

THE NORTHERN TERRITORY OF AUSTRALIA

LAND AND BUSINESS AGENTS ACT
No. 57 of 1979
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THE NORTHERN TERRITORY OF AUSTRALIA

No. 57 of 1979

AN ACT

To provide for the Licensing of certain Agents,
the Registration of Representatives of those
Licensed Agents and for related purposes

[Assented to 18 May 1979]

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:

PART I - PRELIMINARY

- | | |
|--|--------------|
| 1. This Act may be cited as the <u>Land and Business Agents Act 1979</u> . | Short title |
| 2. The several Parts and sections of this Act shall commence on such dates as are respectively fixed by the Administrator by notice in the <u>Gazette</u> . | Commencement |
| 3. The <u>Land and Business Agents Ordinance 1974</u> is repealed. | Repeal |
| 4.(1) This Act does not apply in relation to - | Application |
| (a) an executor, administrator, liquidator or receiver other than a receiver appointed under this Act, the committee of the estate of a person appointed under a law relating to mental health or a manager of the estate of a person appointed under a law relating to the property of protected persons, or any other trustee or a bank or savings bank in the exercise of rights and powers, or the performance of duties and obligations, as such; | |
| (b) the holder of a licence under the <u>Auctioneers Act</u> when conducting a sale by auction within the meaning of that Act; or | |
| (c) a person practising in the Territory as a legal practitioner in the exercise of rights and powers or the performance of duties and obligations in his professional capacity. | |
| (2) This Act does not bind the Crown or its officers or servants. | |

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Interpret-
ation

5.(1) In this Act, unless the contrary intention appears -

"accounting records", in relation to a person, includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts of the person are made up;

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

"agent's representative" means a person who, in the service of, and on behalf of, a licensed agent negotiates or holds himself out as being prepared to negotiate any transaction of a description referred to in sub-section (2)(a) or (b);

"approved building society" means an incorporated building society approved under section 4B of the Trustee Act as a society in which a trustee may invest trust funds;

"bank" means a bank within the meaning ascribed to that term in the Banking Act 1959 of the Commonwealth;

"Board" means the Agents Licensing Board of the Northern Territory constituted under Part II;

"branch manager" means a person of a description referred to in section 25(b);

"certificate in lieu of a fidelity bond" means a certificate issued in accordance with Part XI;

"Chairman" means the Chairman of the Board appointed under section 9 and includes a Deputy Chairman elected under section 14(4)(b);

"company" means a corporation within the meaning ascribed to that term in the Companies Act;

"Consolidated Interest Account" means the Agents Consolidated Interest Account of the Northern Territory established under section 90;

"departmental member" means the member who is an employee within the meaning of the Public Service Act appointed under section 7;

"Deputy Chairman" means the Deputy Chairman of the Board elected under section 14(4)(b);

"fidelity bond" means a fidelity bond given in accordance with Part XI;

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"Fund" means the Land and Business Agents Fidelity Guarantee Fund of the Northern Territory established under section 94;

"inquiry" means a meeting of the Board to conduct an inquiry in pursuance of Part IX;

"inspector" means an inspector appointed under section 8;

"Institute" means the Real Estate Institute of the Northern Territory Incorporated;

"lease" includes a sub-lease;

"legal practitioner" means a person whose name is entered on the Roll of Legal Practitioners kept in pursuance of the Legal Practitioners Act;

"licence" means a licence that is in force under this Act;

"licensed agent" means an agent licensed to carry on business as an agent;

"member" means a member of the Board (including the Chairman or Deputy Chairman) and includes an acting appointment;

"register" means the appropriate register kept under section 109;

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

"registered company auditor" means a registered company auditor within the meaning ascribed to that term in the Companies Act;

"Registrar" means the Registrar of Land and Business Agents appointed under section 8;

"regulations" means regulations made under this Act;

"Stipendiary Magistrate" means a Stipendiary Magistrate within the meaning ascribed to that term in the Magistrates Act;

"trust account" means an account referred to in section 50;

"trust money" means money of a description referred to in section 49.

(2) For the purposes of this Act, but subject to section 4 -

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(a) "real estate agent" means a person whose business either alone or as part of or in connexion 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 -

(i) the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of; or

(ii) negotiations for the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of,

land, whether within or outside the Territory;
and

(b) "business agent" means a person whose business either alone or as part of or in connexion 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 -

(i) the sale, purchase, exchange, leasing or letting or other dealings with, or the disposition of; or

(ii) negotiations for the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of,

a business or any share or interest in a business, or the goodwill in, or stock-in-trade of, a business, but does not include the sale, purchase, exchange or other dealings with, or the disposition of a share in the capital of a body corporate carrying on a business.

(3) In this Act, a reference to a person being licensed or registered as a real estate agent or business agent under a law of a State or Territory providing for the licensing or registration of real estate agents or business agents, as the case may be, includes a reference to a person being licensed or registered in that State or Territory (not being the Northern Territory) to carry on an activity that, if carried on in the Northern Territory, would be an activity of a kind referred to in sub-section (2)(a) or (b), as the case may be.

PART II - AGENTS LICENSING BOARD

The Board

6.(1) For the purposes of this Act, there shall be a Board, to be known as the Agents Licensing Board of the Northern Territory.

(2) The Board shall be a body corporate with

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perpetual succession and a common seal and shall be capable of suing and being sued in its corporate name.

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

7.(1) The Board shall consist of -

Appointment
of members
and tenure

(a) a departmental member, being a person who is an employee within the meaning of the Public Service Act;

(b) a legal practitioner;

(c) subject to sub-sections (5), (6) and (7), 2 persons who are members of the Real Estate Institute of the Northern Territory Incorporated nominated for appointment by the Institute; and

(d) a person who, in the opinion of the Minister, is suitable to represent the interests of consumers of the services offered by agents.

(2) Subject to this section, the Minister shall appoint the members of the Board.

(3) The departmental member shall hold office during the pleasure of the Minister.

(4) Subject to this Act, a member, other than the departmental member, shall hold office for a period of 3 years.

(5) Prior to the first occasion on which an appointment is to be made to the office of a member referred to in sub-section (1)(c), the Minister shall, in writing, request the Institute to nominate to him in writing the names of 4 members of the Institute who are willing to act as members of the Board.

(6) Where the office of a member referred to in sub-section (1)(c) becomes vacant the Minister shall, in writing, request the Institute to nominate to him in writing the names of 2 members of the Institute who are willing to act as members of the Board.

(7) Where a request has been made pursuant to sub-section (5) or (6) the Minister may, if nomination is not made pursuant to that sub-section within 21 days of the request being made, appoint to the office such member or members of the Institute, as the case requires, as the Minister thinks fit.

(8) Where the office of a member referred to in sub-section (1)(b) or (d) becomes vacant before the

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expiration of his term of office, the Minister may appoint -

(a) a legal practitioner; or

(b) a person of a description referred to in sub-section (1)(d),

as the case requires, to hold that office for a period of 3 years.

(9) A person who has attained the age of 65 years shall not be appointed or re-appointed as a member and a person shall not be appointed or re-appointed as a member for a period that extends beyond the date on which he will attain the age of 65 years.

(10) Subject to this section, a member shall be eligible for re-appointment.

(11) The exercise of a power or the performance of a function of the Board is not affected by reason only of there being a vacancy or vacancies in the membership of the Board.

Registrar,
Deputy
Registrars
and
inspectors

8.(1) The Minister may appoint a person to be the Registrar of Land and Business Agents.

(2) The Minister may appoint such persons as he thinks fit to be Deputy Registrars of Land and Business Agents.

(3) The Registrar and Deputy Registrar shall be subject to any directions of the Board.

(4) Subject to this section and to the directions of the Registrar, a Deputy Registrar may exercise any power, or perform any function, of the Registrar.

(5) The Minister may appoint such persons as he thinks fit to be Inspectors of Land and Business Agents.

(6) Inspectors shall be subject to any directions of the Registrar.

(7) The Registrar and each Deputy Registrar is an inspector for the purposes of this Act.

Chairman

9.(1) There shall be a Chairman of the Board who shall be the member appointed under section 7(1)(b).

(2) A person appointed to act temporarily in the place of the member appointed under section 7(1)(b) shall act as Chairman of the Board for the duration of his appointment.

Fees and
allowances

10. The Chairman and a member appointed under section 7(1)(d) shall be paid such fees, allowances and

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expenses, and at such rates, as the Administrator may determine.

11. The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity. Removal of member

12. Where a member -

Vacation of office

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board; or
- (c) ceases to have the qualification by reference to which he was appointed or, being a person referred to in section 7(1)(c) ceases to be a member of the Institute,

the Minister shall terminate the appointment of that member.

13. A member may resign his office by writing under his hand delivered to the Minister. Resignation

14.(1) The Board shall meet when necessary for the exercise of its powers and the performance of its functions, but so that a period not exceeding 6 months elapses between any 2 meetings of the Board. Meetings

(2) The Chairman shall, by notice in writing to other members, convene a meeting of the Board.

(3) A meeting of the Board shall be held at the time and place specified in the notice referred to in sub-section (2).

(4) At a meeting of the Board -

- (a) the Chairman, when present, shall preside;
- (b) in the absence of the Chairman, the members present and voting shall elect a Deputy Chairman, and that person may exercise the powers and perform the duties of the Chairman for that meeting;
- (c) 3 members constitute a quorum;
- (d) all questions arising shall be decided by a majority vote of the members present and voting;
- (e) the member presiding shall have a deliberative

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vote and, in the event of an equality of votes, shall also have a casting vote;

(f) the Board shall keep a record of its proceedings; and

(g) subject to this Act, the Board shall determine its own procedure.

Member not
to act
where in-
terested

15.(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, a company consisting of not less than 25 persons and of which he is not a director, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Board.

(3) Where -

(a) a member has an interest of a description referred to in sub-section (1); or

(b) an application by a member for the grant of a licence or for registration as an agent's representative is being considered or about to be considered by the Board,

that member shall not take part in any deliberation or decision of the Board in relation to the matter which is the subject of the member's interest or in relation to the application, as the case may be, and shall be disregarded for the purpose of constituting a quorum of the Board in relation to that matter or application.

Penalty: \$1,000 or imprisonment for 6 months.

Delegation

16.(1) The Board may, either generally or in relation to a matter or class of matters, by instrument under its common seal, delegate to -

(a) a member;

(b) a committee consisting of members;

(c) the Registrar; or

(d) a Deputy Registrar,

all or any of its powers or functions under this Act other than -

(e) a power to conduct an inquiry under this Act;

(f) a power or function where, prior to the exercise of that power or function, the Board

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is required to conduct an inquiry under this Act; or

(g) this power of delegation.

(2) A power delegated in accordance with subsection (1) may be exercised by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power so delegated by the Board.

PART III - LICENCE TO CARRY ON BUSINESS AS AGENT

Division 1 - General

17. A person, company or firm shall not carry on business, or by any means hold himself or itself out, as a real estate agent or business agent unless he or it is licensed as such under this Act.

Unlicensed
persons not
to act as
agents

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

18.(1) This section applies to -

Certain
persons in-
eligible to
apply for
licence with-
out leave of
Board

(a) a person who, having held a licence or been registered under a law of a State or Territory providing for the licensing or registration of agents, is no longer the holder of such a licence or so registered by reason of the revocation of the licence or registration; or

(b) a person whose application for a licence or registration under such a law has been refused.

