

NORTHERN TERRITORY OF AUSTRALIA  
LAND AND BUSINESS AGENTS AMENDMENT ACT 1992

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No. 33 of 1992

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 33 of 1992

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## AN ACT

to amend the *Land and Business Agents Act*

[Assented to 25 June 1992]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### 1. SHORT TITLE

This Act may be cited as the *Land and Business Agents Amendment Act 1992*.

### 2. COMMENCEMENT

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

### 3. PRINCIPAL ACT

The *Land and Business Agents Act* is in this Act referred to as the Principal Act.

### 4. INTERPRETATION

Section 5 of the Principal Act is amended -

- (a) by omitting from subsection (1) the definition of "Committee";
- (b) by omitting from subsection (1) the definition of "Fund" and substituting the following:

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"'Fund' means the Agents Licensing Fidelity Guarantee Fund of the Northern Territory established by section 94;";

(c) by omitting from subsection (1) the definition of "registered agents representative" and substituting the following:

"'registered agent's representative' means a person registered under Part IV as an agent's representative;"; and

(d) by omitting from subsection (3) -

(i) "or business agent" and substituting  
", business agent or conveyancing agent";

(ii) "or business agents" and substituting  
", business agents or conveyancing agents";  
and

(iii) "(2)(a) or (b)" and substituting "(2)(a),  
(b) or (c)";

(e) by adding at the end the following:

"(5) For the purposes of sections 121A and 121B -

(a) a purchase or sale of land or a business in which a licensed agent, a registered agent's representative or an employee of a licensed agent is beneficially interested includes a purchase or sale that is or will be made by or on behalf of -

(i) in the case of an agent -

(A) the spouse, parent, brother, sister or child of that agent;

(B) a corporation, body, association of persons, firm or partnership carrying on business for profit or gain of which the agent or the spouse, parent, brother, sister or child of the agent is a member;

(C) where the agent is a corporation, that corporation or a member or the spouse, parent, brother, sister or child of a member of the corporation; or

(D) where the agent carries on business as such as a member of a firm or partnership, a person who is a member of that firm or partnership, or the spouse, parent, brother, sister or child of that person;

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(ii) in the case of a registered agent's representative or an employee -

(A) the spouse, parent, brother, sister or child of the registered agent's representative or employee; or

(B) a corporation, body, association of persons, firm or partnership carrying on business for profit or gain of which the registered agent's representative or employee or the spouse, parent, brother, sister or child of the registered agent's representative or employee is a member; and

(b) a person (being a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent) acts as the agent for a principal wishing to purchase or sell land or a business from the time the principal first communicates to that person or a person specified in paragraph (a) in respect of that person, whether orally or in writing, the fact that he wishes to purchase or sell the land or business.

"(6) For the purposes of sections 121A and 121B -

'agent' means a real estate agent or a business agent;

'business' includes a share or an interest in a business;

'land' includes an interest in land;

'spouse' includes a de facto partner within the meaning of the *De Facto Relationships Act*."

5. UNLICENSED PERSONS NOT TO ACT AS AGENTS

Section 17 of the Principal Act is amended by omitting from subsections (1) and (2) "Penalty: \$2,000 or imprisonment for 12 months." and substituting "Penalty: \$50,000."

6. REPEAL AND SUBSTITUTION

Section 24 of the Principal Act is repealed and the following substituted:

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"24. PERSONS LICENSED OR REGISTERED AS AGENTS ELSEWHERE

"(1) Notwithstanding section 22, a person, not being a company or firm, who is licensed or registered as an agent under a law of a State or another Territory of the Commonwealth providing for the licensing or registration of agents, is eligible for the grant of a licence of a like kind by the Board.

"(2) Where a licence is granted to a person by virtue of subsection (1), the licence shall be -

- (a) subject to the conditions as nearly as practicable the same as those to which the licence or registration granted under the law of the State or Territory is subject; and
- (b) revoked immediately upon the revocation or suspension of the licence or registration granted under the law of the State or Territory, except where the revocation or suspension under the law of the State or Territory is for the non-payment of a fee.

"(3) The revocation of a licence under subsection (2)(b) shall be deemed to be a revocation by the Board pursuant to section 69(1)(d)."

7. DURATION AND RENEWAL

Section 32(1) of the Principal Act is amended by omitting "continue in force for 12 months" and substituting "continue in force to and including 30 November immediately following the grant of the licence".

8. REPEAL

Section 40 of the Principal Act is repealed.

