

AUCTIONEERS AND ESTATE AGENTS.

No. 12 of 1962.

AN ACT to amend the *Auctioneers and Estate Agents Act 1959.* [10 May 1962.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Auctioneers and Estate Agents Act 1962.* Short title and citation.

(2) The *Auctioneers and Estate Agents Act 1959*, as subsequently amended, is in this Act referred to as the Principal Act.

2 Section eleven of the Principal Act is repealed and the following section substituted therefor:—

“11—(1) Before any licence is granted or renewed or the name of any person is endorsed on an auctioneer’s licence, there shall be paid to the Council by the licensee such contribution as may be prescribed. Contributions to the Council.

“(2) Production of a certificate purporting to be signed by the secretary to the Council to the effect that any contribution has been paid to the Council is sufficient evidence of that fact.

“(3) Where any sum is paid to the Council by way of a contribution under this section in anticipation of the grant or renewal of a licence or the making of an endorsement, and the licence is not granted or renewed or the endorsement is not made (as the case may be) the Council shall repay the sum so paid within fourteen days after the decision of the police magistrate or the happening of any other event by reason of which the licence is not granted or renewed or the endorsement is not made.”

3 Section thirty of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:— Limitation on commission, &c.

“(1) Notwithstanding the provisions of any agreement, but subject to the provisions of the schedule, no person, in respect of his acting as agent in the negotiation of, or in respect of the negotiations of, any transaction or dealing referred to in the schedule, or in respect of his rendering any service referred to in that schedule, shall be entitled to recover, or to retain from any moneys received or held by him or by any person on his behalf, any remuneration other than a commission, not exceeding the maximum commission specified in that schedule with respect to that transaction, dealing, or service.”;

- (b) by omitting from subsection (2) the word "Where" and substituting therefor the words "Subject to subsection (1) of this section, where";
- (c) by omitting from that subsection the words "that is attested" and substituting therefor the words "is attested and that complies with the requirements of subsection (3A) of this section."; and
- (d) by inserting after subsection (3) the following subsection:—

"(3A) Where, in respect of any transaction, an agreement has the effect of providing that any sum that the principal would be entitled to recover under subsection (2) of this section if the agreement had not been entered into, may or shall be dealt with, otherwise than by payment to him, the agreement, in order to comply with the requirements of this subsection, shall specify the reasons for which or the purposes for which that sum may, or is required to be, so dealt with."

Hearing of applications.

4 Section thirty-five of the Principal Act is amended—

- (a) by omitting subsections (1), (2), and (3) and substituting therefor the following subsections:—

"(1) Where a clerk receives an application for the grant or renewal of a licence he shall, until the application is heard, cause to be posted in conspicuous places inside and outside the building in which the application is to be heard a notice of the application stating that objections may be made thereto if, before the date specified in the notice (not being a date earlier than thirty days after the first posting thereof), a notice of those objections, and the grounds thereof, is lodged with the clerk and a copy of that notice is served on the person making the application.

"(2) In this section the date specified in accordance with subsection (1) of this section in a notice posted under that section is, in relation to the application to which the notice relates, referred to in this section as the latest date for objections.

"(3) A person applying for the grant of a licence shall, at least twenty-one days before the latest date for objections, cause to be published in a newspaper circulating in the place at which the court of petty sessions sits to the clerk of which the application is made a notice of his intention to apply for the licence stating the matters that are required to be stated in the notice posted under subsection (1) of this section in respect of his application.

“(3A) A clerk receiving an application for the grant or renewal of a licence shall serve notice thereof on the Council, and the Council may, before the expiration of thirty days from the service of that notice or before the latest date for objections (whichever is the later), lodge a notice of its objections and the grounds thereof with the clerk, and, if it does so, shall within the time within which it may lodge such a notice, serve a copy thereof on the person making the application.”;

- (b) by omitting from subsection (4) the words “served, posted, or” and substituting therefor the words “posted or”;
- (c) by omitting from that subsection the numeral “(2)” and substituting therefor the numeral “(3)”;
- (d) by omitting from subsection (5) the words following the word “renewal” (second occurring) and substituting therefor the words “made in accordance with the requirements of this section or any notice posted or published thereunder.”.

5 Section forty of the Principal Act is amended—

Revocations.