(2) A person to whom this section applies is ineligible to apply for a licence unless the Board has, on an application made by the person under this section, granted special leave to that person to apply for a licence.

(3) Where, after an application for a licence has been made, the Board is satisfied that the applicant is a person to whom this section applies, the application for a licence shall, unless the Board grants special leave under this section, be deemed to have been withdrawn.

19. The grant under section 18 of special leave to apply for a licence does not affect the onus placed on an applicant for a licence under this Part to establish that he has the specified qualifications for the licence which is the subject of the application.

Leave not to
affect other
requirements

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Division 2 - Qualifications for Licence as Agent

Persons engaged in business at commencement of Act 20. Where a person, other than a company or firm, applies for the grant of a licence within one month after the commencement of this Act, that person 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;
- (d) he was, on the day immediately before the commencement of this Act, carrying on business in the Territory as an agent on his own account, or as a member of a firm or as a person in bona fide control of a company's or firm's business as an agent at an office of the company or firm; and
- (e) by reason of his experience before the commencement of this Act he is competent to carry on business on his own account as a licensed agent.

Provisional licence 21.(1) Where a person, other than a company or firm, applies for the grant of a licence within one month after the commencement of this Act, that person is eligible for the grant of a provisional licence where -

- (a) he satisfies the requirements specified in section 20(a), (b), (d) and (e); and
 - (b) he undertakes in writing to obtain the prescribed educational qualifications referred to in section 20(c) within such period as may be specified by the Board.
- (2) Subject to sub-sections (3) and (4) and section 31, this Act applies to and in relation to -
- (a) an application for, or an objection to the grant of or the issue of, a provisional licence as if that application for, objection to the grant of, or issue of, a provisional licence were an application for, objection to the grant of or issue of, a licence; and
 - (b) a person who is the holder of a provisional licence as if that person were a licensed agent.
- (3) Where the holder of a provisional licence does not obtain the prescribed educational qualifications within a period fixed under sub-section (1)(b), the

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Board may, by notice in writing served on that holder of a provisional licence, revoke that provisional licence.

(4) The Board may, if it thinks fit, either before or after the expiration of a period fixed under subsection (1)(b), extend that period.

22. Where a person, not being a company or firm, applies for the grant of a licence after the expiration of one month after the commencement of this Act, that person is eligible for the grant of a licence where the Board is satisfied that -

Persons who apply after one month after commencement of Act

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

23. The Board may waive in whole or in part the prescribed educational qualifications where the Board is satisfied that the applicant for a licence holds educational qualifications equivalent in whole or in part to the prescribed educational qualifications or where, by reason of his experience as an agent, the Board considers that the applicant should be exempted in whole or in part from a requirement to hold the prescribed educational qualifications.

Board may waive educational qualifications

24. Notwithstanding sections 20, 21 and 22, a person, not being a company or firm, who is licensed or registered as an agent under a law of a State or Territory providing for the licensing or registration of agents, is eligible for the grant of a licence where the Board is satisfied that -

Persons licensed or registered as agents elsewhere

- (a) he is a fit and proper person; and
- (b) by reason of his experience as an agent he is competent to carry on business on his own account as a licensed agent.

25. A company or a firm constituted by 2 or more persons is eligible for the grant of a licence where the Board is satisfied that -

Licence of company or firm

- (a) in the case of a company -
 - (i) the company is, by its memorandum of association, authorized to carry on business as an agent; and

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- (ii) all of the directors of the company and all of the persons concerned in the management or control of the company are fit and proper persons;
- (b) each person (in this Act referred to as a "branch manager") in bona fide control of the business to be operated under the licence sought at an office of the company or firm is a licensed agent; and
- (c) in the case of a firm - all of the persons by whom the firm is constituted and all of the persons concerned in the management or control of the firm are fit and proper persons.

Division 3 - Applications, Objections and Determination of Applications for Licences

Applications 26. An application for the grant of a licence by a
by persons person, not being a company or firm, shall be -
other than
companies (a) in writing in a form approved by the Board;
or firms and

(b) lodged with the Registrar not earlier than 7 days after, and not later than 14 days after, the applicant has -

(i) caused to be published in a newspaper or newspapers nominated by the Board notice of the fact that he intends to apply for the grant of a licence to carry on business as a real estate agent or business agent, as the case may be, and stating his full name and residential address; and

(ii) served on the Commissioner of Police notice of the fact that the applicant intends to apply for the grant of such a licence and setting out his full name, the date and place of his birth, his present residential address and any other addresses at which he has resided during the 3 years immediately preceding the date on which the notice is given to the Commissioner of Police.

Applications 27. An application by a company or firm for the
by grant of a licence shall be -
companies
or firms

(a) in writing and signed by one of the directors of the company or one of the persons by whom the firm is constituted, as the case may be, in a form approved by the Board; and

(b) lodged with the Registrar not earlier than 7 days after, and not later than 14 days after, the company or firm has -

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- (i) caused to be published in a newspaper or newspapers nominated by the Board notice of the fact that the company or firm intends to apply for the grant of a licence to carry on business as a real estate agent or business agent, as the case may be; and
- (ii) served on the Commissioner of Police notice of the fact that the company or firm intends to apply for the grant of such a licence and setting out the full name, the date and place of birth and present residential address of -
 - A in the case of a company - each of the present directors of the company and of each of the persons whom it is proposed to appoint as a branch manager of the company; or
 - B in the case of a firm - each of the persons by whom the firm is constituted and of each of the persons whom it is proposed to appoint as a branch manager of the firm,

and any other residential addresses at which each of those directors and persons has resided during the 3 years immediately preceding the date on which the notice is given to the Commissioner of Police.

28.(1) The Commissioner of Police may, within 21 days after the date on which a notice under this Division is served on him, object by notice in writing lodged with the Registrar to the grant of the application.

Objections

(2) The Registrar may, within 14 days after an application by a person, company or firm for a licence is lodged with him, object by notice in writing under his hand to the grant of the application.

(3) Any person may, within 14 days after the publication of a notice referred to in section 26(b)(i) or 27(b)(i) object, by notice in writing lodged with the Registrar, to the grant of the application.

(4) A notice of objection shall include particulars of the ground or grounds of objection.

(5) Where a notice of objection is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the applicant for a licence.

29.(1) The Board shall consider an application for the grant of a licence and -

Grant or
refusal of
licences

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- (a) shall grant the application and authorize the issue of the licence; or
- (b) may, subject to this Division, refuse the application.

(2) The Board may, whether or not an objection to the grant of an application for a licence has been lodged, require any person to attend before the Board and to furnish to the Board, such documents and such information, either orally or in writing, as it requires.

(3) The Board shall not refuse an application for the grant of a licence unless -

- (a) any person refuses or otherwise fails to attend before the Board or to furnish the documents or information required by the Board in accordance with sub-section (2);
- (b) the applicant for the grant of a licence fails to establish that he is eligible for the grant of the licence;
- (c) the application does not comply with the requirements of section 26 or 27, as the case requires; or
- (d) in the case of an application by a person other than a company or firm, the applicant is a bankrupt, is a person who is, for the time being, taking the benefit of a law for the relief of bankrupt or insolvent debtors or is a person whose remuneration is, for the time being, assigned for the benefit of his creditors.

(4) Where the Board refuses to grant an application for the grant of a licence, the Board shall -

- (a) record the reasons for its decision;
- (b) serve on the applicant, within 7 days after so deciding, notice of its decision; and
- (c) if the applicant so requests, supply him with a copy of the reasons recorded under paragraph (a).

Board to
hold inquiry
before
refusal

30.(1) Where -

- (a) subject to sub-section (2), a notice of objection is lodged in accordance with section 28; or
- (b) the Board considers that there may be grounds for refusing an application for the grant of a licence,

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the Board shall hold an inquiry before considering in accordance with section 29 whether to grant the application for a licence.

(2) The Board may, without holding an inquiry, reject an objection made under section 28(3) if, in the opinion of the Board, the objection is of a frivolous, irrelevant or malicious nature.

31.(1) Where -

Issue of
licences

(a) the Board grants an application for a licence;
or

(b) a Stipendiary Magistrate orders, on the hearing of an appeal under Part X, that an application for a licence be granted,

the Registrar shall, on payment by the applicant of the prescribed fee, issue to him a licence or provisional licence, as the case may be, in the prescribed form to carry on business at the place or places specified in the licence.

(2) Where a licence issued under sub-section (1) is a provisional licence, the Registrar shall record in the register particulars of the period fixed under section 21(1)(b) in relation to the holder of that provisional licence.

(3) Where the Registrar is satisfied that a person who is the holder of a provisional licence has obtained the prescribed educational qualifications before the expiration of the period fixed under section 21(1)(b) in relation to that person, he shall, on the surrender to him of that provisional licence, issue a licence to that person.

(4) A licence issued under sub-section (3) shall take effect on and from the date upon which the licence is issued and shall continue in force for the period that the provisional licence referred to in that sub-section would have continued in force but for the surrender effected under that sub-section.

(5) A licence issued to a company or firm shall specify the name or names of the branch manager or managers of the company or firm and the approval in writing of the Board shall be necessary before any substitution for, or addition to, the branch manager or managers so specified will be recognized for the purposes of this Act.

(6) Where, under sub-section (2), the Board approves a substitution for, or addition to, the branch manager or managers of a company or firm, the Registrar shall, on the surrender to him of the licence previously issued to the company or firm, issue a new licence to the company or firm specifying the name of

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the branch manager or managers, for the time being, of the company or firm.

(7) A licence issued under sub-section (6) shall take effect from the date upon which the licence is issued and shall continue in force for the period that the licence would have continued in force but for the substitution or addition effected under sub-section (5).

Duration
and
renewal

32.(1) A licence shall take effect from the date upon which the licence is, or is deemed to have been, granted and shall, subject to this Act, continue in force for 12 months.

(2) An application for the renewal of a licence shall be lodged with the Registrar in a form approved by the Board and accompanied by the prescribed fee.

(3) Subject to this Act, the Registrar shall renew a licence where an application is lodged in accordance with sub-section (2).

(4) Subject to sub-section (5), where the Registrar renews a licence, the licence as renewed shall continue in force for a period of 12 months commencing on the date which, but for the renewal, the licence would have expired.

(5) Unless the Board otherwise determines -

(a) a provisional licence shall not continue in force for a period longer than the period fixed under section 21(1)(b) in relation to the holder of that provisional licence; and

(b) the Registrar shall not renew a provisional licence for a period that extends beyond the date on which that period fixed under section 21(1)(b) will expire.

PART IV - REGISTRATION OF AGENTS' REPRESENTATIVES

Agents'
represent-
atives to
be re-
gistered

33.(1) A person other than a licensed agent shall not act as, or carry out any of the functions of, an agent's representative unless he is a registered agent's representative and he acts or carries out those functions for and on behalf of a licensed agent.

(2) A person other than a licensed agent shall not, unless he is a registered agent's representative, hold himself out by any means as an agent's representative or as being in the employment of, or as acting for or on behalf of an agent as an agent's representative.

(3) A registered agent's representative shall not hold himself out by any means as being in the employment of, or as acting for or on behalf of an agent,

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unless that agent is his employer, principal or partner.

Penalty: \$500 or imprisonment for 3 months.

34. A person other than a licensed agent -

(a) shall not, as a member, manager or employee of a firm that is a licensed agent; or

Directors,
managers, &c.,
of licensed
agent

(b) shall not, as a director, manager or employee of a company that is a licensed agent,

act as or carry out any of the functions of an agent's representative unless he is a registered agent's representative.

