



ANNO VICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1974

No. 129 of 1974

An Act to amend the Land and Business Agents Act, 1973.

[Assented to 12th December, 1974]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Land and Business Agents Act Amendment Act, 1974".

(2) The Land and Business Agents Act, 1973, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Land and Business Agents Act, 1973-1974".

**Commence-
ment.**

2. This Act shall come into operation on a day to be fixed by proclamation.

**Amendment of
principal Act,
s. 38—
Branch office.**

3. Section 38 of the principal Act is amended—

(a) by striking out from subsection (2) the passage "A licensed agent" and inserting in lieu thereof the passage "Subject to this section, a licensed agent";

(b) by inserting after subsection (2) the following subsection:—

(2a) The obligation imposed by subsection (2) of this section does not apply before the expiration of one year from the commencement of this Act, and where the Board is satisfied that—

(a) an agent, after taking reasonable steps to do so, has been unable to obtain the services of a registered manager as manager of the branch office;

and

(b) that a registered salesman of at least five years' experience, whose work is supervised by the agent, or a registered manager, is in charge of the branch office,

the Board may grant the agent an exemption, or periodical exemptions, for a period or periods of not more than six months from the obligation imposed by subsection (2) of this section but no such exemption shall be effective after the expiration of three years from the commencement of the Land and Business Agents Act Amendment Act, 1974.;

and

(c) by inserting after subsection (3) the following subsection:—

(4) If a person nominated as a manager in respect of a branch office—

- (a) dies;
- (b) ceases to be in the service of the person by whom he was nominated;
- (c) ceases to be in the service of the person by whom he was nominated as a manager of the branch office;
- (d) ceases to be registered as a manager;

or

- (e) ceases to have his usual place of residence in this State,

it shall not be necessary to nominate a registered manager until the expiration of one month after the occurrence of that event or such further period as may be allowed by the Board.

4. Section 41 of the principal Act is amended by striking out from subsection (3) the passage “the owner of the land or business” and inserting in lieu thereof the passage “the person by, or upon whose authority, the land or business is to be sold or disposed of”.

Amendment of principal Act, s. 41—
Advertisements.

5. Section 61 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “A person” and inserting in lieu thereof the passage “Subject to subsection (1a) of this section, a person”;

Amendment of principal Act, s. 61—
Preparation of instruments.

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

(1a) A person who is a party to, or has acted as an agent in, any transaction in respect of which an instrument has been, or is to be, prepared shall, subject to the following provisions of this section, be entitled to charge a fee for the preparation of an instrument if—

(a) the instrument is prepared by a legal practitioner or licensed land broker in his employment;

and

(b) the legal practitioner or licensed land broker has been continuously in his employment since the first day of May, 1973, or some earlier date.;

and

(c) by striking out from subsection (2) the word “mortgagor” and inserting in lieu thereof the word “mortgagee”.

Enactment of
s. 63a of
principal Act—

6. The following section is enacted and inserted in the principal Act immediately after section 63 thereof:—

Control over
trust accounts.

63a. (1) If the Board knows, or suspects upon reasonable grounds, that an agent—

- (a) has become bankrupt or insolvent or taken the benefit of any law relating to bankrupt or insolvent debtors;
- (b) has misappropriated or misapplied any trust moneys;
- (c) has caused or permitted his trust account to be or become in such a state of irregularity as to require immediate supervision;
- (d) is suffering from a mental or physical incapacity that prevents him from properly attending to his affairs;
- (e) has shown unconscionable delay in dealing with matters affecting his business;
- (f) has died, has ceased to carry on business, cannot be found, or is for any other reason unable to attend properly to his business;

or

- (g) where the agent is a body corporate, is being wound up or has been put under official management or into receivership,

the Board may, by resolution, appoint a person to exercise the powers conferred by this section.

(2) A person appointed under subsection (1) of this section shall have power to dispose of trust moneys to persons entitled to those moneys and may execute any cheque or other instrument for that purpose.

(3) As soon as practicable after a resolution under subsection (1) of this section has been passed, the Board shall cause a written copy of the resolution to be served on—

- (a) the agent or his personal representative;
- (b) any other person authorized to operate on the trust account, or to exercise a power of disposition over trust moneys, of the agent;

and

- (c) the manager or other principal officer of the office or branch of the bank at which the trust account is maintained.

