Act and to the firm or the body corporate, as if the contributions were made to the Real Estate and Business Agents Fidelity Guarantee Fund under this Act.

Pastoral Companies.

8. (1) This clause applies to and in relation to each pastoral company in respect of which an exemption granted under section 11 of the Banking Act 1959 of the Parliament of the Commonwealth, or that Act as amended from time to time, is in force, and in respect of which the Secretary of the Land Agents Supervisory Committee under the repealed Act certifies that the company was an approved applicant within the meaning of that Act and by reason thereof was a licensee under that Act immediately preceding the appointed day and consequently its licence has been continued under clause 7.

(2) A pastoral company to and in relation to which this clause applies may carry on business as an agent under and subject to this Act but without complying with the requirements of—

- (a) section 29 (c) and (d); and
- (b) section 37 (2) and section 41,

if, and only if, it complies with the requirements of subclause (3).

(3) A pastoral company to which this clause applies shall establish and maintain a Real Estate and Business Agent's Section specified as such and—

- (a) on and after 1 April 1982 that Real Estate and Business Agent's Section shall have a manager who is a licensee and the holder of a current triennial certificate;
- (b) on and after 1 April 1983, the company shall have as the manager of—
 - (i) each branch office of the company within the metropolitan region at which transactions are negotiated or controlled; and
 - (ii) each branch office of the company outside the metropolitan region which, in the opinion of the Board, is engaged substantially in the negotiation and control of transactions other than those involving rural and agricultural properties,

a person who is a licensee and the holder of a current triennial certificate, but in the case referred to in subparagraph (ii) it shall be deemed to be sufficient compliance with this paragraph if the person in control of the real estate and business agency component of the branch is licensed and is the holder of a current triennial certificate;

- (c) in respect of each office of the company at which transactions are negotiated or controlled, on and after the appointed day until the provisions of paragraphs (a) and (b) have been complied with, the manager shall be a person who is the holder of a current certificate of registration; and
- (d) the manager referred to in paragraph (b) shall not be a licensee nominated as manager by any other licensee, shall not be a manager of any other office, and shall not carry on business as an agent on his own account, but if the manager of the Real Estate and Business Agents Section of the company is, in the opinion of the Board, normally in substantial attendance at any one office, another licensee is not required in respect of that office.

(4) In subclause (3) (b) of this clause "metropolitan region" means that part of the State that comprised the metropolitan region within the meaning of the Town Planning and Development Act 1928 as amended and in force on the date on which this clause came into operation.

[Clauses 9 and 10 omitted under Reprints Act 1984, s. 7 (4) (e).]

Persons of a kind referred to in Section 4 (3) (v) of the repealed Act and whose Licences have been continued under Clause 7.

11. 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.

Persons of a kind referred to in Section 4 (3) (vi) of the repealed Act and whose Licences have been continued under Clause 7.

12. Such a licence shall be effective only for the period it would have continued to be effective if the repealed Act had remained in force.

Auctions in respect of Real Estate Transactions.

13. On and after the appointed date, such an auction shall only be conducted by a person—

- (a) who may lawfully conduct such an auction under the Auction Sales Act 1973; and
- (b) who—
 - (i) is, under this Act, a licensee with a current triennial certificate and conducts the auction in the course of his business as such a licensee; or
 - (ii) is a person who conducts the auction on behalf of, in the course of the business of, and under the supervision and control of such a licensee.

Auctions in respect of Business Transactions not involving a Real Estate Transaction.

14. On and after the appointed day, such an auction shall only be conducted by a person—

- (a) who may, under the Auction Sales Act 1973, lawfully conduct such an auction; and

(b) who—

- (i) is, under this Act, a licensee with a current triennial certificate and conducts the auction in the course of his business as such a licensee; or
- (ii) is a person who conducts the auction on behalf of, in the course of the business of, and under the supervision and control of such a licensee.

Continuation of Certificates of Registration in Force under the Repealed Act.