Penalty: \$1,000 or imprisonment for 6 months.

35. A licensed agent shall not engage as an agent's representative, or permit to carry out in the business of the agent any of the functions of an agent's representative, any person, other than a licensed agent, unless that other person is a registered agent's representative.

Licensed
agents not to
employ unre-
gistered rep-
resentatives

Penalty: \$500 or imprisonment for 3 months.

36.(1) A registered agent's 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, an agent's representative for or on behalf of, any person who is an agent at any time when he is employed by, or in the service of, any other person who is an agent.

Prohibition
of employ-
ment by 2
agents

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

(3) A licensed agent shall not, whether directly or indirectly, give any commission, reward or other valuable consideration to any other person, other than a licensed agent, for acting as, or performing any of the functions of, an agent's representative unless the other person is a registered agent's representative in the service of the licensed agent as an agent's representative.

Penalty: \$500 or imprisonment for 3 months.

37. An application for the registration of a person as an agent's representative shall be -

Application
for
registration

(a) in a form approved by the Board; and

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(b) lodged with the Registrar.

Furnishing of information 38. The applicant shall furnish to the Board such documents and such information as the Board requires to enable it to consider the application.

Qualifications 39.(1) Where an application is made in accordance with this Part, the applicant is entitled to be registered as an agent's representative where he proves to the satisfaction of the Board that -

- (a) he has attained the age of 18 years;
- (b) he is a fit and proper person; and
- (c) he holds the prescribed educational qualifications.

(2) The Board may waive the prescribed educational qualifications where in the opinion of the Board the applicant -

- (a) holds educational qualifications that the Board considers to be equivalent to the prescribed educational qualifications; and
- (b) by reason of the applicant's experience, is competent to act as a registered agent's representative.

(3) The experience referred to in sub-section (2)(b) may have been gained before or after the commencement of this Act and either within or outside the Territory.

Provisional registration 40.(1) Where an application is made in accordance with this Part, the applicant is entitled to be provisionally registered as an agent's representative where -

- (a) he satisfies the requirements specified in section 39(1)(a) and (b); and
- (b) he undertakes in writing to obtain the prescribed educational qualifications within such period as may be specified by the Board.

(2) Subject to sub-sections (3) and (4) and section 41, this Act applies to and in relation to -

- (a) an application for, an objection to the grant of or the issue of, a certificate of provisional registration as an agent's representative as if that application for, objection to the grant of or issue of, a certificate of provisional registration as an agent's representative were an application for, objection to the grant of or issue of a certificate of registration as an agent's representative; and

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- (b) a person who is the holder of a certificate of provisional registration as an agent's representative as if that person were a registered agent's representative.

(3) Where a person who is the holder of a certificate of provisional registration as an agent's representative does not obtain the prescribed educational qualifications within a period fixed under sub-section (1)(b), the Board may, by notice in writing served on that person, revoke that provisional registration as an agent's representative.

(4) The Board may, if it thinks fit, either before or after the expiration of a period fixed under sub-section (1)(b), extend that period.

41.(1) Subject to this Part, on being satisfied that the applicant satisfies the requirements of section 39 or 40 and on receiving payment of the prescribed fee, the Board shall direct the Registrar -

Certificate
of
registration

- (a) to register the applicant as an agent's representative; and
- (b) to issue to him a certificate of registration or provisional registration, as the case may be, in the prescribed form.

(2) Where a certificate of provisional registration is issued under sub-section (1), the Registrar shall record in the register particulars of the period fixed under section 40(1)(b) in relation to the holder of that certificate of provisional registration.

(3) Where the Registrar is satisfied that a person who is the holder of a certificate of provisional registration has obtained the prescribed educational qualifications before the expiration of the period fixed under section 40(1)(b) in relation to that person, he shall, on the surrender to him of that certificate of provisional registration, issue a certificate of registration to that person.

42.(1) The Commissioner of Police may object by notice in writing lodged with the Registrar to the grant of an application for registration as an agent's representative.

Objections

(2) The Registrar may object by notice in writing under his hand to the grant of an application for registration as an agent's representative.

(3) Any person may object by notice in writing lodged with the Registrar to the grant of an application for registration as an agent's representative.

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(4) A notice of objection shall include particulars of the ground or grounds of objection.

(5) Where a notice of objection is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the applicant for registration as an agent's representative.

(6) Where -

(a) subject to sub-section (7), a notice of objection is lodged in accordance with this section; or

(b) the Board considers that there may be grounds for refusing an application for registration,

the Board shall hold an inquiry.

(7) The Board may, without holding an inquiry, reject an objection made under sub-section (3) if, in the opinion of the Board, the objection is of a frivolous, irrelevant or malicious nature.

(8) Where the Board has held an inquiry pursuant to sub-section (6), the Board shall, after that hearing -

(a) register the applicant as an agent's representative and issue to him a certificate of registration or provisional registration, as the case may be, in the prescribed form; or

(b) refuse to register the applicant and direct the Registrar to forward notice of refusal together with a statement of reasons for refusal to the applicant.

Surrender of certificate 43.(1) Subject to the consent of the Board, a registered agent's representative may, at any time, surrender to the Board his certificate of registration.

(2) Upon a surrender in accordance with sub-section (1), the registration ceases to have effect.

Cancellation of registration 44.(1) The Board may, after an inquiry, by notice in writing, cancel the registration of an agent's representative and may, in addition, disqualify him from being registered, either temporarily or permanently or until the fulfilment of a condition imposed by the Board, on one or more of the following grounds:

(a) the registration of the agent's representative was improperly obtained;

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- (b) the agent's representative has been convicted of an offence against this Act;
 - (c) the agent's representative has been convicted of an offence against any other law that involves dishonesty, whether the conviction took place before or after the commencement of this Act and either within or outside the Territory;
 - (d) any other reasonable ground which, in the opinion of the Board, is sufficient to warrant cancellation of the registration of the agent's representative.
- (2) The Commissioner of Police may apply, by notice in writing lodged with the Registrar, for the cancellation of the registration of an agent's representative on one or more of the grounds referred to in sub-section (1).
- (3) The Registrar may apply, by notice in writing under his hand, for the cancellation of the registration of an agent's representative on one or more of the grounds referred to in sub-section (1).
- (4) Any person may apply, by notice in writing lodged with the Registrar, for the cancellation of the registration of an agent's representative on one or more of the grounds referred to in sub-section (1).
- (5) Where -
- (a) subject to sub-section (6), an application for the cancellation of registration as an agent's representative is lodged in accordance with this section; or
 - (b) the Board considers that there may be grounds under sub-section (1) for the cancellation of the registration of an agent's representative,

the Board shall hold an inquiry.

(6) The Board may, without holding an inquiry, reject an application for the cancellation of the registration of an agent's representative made under sub-section (4) if, in the opinion of the Board, the objection is of a frivolous, irrelevant or malicious nature.

(7) Where a notice of application for cancellation of registration as an agent's representative is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the agent's representative in respect of whom the application is made.

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(8) A cancellation of the registration of an agent's representative under sub-section (1) shall have effect on and from -

(a) the date on which the agent's representative receives the notice referred to in that sub-section; or

(b) such other date as the Board may specify in the notice.

(9) Where, under sub-section (1), the Board -

(a) specifies a period that shall elapse; or

(b) imposes a condition that shall be fulfilled,

before the person formerly registered as an agent's representative may apply again for registration, that person is not eligible to apply for registration as an agent's representative until the expiration of that period or the fulfilment of that condition to the satisfaction of the Board, as the case may be.

(10) Where the Board cancels the registration of an agent's representative under sub-section (1) and does not specify a period that shall elapse or impose a condition that shall be fulfilled under that sub-section, the person formerly registered as an agent's representative is not, without the approval of the Board, eligible to apply for registration as an agent's representative.

(11) Where the registration of an agent's representative is cancelled under sub-section (1), the Registrar shall note in the register the fact of revocation and the period, if any, specified by the Board that is to elapse or any condition that is to be fulfilled, before the person formerly registered as an agent's representative may apply for registration.

Employer to
be notified
of suspen-
sion or
cancellat-
ion of
agent's re-
gistration
Unemployed
represent-
ative

45. Where the Board cancels, under section 44, the registration of an agent's representative, the Registrar shall accordingly in writing inform the licensed agent who employs that agent's representative.

46. While a registered agent's representative is not in the employ of a licensed agent, his registration shall be deemed to be suspended and to have no effect.

Notice of
employ-
ment

47. Not later than 14 days after the commencement of or termination of the employment of a registered agent's representative by a licensed agent, the agent's representative and the agent shall each give the Registrar notice in writing of that commencement

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or termination together with the prescribed particulars, if any.

Penalty: \$200.

48.(1) Where the Registrar is notified under section 47 of the termination of the employment of an agent's representative, the Registrar may, in his discretion, direct the agent's representative to surrender to the Board his certificate of registration.

Registrar
may direct
surrender

(2) An agent's representative shall not fail to comply with a direction under sub-section (1) within 14 days after the date on which the direction is given.

Penalty: \$200.

PART V - TRUST MONEYS, TRUST ACCOUNTS AND AGENTS' RECORDS

Division 1 - Trust Moneys and Accounts

49. All moneys received by a licensed agent in his capacity as an agent and in the course of the business that he is licensed to carry on and all moneys received by a licensed agent as a stakeholder shall, for all purposes, be deemed to be held in trust by the agent for the principal on whose behalf the moneys are received.

Trust moneys

50.(1) A licensed agent shall, within 7 days after the licence is granted to him, open an account at a bank in the Territory or at an approved building society, being an account under a title that includes -

Opening of
account

(a) the name of the agent or, if he carries on the business under a business name registered under the Business Names Act the name under which he carries on the business; and

(b) the words "Trust Account".

(2) A licensed agent shall maintain an account so opened.

(3) Sub-sections (1) and (2) do not prevent a licensed agent from opening and maintaining 2 or more trust accounts at a bank or banks or at an approved building society or societies under titles that include the matters referred to in sub-section (1)(a) and (b).

51. A licensed agent shall, within 7 days after he opens an account in pursuance of section 50, notify the Registrar in writing of -

Notification
of account

(a) the name and address of the bank or approved building society at which the trust account is maintained; and

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(b) the title of the account.

Operation
of trust
account

52.(1) When a licensed agent receives trust moneys, he shall pay those moneys into a trust account maintained by him.

(2) A payment under sub-section (1) shall be made as soon as is reasonably practicable after the licensed agent receives the trust moneys.

(3) A licensed agent shall not pay money out of a trust account maintained by him except by means of a cheque made payable to a specified person, being a cheque that is crossed and marked "not negotiable".

(4) A licensed agent shall not withdraw money from a trust account maintained by him except for the purpose of -

(a) payment of his commission under contract;

(b) payment to, or disbursement according to the directions in writing of, the person for whom, or on whose behalf, the money was received; or

(c) repaying a debt lawfully required to be repaid from trust moneys.

Protection
of trust
moneys

53.(1) Subject to sub-section (2), moneys standing to the credit of a trust account maintained by a licensed agent are not -

(a) available for the payment of debts of the licensed agent; or

(b) liable to be attached or taken in execution for the purpose of satisfying a judgment against the agent.

(2) Nothing in sub-section (1) prevents trust moneys held in trust for the person for whom, or on whose behalf, the moneys were received from being available for the discharge of the liability of the licensed agent to that person.

