



NORTHERN TERRITORY OF AUSTRALIA

No. 95 of 1981

AN ACT

To amend the Land and Business Agents Act

[Assented to 8 December 1981]

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 1981.

2. PRINCIPAL ACT

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

3. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the Gazette.

4. APPLICATION

Section 4(1) of the Principal Act is amended by omitting paragraph (b).

5. NEW SECTION

The Principal Act is amended by inserting after section 23 the following:

"23A. PROVISIONAL LICENCE ON ACQUISITION OF BUSINESS

"Where a person, not being a company or firm, acquires from a licensed agent a business, the carrying on of which requires a licence under this Act, that person is eligible for the grant of a provisional licence where -

- (a) he satisfies the requirements specified in section 22(a), (b) and (d); and

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(b) he undertakes in writing to obtain the educational qualifications referred to in section 22(c) within such period as is specified by the Board."

6. APPLICATIONS BY PERSONS OTHER THAN COMPANIES OR FIRMS

Section 26 of the Principal Act is amended -

(a) by omitting from paragraph (a) "and"; and

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

"(aa) accompanied by the prescribed fee; and".

7. APPLICATIONS BY COMPANIES OR FIRMS

Section 27 of the Principal Act is amended -

(a) by omitting from paragraph (a) "and"; and

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

"(aa) accompanied by the prescribed fee; and".

8. ISSUE OF LICENCES

Section 31(1) of the Principal Act is amended by omitting ", on payment by the applicant of the prescribed fee,".

9. DURATION AND RENEWAL

Section 32(5) of the Principal Act is amended by inserting in paragraphs (a) and (b) respectively after "section 21(1)(b)" the words "or 23A(b)".

10. NEW SECTION

The Principal Act is amended by inserting after section 32 the following:

"32A. LICENSEE TO MAINTAIN OFFICE IN TERRITORY

"It shall be a condition of a licence issued to a person whose principal place of business is outside the Territory that the licensee maintains an office within the Territory and complies with section 110 in respect of that office."

11. TRUST MONEYS

Section 49 of the Principal Act is amended by omitting "be deemed to be held in trust by the agent for the principal on whose behalf the moneys are received." and substituting "be held in trust by the agent."

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12. GROUNDS FOR REVOCATION

Section 67 of the Principal Act is amended by omitting from paragraph (i) "as a licensed agent" and substituting "as a licensed agent or has failed to maintain an office in the Territory".

13. NEW SECTION

The Principal Act is amended by inserting after section 69 the following:

"69A. PROFITS TO BE REPAID

"(1) Where the Board has, at the conclusion of an inquiry, taken action under section 69(1), and is satisfied that the licensed agent or person mentioned in section 65(4)(b) has by means of his breach of the rules of conduct for agents set out in section 65(1), made a profit which he would not, but for his breach of those rules, have made, the Board may require him to pay over to the person at whose expense, or in relation to whose affairs, the profit has been made, the amount of that profit or such amount of money as, in the opinion of the Board, is equivalent to that profit.

"(2) An amount ordered by the Board to be paid to a person under sub-section (1) may be sued for and recovered at the suit of the Board."

14. APPOINTMENT

Section 71 of the Principal Act is amended -

(a) by omitting sub-section (1)(d) and substituting the following:

"(d) or any other ground that the Board thinks fit, and the Supreme Court may appoint the registered company auditor accordingly."; and

(b) by omitting sub-section (2) and substituting the following:

"(2) The Board may apply to the Supreme Court for the appointment of a registered company auditor as the receiver of moneys received by a person who, although not licensed under this Act, appears to the Board to be carrying on business as a real estate agent or business agent, and the Supreme Court may, if satisfied that the person is holding moneys in that capacity, appoint the registered company auditor accordingly."

15. NEW SECTION

The Principal Act is amended by inserting after section 73 the following:

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"73A. ACCESS TO BOOKS, &c.

"For the purposes of this Act, a receiver appointed under section 71 -

- (a) shall have full and free access at all reasonable times to all books, documents and other papers kept by or on behalf of an agent; and
- (b) may, for those purposes, take extracts from, and make copies of, any books, documents or papers kept by or on behalf of an agent."

16. REMUNERATION

Section 75 of the Principal Act is amended -

- (a) by inserting after sub-section (1) the following:

"(1A) The Board may pay to the receiver from the Fund the fees and allowances and expenses referred to in sub-section (1)."; and

- (b) by inserting after "The receiver" in sub-section (2) "or, if it has exercised its powers under sub-section (1A), the Board".

17. REPEAL AND SUBSTITUTION

Section 86 of the Principal Act is repealed and the following substituted:

"86. BONDS AND SECURITIES

"(1) A person shall not carry on business as a real estate agent or business agent unless -

- (a) he has lodged with the Registrar a fidelity bond given by an insurance company or other body approved by the Board for the purposes of this Act, being a bond given to the Territory in the amount determined in accordance with sub-section (2); or
- (b) he has deposited with the Registrar securities approved by the Board to the value set out in sub-section (2), being securities which he has in writing authorized the Board to sell in the circumstances referred to in section 87.

Penalty: \$2,000 or imprisonment for 12 months.

"(2) The amount of the bond or value of the securities referred to in sub-section (1) shall be determined as follows:

- (a) when the person commences to carry on business as an agent, and thereafter until the maximum reconciled balance of the agent's trust account exceeds \$10,000 - \$10,000;

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- (b) where the maximum reconciled balance of the agent's trust account exceeds \$10,000 but does not exceed \$150,000 - \$20,000;
- (c) where the maximum reconciled balance of the agent's trust account exceeds \$150,000 but does not exceed \$250,000 - \$30,000; and
- (d) where the maximum reconciled balance of the agent's trust account exceeds \$250,000 - \$50,000.

"(3) In this section the maximum reconciled balance of an agent's trust account means the amount, ascertained in accordance with normal accounting practice, that was the highest aggregate balance of the trust account of the agent on a day during the last preceding financial year or, if the agent maintains more than one trust account, the amount that was the highest aggregate of the balance of the trust accounts of the agent on a day during the last preceding financial year, not being a trust account maintained for a specific person or specific persons to the exclusion of any other person."

18. LICENSED AGENT TO DEPOSIT PART OF TRUST MONEYS

Section 93(1)(a)(i) of the Principal Act is amended by omitting "12" and substituting "3".

19. PERSONS WHO MAY APPLY

Section 96(1) of the Principal Act is amended by omitting all words after "misappropriation of other" and substituting "property by a licensed agent, the partner of a licensed agent, or a person constituting, or an officer or employee of, a firm or company licensed under this Act, may apply to the Registrar for compensation under this Part in respect of that loss."

20. REGISTRAR MAY APPROVE OPERATION OF REGISTERED OFFICE WITHOUT LICENSED BRANCH MANAGER

Section 111(1) of the Principal Act is amended by omitting "not exceeding one month" and substituting "not exceeding 60 days".

21. NEW SECTION

The Principal Act is amended by inserting after section 125 the following:

"125A. OFFENCES PUNISHABLE SUMMARILY

"All offences against this Act, other than offences expressed to be indictable, shall be punishable on summary conviction."

