

NORTHERN TERRITORY OF AUSTRALIA

LAND AND BUSINESS AGENTS
AMENDMENT ACT 1991

No. 79 of 1991

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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 79 of 1991

AN ACT

to amend the *Land and Business Agents Act*
and to make consequential amendments to
the *Legal Practitioners Act*

[Assented to 17 December 1991]

BE 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 1991*.

2. COMMENCEMENT

This Act shall come into operation on a date to be 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. REPEAL AND SUBSTITUTION

Section 1 of the Principal Act is repealed and the following substituted:

"1. SHORT TITLE

"This Act may be cited as the *Agents Licensing Act*."

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5. INTERPRETATION

Section 5 of the Principal Act is amended -

- (a) by omitting the definition of "agent" in subsection (1) and substituting the following:

"'agent' means a real estate agent, business agent or conveyancing agent;"

- (b) by omitting from subsection (2)(b) "business." and substituting "business; and";

- (c) by adding at the end of subsection (2) the following:

"(c) 'conveyancing 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 (whether or not paid directly or indirectly for the service provided), in respect of a matter set out in Part 1 of the Schedule in accordance with the requirements specified in Part 2 of the Schedule."; and

- (d) by adding at the end the following:

"(4) Part IV does not apply to or in relation to a licensed conveyancing agent."

6. APPOINTMENT OF MEMBERS AND TENURE

Section 7 of the Principal Act is amended -

- (a) by omitting from subsection (1) "The Board" and substituting "Subject to subsection (1A), the Board"; and

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

"(1A) For the purposes of considering an application for a licence as a conveyancing agent or any other matter relating to conveyancing agents, the Board shall consist of the Registrar and the members appointed under subsection (1)(b) and (d) and, if the Minister thinks fit, 2 licensed conveyancing agents appointed by the Minister for that purpose."

7. UNLICENSED PERSONS NOT TO ACT AS AGENTS

Section 17 of the Principal Act is amended -

- (a) by omitting from subsection (1) "A person," and substituting "Subject to subsection (1A), a person,";

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(b) by omitting "or business agent" (twice occurring) and substituting ", business agent or conveyancing agent"; and

(c) by adding at the end the following:

"(1A) A licensed real estate agent may arrange for the preparation and execution of a contract of sale of land, but only where the contract is in a form -

(a) approved by the Registrar for the purposes of this Act; or

(b) approved by the Law Society of the Northern Territory for use by persons who are not legal practitioners."

8. REPEAL AND SUBSTITUTION

Section 22 of the Principal Act is repealed and the following substituted:

"22. ELIGIBILITY FOR LICENCE

"(1) A person, not being a company or firm, is eligible for the grant of a licence where the Board is satisfied that -

(a) he has attained the age of 18 years;

(b) he is a fit and proper person;

(c) he holds the prescribed educational qualifications for the class of licence which is the subject of the application or has other prescribed qualifications or experience; and

(d) by reason of his qualifications and experience he is competent to carry on business on his own account as a licensed agent.

"(2) In subsection (1)(c) 'other prescribed qualifications or experience' includes, in the case of an applicant for a conveyancing agent's licence, experience gained for the prescribed period in the employ of -

(a) a person (however described) authorised to act as a legal practitioner under the law of a State or Territory of the Commonwealth and who was during the period of that employment engaged from time to time in the sale and transfer of real property;

(b) a conveyancing agent licensed under this Act;

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- (c) a person authorised under the law of the State of South Australia to act as a land broker;
- (d) a person authorised under the law of the State of Western Australia to act as a settlement agent; or
- (e) such other person or body as may be prescribed.

"(3) Where a person applies for a licence under section 26 on the basis that the person holds other prescribed qualifications or experience referred to in subsection (1)(c), the person's application under section 26 shall be accompanied by a certificate in the prescribed form."

9. PERSONS LICENSED OR REGISTERED AS AGENTS ELSEWHERE

Section 24 of the Principal Act is amended by omitting "the grant of a licence" and substituting "the grant of a licence to carry on business of a similar kind".