Provisions
applicable
to banks
or build-
ing so-
cieties

54.(1) A bank or approved building society at which a trust account is maintained is not under an obligation to control or supervise transactions in relation to the trust account or to verify the application by the agent of moneys drawn out of the account.

(2) Nothing in sub-section (1) authorizes a bank or approved building society to pay money out of a trust account except by the means referred to in section 52(3).

(3) With respect to any liability of the agent to the bank or approved building society at which the

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agent maintains a trust account, the bank or approved building society does not have and shall not have and shall not obtain, a recourse or right, whether by way of settlement, counter-claim, charge or otherwise, against moneys standing to the credit of the trust account.

(4) This section does not relieve a bank or approved building society from a liability or obligation to which it is subject apart from this Act.

Division 2 - Agents' Records

55.(1) A licensed agent shall keep such accounting records as disclose particulars of -

Accounting
records

- (a) all trust moneys received from day to day by him on behalf of each principal for whom he acts; and
- (b) all payments made by him from day to day out of the trust moneys so received.

(2) A licensed agent shall -

- (a) keep the accounting records referred to in sub-section (1) -
 - (i) in written or printed form in the English language; or
 - (ii) so as to enable them to be readily accessible and readily convertible into written or printed form in the English language;
- (b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and
- (c) retain those records for a period of not less than 6 years after the date on which the last entry in those records was made.

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

56.(1) A licensed agent shall give to a person from whom the agent receives trust moneys a receipt clearly marked with the words "Trust Account" and adequately specifying the subject-matter or purpose in respect of which the money was received.

Receipt for
trust moneys

(2) A licensed agent shall keep a legible carbon duplicate of a receipt given in accordance with sub-section (1).

(3) A receipt relating to trust moneys shall be taken from a book that bears a number or mark identifying the book and contains not less than 50 receipt

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forms so arranged that a carbon duplicate of each receipt remains in the book.

(4) A receipt and the carbon duplicate shall bear the same number or mark, being such number or mark as enables the receipt to be identified by reference to that number or mark.

(5) Sub-sections (2), (3) and (4) do not apply in relation to a licensed agent who, in accordance with an authority given by the Board for the purpose of this sub-section, issues receipts in a manner specified in the authority.

Business
moneys other
than trust
moneys

57.(1) Subject to sub-section (2), a licensed agent shall keep such accounting records as disclose particulars of -

(a) all moneys, other than trust moneys, received by him in the course of his business as a licensed agent; and

(b) all payments out of those moneys made by him.

Penalty: \$1,000 or imprisonment for 6 months.

(2) Sub-section (1) does not apply to a licensed agent that -

(a) is a company carrying on business as an agent within and outside the Territory; and

(b) keeps accounting records, which include accounting records of a description referred to in sub-section (1), in accordance with the requirements of the law in force in a State or Territory, not being the Northern Territory, relating to the keeping and audit of accounting records of companies.

Division 3 - Audit and Inspection of Trust Accounts

Prescribed
period

58. In this Division, "prescribed period" means -

(a) the period of 12 months ending on 30 June in each year; or

(b) the period of 12 months ending on such other date as the licensed agent specifies, by notice in writing lodged with the Registrar, to be the date in each year for the purpose of this Part.

Audit

59.(1) Within 3 months after the end of each prescribed period, a licensed agent shall cause to be audited his accounting records relating to trust moneys received and paid by him during the prescribed period.

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(2) A licensed agent shall produce to the auditor at an audit the auditor's report in respect of the last preceding audit.

Penalty: \$500 or imprisonment for 3 months.

60.(1) A licensed agent shall not engage as his auditor, or permit the audit of his accounting records relating to trust moneys to be made by, a person who -

Qualifications
of auditor

- (a) is not a registered company auditor;
- (b) is an employee of, or is a partner of, or is a relation of, the licensed agent;
- (c) is an employee of any other licensed agent;
- (d) is engaged in keeping and entering those records or has those records in his custody or control;
- (e) is himself a licensed agent;
- (f) is a director, officer or employee of a company that is a licensed agent;
- (g) is a person by whom a firm is constituted that is a licensed agent; or
- (h) is an employee of, or is a partner of, or is a relation of, a branch manager of a company or firm that is a licensed agent.

Penalty: \$500 or imprisonment for 3 months.

(2) For the purposes of this section, "relation" means -

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that person or of his or her spouse; or
- (b) the spouse or de facto spouse of that person or of any other person specified in paragraph (a).

61. Where an auditor requires a licensed agent for the purpose of an audit of his accounting records relating to trust moneys, the licensed agent shall -

Furnishing of
documents, in-
formation, &c.

- (a) produce to the auditor all receipt and other books, accounts, securities and other documents and papers in his possession relating in any way to trust moneys received or paid by the agent or relating to the transactions in respect of which such moneys were received or paid during the prescribed period to which the audit relates; and

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- (b) furnish to the auditor such information and answer such questions relating to those receipt and other books, accounts, securities and other documents and papers and in relation to transactions by the agent in the course of his business as a licensed agent, as the auditor requires.

Penalty: \$500 or imprisonment for 3 months.

Auditor's
report

62.(1) As soon as is reasonably practicable after the completion of an audit pursuant to section 59, the auditor shall -

- (a) prepare a report of the result of the audit; and
- (b) deliver the report to the licensed agent and a copy of the report to the Board.

(2) Subject to section 93, an auditor shall state in his report -

- (a) whether, in his opinion, the licensed agent had kept the accounting records relating to all trust moneys received and paid by him in accordance with this Act;
- (b) whether those records were ready, within a reasonable time, for his examination after he had required their production;
- (c) whether the agent had complied with the auditor's other requirements and so complied within a reasonable time; and
- (d) anything in relation to those records of which the agent or the Board should, in the opinion of the auditor, be informed.

Special
report

63. Where, in the course of an audit, an auditor considers -

- (a) that the accounting records relating to trust moneys have been so kept that he has not been able to audit them properly;
- (b) that there is a loss or deficiency of trust moneys or a failure to pay or account for trust moneys; or
- (c) that there has been a failure to comply with a provision of this Part,

the auditor shall forthwith report accordingly, in writing, to the agent and, at the same time, forward a copy of the report to the Board.

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Division 4 - Inspections

64.(1) An inspector may, at any reasonable time - Inspections

- (a) inspect all receipt and other books, accounts, securities and other documents and papers relating in any way to trust moneys received or paid by a licensed agent or relating to the transactions in respect of which such moneys were received or paid;
- (b) inspect all accounting records of a description referred to in section 57 kept by a licensed agent; and
- (c) for the purposes of paragraph (a) or (b), require a licensed agent or any other person in whose custody or control those receipt or other books, accounts, securities, documents, papers or accounting records are, to produce and to hand over to him those receipt or other books, accounts, securities, documents, papers or accounting records.

(2) A person to whom a requirement under sub-section (1) is made, shall not refuse or fail to comply with that requirement.

Penalty: \$500 or imprisonment for 3 months.

(3) An inspector may make notes, copies of extracts from or copies of, any books, accounts, securities, documents, papers or accounting records referred to in sub-section (1)(a) or (b).

(4) For the purposes of sub-section (3), an inspector may retain, for such period as he considers necessary, any book, account, security, document, paper or accounting record referred to in sub-section (1)(a) or (b).

PART VI - RULES OF CONDUCT FOR AGENTS

65.(1) A licensed agent who -

Rules of
conduct

- (a) is convicted of an offence against this Act or the regulations;
- (b) without the consent of the principal on whose behalf he acts, or has acted, makes use in a manner prejudicial to the interests of the principal of any material or information acquired by the agent in the course of so acting;
- (c) fails to perform his duties to his principal or to carry out the lawful instructions of his principal;

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- (d) fails to exercise due skill, care or diligence in carrying out his duties on behalf of his principal;
- (e) having an interest in, or being likely to obtain an interest in, a transaction entered into on behalf of his principal, fails to disclose to his principal the exact nature of his interest or of the interest that he is likely to obtain;
- (f) fails to make to his principal a full disclosure of all material facts and circumstances and of everything known to the licensed agent regarding the matter in respect of which he is authorized to act as agent;
- (g) fails to inform his principal that, in the opinion of the licensed agent, a price or other consideration that the principal is prepared to accept on the sale of any property may be less than the fair market value of the property;
- (h) without the consent of the principal on whose behalf he acts or has acted, discloses, except where required to do so in pursuance of a law of the Territory, information relating to the affairs of the principal obtained by the licensed agent while so acting;
- (i) publishes, or causes to be published an advertisement or other statement, that he is authorized to sell property which he is not authorized to sell by instrument in writing under the hand of the owner;
- (j) publishes, or causes to be published an advertisement or other statement that is false, misleading or likely to deceive a person;
- (k) accepts or demands a fee or other payment from a person other than his principal in respect of a service performed or to be performed by the licensed agent, being a service in respect of which he has received payment, or is entitled to receive payment from his principal; or
- (m) without the consent in writing of the principal on whose behalf he acts, publishes, or causes to be published an advertisement or other statement that he is authorized to sell property at a price higher than or lower than the price authorized by the principal,

is guilty of a breach of the rules of conduct for agents.

(2) A licensed agent who attempts to do an act the doing of which would be a breach of the rules of

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conduct for agents is guilty of a breach of the rules of conduct for agents.

(3) Where a licensed agent who carries on business as a member of a firm contravenes or fails to comply with a provision of Part V, each licensed agent who is a member of the firm shall be deemed to be guilty of the contravention of, or failure to comply with, that provision.

(4) Where -

(a) a company or firm is a licensed agent acting on behalf of a principal; and

(b) a director or employee of the company or firm does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were a licensed agent, make the director or employee guilty of a breach of the rules of conduct for agents,

the company shall be deemed to be guilty of a breach of the rules of conduct for agents.

PART VII - SURRENDER AND REVOCATION OF LICENCES

66.(1) A licensed agent may, by notice in writing delivered to the Registrar, apply to the Board for permission to surrender the licence of the agent commencing on a date that is a date not earlier than one month after the date on which the notice is delivered to the Registrar.

Surrender

(2) The Board is not required to grant permission to a licensed agent to surrender the licence of the agent where -

(a) the Board has, before the date of delivery by a licensed agent of a notice under sub-section (1), resolved or resolves, within the period of one month referred to in that sub-section, to hold an inquiry under section 68(1); or

(b) the Registrar has, before the date of delivery by a licensed agent of a notice under sub-section (1), delivered or delivers, within the period of one month referred to in that sub-section, a statement under section 68(2).

(3) Where the Board holds an inquiry pursuant to section 68 and does not revoke the licence of a licensed agent, the Board may, after that inquiry, grant permission to the licensed agent to surrender his licence.