15. (1) Any certificate of registration of a land salesman in force under the repealed Act immediately preceding the appointed day shall continue in force as if granted as a certificate of registration of a sales representative and as if the person registered under the repealed Act was qualified to be registered under this Act and shall, subject to this Act, expire on the day it would have expired under the repealed Act if that Act had remained in force.

(2) Contributions made to the Land Agents Fidelity Guarantee Fund under the repealed Act in respect of certificates of registration that have been continued under this clause shall be credited to the sales representative as if the contributions were made to the Real Estate and Business Agents Fidelity Guarantee Fund under this Act.

Continuation of Certain Office Managers.

16. (1) Notwithstanding section 37 (2), a person, who immediately before the appointed day—

- (a) was registered as a land salesman under the repealed Act and had been so registered for a period of not less than 3 years; and
- (b) was the manager of a branch office of the business of an agent and had been the manager of such a branch office for a period of not less than one year,

may be nominated by a licensee as manager of a registered branch of the licensee's business and may continue to act as such a manager if the board so approves and the person continues to be registered as a sales representative.

(2) For the purposes of subclause (1) the other provisions of this Act shall be read and construed with such modifications as are necessary and, without limiting the generality thereof, shall be read and construed with the following particular modifications—

- (a) a person acting as the manager of a registered branch office pursuant to subclause (1) shall identify himself as the manager and a real estate or business sales representative, or both and not as a real estate or business agent, or both; and
- (b) the other provisions of this Act that apply to and in relation to sales representatives apply to and in relation to a person acting as the manager of a registered branch office pursuant to subclause (1), and not such other provisions that apply to and in relation to a manager who is a licensee except to the extent that they are necessary to so apply in respect of the duties and obligations of the manager of such a branch.

TRANSITIONAL.

[Clauses 17 and 18 omitted under Reprints Act 1984, s. 7 (4) (e).]

Matters Pending or Arising out of Events before Appointed Day.

19. On and after the appointed day, the Board and the officers thereof may exercise powers and functions and discharge duties that the Land Agents Supervisory Committee may have done under the repealed Act, if it had remained in force, in respect of matters

pending immediately preceding, or arising out of events preceding that day, and the Board may give directions in respect of the practice and procedure of proceedings before the Board relating to such matters.

Transfer of Rights, Obligations, and Liabilities, and of the Management and Control of Certain Personal Property.

20. On the appointed day—

- (a) all rights, obligations, and liabilities of that Land Agents Supervisory Committee existing immediately preceding that day are by force of this clause vested in or imposed on the Board;
- (b) in any agreement, whether in writing or not, and in every deed, contract, or other instrument to which that Land Agents Supervisory Committee was a party or by which it was affected, a reference to that Committee shall take effect as a reference to the Board;
- (c) any proceedings pending immediately preceding that day to which that Land Agents Supervisory Committee was a party shall be continued as if the Board were a party thereto in lieu of that Committee;
- (d) all rights, obligations, and liabilities of the Land Agents Fidelity Guarantee Fund established under the repealed Act existing immediately preceding that day or which would have arisen out of events preceding that day if the repealed Act had continued in force are by force of this clause vested in or imposed on that Fund as continued by this Act under the name Real Estate and Business Agents Fidelity Guarantee Fund;
- (e) in any agreement, whether in writing or not, and in every deed, contract, or other instrument by which that Land Agents Fidelity Guarantee Fund was affected, a reference to it shall be read as a reference to that Fund as continued under this Act under the name Real Estate and Business Agents Fidelity Guarantee Fund;
- (f) any proceedings pending immediately preceding that day in respect of that Land Agents Fidelity Guarantee Fund shall be continued in respect of that Fund as continued under this Act under the name Real Estate and Business Agents Fidelity Guarantee Fund;
- (g) all records of that Land Agents Supervisory Committee and of that Land Agents Fidelity Guarantee Fund shall be transferred to the Board; and
- (h) any personal property vested in Her Majesty and under the management and control of that Land Agents Supervisory Committee for the purposes of the repealed Act immediately preceding that day shall, subject to the approval of the Treasurer and the Minister, be transferred to the management and control of the Board.