(4) After service of the notice on the bank, and until the resolution ceases to be effective—

- (a) no payment shall be made by the bank on any cheque or other instrument drawn on the trust account to which the resolution relates unless it bears the signature of the person appointed pursuant to this section;

and

- (b) if it bears the signature of the person so appointed (whether or not it bears the signature of any other person) it shall be lawful for the bank to make a payment in accordance with the cheque or other instrument.

(5) No person upon whom a copy of the resolution has been served shall sign any cheque or instrument purporting to draw moneys from the trust account to which the resolution relates unless that cheque or instrument is also signed by the person appointed pursuant to this section.

(6) Any person who contravenes this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(7) Any agent in respect of whose trust account a resolution is passed under this section may appeal against the resolution to the Supreme Court.

(8) Any such appeal may be heard and determined by a Judge sitting in chambers.

(9) A resolution under this section shall cease to be effective—

(a) on the expiration of twelve months from the date on which it was passed (unless extended by a further resolution of the Board for a further period not exceeding twelve months);

(b) if rescinded by the Board;

or

(c) if rescinded by the Supreme Court.

(10) In this section—

“bank” includes any institution with which trust moneys have been deposited.

7. Section 85 of the principal Act is amended—

(a) by inserting in subsection (1) after paragraph (a) the following paragraph:—

(ab) inspect any books, accounts, documents or writings in the custody or control of a bank or other institution relating to any trust moneys;;

and

(b) by inserting in paragraph (b) of subsection (2) after the passage “or licensed land broker,” the passage “or a bank or other institution”.

Amendment of
principal Act,
s. 85—
Inspection.

8. Section 86 of the principal Act is amended by striking out from subsection (5) the passage “subsection (3)” and inserting in lieu thereof the passage “subsection (4)”.

Amendment of
principal Act,
s. 86—
Obligations
and offences in
relation to
subdivided
land.

9. Section 88 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “within two clear business days after the prescribed day” and inserting in lieu thereof the passage “before the expiration of two clear business days from the prescribed day (but before the date of settlement)”;

Amendment of
principal Act,
s. 88—
Cooling off
period.

(b) by striking out from subsection (1) the passage “and the purchaser shall thereupon be entitled to the return of any moneys paid by him under the contract”;

(c) by inserting after subsection (1) the following subsections:—

(1a) If a contract is rescinded under subsection (1) of this section then, subject to subsection (1b) of this section, the purchaser shall, upon rescission, be entitled to the return of any moneys paid by him under the contract.

(1b) A contract may provide that if it is rescinded in pursuance of this section the vendor may retain moneys (not exceeding twenty-five dollars) paid by the purchaser by way of deposit in respect of the sale, and if the contract contains that provision, it shall be lawful for the vendor to retain those moneys in the event of the contract being so rescinded.;

(d) by striking out subsection (2);

(e) by striking out paragraph (c) of subsection (4) and the word “or” immediately preceding that paragraph and inserting in lieu thereof the following paragraphs:—

(c) where the sale is by auction;

or

(d) where the land is offered for sale, but not sold, by auction and a person by whom, or on whose behalf, a bid for the land was made at the auction enters into the contract of sale on the same day as the auction for a price not exceeding the amount of that bid;

(f) by inserting in subsection (5) the following definitions:—

“the prescribed day” means—

(a) the day on which the contract is executed by the vendor;

(b) the day on which the contract is executed by the purchaser;

(c) where the vendor or some person acting on behalf of the vendor serves on the purchaser personally or by registered or certified mail, before the date of settlement, a notice in the prescribed form setting forth the rights of the purchaser under this section—the day on which the notice is served;

(d) where section 90 statements are served personally or by registered or certified mail upon the purchaser before the date of settlement—the day on which the statements are served,

whichever last occurs and where the notice or the statements referred to in this definition are not served before the date of settlement, “the prescribed day” is the date of settlement:

“purchaser” means the person or persons named as purchaser or purchasers in the contract or any one or more of them:

“section 90 statements” means—

(a) a statement signed by or on behalf of the vendor containing the particulars required by subsection (1) of section 90 of this Act;

and

(b) where an agent acts for the vendor or purchaser, a statement containing the particulars and the certificate required by subsection (4) of section 90 of this Act:

“vendor” means the person or persons named as vendor or vendors in the contract or any one or more of them.