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Grounds for
revocation

67. Subject to this Part, the Board may revoke the licence of a licensed agent on one or more of the following grounds:

- (a) the licence was obtained by means of misrepresentation, a false or misleading statement;
- (b) in the case of a licensed agent not being a company or firm, the agent has been convicted of an offence that involves dishonesty, whether the conviction took place before or after the commencement of this Act and either within or outside the Territory;
- (c) the licensed agent has been guilty of a breach of the rules of conduct for agents referred to in section 65;
- (d) the licensed agent has contravened or failed to comply with a direction of the Board under section 69(2);
- (e) a licence under a law of a State or Territory providing for the licensing of real estate agents or of business agents granted to the licensed agent has, under that law, been cancelled or revoked or a renewal of such licence has been refused;
- (f) subject to section 111, in the case of a licensed agent being a company or firm, the company or firm has carried on business as a licensed agent for a period during which a branch manager of the company or firm was not a licensed real estate agent or business agent, as the case requires;
- (g) the licensed agent has contravened or failed to comply with a provision of Part XII with respect to licensed agents;
- (h) the licensed agent has not paid within the prescribed time the prescribed annual fee payable by the agent;
- (i) the licensed agent has ceased to carry on business in the Territory as a licensed agent; or
- (j) any other reasonable ground which, in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent.

Applications
for revoc-
ation of
licence of
agent

68.(1) The Commissioner of Police may apply, by notice in writing lodged with the Registrar, for the revocation of the licence of a licensed agent on one or more of the grounds referred to in section 67.

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(2) The Registrar may apply, by notice in writing under his hand, for the revocation of the licence of a licensed agent on one or more of the grounds referred to in section 67.

(3) Any person may apply, by notice in writing lodged with the Registrar, for the revocation of the licence of a licensed agent on one or more of the grounds referred to in section 67.

(4) Where -

(a) subject to sub-section (5), an application for the revocation of the licence of a licensed agent is lodged in accordance with this section; or

(b) the Board considers that there may be grounds under section 67 for the revocation of the licence of a licensed agent,

the Board shall hold an inquiry.

(5) The Board may, without holding an inquiry, reject an application for the revocation of the licence of a licensed agent made under sub-section (3) if, in the opinion of the Board, the application is of a frivolous, irrelevant or malicious nature.

(6) Where a notice of application for the revocation of the licence of a licensed agent is lodged with the Registrar in accordance with this section, he shall, as soon as is reasonably practicable, serve a copy of that notice on the licensed agent in respect of whom the application is made.

69.(1) Where, at the conclusion of an inquiry conducted pursuant to section 68(4), the Board is satisfied that it is authorized to revoke the licence of a licensed agent, the Board may -

Powers of
Board after
inquiry

(a) reprimand or caution the agent;

(b) impose a fine not exceeding \$200 on the agent;

(c) by notice in writing, suspend the licence of the agent for such period as the Board shall in that notice specify; or

(d) by notice in writing, revoke the licence of the agent.

(2) Where the Board decides to take action of a kind specified in sub-section (1)(a), (b), (c) or (d), the Registrar shall accordingly in writing inform -

(a) in the case of a licensed agent or former licensed agent, as the case may be, who is an

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employee of, or a director of, a company which is a licensed agent - that company; or

- (b) in the case of a licensed agent or former licensed agent, as the case may be, who is an employee of a firm which is a licensed agent or a person by whom such a firm is constituted - that firm,

as the case requires.

(3) Where the Board decides to take action of a kind specified in sub-section (1)(a), (b) or (c), the Board may, by notice in writing, direct the licensed agent to take, or to refrain from taking, a specified action within such time as the Board shall in that notice specify.

(4) The Board may, if it thinks fit, either before or after the expiration of a period fixed under sub-section (1)(c) or (3), extend that period.

(5) Where the Board revokes a licence under sub-section (1)(d), the Board may, in the notice referred to in that sub-section, specify a period that shall elapse or impose a condition that shall be fulfilled before the person formerly licensed may apply again for a licence.

(6) Where a period is specified or a condition imposed under sub-section (5), the person formerly licensed is not eligible to apply for a licence until the expiration of that period or the fulfilment of that condition to the satisfaction of the Board, as the case may be.

(7) Where the Board revokes a licence under sub-section (1)(d) and does not specify a period that shall elapse or impose a condition that shall be fulfilled under sub-section (5), the person formerly licensed is not, without the approval of the Board, eligible to apply for a licence.

(8) Where the Board decides to take action of a kind specified in sub-section (1), the Board shall record the reasons for its decision and shall direct the Registrar to furnish a copy of those reasons to the licensed agent or person formerly licensed.

Effect of
suspension
or revoc-
ation

70.(1) A licence that is suspended under section 69(1)(c) or revoked under section 69(1)(d) ceases to have effect on and from -

- (a) the day on which the licence is suspended or revoked, as the case may be; or
(b) such other date as the Board may specify in

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the notice referred to in section 69(1)(c) or (d), as the case may be.

(2) A licence that is suspended under section 69(1)(c) shall, unless the Board otherwise determines, have no effect until the expiration of the period specified in the notice referred to in that sub-section.

(3) Where a licence is suspended under section 69(1)(c) or revoked under section 69(1)(d), the Registrar shall note in the register -

- (a) the fact of suspension and the period specified in the notice referred to in section 69(1)(c); or
- (b) the fact of revocation and the period, if any, specified in the notice referred to in section 69(1)(d) that is to elapse or any condition that is to be fulfilled, before the person formerly licensed may apply for a licence,

as the case requires.

PART VIII - RECEIVERS

71.(1) The Board may apply to the Supreme Court to appoint a registered company auditor to be receiver of the trust moneys of a licensed agent in the following circumstances:

Appointment

- (a) where the Board is required to hold an inquiry under section 68(3);
- (b) where an agent has, through physical or mental illness, become incapable of carrying on business as an agent;
- (c) on the death of an agent; or
- (d) on any other ground that the Board thinks fit.

(2) Where a person is convicted of an offence under section 17, the Supreme Court may, on the application of the Board, appoint a registered company auditor to be receiver of any moneys received by the person in his capacity as an agent in the course of the business that he was not licensed to carry on.

72.(1) A receiver appointed under this Part -

Responsibility

- (a) is responsible to the Supreme Court for his acts and for the performance of transactions entered into by him; and
- (b) shall report to the Board as often as required by the Supreme Court.

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(2) The Supreme Court may replace a receiver appointed under this Part with another registered company auditor to be receiver of the trust moneys of the agent.

Notice to
bank

73.(1) A receiver appointed under this Part may -

- (a) by instrument in writing, give to the manager or other officer in charge of the bank or approved building society at which the agent maintains or has maintained his trust account, notice of the appointment of the receiver; and
- (b) by the same or a subsequent instruction in writing, withdraw the authority, or purported authority, of the agent, and of any other persons authorized, or purported to be authorized, by the agent, to sign cheques or other authorities for the payment of moneys out of the trust account.

(2) Where, by a notice given under sub-section (1), the receiver has withdrawn the authority, or purported authority, of the agent, and of any other persons authorized, or purported to be authorized, by the agent, to sign cheques or other authorities for the payment of moneys out of the trust account -

- (a) the bank or approved building society shall not, except with the approval of the receiver, pay any moneys out of the trust account on cheques or other authorities signed by the agent or any other person authorized, or purported to be authorized, by the agent; and
- (b) only the receiver and a person authorized by the receiver by notice in writing delivered to the bank or approved building society are authorized to sign cheques or other authorities for the payment of moneys out of the account.

(3) A purported payment of moneys out of an account in contravention of sub-section (2) is of no effect.

(4) The receiver shall cause a copy of an instrument given under this section to be served on the agent either -

- (a) personally; or
- (b) by leaving it at the last-known place of residence of the agent.

Powers of
receiver

74.(1) A receiver appointed under this Part may do all things and shall perform all functions that a licensed agent is permitted to do, or required to perform, by this Act.

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(2) An agent shall not be personally liable for any default of the receiver appointed for the agent unless the agent is a party to the default.

75.(1) A receiver appointed under this Part -

Remuneration

(a) shall be paid such fees and allowances and at such rates as the Supreme Court may determine; and

(b) is entitled to reimbursement of the expenses necessarily incurred by him in carrying out his receivership.

(2) The receiver may recover from the agent for whom the receiver is appointed or (not being a company or firm) if dead, his estate -

(a) an amount of fees and allowances paid or payable to the receiver; and

(b) the amount of the reimbursement of expenses paid or payable to the receiver.

76. In this Part, unless the contrary intention appears -

Interpretation

"agent" includes a person referred to in section 71(2);

"trust account" includes an account into which moneys referred to in section 71(2) have been paid;

"trust moneys" include moneys referred to in section 71(2).

PART IX - INQUIRIES BY BOARD

77.(1) Where, by this Act, the Board may or is required to hold an inquiry, the Chairman shall fix a time and place for the holding of the inquiry.

Inquiries

(2) The Chairman shall cause notice of the matter to be inquired into and of the time and place fixed for the holding of the inquiry to be given to the parties not less than 7 days before the date fixed for the hearing.

(3) The Board may adjourn the holding of an inquiry from time to time and from place to place.

(4) An inquiry shall not be open to the public.

(5) At an inquiry, the Board may take unsworn evidence or take evidence on oath or affirmation and, for that purpose, a member may administer an oath or affirmation.

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(6) Subject to this Act, the procedure at an inquiry is at the discretion of the Board.

(7) A party may be represented by a legal practitioner, or by another person, who may examine witnesses and address the Board on behalf of the person for whom he appears.

(8) At an inquiry the Board may be assisted by a legal practitioner or by another person, who may examine witnesses and address the Board.

(9) In conducting an inquiry the Board is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

(10) In this section, "party" means -

- (a) at an inquiry in relation to the grant of a licence or the registration of a person as an agent's representative - the applicant for the grant of a licence or registration and a person who has lodged an objection to the grant of a licence or registration; and
- (b) at any other inquiry - the agent or agent's representative concerned in the subject-matter of the inquiry.

Power to
summon
witnesses

78.(1) The Chairman may, by writing under his hand, summon a person to attend an inquiry at a time and place specified in the summons and then and there to give evidence and produce such books and other documents in his custody or control as he is required by the summons to produce.

(2) A summons under sub-section (1) may be served -

- (a) personally;
- (b) by sending it to the person's last-known place of residence or business; or
- (c) by leaving it at that place of business or residence with a person apparently having attained the age of 16 years.

Failure to
attend or
produce
documents

79.(1) A person served with a summons to attend an inquiry shall not refuse or fail, without reasonable excuse -

- (a) to attend the inquiry; or
- (b) subject to sub-section (2), to produce at the inquiry the books or other documents in his custody or control that he is required by the summons to produce.

Penalty: \$200.

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(2) It is a defence to a charge in respect of a refusal or failure, without reasonable excuse, to produce at an inquiry a book or other document if the accused proves that the book or other document was not relevant to the subject-matter of the inquiry.

80.(1) A person appearing as a witness at an inquiry shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him by a member.

Refusal to
be sworn or
give
evidence

Penalty: \$200.

(2) A statement or disclosure made before the Board by a witness is not, except in proceedings for giving false testimony at an inquiry, admissible in evidence in civil or criminal proceedings.

81.(1) A record of the evidence of a witness at an inquiry shall be made in the manner specified by the Board.

Record of
evidence of
witnesses

(2) The Registrar shall have the custody of a record of evidence made in accordance with sub-section (1).

(3) The Registrar may give directions that a transcript of the record of any evidence made in accordance with sub-section (1) be prepared.

(4) Where a transcript of a record is prepared in accordance with the directions of the Registrar given under sub-section (3), the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Registrar.

(5) Where a record that purports to be a record made in accordance with sub-section (1) of the evidence of a witness at an inquiry is produced out of the custody of the Registrar, the record is, unless the contrary is proved, evidence that the person gave that evidence at that inquiry.