Business Agents Only.

21. (1) Where immediately preceding the day on which this Act received the Royal Assent, a person or firm carried on the business of a business agent but not the business of a land agent the Board, subject to this Act, may, on the application of that person or firm and payment of the prescribed fee, grant to the person or firm a Business Agent's Permit if the Board is satisfied that—

- (a) in the case of a person, not being a body corporate—
 - (i) he is of or over the age of 18 years;
 - (ii) he is a person of good character and repute and a fit and proper person to hold a Business Agent's Permit;
 - (iii) he has sufficient material and financial resources available to him to enable him to comply with the requirements of this Act; and
 - (iv) he understands fully the duties and obligations imposed by this Act on business agents;

(b) in the case of a firm—

- (i) all of the natural persons, if any, by whom the firm is constituted 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 business agent's business;
- (ii) 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; and
- (iii) the person in *bona fide* control of the business agent's business is a person of good character and repute and a fit and proper person to have such control and has the qualifications referred to in paragraph (a)(i) and (iv);

(c) in the case of a body corporate—

- (i) all of the directors of the body corporate, and all of the persons concerned in the management or control 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 business agent's business;
- (ii) that it has sufficient material and financial resources available to it to comply with the requirements of this Act;
- (iii) the person in *bona fide* control of the business agent's business is a person of good character and repute and a fit and proper person to have such control, and has the qualifications referred to in paragraph (a)(i) and (iv).

(2) Subject to this Act a Business Agent's Permit—

- (a) confers on the holder the right to carry on business as a business agent but not as a real estate agent;
- (b) is effective for one year, but subject to paragraph (c), not any time after a date 3 years from and including the appointed day; and
- (c) may, on payment of the prescribed fee be renewed for a further period of one year but any such renewal is not effective any time after a date 3 years from and including the appointed day unless the holder establishes to the satisfaction of the Board that he has made significant progress towards qualifying himself for a licence, in which case a renewal may be effective until a date 5 years from and including the appointed day.

(3) The provisions of this Act that apply to and in relation to applications for licences and renewals of triennial certificates apply to and in relation to applications for Business Agent's Permits and renewal thereof but with such modifications as are necessary and in particular with the modification that an applicant for a Business Agent's Permit who lodges a bond or guarantee with the Board pursuant to clause 22 (1) or is covered by a policy of insurance effected by the Board pursuant to subclause (7) of that clause is not required to contribute to the Real Estate and Business Agent's Fidelity Guarantee Fund.

Bonds, Guarantees, Insurance Policy, or Fund Contributions in respect of Business Agent's Permits.

22. (1) Subject to subclause (11) and subclause (16) the Board shall not grant or renew a permit unless the applicant lodges or has lodged with the Board a bond or guarantee to Her Majesty and her successors in an approved form and in an amount, of not less than \$75 000, approved in respect of the applicant, entered into by an insurance company carrying on business under and in accordance with the Insurance Act 1932 of the Parliament of the Commonwealth, or by a bank carrying on business under, and in accordance

with the Banking Act 1959 of the Parliament of the Commonwealth, or any other Act in amendment, or substitution of those Acts respectively, or by other approved surety or sureties or by other approved guarantor or guarantors.

(2) A bond or guarantee lodged pursuant to this clause shall be conditioned on the agent duly and according to law paying, applying, and accounting for moneys coming to his hands and punctually complying with all duties and obligations imposed on him by law in relation to those moneys; and the bond or guarantee shall provide that it enures during the term of the permit for which it is originally given and may also provide that it enures during the term of any renewal of the permit.

(3) Where a bond or guarantee enures in respect of the renewal or further renewal of a permit, the insurance company, surety, or sureties, or the bank, guarantor, or guarantors may by notice in writing given to the Board determine its, his, or their liability under the bond or guarantee in respect of any act or default that may be done or made after the current permit expires and the Board shall not renew the permit until another approved bond or guarantee has been lodged by the applicant.

