



ANNO DECIMO OCTAVO

GEORGII V REGIS.

A.D. 1927.

No. 1807.

An Act to amend the Land Agents Act, 1925, and for other purposes.

[Assented to, November 30th, 1927.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :—

1. (1) This Act may be cited alone as the “ Land Agents Act, 1927.” Short titles.

(2) The Land Agents Act, 1925 (hereinafter called the “ principal Act ”), and this Act, may be cited together as the “ Land Agents Acts, 1925 and 1927 ”.

2. This Act is incorporated with the Land Agents Act, 1925, and that Act and this Act shall be read as one Act. Incorporation.

3. Section 2 of the principal Act is amended by adding at the end of subsection (1) thereof the following passage :— Amendment of principal Act, s. 2—

The term land agent also includes any person whose business is the selling, whether as owner or otherwise, of land in allotments. Definition of land agent.

4. The principal Act is amended by inserting after section 2 thereof the following section :— Amendment of principal Act, s. 2—

2A. The provisions of this Act shall not apply to any land or interest in land sold at public auction, nor to any contract for the sale of any land or interest in land sold as aforesaid, and no person shall be deemed to be a land agent by reason only of the fact that he acts as agent in respect of the sale or other disposal at public auction of any land or interest in land. Exemption of sales of land by public auction.

5. (1) Section

Land Agents Act.—1927.

Amendment of
principal Act, s. 6—
Provisions as to
bonds.

5. (1) Section 6 of the principal Act is amended by striking out subsections (1) and (2) thereof and inserting in lieu thereof the following subsections :—

(1) With every application for the grant of a licence made after the first day of January, nineteen hundred and twenty-eight, there shall be filed in the Local Court a fidelity bond to His Majesty given by an insurance company in the sum of Five Hundred Pounds. In this Act “insurance company” means any company within the meaning of that term as defined in the Insurance Companies (Deposits) Act, 1924, which has deposited a sum of money with the Treasurer in accordance with the requirements of that Act.

(2) Every such bond shall be in such one of the forms contained in the Schedule to this Act as is applicable or in a form to the like effect.

(2) Subsection (4) of section 6 of the principal Act is amended by striking out paragraph (a) thereof and inserting in lieu thereof the following paragraph :—

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

(3) Section 6 of the principal Act is further amended by inserting therein the following subsection :—

(5) If at any time during the currency of the licence of a land agent the bond filed by him under this Act ceases to be of full force and effect, such land agent shall, until a bond of full force and effect is filed by him, be deemed to be unlicensed.

Amendment of
principal Act, s. 12—
Provisions as to
renewal of licences.

6. (1) Section 12 of the principal Act is amended by striking out subsection (1) thereof and inserting in lieu thereof the following subsections :—

(1) Every application for the renewal of a licence shall be made not earlier than the first day of January and not later than the last day of February preceding the date of the expiry of the licence, and shall be made in the form and in the manner prescribed by regulations.

(1a) Every such application shall be made to and filed in the Local Court of Full Jurisdiction nearest by the most convenient route to the registered office of the land agent at the time of making the application.

(1b) With every application for the renewal of a licence there shall be filed in the Local Court a fidelity bond to His Majesty given by an insurance company in the sum of Five Hundred Pounds or a receipt for the renewal premium on a like fidelity bond previously filed : Provided that if the applicant has previously filed a fidelity bond complying with this section which will enure and remain of full force and effect during the period of renewal of the applicant's licence the applicant shall
be

Land Agents Act.—1927.

be deemed to have complied with this section. All the provisions relating to fidelity bonds filed in the Court on the application for the grant of a licence in the first instance shall apply with the necessary modifications to bonds filed on the application for the renewal of a licence.

(2) Subsection (5) of section 12 of the principal Act is amended by adding at the end thereof the following passage:—

An application for renewal of a licence to which no objection has been filed may be dealt with by the Court sitting in Chambers at such time and place as the Court thinks fit.

7. Section 18 of the principal Act is amended by adding at the end of subsection (3) thereof the following passage:—

The Minister shall, upon the request in writing of any person and payment of the prescribed fee, issue a certificate stating any such matters as are referred to in this subsection.

Amendment of principal Act, s. 18—

Issue of certificates as to contents of register.

8. Section 20 of the principal Act is amended by inserting after the word "Court" in subsection (3) thereof the words "nearest by the most convenient route to the land agent's registered office prior to the change."

Amendment of principal Act, s. 20—

Court to which changes of address to be notified.