- (a) by omitting from subsection (2) the word “On” (first occurring) and substituting therefor the words “Subject to subsection (2A) of this section, on”;
- (b) by inserting after subsection (2) the following subsection:—

“(2A) Where a person is convicted of an offence under subsection (1) of section forty-seven or section fifty, the court, whether or not it imposes any other penalty, shall revoke any auctioneer’s or estate agent’s licence held by him.”; and

- (c) by adding at the end thereof the following subsection:—

“(4) References in subsection (3) of this section to a court shall be deemed to include references to a police magistrate.”.

6 After section forty of the Principal Act the following section is inserted:—

“40A A person is disqualified for holding an auctioneer’s licence or an estate agent’s licence if he—

Disqualification on bankruptcy, &c.

- (a) is an undischarged bankrupt; or
- (b) has made any composition or arrangement with his creditors, unless the debts to which the composition or arrangement relates have been paid in full or its terms have been fulfilled,

and when a person becomes bankrupt or makes a composition or arrangement with his creditors any auctioneer’s licence or estate agent’s licence held by him shall be deemed to be revoked.”.

7 Section forty-two of the Principal Act is repealed and the following section substituted therefor:—

Fidelity
bonds.

“42—(1) No auctioneer’s licence or estate agent’s licence shall be granted or renewed on the application of any person unless there has been duly lodged a fidelity bond that complies with the requirements of this section.

“(2) Subject to this section, one and the same bond may comply with the requirements of this section in respect of two or more applications by the same person, whether those applications are for the grant or for the renewal of a licence and whether or not they are in respect of the same licence, and a bond shall be deemed to be duly lodged if it is lodged with the clerk to whom the application to which it relates has been made or if it has been lodged, on some previous occasion, with a clerk to whom some previous application to which it related has been made.

“(3) To comply with the requirements of this section in respect of an application for the grant or renewal of a licence a fidelity bond shall be a bond to the Minister in the prescribed form from an insurance company or banker, or from such other person as the Minister may approve, in the sum of ten thousand pounds, containing such conditions as may be prescribed with respect to acts, defaults, or omissions done or made, or any other matters arising in respect of any dealing or transaction completed or entered into or upon, or any money or property held, acquired, or received during the period of the bond, whether or not that act, default, or omission was done or made, or that matter arose before or after the expiration of that period, and the period of the bond shall be the period during which, if the application is granted, the licence may remain in force without renewal or further renewal (as the case may be) or any other longer period within which that period is contained.

“(4) Where, in respect of the same licensee a person, for the purposes of this section, enters, as obligor, into two or more fidelity bonds the periods of which succeed each other without interval the obligor shall not be liable under those bonds to pay any sums that in the aggregate exceed ten thousand pounds.”.

Trust
accounts.

8 Section forty-seven of the Principal Act is amended by adding at the end thereof the following subsections:—

“(7) A person shall keep accounts in such manner as may be prescribed of the moneys that he is required, by this section, to be caused to be paid into a trust account and of the moneys paid out of that account.

Penalty: One hundred pounds.

“(8) A person who on the thirtieth day of June in any year is a licensee shall, before the thirtieth day of September in that year, serve on the Council a certificate in the prescribed form from a person authorized to be appointed as the auditor of a company formed and registered under any Act relating to companies as to the result of an audit carried out by him on the accounts of the moneys that, during the twelve months ending on that thirtieth day of June, the licensee was required, by this section, to pay into a trust account and of the moneys that have, during that period, been paid out of that account.

Penalty: One hundred pounds.

“(9) Subsection (8) applies to a person who ceases to be a licensee as if—

- (a) the reference in that subsection to a person who is a licensee on the thirtieth day of June in any year were a reference to the person who ceases to be a licensee;
- (b) the reference in that subsection to the thirtieth day of September in that year were a reference to the expiration of a period of three months from the date on which he ceases to be a licensee; and
- (c) the reference in that subsection to the period of twelve months ending on that thirtieth day of June were a reference to the period commencing on the first day of July immediately preceding the date on which he ceased to become a licensee and ending on that date.”.

9 Section fifty-three of the Principal Act is amended by adding at the end thereof the following subsection:—

Inspection
of, and claims
under, fidelity
bonds.