(4) Where, at any time during the currency of a permit, the bond or guarantee lodged in respect of it ceases to be of full force and effect, the agent is deemed not to be the holder of a permit until another approved bond or guarantee is lodged by him.

(5) The District Court may, on the application of the Board and on being satisfied that any condition of the bond or guarantee has been broken, assign the moneys recoverable on the bond or guarantee to the Board or to any other person and the Board or any other person to whom such an assignment has been made or the executor or administrator of the estate of that other person is, upon the assignment, entitled to sue upon the bond or guarantee in its or his own name, or as such an executor or administrator, as if the bond or guarantee had in the first instance been given to it or him and is entitled to receive, as trustees for all persons interested, the full amount recoverable in respect of the breach of a condition of the bond or guarantee.

(6) In this section "District Court" includes the Registrar and a Deputy Registrar of that Court, acting pursuant to the Rules of Court.

(7) Notwithstanding subclauses (1) to (6), both inclusive, the Board may, from time to time, effect a policy or policies of insurance for the purpose of compensating persons who suffer pecuniary loss by reason of defalcation by an agent who has been granted a permit.

(8) A policy effected under subclause (7)—

- (a) may relate generally to defalcations by agents who are the holders of current permits, or may relate only to defalcation by an agent who is the holder of a current permit and named in the policy;
- (b) shall be for an approved amount of not less than \$75 000 in respect of each agent to whom the policy relates; and
- (c) shall be conditioned in like terms to those required in respect of a bond or guarantee as provided in subclause (2).

(9) Before a policy is effected under subclause (7), an agent to whom the policy relates shall pay to the Board the cost of the premium payable on the policy or, where the case requires, the agents to whom the policy relates shall respectively pay such proportions of the costs of the premium payable under the policy as is determined by the Board having regard to the amount involved in respect of each agent.

(10) The Board may publish the fact that a policy has been effected under subclause (7) and of the details of the policy.

(11) During the currency of a policy effected under subclause (7), the grant or renewal of a permit to an agent to whom the policy relates is not conditional upon the lodging of a bond or guarantee as provided by subclause (1).

(12) The Board is entitled to sue in its own name on a policy effected under subclause (7), and is entitled to receive as trustee for all persons interested the full amount recoverable under the policy in respect of defalcation by an agent to whom the policy relates, but the District Court may, on the application of the Board and on being satisfied that there has been a defalcation by an agent to whom the policy relates, assign the moneys recoverable under the policy to any other person and any other person to whom such an assignment has been made or the executor or administrator of the estate of that other person is upon the assignment, entitled to sue in his own name, or as such an executor or administrator, on the policy and is entitled to receive as trustee for all persons interested the full amount recoverable under the policy in respect of such a defalcation.

(13) Except as provided by subclause (12) a person other than the Board has no right of action against an insurer with whom or with which the Board effects a policy of insurance under subclause (7), or any claim against moneys paid to the Board by such an insurer, by reason only that the person has a claim in respect of defalcation by an agent to whom the policy relates.

(14) Notwithstanding any provision of the State Government Insurance Office Act 1938, the State Government Insurance Office is authorized to undertake liability under a policy or policies of insurance effected under subclause (7).

(15) Where—

- (a) an applicant for the grant or renewal of a permit does not lodge and has not lodged with the Board a bond or guarantee as provided by subclause (1); and
- (b) there is not in force in relation to an agent a policy of insurance effected under subclause (7),

the Board shall not grant a permit to the applicant or renew a permit granted to the applicant unless the applicant pays to the Board the sum of \$750.

(16) Where an applicant has paid the sum prescribed by subclause (15) to the Board in respect of the grant or renewal of a permit, as the case requires, such grant or renewal is not conditional upon the applicant lodging a bond or guarantee under subclause (1) or his paying the cost of the premium payable on the policy of insurance effected by the Board under subclause (7).