9. Section 22 of the principal Act is amended by striking out the proviso thereto.

Amendment of principal Act, s. 22—

Effect of licence.

10. The principal Act is amended by inserting therein after section 25 the following sections:—

New sections 25A, 25C—

25A. (1) In this section and sections 25B, 25D, and 25E "subdivided land" means any one or more vacant allotments of land shown on a plan of subdivision deposited in the Lands Titles Registration Office at Adelaide or any part of such an allotment: Provided that the term shall not include any allotments which as allotments are suitable or intended wholly or mainly for use for agricultural, pastoral, horticultural, or viticultural purposes. Land shall be deemed to be vacant within the meaning of this section if no house or building suitable for human occupation is built thereon.

Offences in connection with the sale of subdivided land.

(2) Any person who, in connection with the selling of any subdivided land or any interest in such land, knowingly makes a false representation which is likely to induce another person to buy such land or interest shall be guilty of an offence, and shall, on summary conviction, be liable to imprisonment for any term not exceeding twelve months, or to a fine not exceeding One Hundred Pounds.

In any proceedings under this subsection, if it is proved that the defendant made any false representation, he shall be deemed to have made such representation with knowledge of its falsity unless he satisfies the Court that he had reasonable ground to believe and did believe it to be true.

(3) Any

Land Agents Act.—1927.

(3) Any person who in order to induce any other person (in this subsection called "the prospective purchaser") to purchase subdivided land states—

- (a) that he or any other person will buy at a profit to be received in the future by the prospective purchaser any other land or chattel then owned by the prospective purchaser; or
- (b) that he or some other person will at some future time obtain for the prospective purchaser a profit on such subdivided land or any part thereof,

shall be guilty of an offence, and shall be liable on summary conviction to imprisonment for any term not exceeding twelve months or to a fine not exceeding One Hundred Pounds.

Contracts relating to subdivided land voidable in certain cases.

25B. Any contract for the sale of any subdivided land or interest in such land made after the commencement of the Land Agents Act, 1927, shall be voidable at the option of the purchaser at any time within six months from the making thereof unless such contract complies with the following requirements, namely:—

- I. Such contract shall be in writing and shall contain the following particulars, namely:—
 - (a) The name, address, and description of the vendor:
 - (b) The name, address, and description of the person who is, at the time when the contract is made, the registered proprietor of the land sold:
 - (c) A statement whether or not a plan of subdivision relating to the land sold has been deposited in the Lands Titles Registration Office, and whether or not such plan has been approved by the Government Town Planner, and the name, if any, of the subdivision, and number of such plan:
 - (d) The name, address, and description of some person to whom all moneys falling due under the contract may be paid; and
- II. Such contract, if the consideration therein mentioned is Five Hundred Pounds or more, or if it is one of a number of contracts forming substantially one transaction in which the total consideration is Five Hundred Pounds or more, shall be executed by the purchaser in the presence of two witnesses, neither of whom shall be the vendor, the vendor's agent or any person employed by the vendor's agent.

A purchaser shall not be deemed to have elected to affirm a contract which is voidable under this section by reason of any payments of money made by the purchaser pursuant to the contract within the period of six months aforesaid.

Prohibition of contracting out.

25C. Any agreement whereby a person purports to waive any right which he may have under this Act to avoid a contract shall be void and of no effect.

25D. In

Land Agents Act.—1927.

25D. In any action which comes on for trial after the commencement of the Land Agents Act, 1927, if it is shown that any false representation was made and that any person was induced by such representation to enter into a contract to purchase subdivided land or any interest in such land, the person making such representation shall be deemed to have made the same with knowledge of its falsity unless it is proved that he had reasonable ground to believe and did believe that such representation was true.

Onus of proof as to knowledge of falsity of representation.

25E. In any such action as aforesaid if it is shown that any person was induced—

Contracts induced by excessive persuasion.

- (a) to enter into any contract to purchase subdivided land or any interest in such land; or
- (b) to affirm any such contract, being voidable by such person,

by any unreasonable persuasion on the part of any person acting or appearing to act on behalf of the vendor or the vendor's agent, then according to the nature of the case—

- (a) such contract whether equitable or otherwise shall be deemed to have been induced by undue influence, and shall be voidable at the option of such first-mentioned person accordingly; or
- (b) such affirmation shall be void and of no effect.