9. CERTIFICATE OF REGISTRATION

Section 41 of the Principal Act is amended -

- (a) by omitting from subsection (1) "or 40";
- (b) by omitting from subsection (1)(b) "or provisional registration, as the case may be,"; and
- (c) by omitting subsections (2) and (3).

10. OBJECTIONS

Section 42(8)(a) of the Principal Act is amended by omitting "or provisional registration, as the case may be,".

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11. REPEAL AND SUBSTITUTION

Section 43A of the Principal Act is repealed and the following substituted:

"43A. ANNUAL FEE

"A registered agent's representative shall pay to the Registrar the prescribed annual fee on or before 1 May of each year."

12. NOTIFICATION OF ACCOUNT

Section 51 of the Principal Act is amended by adding at the end "Penalty: \$500".

13. RECEIPT FOR TRUST MONEYS

Section 56 of the Principal Act is amended by adding at the end "Penalty: \$500".

14. AUDIT

Section 59 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) A licensed agent shall ensure that his accounting records relating to trust moneys received and paid by him during the prescribed period are audited within 3 months after the expiration of each prescribed period.

"(1A) It is a defence to a prosecution for an offence against subsection (1) if the licensed agent charged with the offence proves that -

- (a) the licensed agent engaged an auditor to carry out the audit at a time when the auditor would reasonably be expected to complete the audit within the period specified in that subsection, but the auditor had failed to do so; and
- (b) a written statement was forwarded to the Registrar by the auditor or the licensed agent before the expiration of the period specified in that subsection setting out the reasons for the auditor's failure to complete the audit and specifying the period within which the audit will be completed."

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15. RULES OF CONDUCT

Section 65(1) of the Principal Act is amended -

(a) by omitting paragraph (a) and substituting the following:

"(a) breaches this Act or the regulations, whether or not the licensed agent is convicted of an offence in respect of the breach;" and

(b) by inserting after paragraph (d) the following:

"(da) fails to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent;".

16. APPLICATIONS FOR DISCIPLINARY ACTION

Section 68 of the Principal Act is amended by omitting subsection (5) and substituting the following:

"(5) The Board may, without holding an inquiry, reject an application for disciplinary action to be taken against a licensed agent where -

(a) the application was made under subsection (3) and is, in the opinion of the Board, of a frivolous, irrelevant or malicious nature; or

(b) the application was made (by virtue of section 67(1)(c)) in respect of a breach of section 59(1) and the Board is satisfied that the licensed agent has, or would have, a defence to a prosecution for an offence against that subsection.".

17. REPEAL AND SUBSTITUTION

Divisions 2 and 2A of Part XII of the Principal Act are repealed and the following substituted:

*"Division 2 - Agents Licensing Fidelity  
Guarantee Fund of the Northern Territory*

"94. ESTABLISHMENT OF FUND

"(1) There is established by this section the Agents Licensing Fidelity Guarantee Fund of the Northern Territory.

"(2) The Fund -

(a) is a body corporate with perpetual succession;

(b) shall have a common seal; and



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- (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.

"(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Fund affixed to a document and shall assume that it was duly fixed.

"(4) The functions of the Fund are to maintain and operate the moneys of the Fund.

"(5) Subject to this Act, the Fund has power to do all things that are necessary or convenient to be done for or in relation to or incidental to the performance of its functions.

"(6) The Minister may, by instrument in writing, determine the manner in which the Fund shall maintain and operate the moneys of the Fund and the Fund shall act in accordance with the determinations of the Minister, if any.

"(7) Subject to the determinations, if any, made by the Minister under subsection (6), the Fund shall -

- (a) keep separate records of all transactions concerning the moneys of the Fund;
- (b) provide copies of the records to the Board upon demand but, in any case, not less than once in each period of 3 months; and
- (c) ensure that each cheque of the Fund is signed by the Registrar and another member of the Fund or, in the absence of the Registrar, by the 2 other members of the Fund.

"(8) The exercise of the powers and functions of the Fund shall not be affected by reason only of there being a vacancy in the office of a member of the Fund.

"95. MEMBERS OF FUND

"(1) The Fund shall consist of -

- (a) the Registrar;
- (b) the Chairman or his nominee; and
- (c) the appointed member.

"(2) The Minister shall, by instrument in writing, appoint a person, being a person who, in the opinion of the Minister, has expertise and experience in finance and investment, to be the appointed member of the Fund referred to in subsection (1)(c).

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"(3) Subject to subsections (4) and (5), the appointed member -

- (a) holds office for a period of 2 years; and
- (b) is eligible for re-appointment.