“(7) Where in respect of the same licensee, a person, for the purposes of section forty-two, has entered, as obligor, into two or more fidelity bonds the periods of which succeed each other without interval the references in subsections (3), (4), (5), and (6) of this section to any one of those bonds shall be construed as references to all of those bonds.”.

10 Section fifty-seven of the Principal Act is amended by omitting from paragraph (b) the word “trustee” and substituting therefor the words “trustee of any trust arising under a will or intestacy”.

Exemptions.

11 The schedule to the Principal Act is amended—

Schedule.

- (a) by omitting from sub-rule (1) of rule 1 of Part I the words “a city or suburban” and substituting the words “an urban”;

(b) by omitting sub-rule (2) of that rule and substituting therefor the following rule:—

“(2) Where an estate agent, on behalf of a client, carries out, or secures the carrying out, of the work necessary to render a property available for sale in subdivided lots, and no remuneration is paid by the client in respect of the carrying out of that work, the maximum commission in respect of the negotiation by that estate agent of the sale of any of those lots shall be five per cent of the purchase price.”;

(c) by adding at the end of Part I the following rule:—

“ 8 In this schedule—

‘country property’ means a property that is not an urban property; and

‘urban property’ means a property that is situated wholly or partly within—

(a) the city of Hobart or the city of Launceston or the town of Burnie or the town of Devonport; or

(b) any town or other area that the Minister may, by order published in the *Gazette*, for the time being declare to be an urban area for the purposes of this Act.”;

and

(d) by omitting Part II and substituting therefor the Part contained in the schedule to this Act.

THE SCHEDULE.

(Section 11 (d).)

PART II—SALES.

(a) URBAN PROPERTIES.

Where the purchase price—

Does not exceed £500 4 per cent of the purchase price, or £10, whichever is the greater.

Exceeds £500, but does not exceed £1,000 £20, plus 3 per cent of the amount by which the purchase price exceeds £500.

Exceeds £1,000, but does not exceed £3,000 £35, plus 2½ per cent of the amount by which the purchase price exceeds £1,000.

Exceeds £3,000, but does not exceed £5,000 £85, plus 2 per cent of the amount by which the purchase price exceeds £3,000.

Exceeds £5,000, but does not exceed £10,000 £125, plus 1½ per cent of the amount by which the purchase price exceeds £5,000.

Exceeds £10,000, but does not exceed £50,000 £200, plus 1½ per cent of the amount by which the purchase price exceeds £10,000.

Exceeds £50,000 £700, plus 1 per cent of the amount by which the purchase price exceeds £50,000.

(b) COUNTRY PROPERTIES.

Where the purchase price—

Does not exceed £500 5 per cent of the purchase price.

Exceeds £500, but does not exceed £3,000 £25, plus 3 per cent of the amount by which the purchase price exceeds £500.

Exceeds £3,000, but does not exceed £5,000 £100, plus 2½ per cent of the amount by which the purchase price exceeds £3,000.

Exceeds £5,000, but does not exceed £10,000 £150, plus 2 per cent of the amount by which the purchase price exceeds £5,000.

Exceeds £10,000, but does not exceed £25,000 £250, plus 1½ per cent of the amount by which the purchase price exceeds £10,000.

Exceeds £25,000, but does not exceed £50,000 £475, plus 1¼ per cent of the amount by which the purchase price exceeds £25,000.

Exceeds £50,000 £787 10s., plus 1 per cent of the amount by which the purchase price exceeds £50,000.

STATE ADVANCES.

No. 13 of 1962.

AN ACT to amend the *State Advances Act 1935* and the *State Advances Act 1946*.

[10 May 1962.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *State Advances Act 1962*. Short title and citation.

(2) The *State Advances Act 1935*, as subsequently amended, is in this Act referred to as the Principal Act.

2 Section seven of the Principal Act is amended by omitting the words “(other than a member who, at the time of his appointment, was an officer of the Public Service)”. Dismissal of appointed members.

3 After section eleven of the Principal Act the following section is inserted in Part II:—

“12 Subject to this Act, the Treasurer may, on such terms and conditions as he thinks fit, make advances to the Board for the purposes of this Act out of moneys provided by Parliament for the purpose.” Advances to Board by Treasurer.