10. Section 90 of the principal Act is amended—

(a) by striking out from subsection (1) the passage “Subject to subsection (2) of this section, before a document that is intended to constitute a contract or part thereof for the sale of any land or business is executed by the purchaser, the vendor shall annex or cause to be annexed, to the document a statement signed by or on behalf of the vendor containing” and inserting in lieu thereof the passage “A vendor, or prospective vendor, of any land or business must serve, or cause to be served, at least ten days before the date of settlement, personally or by registered or certified mail upon the purchaser or prospective purchaser a statement signed by or on behalf of the vendor containing”;

(b) by striking out subsection (2) and inserting in lieu thereof the following subsections:—

(2) A statement complies with subsection (1) of this section if—

(a) it was prepared by the vendor or some person acting on his behalf not more than two months before service on the purchaser, and was accurate at the time it was prepared;

and

(b) where, before the statement is served on the purchaser or prospective purchaser, any variation in the particulars set out in the statement has come to the knowledge of the vendor, the statement is accompanied by a further statement signed by the vendor or some person acting on his behalf giving particulars of the variation.

(2a) For the purposes of paragraph (c) of subsection (1) of this section, where a person enters into a transaction for the purpose of obtaining title to land or a business and an instrument of transfer, conveyance or other instrument relating to the transaction is lodged at the Lands Titles Registration Office or the General Registry Office, he shall be deemed to have obtained title to the land or business not later than the day on which the instrument of transfer, conveyance or other instrument is so lodged.

Amendment of principal Act, s. 90—
Information to be supplied to purchaser before execution of contract.

- (c) by striking out from subsection (3) the passage “, before presenting to the purchaser for execution by the purchaser, any document that is intended to constitute a contract or part thereof for the sale of the land or business,”;
- (d) by striking out from subsection (4) the passage “before presenting to the purchaser any document that is intended to constitute a contract or part thereof for the sale of any land or business for execution by the purchaser, deliver to” and inserting in lieu thereof the passage “at least ten days before the date of settlement serve personally or by registered or certified mail upon”;
- (e) by inserting after subsection (4) the following subsection:—
- (4a) A statement complies with subsection (4) of this section if—
- (a) it was prepared by the agent or some person acting on his behalf not more than two months before service on the purchaser or prospective purchaser and was accurate at the time that it was prepared;
- and
- (b) where, before the statement is served on the purchaser or prospective purchaser any variation in the particulars set out in the statement has come to the knowledge of the agent, the statement is accompanied by a further statement signed by the agent or some person acting on his behalf giving particulars of that variation.
- (f) by striking out from paragraph (b) of subsection (5) the passage “subsection (3)” and inserting in lieu thereof the passage “subsection (4)”;
- (g) by striking out from subsection (9) the passage “In this” and inserting in lieu thereof the passage “Subject to subsection (9a) of this section, in this”;
- (h) by inserting in subsection (9) the following definitions:—
- “purchaser” means the person or persons named in the contract as purchaser or purchasers or any one or more of them;
- “vendor” means the person or persons named in the contract as vendor or vendors, or any one or more of them.;
- and
- (i) by inserting after subsection (9) the following subsections:—
- (9a) A reference to a “charge” or an “encumbrance” in this section shall not be construed as including any charge or encumbrance arising from a rate or tax imposed less than twelve months before the date on which the contract is, or is to be, executed by or on behalf of the purchaser.
- (9b) Where an auctioneer proposes to offer any land or business for sale by auction—

(a) he shall make the statements required by this section in relation to the sale available for perusal by members of the public—

(i) at the office of the auctioneer for at least three consecutive business days preceding the auction;

and

(ii) at the place at which the auction is to be conducted, for at least thirty minutes before the auction commences;

and

(b) he shall cause public advertisement to be given in the manner and form prescribed of the times and places at which the statements may be inspected.

Penalty: Two hundred dollars.

(9c) The failure of an auctioneer to comply with subsection (9b) of this section shall not affect the legality or validity of a contract of sale relating to any land or business.

11. Section 91 of the principal Act is amended by striking out subsections (2) and (3) and inserting in lieu thereof the following subsections:—

Amendment of
principal Act,
s. 91—
Sale of Small
Businesses.

(2) If a statement is not given in accordance with subsection (1) of this section, or if a statement so given is false or inaccurate in any material particular, or omits any material particular, and a purchaser suffers loss by reason of that fact, he may apply to any Court of competent jurisdiction for an order under this section.

(3) The Court may, upon the hearing of an application under subsection (2) of this section—

(a) award such damages against the person in default as may, in the opinion of the Court, be necessary to compensate loss arising from the default;

or

(b) avoid the contract, and make such orders as the Court thinks necessary or desirable to restore the parties to the contract to their respective positions before entering into the contract.

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

M. L. OLIPHANT, Governor