25F. If any person resident in the State enters into a contract within the State for the sale of land which contract would if governed by the law of the State be or be held to be void or voidable under this Act and judgment is obtained on or in respect of such contract in any other State, and a certificate of such judgment is registered in any Court within the State, the person against whom the judgment was obtained may apply to such Court at any time within forty-two days of his receiving notice of the registration of the certificate of the judgment to set aside the same on any ground of defence which would have been available to such person if the action upon which such judgment was obtained had been brought in a Court within the State and the contract had been governed by the law of the State. Upon any application to set aside a judgment under this section the Court may make such order in conformity with this section as it deems just and shall observe as nearly as possible the usual practice of the Court on the hearing of applications for a stay of proceedings on certificates of judgment registered in such Court under the Act of the Commonwealth Parliament known as the Service and Execution of Process Act, 1901-1924.

Provision as to judgments obtained in other States on voidable contracts.

25G. The provisions of sections 25D, 25E, and 25F shall apply in respect of all contracts whether made before or after the passing of the Land Agents Act, 1927: Provided that nothing

Application of sections 25D, 25E, and 25F.

Land Agents Act.—1927.

nothing in the said sections shall affect any contract which, prior to the commencement of the Land Agents Act, 1927, has been completely performed, or apply in any action relating to any such contract.

Amendment of
principal Act, s. 27—

Cancellation of
licences.

11. Section 27 of the principal Act is amended so as to read as follows :—

27. (1) Subject as hereinafter mentioned the Attorney-General or any other person may apply to the Local Court of Full Jurisdiction nearest by the most convenient route to the registered office of the holder of any licence for an order directing either the first or both of the following things, namely :—

(a) that such licence be cancelled :

(b) that the holder of such licence be disqualified either temporarily or permanently, or until the fulfilment of a condition imposed by the Court, from holding a licence.

(2) Where a licence is held by one member of a firm on behalf of all the members of the firm, or by a person on behalf of a company, an order under this section may direct either the first or both of the following things, namely :—

(a) that the licence be cancelled :

(b) that any member of the firm or the company be disqualified either temporarily or permanently, or until the fulfilment of a condition imposed by the Court, from being entitled to have a licence held on his or its behalf.

(3) An order under this section may be made upon any of the following grounds, namely :—

(a) that the licence was improperly obtained contrary to the provisions of this Act ; or

(b) that the holder of the licence has at any time been convicted of any offence against this Act or any offence involving dishonesty, whether such conviction took place before or after the commencement of the Land Agents Act, 1927 ; or

(c) that the holder of the licence is not a fit and proper person to continue any longer to be licensed ; or

(d) that he has been guilty, whether before or after the commencement of the Land Agents Act, 1927, of such conduct as renders him unfit to continue any longer to be licensed ; or

(e) if the licence was granted on behalf of a firm, that any member of the firm has been convicted of any offence against this Act or any offence involving dishonesty, whether such conviction took place before or after the commencement of the Land Agents Act, 1927, or is not a fit and proper person to be permitted any longer

Land Agents Act.—1927.

longer to carry on business as a land agent, or has been guilty, whether before or after the commencement of the Land Agents Act, 1927, of such conduct as renders him unfit to carry on business as a land agent ;

(f) if the licence was granted on behalf of a company, that any of the directors thereof or the general manager thereof has been convicted, whether before or after the commencement of the Land Agents Act, 1927, of any offence involving dishonesty ; or

(g) upon any other grounds which the Court deems sufficient.

(4) Every application under this section shall be made and notice thereof shall be served on the persons affected in accordance with the regulations.

(5) Upon being satisfied of the truth of any of the grounds aforesaid the Court may make such order in accordance with this section and such order as to costs as it thinks just.

(6) When any land agent or member of a firm of land agents or director or manager of a company carrying on business as a land agent has been convicted before any Court of an offence against this Act or any offence involving dishonesty such Court may of its own motion and without further notice to any person make any such order as mentioned in subsection (1) or subsection (2) of this section.

(7) Where any land agent or member of a firm of land agents or director or manager of a company carrying on business as a land agent is a party to an action in the Supreme Court or in a Local Court of Full Jurisdiction in which his or its conduct as a land agent are in question, and such Court is satisfied, on the evidence before it in such action, that a proper case exists for making any such order as mentioned in subsection (1) or subsection (2) of this section, such Court may, of its own motion and without further notice to any person, make any such order as aforesaid.

12. The principal Act is amended by inserting therein after section 30 the following sections :—

30A. No person required to hold a licence under this Act shall be entitled to sue for or recover any commission, reward, or other valuable consideration, in respect of his services as agent in connection with the sale, lease, exchange, or other disposal of land or any interest in land, or in connection with any other like transaction unless he proves that he was the holder of a licence for the time being in force at the time of rendering the service in respect of which he sues.