(6) Where -

(a) a document purports to be a transcript, or a copy of a transcript, of a record, made in accordance with sub-section (1), of evidence given by a witness at an inquiry; and

(b) the document bears a certificate that purports to be a certificate made in accordance with sub-section (4),

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the document is, unless the contrary is proved, evidence that the witness gave at that inquiry the evidence of which the document purports to be a transcript.

(7) On an application made to the Registrar by -

(a) a person represented at an inquiry; or

(b) a person who satisfies the Registrar that the person has good reason for requiring a copy of a transcript or of any evidence recorded in accordance with this section,

the Registrar may, upon payment by the applicant of the prescribed fee, supply to the applicant a copy of the transcript or of the evidence so recorded.

Protection of
members

82. An action or proceeding, civil or criminal, does not lie against the Board or a member in respect of anything done in good faith by the Board or a member in its or his capacity as the Board or as a member.

Protection of
persons
appearing
before Board

83.(1) A legal practitioner or other person appearing before the Board has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

(2) A witness summoned to attend or appear before the Board has the same protection as a witness in proceedings in the Supreme Court.

Board may
inspect
books, &c.

84.(1) A member may inspect books or other documents or writings produced at an inquiry and shall return them as soon as practicable after the completion of the inquiry.

(2) A member may make a copy of, or copies of such portions of, those books or other documents as are relevant to a matter before the Board.

PART X - APPEALS TO STIPENDIARY MAGISTRATE

Appeals

85.(1) A person aggrieved by a decision of the Board may, within 21 days after the decision was given, appeal to a Stipendiary Magistrate against the decision of the Board on one or more of the following grounds:

(a) the decision was wrong in law;

(b) the decision was against the weight of the evidence;

(c) the Board had improperly exercised its discretion or otherwise acted unlawfully;

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- (d) the Board had not acted in good faith; or
 - (e) the Board had acted contrary to the principles of natural justice.
- (2) Jurisdiction to hear and determine appeals under this section is vested in a Stipendiary Magistrate.
- (3) The Board shall supply to a Stipendiary Magistrate who hears an appeal under this section -
- (a) a record of any proceedings before the Board;
 - (b) a statement of the reasons for the decision appealed against; and
 - (c) any information or thing in connexion with the decision that is in the possession or control of the Board and that the Stipendiary Magistrate requires.
- (4) The Board is the respondent to an appeal under this section.
- (5) A Stipendiary Magistrate may -
- (a) affirm, set aside or vary a decision of the Board;
 - (b) give such judgment which to the Stipendiary Magistrate seems proper; and
 - (c) make such other order as justice requires.
- (6) Where a Stipendiary Magistrate sets aside or varies a decision of the Board, the Stipendiary Magistrate shall set out in his decision the reasons for the decision.
- (7) Subject to this Act, an appeal under this section shall be brought as if it were an appeal from a court of summary jurisdiction to the Supreme Court under the Justices Act and the Stipendiary Magistrate who hears the appeal may exercise all the powers and perform all the functions that the Supreme Court may exercise and perform under that Act in relation to an appeal from a court of summary jurisdiction to the Supreme Court.

PART XI - FIDELITY BONDS AND SECURITIES

86. A person shall not carry on business as a real estate agent, or business agent unless -

Bonds and
securities

- (a) the person has lodged with the Registrar a fidelity bond given by such insurance company or other body, which is approved by the

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Board for the purposes of this Act, being a bond given to the Territory in the sum of \$10,000; or

- (b) he has deposited with the Registrar securities approved by the Board to the value of \$10,000, being securities that the person has, in writing, authorized the Board to sell in the circumstances referred to in section 87.

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

Breach of
conditions

87.(1) A fidelity bond shall be subject to the prescribed conditions and be in a form approved by the Board.

(2) The sum mentioned in a fidelity bond is recoverable on a breach of a condition of the bond as a debt due by the surety or sureties to the Territory.

(3) After the deduction of costs and other expenses, the remainder of any sum received on a breach of a condition of the bond may, in such manner as the Board approves, be applied -

- (a) in compensating a person for a loss sustained by reason of a breach of a condition of the fidelity bond; and

- (b) in refunding to the surety or sureties any balance left after payment of that compensation.

(4) If, at any time during the currency of a licence, the fidelity bond taken out by a licensed agent ceases to be of full force and effect, the agent shall, until a fidelity bond of full force and effect or a certificate in lieu of a fidelity bond is delivered to the Registrar, be deemed to be unlicensed.

Certificate
in lieu of
bond

88.(1) The Registrar shall, on the deposit of securities with the Registrar under section 86(b), issue to the person depositing them a certificate in lieu of a fidelity bond certifying the fact of deposit.

(2) The Board shall hold the securities as security for the performance of the same conditions as the prescribed conditions of a fidelity bond.

(3) Upon the breach of a condition referred to in sub-section (2), the Board shall sell the securities and apply the proceeds in the following order of priority:

- (a) in payment of the cost of selling the securities;

- (b) in compensating a person for a loss sustained by reason of a breach of such a condition; and

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(c) in refunding to the depositor of those securities or his successor in title or nominee any balance left after payment of the cost and compensation.

(4) While the securities are held by the Board, the depositor of those securities shall not charge those securities.

(5) Where, at any time securities held by the Board are subject to a charge, the depositor of those securities shall be deemed to be unlicensed -

(a) while the securities are so charged; or

(b) unless the agent has lodged with the Registrar a fidelity bond under section 86(a).

(6) While the securities are held by the Board, the depositor of those securities is entitled to any interest accruing on the securities.

(7) The Board shall, on an application made for the purpose, return the securities deposited under this section to the person who deposited them or his successor in title or nominee, if the Board is satisfied that the person -

(a) has not carried on business as an agent for a period of not less than 6 months and has not committed a breach of a condition attaching to the deposit; or

(b) has lodged with the Registrar a fidelity bond under section 86(a).

(8) On the return of the securities, the depositor of the securities shall be deemed to be unlicensed unless he has lodged with the Registrar a fidelity bond under section 86(a).

89.(1) This Part shall cease to operate on and from such date as is fixed by the Minister by notice in the Gazette.

Part to
cease on
notice

(2) The Board shall, on the date fixed by the Minister under sub-section (1) or as soon as is reasonably practicable after that date, return the fidelity bond or the securities, as the case may be, deposited under this section to the depositor of the bond or the securities or his successor in title or nominee, if the Board is satisfied that the depositor has not committed a breach of a condition attaching to the deposit.

(3) Where, before the date fixed by the Minister under sub-section (1), the depositor of a fidelity bond or securities under this section has committed a breach

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of a condition attaching to that deposit, the fidelity bond or the securities, as the case may be, shall be dealt with by the Board after the date fixed under sub-section (1) in the same manner as if this Part had not ceased to operate from that date.

PART XII - AGENTS CONSOLIDATED INTEREST ACCOUNT AND FIDELITY FUND

Division 1 - Consolidated Interest Account

Account

90.(1) The Minister shall establish an account to be called the Agents Consolidated Interest Account of the Northern Territory.

(2) All moneys standing to the credit of the Consolidated Interest Account shall, pending the investment or other application of the moneys, be paid into a bank in the Territory.

(3) The Consolidated Interest Account shall be maintained and operated by the Registrar in such manner as the Minister determines.

Moneys of
account

91. There shall be paid to the credit of the Consolidated Interest Account -

- (a) all moneys paid to the account pursuant to section 93(7); and
- (b) the interest from time to time accruing from the investment of those moneys.

Application of
moneys

92.(1) Subject to this section, the Registrar shall, as soon as practicable after the first day of August in each year, pay all moneys standing to the credit of the Consolidated Interest Account into the Land and Business Agents Fidelity Guarantee Fund of the Northern Territory.

(2) Notwithstanding sub-section (1), the Registrar may at any time during a year pay into the Fund all or any part of the moneys standing to the credit of the Consolidated Interest Account.

(3) Where, at any time the amount standing to the credit of the Fund is greater than \$250,000, or such other amount as the Administrator may determine, the Registrar may, with the consent of the Minister use -

- (a) the moneys of the Consolidated Interest Account; and
- (b) such other moneys which may be made available for the purpose under section 95(c),

for the establishment and conduct by the Board of a

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scheme for the payment of the whole or part of the costs or other expenses in connexion with educational courses of the Board for licensed agents or registered agents' representatives, other than fees or other expenses of students attending or undertaking such a course.

93.(1) Notwithstanding Part V, a licensed agent shall, out of the moneys in the trust account of the agent -

Licensed agent
to deposit
part of trust
moneys

- (a) not later than 21 days after the commencing date, deposit in an interest-bearing account at the bank or approved building society at which the agent normally transacts business -
 - (i) a sum that is not less than two-thirds of the amount that was the lowest balance of the trust account of the agent on a day during the period of 12 months ending with the day immediately preceding the commencing date; or
 - (ii) if he maintains more than one trust account, a sum that is not less than two-thirds of the amount that was the lowest aggregate balance of the balances of the trust accounts on a day during the period referred to in sub-paragraph (i), not being a trust account maintained for a specific person or specific persons to the exclusion of any other person; and
- (b) during each financial year after the initial period, keep deposited in his interest-bearing account a sum that is not at any time less than the amount fixed by the Board or, if no amount is so fixed, a sum that is not less than two-thirds of the aggregate of -
 - (i) the amount upon deposit by the agent with the bank or approved building society of the agent in the interest-bearing account in accordance with this sub-section on the day of the lowest balance; and
 - (ii) the amount that was the lowest 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 lowest aggregate balance of the balances 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.

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(2) The licensed agent shall, not later than 14 days after the commencing date, send to the Registrar a certificate signed by the licensed agent stating, in respect of an interest-bearing account -

- (a) the name and address of the bank or approved building society at which the account is maintained;
- (b) the date on which the account was opened; and
- (c) the amount deposited in the account.

(3) A licensed agent may withdraw money from the interest-bearing account of the agent if -

- (a) the money in the trust account of the agent is not sufficient to meet the obligations of the agent; and
- (b) within 7 days after the date of the withdrawal, the agent sends to the Registrar notice of the fact specifying -
 - (i) the amount withdrawn;
 - (ii) the precise reason for the withdrawal; and
 - (iii) the date by which the agent expects that such amounts will be paid into the account as to make the balance of the account conform with the requirements of this section.

(4) Where a licensed agent withdraws money from the interest-bearing account of the agent under this section and replaces, in whole or in part, an amount so withdrawn with an amount paid into the account, the licensed agent shall, within 7 days of the replacement, notify the Registrar of that fact.

(5) In addition to the matters required to be stated in his report under section 62(2), the auditor shall state in that report whether, in his opinion, the licensed agent needed to withdraw from the interest-bearing account the moneys withdrawn during the period to which the audit relates.

(6) Within 14 days after the end of each financial year, the licensed agent shall deposit with the Registrar an amount equal to the amount of interest accruing during the last preceding financial year on the money in the interest-bearing account.

(7) Upon receipt of an amount under sub-section (6), the Registrar shall credit the amount to the Consolidated Interest Account.

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(8) If, at any time during the relevant year, the amount of the lowest balance in the trust account or trust accounts of a licensed agent together with the amount, if any, deposited in the interest-bearing account by the agent is less than \$3,000, the obligations imposed on the agent by sub-sections (1) and (2) do not apply and those obligations shall not apply while the amounts are less than \$3,000.

(9) This section does not affect any right or remedy of a person against a licensed agent for an act or omission of the agent in respect of trust money.