(17) Part VIII applies to and in relation to—

- (a) a permit holder who has paid to the Board the sum prescribed by subclause (15) as though the permit holder was licensed and held a current triennial certificate;
- (b) the sum paid by the permit holder to the Board pursuant to subclause (15) as though the sum were a contribution by an agent.

[*Clause 23 omitted under Reprints Act 1984, s. 7 (4) (e).*]

Holders of Business Agents' Permits may apply for Licences.

24. (1) Where immediately before 1 December 1980 a person or firm is carrying on the business of a business agent pursuant to a Business Agent's Permit granted under clause 21 and the Board is of the opinion first that during the period from the date of the grant of the permit to 1 December 1980 that person or firm has performed the function of a business agent in a satisfactory manner and secondly that the person or firm has sufficient material and financial resources available to him or it to enable that person or firm to comply with the requirements of this Act, the Board shall—

- (a) upon the application of such a person or firm and upon payment of the prescribed fee, grant to that person or firm a licence under this Act as a business agent as if the applicant were qualified under this Act to be granted such a licence; and

- (b) in the case of an application by a firm and upon payment of the prescribed fee, grant to the person in *bona fide* control of the business agent's business (if he is one of the persons constituting the firm) a licence under this Act as a business agent as if the applicant were qualified under this Act to be granted such a licence; and
- (c) in the case of an application by a body corporate and upon payment of the prescribed fee, grant to the person in *bona fide* control of the business agent's business (if he is a director of the body corporate) a licence under this Act as a business agent as if the applicant were qualified under this Act to be granted such a licence.

(2) An application under subclause (1) for a licence as a business agent shall be made in accordance with section 24 but subsection (2) of that section shall not apply.

(3) Section 25 shall not apply in respect of the grant of a licence under this clause.

(4) Upon the grant of a licence as a business agent under this clause—

- (a) the Board shall grant the licensee a triennial certificate under and subject to section 31; and
- (b) subject to subclause (5), this Act shall apply to and in relation to the licensee in all respects as though his licence and triennial certificate had been granted under Part III.

(5) Until 1 April 1983, the provisions of section 28 (c), section 29 (c), and sections 37, 38 and 41 do not apply to or in relation to licensees granted licences under this clause.

[Schedule amended by No. 74 of 1979, s. 2; No. 74 of 1980, s. 13.]

NOTES

1. Sections 54, 55, 57-100, 102-131 and 135 came into operation on 1 December 1979; balance (except section 5) came into operation on 1 September 1979; see *Gazette* 31/8/79, p. 2601. Section 5 came into operation on the appointed day i.e. 1 December 1979, see section 2 (2).
2. The reprint incorporates the amendments set out in the Table of Acts below.

Table of Acts

Act	Number and Year	Date of Assent	Day of Commencement	Application, Saving or Transitional Provision
Real Estate and Business Agents Act Amendment Act 1979	74 of 1979	27 November 1979	27 November 1979	
Real Estate and Business Agents Amendment Act 1980	74 of 1980	5 December 1980	Section 13 deemed to operate from 1 December 1980. Balance came into operation 2 January 1981, see section 2.	
Companies (Consequential Amendments) Act 1982	10 of 1982	14 May 1982	1 July 1982, see section 2 (1) and <i>G.G.</i> 25/6/82, p. 2079.	
Real Estate and Business Agents Amendment Act 1982	29 of 1982	27 May 1982	25 June 1982; see <i>Gazette</i> 25/6/82, p. 2091.	
Real Estate and Business Agents Amendment Act 1984	77 of 1984	26 November 1984	26 November 1984	S. 4 (c)
Acts Amendments (Strata Titles) Act 1985	40 of 1985	13 May 1985	30 June 1985, see s. 2 of Acts Nos. 33 and 40 of 1985 and <i>G.G.</i> , 21/6/85 p. 2188.	

FOOTNOTES

^a The “appointed day” was 1 December 1979. See *Gazette* 31/8/79, p. 2615.

^b Now see the Interpretation Act 1984.