30B. (1) In any legal proceedings whatever *prima facie* evidence of the fact that any person is at any time the holder of a licence may be given by production of a document purporting to be a licence granted by a Local Court of Full Jurisdiction to such person and purporting to be in force at such time.

(2) The

New sections 30A,
30B—

Prohibition on
unlicensed persons
suing for com-
mission.

Proof that person
is licensed or
unlicensed.

Land Agents Act.—1927.

(2) The allegation in any complaint that any person is not or was not the holder of a licence under this Act at any time mentioned in the complaint shall be *prima facie* evidence of that fact.

New sections 32A and 32B—

Power of Magistrate as to witnesses and evidence.

13. The principal Act is amended by inserting therein after section 32 the following sections :—

32A. For the purpose of hearing and determining any application, objection, or other matter under this Act all the provisions of the Local Courts Act, 1926, relating to summoning, swearing, and examining witnesses, and compelling the production of books and documents, and punishing witnesses for any contravention of or failure to comply with any requirement of the said Act shall apply as if the Special Magistrate exercising jurisdiction under this Act were a Local Court exercising jurisdiction under the Local Courts Act, 1926, and such Special Magistrate, with respect to the matters aforesaid, shall have and may exercise all the powers of a Local Court.

Enforcement of orders as to costs.

32B. Any order made by the Court for costs under this Act may be enforced in like manner as a judgment of a Local Court under the Local Courts Act, 1926.

New section 33A—

Duty of Commissioner of Police to object to granting licences and registrations in certain cases.

14. The principal Act is amended by inserting therein, after section 33, the following section :—

33A. (1) The Clerk of any Local Court in which any application for a licence or for renewal of a licence is filed, shall forthwith, after such filing, give notice thereof to the Commissioner of Police.

(2) If the said Commissioner is of opinion that the applicant is not a fit and proper person to be licensed he shall take all proper steps to object to the granting of the application and shall be represented at the hearing thereof.

Amendment of principal Act, s. 34—
Contracting out.

15. Section 34 of the principal Act is amended so as to read as follows :—

(1) No term or provision of any agreement for the sale and purchase of land or any interest in land shall be so construed as in any way to prevent the purchaser from claiming or being awarded damages or any other relief in respect of fraud or misrepresentation in connection with the purchase of such land or interest in land.

(2) This section applies to any agreement or term or provision of any agreement whether made before or after the commencement of the Land Agents Act, 1925.

Amendment of principal Act, s. 35—
Regulations.

16. Section 35 of the principal Act is amended—

(a) by inserting after the word "licences" in the first line of paragraph (a) of subsection (1) the words "or renewals of licences":

(b) by

Land Agents Act.—1927.

(b) by striking out in subsection (3) thereof the words “additional rates may be prescribed for every place of business in addition to the registered office in which the applicant for a licence carries on or proposes to carry on business, and save also that.”

17. Section 35 of the principal Act is further amended by inserting after paragraph (c) of subsection (1) thereof the following paragraphs:—

Amendment of principal Act, s. 35—

Regulations as to registration of land salesmen.

- (c1) requiring all land salesmen to be registered annually and empowering any person, body or Court to grant certificates of registration after such inquiry as may be prescribed:
- (c2) granting to any person the right to object to the granting of any application for registration as a land salesman or for renewal of such registration:
- (c3) prescribing all matters incidental to applications for registration and renewal of registration as a land salesman and objections thereto and to the hearing and determination of such applications and objections:
- (c4) requiring all land salesmen to procure and deposit or file as prescribed a fidelity bond to His Majesty in the prescribed amount and in the prescribed form and containing the prescribed conditions, and prescribing all matters connected with or incidental to such bonds:
- (c5) providing for the keeping of a Register of Land Salesmen and the inspection of the same, and for the annual publication in the *Gazette* of a list of registered land salesmen and requiring every registered land salesman to file as, when and where prescribed the name and address of his employer:
- (c6) providing for the cancellation of the registration of any land salesman by any person, Court, or body on any grounds prescribed, with or without application made for the purpose by any person:
- (c7) empowering the person, Court, or body hearing or determining any application for or objection to registration or renewal of registration as a land salesman to award costs:
- (c8) prescribing fees payable in connection with any such application or objection:
- (c9) creating offences and prescribing penalties:
- (c10) prescribing the mode in which any fact relevant to any matter arising under this Act may be proved in any Court:
- (c11) prescribing any matters necessary or convenient to ensure that only fit and proper persons shall act as land salesmen.