"(4) The appointed member may resign office by writing signed by or with the authority of the member and delivered to the Minister.

"(5) The Minister may terminate the appointment of the appointed member.

"(6) Where the appointed member is or is expected to be absent from the Territory or is unable to perform the duties of his office, or there is a vacancy in the office of the appointed member, the Minister may appoint a person temporarily to act in the place of the appointed member for a period not exceeding 3 months.

"95A. MEETINGS OF FUND

"(1) The Registrar shall call such meetings of the Fund as are necessary for the exercise of its powers and the performance of its functions, but the interval between one meeting and the next shall not exceed 3 months.

"(2) Subject to subsections (3) and (4), the Fund shall determine the procedure to be followed at or in relation to its meetings.

"(3) The Registrar shall preside at the meetings of the Fund.

"(4) The Fund shall keep records of its meetings.

"95B. MONEYS OF FUND

"(1) The moneys of the Fund shall comprise -

- (a) contributions and levies paid under this Act;
- (b) fees paid to the Board with respect to licences or registrations;
- (c) fines imposed by the Board under section 69(1)(b);
- (d) interest from time to time accruing from the investment of the moneys of the Fund; and
- (e) any other money which may be lawfully paid to the Fund.

"(2) Subject to this Division, the Fund shall pay out of the moneys of the Fund -

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- (a) the amount of all claims, including costs allowed or established against the moneys of the Fund in accordance with Division 3;
- (b) the costs and expenses of the administration of this Act;
- (c) the amount of remuneration, allowances and expenses payable under the *Remuneration (Statutory Bodies) Act* to a member;
- (d) where the amount of the moneys of the Fund is greater than \$250,000, or such other amount as the Administrator may determine, such amounts, if any, as the Minister determines for the purpose referred to in section 92(3);
- (e) such amounts, if any, used by the Institute in pursuance of section 92(4); and
- (f) such other amounts as may lawfully be paid out of the moneys of the Fund."

18. PERSONS WHO MAY APPLY

Section 96 of the Principal Act is amended -

- (a) by omitting from subsection (1) all words after and including "misappropriation of other property by" and substituting "misappropriation of other property by -
  - (a) a licensed agent or a partner of a licensed agent;
  - (b) a person constituting, or an officer or employee of, a firm or company licensed under this Act; or
  - (c) any other person carrying on business as an agent,

may apply to the Registrar for compensation under this Part in respect of that loss."; and

- (b) by inserting after subsection (1) the following:

"(1A) Nothing in subsection (1) shall be construed as permitting a person to apply to the Registrar for compensation in respect of a pecuniary loss arising out of a defalcation of trust moneys or a misappropriation of other property by a person referred to in subsection (1)(c) which occurred before the commencement of the *Land and Business Agents Amendment Act 1992*."

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19. NEW SECTIONS

The Principal Act is amended by inserting after section 121 the following:

"121A. RESTRICTION ON AGENT, &c., PURCHASING OR SELLING PROPERTY IN WHICH INTERESTED

"(1) Subject to subsection (6), a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent shall not purchase, whether directly or indirectly, or be beneficially interested in the purchase of land or a business, as the case may be, where he is acting as an agent for a principal.

Penalty: \$20,000.

"(2) Subject to subsection (6), a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent shall not, whether directly or indirectly, accept title to land or a business where he is in breach of subsection (1).

Penalty: \$20,000.

"(3) Subject to subsection (6), a licensed agent, a registered agent's representative, an employee of a licensed agent or a person who holds himself out to be an agent shall not sell, whether directly or indirectly, land or a business that he owns or is beneficially interested in to a person who is a principal for whom he is acting as an agent.

Penalty: \$20,000.

"(4) A licensed agent or a person who holds himself out to be an agent shall not receive commission from a principal in any case where he has been found guilty of an offence against subsection (1) or (3).

Penalty: \$10,000.

"(5) A person who is convicted of an offence against this section shall -

- (a) account for and repay to the principal all profits (including commission received) resulting from the purchase or sale and any subsequent dealings with the land or business;
- (b) subject to an agreement with the principal, in the case of a conviction against subsection (2), transfer title to the land or business to the principal.

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"(6) This section does not apply where -

- (a) the land or business is purchased by a person who is a shareholder or creditor of a licensed agent which is a corporation the shares of which are listed on the Australian Stock Exchange or a prescribed corporation;
- (b) the licensed agent, the registered agent's representative or employee acted honestly and reasonably;
- (c) the principal is in substantially as good a position as if the licensed agent, agent's representative or employee had no interest whatsoever in the purchase or sale; or
- (d) the licensed agent, registered agent's representative or employee has complied with section 121B.