(10) In this section -

"commencing date" means the date fixed by the Administrator by notice published in the Gazette as the commencing date for the purposes of this Division;

"initial period" means the period from the commencing date until the expiration of the financial year following the financial year in which the commencing date is fixed.

Division 2 - Land and Business Agents Fidelity Guarantee Fund

94.(1) The Minister shall establish a fund to be known as the Land and Business Agents Fidelity Guarantee Fund of the Northern Territory. Fund

(2) The Fund shall be maintained and operated by the Registrar in such manner as the Minister determines.

(3) The Fund shall consist of -

- (a) contributions and levies paid under this Part;
- (b) fees paid to the Board with respect to licences;
- (c) moneys paid into the Fund under section 92;
- (d) fines imposed by the Board under section 69(1)(b);
- (e) the interest from time to time accruing from the investment of moneys standing to the credit of the Fund; and
- (f) such other moneys as may lawfully be paid into the Fund.

(4) All moneys to the credit of the Fund shall, pending the investment or other application of the moneys, be paid into a bank in the Territory.

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Application of moneys 95. There shall from time to time be paid out of the Fund -

- (a) the amount of all claims, including costs allowed or established against the Fund in accordance with Division 3;
- (b) the costs and expenses of the administration of this Act, including the payment of fees, allowances and expenses under section 10, the costs of discharging the duties and exercising the powers of the Registrar under this Part, the costs of enforcing the rights conferred on the Registrar under this Part, the legal expenses incurred in defending claims against the Fund or otherwise incurred in relation to the Fund and the collection of the interest on investment of the moneys of the Fund and of the Consolidated Interest Account;
- (c) where, at any time the amount standing to the credit of the Fund is greater than \$250,000, or such other amount as the Administrator may determine - such amounts, if any, as the Minister may determine for the purpose referred to in section 92(3); and
- (d) such other moneys as may lawfully be paid out of the Fund.

Division 3 - Claims against Fund

Persons who may apply

96.(1) Subject to this Part, after the date fixed for the purpose of this section by the Board by notice published in the Gazette, a person who suffers pecuniary loss arising out of a defalcation of trust moneys or misappropriation of other property, committed by an agent, a person in the employ of an agent, a partner of an agent, a person by whom an agent firm is constituted or a director of an agent company, may apply to the Registrar for compensation under this Part in respect of that loss.

(2) Subject to this Part, the pecuniary loss in respect of which compensation may be paid to an applicant under this Part is the amount of the pecuniary loss suffered by the applicant less any amount that the applicant has recovered from any person in respect of the loss.

Registrar may invite claims

97.(1) The Registrar may cause to be published in the Gazette and a newspaper or newspapers nominated by the Minister a notice inviting persons entitled to apply for compensation under this Part in respect of losses arising out of a defalcation or misappropriation committed by an agent, a person in the employ of an agent, a partner of an agent, a person by whom an agent firm is constituted or a director of an agent

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company named in the notice to make an application within the period specified in the notice.

(2) Subject to sub-section (3), the period to be specified in a notice published under this section shall be not less than 3 months commencing on the date of publication of the notice in the Gazette, newspaper or newspapers, whichever is the latest.

(3) An action for damage does not lie against the Registrar in respect of the publication in good faith of a notice under this section.

98.(1) Subject to sub-section (2), an application for compensation under this Part shall not be accepted unless it is made in writing -

Time for
making
applications

- (a) within the period of 6 months after the applicant becomes aware of the defalcation or misappropriation; or
- (b) within such further period, not exceeding 2 years, as the Registrar, in his discretion and either before or after the expiration of the period referred to in paragraph (a), allows.

(2) Where a notice is published under section 97, an application for compensation under this Part in respect of a defalcation or misappropriation committed before the publication of the notice shall be made -

- (a) before the expiration of the period specified in the notice; or
- (b) within such further period, not exceeding 2 years, as the Registrar, in his discretion and either before or after the expiration of that period, allows.

99.(1) An application for compensation under this Part shall be made by the delivery to the Registrar, in writing, of full particulars of the claim supported by a statutory declaration by the applicant.

Manner of
applications

(2) The Registrar shall, within one week after receiving an application for compensation under this Part, post to the applicant a letter acknowledging receipt of the application.

(3) The Registrar may, by notice in writing delivered to an applicant for compensation under this Part, require the applicant to -

- (a) give to the Registrar information in the possession or control of the applicant with regard to a matter relating to the application; or
- (b) deliver to the Registrar any documents in the possession or control of the applicant that tend

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to establish the fact of the defalcation or misappropriation and the amount of the loss to which the application relates.

(4) The Registrar may retain a document delivered to him in accordance with a requirement under sub-section (3) for as long as the Registrar considers necessary for the purposes of this Part, but the person by whom the document was produced is entitled to be supplied, as soon as practicable, with a copy of the document certified by the Registrar to be a true copy.

(5) A copy certified under sub-section (4) shall be received in all courts as if it were the original.

(6) Where the Registrar makes a requirement under sub-section (3), the Registrar need not take any further steps in relation to the application until the requirement is satisfied.

Registrar to
consider
applications

100.(1) Subject to section 99(6), the Registrar shall consider an application made in accordance with this Part and shall determine -

(a) the amount of the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or

(b) that there is no pecuniary loss in respect of which compensation may be so paid.

(2) Sub-section (1) does not require the Registrar to be satisfied -

(a) that a person has been convicted of an offence arising out of a defalcation or misappropriation; or

(b) that there is evidence upon which a person might be convicted of such an offence.

(3) Before making a determination under sub-section (1), the Registrar may, if he is of the opinion that the circumstances so warrant, require the applicant to institute against the agent, employee, partner, person by whom an agent firm is constituted or director to whose defalcation or misappropriation the claim relates, or any other person considered to be liable in respect of the loss, or both, proceedings for the recovery of the money the subject of the defalcation or the property the subject of the misappropriation, including proceedings to follow assets and any property into which the money or other property may have been converted.

(4) Where the Registrar requires a person to institute proceedings under sub-section (3), the Registrar is liable to pay out of the Fund the costs and other expenses necessarily incurred by the person by

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reason of the institution of the proceedings.

(5) The Registrar shall give to an applicant for compensation under this Part notice in writing stating -

(a) the amount that the Registrar has determined is the pecuniary loss in respect of which compensation may be paid to the applicant under this Part; or

(b) that the Registrar has determined that there is no pecuniary loss in respect of which compensation may be so paid.

(6) In a notice given under this section, the Registrar shall state the grounds on which he has made the determination referred to in the notice.

101.(1) An applicant for compensation under this Part to whom the Registrar gives notice under section 100(5) may, within 21 days after the date on which notice is so given, make application to a Stipendiary Magistrate for an order under this section.

Review of
Registrar's
determinations

(2) A Stipendiary Magistrate, on application under this section may, if he thinks fit, by order affirm, set aside or vary a determination of the Registrar made under section 102(1).

102.(1) Subject to this section, where an amount has been determined under this Part as the amount of pecuniary loss in respect of which compensation may be paid to an applicant under this Part, the Registrar shall pay to the applicant an amount equal to the amount so determined.

Payment of
compensation

(2) The amounts paid under sub-section (1) to applicants for compensation in respect of defalcations or misappropriations by the same person shall not exceed, in the aggregate, \$50,000 or such other amount as the Administrator may determine by notice published in the Gazette.

(3) Where the aggregate of the amounts that the Registrar would, but for this sub-section, be required by sub-section (1) to pay to applicants for compensation in respect of defalcations or misappropriations by the same person, exceeds the amount available under sub-section (2), the Registrar shall divide the amount available under that sub-section among those applicants in proportion to the amounts payable to them.

(4) Where, at any time, the amount of the Fund is insufficient for the payment of all amounts that the Registrar would, but for this sub-section, be required by this section to pay, the Registrar shall divide the amount in the Fund among the persons to whom it

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would be required to pay those amounts in proportion to those amounts.

Subrogation

103. Where the Registrar has paid compensation to a person under this Part, the Registrar is, to the extent of the payment, subrogated to the rights of that person against any other person in relation to the occurrence that gave rise to the claim for compensation.

Agents may claim in certain circumstances

104.(1) Where -

(a) the Registrar has paid the amounts of compensation that he is required to pay in respect of defalcations or misappropriations committed by a person; and

(b) the sum of those amounts is less than \$50,000, or such other amount as the Administrator has determined under section 102(2),

an agent who was, at the time at which any of those defalcations or misappropriations were committed, a partner of or employer of the person referred to in paragraph (a) and has made a payment to a person in respect of pecuniary loss suffered by that person as a result of any of those defalcations or misappropriations, may apply to the Registrar for compensation under this Part in respect of that payment.

(2) Section 98 does not apply in relation to an application under this section.

(3) Where -

(a) an application is made under this section; and

(b) the Registrar is satisfied that -

(i) the agent by whom the application is made is entitled to make an application under this section; and

(ii) in relation to the defalcation or misappropriation to which the claim relates, the agent acted in good faith,

the Registrar may pay compensation out of the Fund to that agent.

(4) The amount to be paid under sub-section (3) is such amount, not exceeding the difference between \$50,000 or such other amount as the Administrator has determined under section 102(2) and the sum of the amounts referred to in sub-section (1)(a), as the Registrar thinks fit.

Interim payments

105.(1) Where, in relation to an application made under this Part, other than an application under

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section 104, the Registrar has determined the amount of pecuniary loss in respect of which compensation may be paid to the applicant, the Registrar may, if he thinks fit, make an interim payment of compensation to the applicant.

(2) An amount paid to a person under this section shall be set off against the compensation that the Registrar is required by section 102 to pay to the person.

Division 4 - Contributions and Levies to Fund

106.(1) A licensed agent shall pay to the Registrar annually a contribution to the Fund of such amount and at such time as may be determined by the Board.

Annual contributions

(2) A licensed agent shall, in addition to the amount payable under sub-section (1), pay to the Registrar annually a contribution to the Fund of such amount and at such time as may be determined by the Board in respect of each agent's representative employed by that agent.

107. Notwithstanding section 106(1) and (2), a licensed agent -

Contributions not payable in certain circumstances

(a) who has contributed to the Fund not less than 4 annual contributions in respect of himself and in respect of each agent's representative employed by him; and

(b) in respect of whom or in respect of a person in the employ of that agent or a partner of that agent no claim has been made and sustained or is pending against the Fund,

is not liable to pay any further annual contributions under section 106(1) or (2) at any time while the amount standing to the credit of the Fund, including any investments of the Fund, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fund, exceeds \$250,000 or such other amount as the Administrator may determine.

108.(1) Where, at any time the Registrar considers that the Fund is not sufficient to satisfy the liabilities of the Registrar in relation to the Fund, the Registrar may, with the approval of the Administrator, impose a levy of such amount, not exceeding \$20 a year, as he thinks fit for payment into the Fund.

Levies

(2) Subject to this section -

(a) a levy imposed under sub-section (1) is payable on the date fixed, for the purpose of this section, by the Registrar by notice published in the Gazette; and

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- (b) a levy so imposed is payable by each agent who, on that date, holds a licence and is payable also by such an agent in respect of each agent's representative employed by that agent.

(3) The Registrar may, if he thinks that the circumstances so warrant, extend the time for payment of a levy by an agent and, in such a case, the levy is payable by that agent on the date fixed by the Registrar under this sub-section.