10. INSPECTORS

Section 64 of the Principal Act is amended -

- (a) by inserting after subsection (1)(a) the following:
 - "(aa) inspect all documents or certificates relating to indemnity insurance referred to in Part XIIIA of a licensed agent or former licensed agent;"
 - (b) by omitting subsection (1)(c) and substituting the following:
 - "(c) for the purposes of paragraph (a), (aa) or (b), require a licensed agent or any other person in whose custody or control those receipts or other books, accounts, securities, documents, papers or accounting records, or those documents or certificates relating to indemnity insurance referred to in Part XIIIA, are, to produce and to hand over to him those receipts or other books, accounts, securities, documents, papers or accounting records or those documents or certificates relating to indemnity insurance referred to in Part XIIIA."; and
- (c) by omitting from subsections (3) and (4) "referred to in subsection (1)(a) or (b)" and substituting "or a document or certificate relating to indemnity insurance referred to in subsection (1)".

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11. RULES OF CONDUCT

Section 65 of the Principal Act is amended -

- (a) by omitting from subsection (1)(k) "from his principal; or" and substituting "from his principal;";
- (b) by omitting from subsection (1)(m) "by the principal," and substituting "by the principal; or";
- (c) by inserting in subsection (1), after paragraph (m), the following:
"(n) contravenes or fails to comply with a rule prescribed by the Regulations for the purposes of this section,"; and
- (d) by inserting in subsection (2), after "for agents", the words ", or agents of a class of which he is one,".

12. GROUNDS FOR DISCIPLINARY ACTION

Section 67(1) of the Principal Act is amended -

- (a) by inserting in paragraph (e), after "business agents", the words "or of conveyancing agents (by whatever name called)";
- (b) by omitting from paragraph (f) "or business agent" and substituting ", business agent or conveyancing agent"; and
- (c) by inserting after paragraph (j) the following:
"(ja) the licensed agent has failed to take out or to maintain indemnity insurance referred to in Part XIIIA as required by or under this Act;".

13. INTERPRETATION

The definition of "indemnity insurance" in section 108A(1) of the Principal Act is amended -

- (a) by omitting from paragraph (b) "a member" and substituting "a member; or";
- (b) by omitting from paragraph (c) "a director; or" and substituting "a director,";
- (c) by omitting paragraph (d); and
- (d) by omitting "firm, company or trust" and substituting "firm or company".

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14. NEW SECTION

The Principal Act is amended by inserting after section 108B the following:

"108C. CONVEYANCING AGENTS TO INSURE

"A conveyancing agent shall, before commencing to carry on business, take out and maintain with an authorised insurer indemnity insurance in the sum of \$500,000, or the maximum sum agreed under the arrangements entered into under section 108B with the authorised insurer, whichever is the lesser.

Penalty: \$5,000."

15. REGISTERS

Section 109(1) of the Principal Act is amended -

- (a) by omitting from paragraph (b) "and";
- (b) by omitting from paragraph (c) "registered." and substituting "registered; and"; and
- (c) by adding at the end the following:
"(d) a Register of Conveyancing Agents."

16. NO RECOVERY OF COMMISSION UNLESS LICENSED

Section 121 of the Principal Act is amended by inserting after "section 5(2)" the words "or to work which, under this Act, a conveyancing agent may perform".

17. REGULATIONS

Section 127(1) of the Principal Act is amended -

- (a) by omitting from paragraph (g) "this Act; and" and substituting "this Act;"; and
- (b) by adding at the end the following:
"(j) rules of conduct;
- (k) the type of services relating to the sale and transfer of land that a licensed conveyancing agent may and the regulation and limits of those services perform; and
- (m) the regulation of licensed agents in respect of professional service or agency activities they may provide or in which they may engage in association with their activities as licensed agents."