"(7) A person who has sold land may lodge a caveat with the Registrar-General in respect of his former interest in the land, except where the land has been sold to a bona fide purchaser, where -

- (a) he believes that the person who acted as agent for him for the purposes of the sale of the land was beneficially interested in the purchase of the land at the time of the transaction; and
- (b) the sale of the land is or will be the subject of an action brought under this section.

"121B. WHERE AGENT, &c., MAY PURCHASE OR SELL

"(1) A licensed agent, a registered agent's representative or an employee of a licensed agent may purchase or sell, whether directly or indirectly, or be beneficially interested in the purchase or sale of land or a business which the person for whom he is acting as agent wishes to purchase or sell, as the case may be, where the agent, agent's representative or employee makes a full disclosure of his intention to purchase or sell or of his interest in the purchase or sale.

"(2) A disclosure under subsection (1) shall be in the prescribed form and subject to the prescribed conditions, if any.

"(3) A form prescribed for the purposes of subsection (1), shall -

- (a) provide that full details of the intention to purchase or sell or of the beneficial interest in the purchase or sale shall be set out in or attached to the form; and

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- (b) contain a statement to the effect that the agent, agent's representative or employee may have gained information in relation to the principal's circumstances and the proposed purchase or sale by virtue of his relationship with the principal that may place him in a position of advantage."

20. SERVICE OF DOCUMENTS

Section 122 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) Subject to this Act, a document required by this Act to be given to, or served on, a licensed agent may be given or served by -

- (a) leaving the document at the place specified in the licence as the place or principal place at which the business of the agent is carried on; or
- (b) sending the document by post to the address of the place specified in the licence as the place or principal place at which the business of the agent is carried on."

21. REGULATORY OFFENCES

Section 125B of the Principal Act is amended by omitting "section 47," and substituting "section 47, 51, 56,".

22. FURTHER AMENDMENTS

The Principal Act is further amended as provided for in the Schedule.

23. TRANSITIONAL AND SAVINGS

(1) Where, immediately before the commencement of this Act, a person was provisionally registered as an agent's representative under section 40 of the Principal Act, that person's provisional registration shall continue to have effect for a period of 2 years from that commencement or until the issue of a certificate of registration to that person under section 41 of the Principal Act, whichever first occurs, as if this Act had not come into operation.

- (2) On the commencement of this Act -
  - (a) a reference to the Fund or the Committee existing immediately before that commencement shall be deemed to be a reference to the Fund established by this Act and, where appropriate, to the moneys of the Fund;

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- (b) an act of any nature whatsoever carried out by the Committee existing immediately before that commencement shall be deemed to be an act carried out by the Fund established by this Act;
  - (c) all estates and interests in personal property held in the name of the Fund existing immediately before that commencement shall be deemed to be estates and interests vested in the Fund established by this Act which shall have such powers as are necessary to take possession of, recover and deal with such property;
  - (d) any levy, fee, charge, interest, debt or money payable to the Fund existing immediately before that commencement shall be deemed to be payable to the Fund established by this Act;
  - (e) all powers and functions and all rights and liabilities of any nature whatsoever of the Fund or the Committee existing immediately before that commencement shall be deemed to be powers, functions, rights and liabilities of the Fund established by this Act; and
  - (f) a determination made by the Minister in pursuance of section 95B(2) of the Principal Act as in force immediately before that commencement shall be deemed to be a determination made under section 94(6) of the Principal Act as amended by this Act.
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SCHEDULE

Section 22

Provision	Amendment	
	omit	substitute
Section 50(4)	"Committee" (wherever occurring)	"Fund"
Section 50(5)	"the Committee, pay to the Committee for the credit of"	"the Fund pay to"
Section 62(2)	"Subject to section 93, an"	"An"
Sections 75(1A), 92(3), (4), 100(4), 104(3)	"Fund" (wherever occurring)	"moneys of the Fund"
Section 102(4)	"Fund" (first occurring)	"moneys of the Fund"
	"in the Fund"	"of the moneys of the Fund"
Section 107	"against the Fund" (twice occurring)	"against the moneys of the Fund"
	"of the Fund" (twice occurring)	"of the moneys of the Fund"
Section 108(1)	"Fund is"	"moneys of the Fund are"
	"to the Fund"	"to the moneys of the Fund"
	"into the Fund"	"to the Fund"