(4) Where an agent does not pay a levy in accordance with this section the Registrar shall record the fact in the register and so long as the levy remains unpaid, the agent shall be deemed to be unlicensed.

PART XIII - MISCELLANEOUS

Registers

109.(1) The Registrar shall keep the following registers:

- (a) a Register of Licensed Real Estate Agents;
- (b) a Register of Licensed Business Agents; and
- (c) a Register of Agents' Representatives who are entitled to be registered.

(2) The Registrar shall record in the registers -

- (a) the name of each licensed agent or registered agent's representative, as the case may be;
- (b) in the case of a register other than the register specified in sub-section (1)(c), the address of each office in the Territory at which each licensed agent carries on business and, if there is more than one such office, a statement as to which is the principal office;
- (c) the prescribed particulars; and
- (d) such other particulars as the Board determines or as are required to be recorded under this Act.

(3) A register so kept shall, without fee, be open to inspection during ordinary business hours by a person desiring to inspect the register.

Requirements with respect to registered offices

110.(1) A licensed agent shall register any office at which the agent carries on business under his licence by giving notice of the address of the office to the Registrar on or before the day on which he commences to carry on business at that office.

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(2) Where, pursuant to sub-section (1), a licensed agent registers more than one office, he shall specify in the notice referred to in that sub-section, which of the offices is to be his principal office.

(3) Subject to section 111, a licensed agent shall nominate and have at all times in his service at a registered office, as manager of that office, a branch manager who is a licensed agent.

(4) A branch manager shall not be a licensed agent nominated as manager by any other licensed agent or in respect of any other office and shall not carry on business as an agent on his own account.

Penalty: \$500 or imprisonment for 3 months.

111.(1) Upon an application by a licensed agent, the Registrar may, subject to such conditions that he may consider necessary or desirable, grant approval, in writing, to the licensed agent to carry on business as a licensed agent for a period, not exceeding one month, during which the branch manager of a registered office of the licensed agent is not a licensed agent.

Registrar may approve operation of registered office without licensed branch manager

(2) A licensed agent shall not contravene or fail to comply with a condition specified in an approval granted under sub-section (1).

Penalty: \$500 or imprisonment for 3 months.

112.(1) Except as may be prescribed, a licensed agent shall not share with another person, other than a licensed agent, or partner of, or registered agent's representative employed by, the first-mentioned agent, a fee, commission or other gain or reward payable to the first-mentioned agent in respect of a transaction in his capacity as agent.

Agent not to share commission

Penalty: \$500 or imprisonment for 3 months.

(2) In sub-section (1), a reference to a licensed agent includes a reference to a person licensed under a law of a State or Territory providing for the licensing of real estate agents or business agents.

113. A licensed agent shall not permit any other person to have possession of his licence with the intent that the other person shall represent himself as the person to whom the licence was granted.

Improper use of licence

Penalty: \$500 or imprisonment for 3 months.

114.(1) A person, other than a licensed agent, shall not use, in an advertisement or any other mode of public notification, words that would reasonably lead to the belief that he is a licensed agent.

Improper use of title of agent

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(2) Without limiting the effect of sub-section (1), a person other than a licensed agent or a registered agent's representative shall not -

(a) place, or suffer or permit to be placed, on the building in which his office is situated; or

(b) place, on a document, as a description of his business,

the words "real estate agent", "estate agent", "land agent", "property agent", "business agent" or words implying that, in the course of his business, he acts, or is prepared to act, as agent for principals in connection with any of the matters referred to in section 5(2).

Penalty: \$500 or imprisonment for 3 months.

False or misleading advertisements

115. A licensed agent shall not, in an advertisement or any other mode of public notification published in connexion with his business as a licensed agent, make a statement or any representation that is false, misleading or is intended to deceive.

Penalty: \$500 or imprisonment for 3 months.

Obstruction of Registrar, inspector, &c.

116. A person shall not obstruct, threaten or intimidate another person in the exercise of a power conferred, or the performance of a duty imposed by or under this Act on that other person.

Penalty: \$200.

Production of licence

117. A licensed agent shall not fail, without reasonable excuse, upon demand of the Registrar or an inspector, to produce the licence of the agent for inspection.

Penalty: \$200.

Withholding of deposit

118. Where an agent is authorized to retain in a trust account money received as a deposit in respect of a transaction in the capacity of agent and the money is to be withheld or not repaid, the agent shall, within a period of 14 days from the completion of the transaction, inform in writing all persons involved, including his principal, of the reason for withholding or not repaying the money.

Penalty: \$200.

Requirements of advertisements

119. A licensed agent shall not publish an advertisement in connexion with his business as agent unless it is stated in the advertisement -

(a) that the agent is licensed; and

(b) the address of the place or, where the agent

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carries on business at more than one place, one of the places at which the agent carries on business as an agent.

Penalty: \$200.

120.(1) A licensed agent shall exhibit and keep exhibited in a prominent position at the place, or each place specified in the licence of the agent as a place at which the agent is authorized to carry on business as a licensed agent, and so as to be easily read from outside that place of business -

Display of
notices

(a) a notice of -

(i) the name of the agent and the fact of his being licensed as an agent; and

(ii) if the business is carried on in a name other than the name of the agent - the name under which the agent carries on business; and

(b) the licence, or a photographic copy of the licence, issued to the agent.

(2) Where a licensed agent ceases to carry on business at the place specified in the licence of the agent, the agent shall forthwith remove from that place a notice, photograph or licence exhibited under subsection (1).

Penalty: \$200.

121. A person is not entitled to bring an action to recover a fee, commission or other gain or reward for acting as an agent for a principal in relation to a matter referred to in section 5(2) unless -

No recovery
of commission
unless li-
censed

(a) at the time the person was engaged to act as an agent, the person was a licensed agent and was such an agent at the time of acting as agent; or

(b) the person was engaged to act as an agent before the expiration of the period of one month after the commencement of this Act and, at the time of acting as agent, was a person to whom section 17 did not apply by reason of section 128.

122.(1) Subject to the Act, a document required by this Act to be given to, or served on, a licensed agent, may be given or served by leaving it at a place specified in the licence as the place, or principal place, at which the business of the agent is carried on.

Service of
documents

(2) A document required by this Act to be given

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to, or served on, an applicant for a licence or for registration as an agent's representative may be given or served by sending it by post to the applicant at the last-known place of residence of the applicant.

Evidence of
licensing or
registration

123. A document purporting to be a certificate under the hand of the Chairman or Registrar and stating that a person was, or was not, on a date or dates or during a period mentioned in the document, the holder of a real estate agent's licence or business agent's licence or a registered agent's representative is, in all courts and before all persons and other bodies authorized to receive evidence, prima facie evidence of the matter so stated.

Requirement
by Registrar
or inspector

124. Where the Registrar or an inspector is empowered by this Act to require a person to do any thing, the Registrar or inspector may make the requirement orally or in writing served on that person.

Cancelled
registration
and revoked
licences

125.(1) Where -

(a) the Board cancels the registration of an agent's representative; or

(b) the Board revokes the licence of an agent,

the agent's representative or the holder of the licence, as the case may be, shall deliver the certificate of registration or licence, as the case may be, to the Registrar as directed by the Registrar.

Penalty: \$500 or imprisonment for 3 months.

(2) Where the cancellation of the registration of an agent's representative or the revocation of a licence is set aside by a Stipendiary Magistrate under section 85 the Registrar shall return the certificate of registration or the licence, as the case may be, to the agent's representative or the agent.

Offences
committed by
employees,
partners, or
directors

126.(1) Subject to sub-section (2), a licensed agent may be prosecuted for an offence committed against this Act by a person who, not being a licensed agent, is an employee of, a partner of or, where the licensed agent is a company, a director of the licensed agent.

(2) A licensed agent shall not be liable under sub-section (1) where the licensed agent proves that he or it had given such directions to the employee, partner or director and had exercised or caused to have been exercised such supervision of the employee, partner or director as were reasonably necessary to ensure that the employee, partner or director did not commit an offence against this Act.

Regulations

127. The Administrator may make regulations, not inconsistent with this Act, prescribing all matters that

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this Act requires or permits to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, as to -

- (a) the fees to be paid for the grant or renewal of a licence or for the grant of registration of an agent's representative;
- (b) the annual fees to be paid by the holder of a licence or a registered agent's representative;
- (c) applications for renewal or restoration of licences or of registration and the circumstances in which applications may be granted;
- (d) the maximum commission, or rate of commission, that agents may receive in respect of services or transactions generally or in respect of specified areas or transactions or classes of transactions;
- (e) the educational qualifications required to be held by an applicant for a licence to carry on business as a real estate agent or business agent;
- (f) the educational qualifications required to be held by an applicant for registration as an agent's representative;
- (g) the procedures and forms to be followed or used under this Act; and
- (h) penalties not exceeding a fine of \$100 for an offence against the regulations.

PART XIV - TRANSITIONAL

128.(1) Subject to sub-section (2), section 17 does not apply in relation to a person who was, immediately before the commencement of this Act, carrying on business as -

Transitional

- (a) a real estate agent; or
- (b) a business agent,

until the expiration of one month after the commencement of this Act.

(2) Where, within a period of one month after the commencement of this Act, a person mentioned in sub-section (1) applies for the grant of a licence to carry on business as a real estate agent or business agent, as the case requires, section 17 does not apply in relation to that person until -

- (a) the expiration of a period of one month after

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the determination by the Board of the application for the grant of the licence; or

- (b) if the Board has refused the application for the grant of the licence and the applicant has appealed to a Stipendiary Magistrate against the decision of the Board within the time specified in section 85 - the expiration of a period of one month after the determination by the Stipendiary Magistrate of the appeal.

(3) A provision of this Act that is expressed to apply in relation to a licensed agent applies on and after the commencement of this Act in relation to a person who -

- (a) on the day immediately before the commencement of this Act was carrying on business as a real estate agent or business agent, as the case may be; and
- (b) within the period of one month after the commencement of this Act, applies for the grant of a licence to carry on business as a real estate agent or business agent in the period during which, by sub-section (2), section 17 does not apply in relation to him,

in the same manner as that provision would have applied in relation to him in that period if he had been granted such a licence on the date of commencement of this Act.

(4) Subject to sub-section (5), sections 33(1), (2) and 34 do not apply in relation to a person who was, immediately before the commencement of this Act, engaged as an agent's representative until the expiration of one month after the commencement of this Act.

(5) Where, within a period of one month after the commencement of this Act, a person mentioned in sub-section (4) applies for the grant of registration as an agent's representative, sections 33(1), (2) and 34 do not apply in relation to that person until -

- (a) the expiration of a period of one month after the determination by the Board of the application for the grant of registration as an agent's representative; or
- (b) if the Board has refused the application for the grant of registration as an agent's representative and the applicant has appealed to a Stipendiary Magistrate against the decision of the Board within the time specified in section 85 - the expiration of a period of one month after the determination by the Stipendiary Magistrate of the appeal.

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(6) A provision of this Act that is expressed to apply in relation to a registered agent's representative applies on and after the commencement of this Act in relation to a person who -

- (a) on the day immediately before the commencement of this Act was engaged as an agent's representative; and
- (b) within the period of one month after the commencement of this Act, applies for the grant of registration as an agent's representative in the period during which, by subsection (5), sections 33(1), (2) and 34 do not apply in relation to him,

in the same manner as that provision would have applied in relation to him in that period if he had been granted registration as an agent's representative on the date of commencement of this Act.