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18. SCHEDULE ADDED

The Principal Act is amended by adding at the end the following:

"SCHEDULE

PART 1

Section 5(2)(c)

FUNCTIONS OF CONVEYANCING AGENT

1. A licensed conveyancing agent may perform the following functions in respect of the sale and transfer of real property:

- (a) search land titles and dealings thereon and search for caveats against such dealings;
- (b) search and inquire at Government offices and at the offices of statutory authorities and municipalities, and obtain certificates therefrom, in respect of records, plans and policies and make inquiries with respect to adjustment of rates, taxes and other outgoings of a periodical nature in respect of the real estate the subject of the transaction involved;
- (c) arrange for the preparation and execution of contracts of sale, but only where the contract is in a form -
 - (i) approved by the Registrar-General for the purposes of this Act; or
 - (ii) approved by the Law Society of the Northern Territory for use by persons who are not legal practitioners;
- (d) arrange and attend on settlement, including the exchange of documents and the receipt of money;
- (e) lodge documents at the Registry Office or other Government offices or the offices of statutory authorities for registration, and uplift such documents;
- (f) complete powers of attorney in such form and subject to such conditions as are prescribed;
- (g) draw or prepare, and arrange the execution of, the documents referred to in clause 2; and
- (h) report progress to the agent's client.

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2. A licensed conveyancing agent may, in addition to any document required for the purposes of the performance of a function referred to in clause 1, draw or prepare the following documents:

- (a) instruments (including caveats but not including leases, mortgages or encumbrances) and memoranda relating to the sale and transfer of real property for lodgement or registration under the *Real Property Act*, the *Unit Titles Act*, the *Crown Lands Act* or any other Act dealing with the grant of title to Crown land;
- (b) statutory declarations to support documents mentioned in paragraph (a);
- (c) declarations of non-revocation of powers of attorney; and
- (d) such other documents with the approval of the Board.

PART 2

REQUIREMENTS RELATING TO CONVEYANCING AGENTS

1. REMUNERATION

(1) A conveyancing agent is not entitled to receive any reward in respect of services in that capacity unless a valid appointment to act in that capacity has been signed, before the services are rendered, by the party to the transaction for whom the services are to be rendered or by some other person lawfully authorized to sign on behalf of the person for whom the services are to be rendered (not being a real estate agent or other commission agent or an employee or agent thereof, acting for a party in the transaction).

(2) A person may recover remuneration for services rendered as a licensed conveyancing agent notwithstanding that there is no valid appointment as required by subclause (1) if -

- (a) the party to the transaction for whom the services were rendered has certified that the party was aware of the provisions of subclause (1) and has ratified in writing the appointment of the conveyancing agent; or

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- (b) a court before which the claim for remuneration is heard is satisfied that in all the circumstances it would be unjust to deprive the agent of all or a part of the remuneration.

(3) Where an appointment of a conveyancing agent is terminated before the transaction is completed, the agent shall be entitled to recover such proportion of the quoted remuneration as is reasonable in the circumstances.

2. QUOTES FOR SERVICES

A conveyancing agent shall supply to a person for whom the agent is acting or who may wish to engage the agent to act, upon request by that person, a bona fide quote of the cost of the services of the agent in respect of the particular transaction to which the request relates.

3. POSSESSORY LIENS

A conveyancing agent is not entitled to claim a possessory or other lien over documents for the agent's fees or otherwise.

19. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

20. AMENDMENTS TO *LEGAL PRACTITIONERS ACT*

(1) Section 131 of the *Legal Practitioners Act* is amended by omitting "functions of, a legal practitioner." and substituting the following:

"functions of, a legal practitioner, unless the person is permitted by or under a law of the Territory to perform the function for reward."

(2) Section 132(3) of the *Legal Practitioners Act* is amended by inserting after the definition of "draw" the following:

"'prescribed work' includes work lawfully performed by a conveyancing agent within the meaning of the *Agents Licensing Act*;"

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SCHEDULE

Section 19

| Section | Amendment | |
|---------------------------|-----------------------------------|--|
| | omit | substitute |
| Section 8(1), (2) and (5) | "Land and Business Agents" | "Land, Business and Conveyancing Agents" |
| Sections 20 and 21 | the whole sections | |
| Section 23A | "section 22" (twice occurring) | "section 22(1)" |
| Section 69A(1) | "set out" | "set out or referred to" |
| Section 71(2) | "or business agent" | ", business agent or conveyancing agent" |
| Section 94(1) | "Land and Business Agents" | "Land, Business and Conveyancing Agents" |
| Section 112(2) | "or business agents" | ", business agents or conveyancing agents (by whatever name called)" |
| Section 114(2) | "'business agent'" | "'business agent', 'conveyancing agent'" |
| Section 128 | the whole section | |