18. The

Land Agents Act.—1927.

**Amendment of
Principal Act—
The Schedule.**

18. The Schedule to the principal Act is amended so as to read as follows :—

FORM No. 1.

FIDELITY BOND TO BE FILED BY PERSON APPLYING FOR LAND AGENT'S LICENCE ON HIS OWN BEHALF.

Know all men by these presents that..... of..... is held and firmly bound unto His Majesty the King in the sum of Five Hundred Pounds (£500) for the payment of which sum to His Majesty the said..... binds itself and its assigns firmly by these presents.

Whereas..... of..... has applied for the issue to him on his own behalf of a licence under the Land Agents Acts, 1925 and 1927 :

Now the condition of the above-written bond is such that if such licence shall be granted to the said..... and if the said..... shall during the currency of the term of such licence [and during the currency of the term of every licence granted to him in renewal of such licence]—

- (a) always duly apply all moneys received by him in the manner required by the said Acts ;
- (b) always duly render accounts in writing of all moneys received by him within the times and to the persons required by the said Acts ;
- (c) always fully satisfy within one month from the giving or making thereof any judgment or order given against him for the payment of any sum of money received by him in connection with the sale of any land, or for the payment of any sum of money as damages for fraud, misrepresentation, or breach of contract, condition, or warranty ;

then the above-written obligation shall be void, but otherwise shall remain in full force and effect.

Signed, sealed, and delivered, &c.

FORM No. 1A.

FIDELITY BOND TO BE FILED BY PERSON APPLYING FOR LAND AGENT'S LICENCE ON BEHALF OF A FIRM.

Know all men by these presents that..... of..... is held and firmly bound unto His Majesty the King in the sum of Five Hundred Pounds (£500) for the payment of which sum to His Majesty the said..... binds itself and its assigns firmly by these presents.

Whereas..... of..... who with..... of..... and..... of..... carries on the business of land agents in partnership under the firm name of....., has applied for the issue to him of a licence under the Land Agents Acts, 1925 and 1927, on behalf of himself and the said..... and.....

Now the condition of the above-written bond is such that if such licence shall be granted to the said..... and if during the currency of the term of such licence [and during the currency of the term of every licence granted in renewal of such licence]—

- (a) they the said..... and the said..... and the said..... [insert names of all partners] and each of them shall always duly apply all moneys received by them or any of them in the manner required by the said Acts ; and

(b) they

Land Agents Act.—1927.

(b) they the said.....and the said.....
and the said.....shall always duly render accounts
in writing of all moneys received by them or any of them within the
times and to the persons required by the said Acts; and

(c) every judgment or order given or made against the said.....
and the said.....and the said.....
or any of them for the payment of any sum of money received in con-
nection with the sale of any land, or for the payment of any sum of
money as damages for fraud, misrepresentation, or breach of warranty
or condition shall be fully satisfied within one month from the giving
or making thereof,

then the above written obligation shall be void, but otherwise shall remain in full
force and effect.

Signed, sealed, and delivered, &c.

FORM 1B.

BOND TO BE FILED BY PERSON APPLYING FOR LAND AGENT'S
LICENCE ON BEHALF OF A COMPANY.

Know all men by these presents that.....of.....
is held and firmly bound unto His Majesty the King in the sum of Five Hundred
Pounds (£500) for the payment of which sum to His Majesty the said.....
binds itself and its assigns firmly by these presents.

Whereas.....of.....has applied for the issue
to him on behalf of....., a company incorporated according
to the laws of....., whose registered office in South
Australia is situated at....., of a licence under the Land
Agents Acts, 1925 and 1927.

Now the condition of the above-written bond is such that if such licence shall
be granted to the said....., and if during the currency of
the term of the said licence [and during the currency of the term of every licence
granted in renewal of the said licence]—

(a) the said.....[*name of company*] shall always duly apply
all moneys received by it in the manner required by the said Acts:

(b) the said.....[*name of company*] shall always duly render
accounts in writing of all moneys received by it within the times and
to the persons required by the said Acts:

(c) the said.....[*name of company*] shall always fully satisfy
within one month from the giving or making thereof any judgment
or order given against the said.....[*name of company*]
for the payment of any sum of money received in connection with the
sale of any land, or for the payment of any sum of money as damages
for fraud, misrepresentation, or breach of contract, condition, or
warranty:

then the above-written obligation shall be void, but otherwise shall remain in full
force and effect.

Signed, sealed, and delivered, &c.

In the name and on behalf of His Majesty, I hereby assent to
this Bill.

TOM BRIDGES, Governor.