



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

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No. 23 of 1991

An Act to amend the Land Agents, Brokers and Valuers Act 1973.

[Assented to 18 April 1991]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Land Agents, Brokers and Valuers (Incorporated Land Brokers) Amendment Act 1991*.

(2) The *Land Agents, Brokers and Valuers Act 1973* is referred to in this Act as “the principal Act”.

## Commencement

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

## Interpretation

3. Section 6 of the principal Act is amended—

(a) by striking out from subsection (1) the definition of “director” and substituting the following definition:

“director”, in relation to a company, includes any person occupying or acting in the position of director of the company, by whatever name called and whether or not validly appointed to occupy or duly authorized to act in the position, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

(b) by striking out paragraph (b) of the definition of “prescribed officer” in subsection (1) and substituting the following paragraph:

(b) any member of the governing body of the corporation;

(c) by inserting after the definition of “prescribed officer” in subsection (1) the following definitions:

“prescribed relative”, in relation to a person, means a spouse, parent, child or grandchild of the person:

“putative spouse” includes a person who is a putative spouse notwithstanding that a declaration has not been made under the *Family Relationships Act 1975* in relation to that person;

and

(d) by inserting after the definition of “sales representative” in subsection (1) the following definition:

“spouse” includes a putative spouse:.

#### **Employment of registered managers**

4. Section 30 of the principal Act is amended by striking out from subsection (1) “licensed corporation” and substituting “licensed agent that is a corporation”.

#### **Entitlement to be licensed**

5. Section 57 of the principal Act is amended by inserting “(not being a corporation)” before “is entitled to be licensed”.

#### **Insertion of new s. 57a**

6. The following section is inserted after section 57 of the principal Act:

##### **Entitlement of company to licence**

57a. Subject to this Act, a company is entitled to be licensed as a land broker if the Tribunal is satisfied—

(a) that the memorandum and articles of association of the company contain stipulations to the following effect:

(i) the sole object of the company must be to carry on business as a land broker;

(ii) the directors of the company must be natural persons who are licensed land brokers (but where there are only two directors one may be a licensed land broker and the other may be a prescribed relative of that land broker);

(iii) no share in the capital of the company, and no rights to participate in distribution of profits of the company, may be owned beneficially except by—

(A) a licensed land broker who is a director or employee of the company;

(B) a prescribed relative of a licensed land broker who is a director or employee of the company;

(C) an employee of the company;

(iv) not more than 10 per cent of the issued shares of the company may be owned beneficially by employees who are not licensed land brokers;

(v) the total voting rights exercisable at a meeting of the members of the company must be held by licensed land brokers who are directors or employees of the company;

(vi) no director of the company may, without the prior approval of the Tribunal, be a director of any other company that is a licensed land broker;

(vii) the shares in the company beneficially owned by any person must be—

(A) redeemed by the company;

(B) transferred to a person who is to become a director or employee of the company or to the trustee of such a person;

or

(C) distributed among the remaining members of the company, in accordance with the memorandum and articles of association of the company,

(D) in the case of shares beneficially owned by the person as a licensed land broker who is a director or employee of the company or as a prescribed relative of such a land broker—on the land broker ceasing to be a licensed land broker or a director or employee of the company;

(E) in the case of shares beneficially owned by the person as the spouse of a licensed land broker—on the dissolution or annulment of their marriage or, in the case of a putative spouse, on the cessation of cohabitation with the licensed land broker;

(F) in the case of shares beneficially owned by a person as an employee of the company—on the person ceasing to be an employee of the company;

and

(b) that the memorandum and articles of association are otherwise appropriate to a company formed to carry on business as a land broker.

#### **Duration of licences**

7. Section 58 of the principal Act is amended by inserting in subsection (1) “or, in the case of a company, is dissolved” after “dies”.

#### **Insertion of Division IIA**

8. The following division is inserted after Division II of Part VII of the principal Act:

#### **DIVISION IIA—PROVISIONS REGULATING INCORPORATED LAND BROKERS**

##### **Non-compliance with memorandum or articles**

59. (1) Where one or more of the stipulations required by this Act to be included in the memorandum and articles of association of a company licensed as a land broker are not complied with, the company must, within 14 days, report the non-compliance to the Commissioner.

Penalty: \$2 000.

(2) The Tribunal may, on the application of the Commissioner, give such directions to a company licensed as a land broker as may be necessary to secure compliance by the company with the stipulations required by this Act to be included in its memorandum and articles of association.

(3) If a company fails to comply with a direction of the Tribunal under this section within the time allowed by the Tribunal for compliance with the direction, the licence of the company is, by force of this subsection, suspended until the company satisfies the Tribunal that it has complied with the direction.

**Companies not to carry on land broking business in partnership**

60. A company that is a licensed land broker must not carry on business as a land broker in partnership with any other person without the prior approval of the Tribunal.  
Penalty: \$2 000.

**Joint and several liability**

60a. Notwithstanding any other Act or law, any civil liability incurred by a company that is a licensed land broker is enforceable jointly and severally against the company and the persons who were directors of the company at the time the liability was incurred.

**Alteration to memorandum or articles of association**

60b. (1) Where a company that is a licensed land broker proposes to alter its memorandum or articles of association, the company may submit the proposed alterations to the Tribunal for its approval.

(2) If the company alters its memorandum or articles of association without the prior approval of the Tribunal, the licence of the company is, by force of this subsection, suspended until the company obtains the Tribunal's approval of the alteration or restores the provisions of the memorandum or articles to the form in which they were before the alteration was made.

**Cause for disciplinary action**

9. Section 85a of the principal Act is amended by striking out paragraphs (ba) and (c) of subsection (4) and the word "or" occurring between those paragraphs and substituting the following word and paragraph:

or

(c) in the case of a licensed land broker—

(i) the land broker is an undischarged bankrupt, or is bound by a subsisting composition or deed or scheme of arrangement with or for the benefit of creditors, or, being a company, has insufficient funds for the payment of creditors;

(ii) the land broker has ceased to be a fit and proper person to hold a licence;

or

(iii) the land broker is a company and a person who is or has become a director of the company has ceased to be or is not a licensed land broker as required by the stipulations required by section 57a to be included in the memorandum and articles of association of the company.

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

ROMA MITCHELL Governor