

## LAND AGENTS BILL

### EXPLANATORY NOTE

THIS Bill is a consolidation with amendments of the law relating to the licensing of land agents. The principal changes are referred to in this explanatory note.

#### *Licensing of Land Agents*

*Clause 3* requires every person who carries on business as a land agent to hold a land agent's licence. Where several persons carry on a land agency business in partnership it is sufficient for one of them to hold a licence. The existing provision provides that where a company carries on business as a land agent the licence may be held by some person appointed by the general manager or by a resolution of the directors, but under this Bill the company itself must hold the licence.

*Clauses 4 to 8* re-enact the existing provisions relating to the procedure in applications for licences and the giving of fidelity bonds by licensees, but increases the amount of the bond from £500 to £2,000.

Under *clause 9* the Magistrate hearing an application for a licence must require evidence as to the character and financial position of the applicant and of each partner of the applicant and also, in the case of a company unless he considers it unnecessary, of each director and the general manager of the company. *Subclause (1)* is a new provision, and provides that no licensee is to carry on business as a land agent under any name that is not his own name or the name of his partner, or in the case of a company the name of the company, unless the name has first been approved by a Magistrate.

*Clause 10* specifies the persons who are disqualified from obtaining a land agent's licence. The existing provision disqualifies undischarged bankrupts, but this clause extends the list of disqualified persons to persons under twenty-one years of age. *Subclause (2)* prohibits any person from becoming or acting as a director or the principal officer of any company holding a land agent's licence who, if he were a licensee, would be liable to have his licence cancelled under any of the grounds specified in *clause 24 (1)* of the Bill.

*Clause 11* re-enacts the existing provision that a land agent's licence authorizes the licensee to act as a land agent at any place in New Zealand, but must not carry on business at any place not specified in the licence unless he first notifies the Registrar of the Magistrate's Court.

*Clause 12* re-enacts the existing provision that licences are to be annual, and may be renewed from year to year.

*Clause 13* re-enacts the existing provision relating to the renewal of licences, but includes a new provision that where no objection to the renewal has been filed the renewal may be granted by the Registrar of the Magistrate's Court, and need not be dealt with by a Magistrate. *Subclause (8)* provides that licences held at the commencement of the Bill by a person on behalf of any company may be renewed in the name of the company.

*Clause 14* re-enacts the existing provision enabling the Magistrate to award costs where an objection to the granting or renewal of a licence is made.

*Clause 15* provides for the transfer of licences. It re-enacts the existing provisions in this respect, with the addition of provisions enabling a transfer to be made in the case of a licensee who becomes mentally defective, or in respect of whom a protection order is made under the Aged and Infirm Persons Protection Act 1912. The clause also enables a licence to be transferred where the licensee is a company and goes into liquidation.

*Clause 16* is a new provision, and enables temporary licences to be granted where a licensee becomes mentally defective or dies or where a manager of his estate is appointed under the Aged and Infirm Persons Protection Act 1912.

*Clause 17* is a new provision, and requires the licensee to obtain the consent of a Magistrate before entering into a partnership with any other person. The Magistrate must refuse his consent unless he is satisfied as to the character and financial position of the proposed partner.

#### *Duties of Land Agents*

*Clause 18* re-enacts the existing provision requiring a land agent to have a registered office. Under *clause 19* the land agent is required to exhibit in a prominent place on his registered office a notice of his name and of the fact that he is licensed as a land agent, together with the name or style under which he carries on business as a land agent if the business is not carried on in his own name. *Subclause (2)* is a new provision, and requires the same information to be shown in notices, advertisements, and other publications issued by the licensee and in all his letters, accounts, agreements, and other documents.

*Clause 20* sets out the duties of a land agent with respect to moneys received in the course of business. The clause specifies that all such moneys are to be held by him exclusively for the persons on whose behalf they are received and must be paid to that person or as he directs and until so paid are to be kept in a general trust account or separate trust account at a bank.

*Clause 21* re-enacts the existing requirement that the land agent must furnish an account to his principal of moneys received by the agent in respect of any transaction in his capacity as a land agent. *Subclause (3)* is a new provision, and requires land agents who are liable to pay any moneys received on behalf of any person to pay those moneys within ten days after demand

to that person or as that person directs. *Subclause (4)* is also a new provision, and requires a land agent who receives moneys under any transaction to retain them for a period of at least ten days unless any Court or all the parties to the transaction authorize payment of the moneys. If at any time while a land agent holds moneys on behalf of any party to a transaction he receives written notice of requisitions or objections in respect of the title to any land affected by the transaction, the land agent must retain those moneys unless payment out is authorized by any Court or by all the parties to the transaction.

*Clause 22* repeats the existing provisions relating to the fraudulent conversion to his own use of moneys received by a land agent or the rendering of false accounts.

*Clause 23* re-enacts the existing provision prohibiting a land agent from acting as a land broker in connection with the same transaction.

#### *Cancellation of Licences*

*Clause 24* prescribes the grounds upon which licences may be cancelled. Paragraphs (d) to (h) of *subclause (1)* are new provisions, and enable a licence to be cancelled if the licensee without the prior consent of a Magistrate enters into a partnership with any other person or knowingly employs in his business any person who has been convicted of any of the offences specified in the subclause, if the licensee is adjudged bankrupt or makes an assignment for the benefit of his creditors, if the licensee has failed to observe or comply with any requirement relating to his trust account or the auditing of his trust account, or, in the case of a licence issued to a company, if any director or the general manager is convicted of any offence referred to in the subclause or is adjudged bankrupt or makes an assignment or composition for the benefit of his creditors.

#### *Miscellaneous*

*Clause 25* re-enacts the existing provision that no person is entitled to recover commission in respect of work performed as a land agent unless he held a land agent's licence and his appointment was in writing.

*Clause 26* makes it an offence for any person who is not the holder of a land agent's licence to describe himself or hold himself out as a land agent or carry on the business of a land agent. The clause contains a new provision under which any person who is convicted of an offence under this clause shall forfeit to the Crown moneys received by him by way of remuneration for work performed by him as a land agent.

*Clause 27* makes it an offence for any person who is not a member of the Real Estate Institute of New Zealand Incorporated to hold himself out by the use of any title, initials, etc., as being a member of that Institute.

*Clause 28* prescribes a general penalty for offences, and specifies that, except where the Bill otherwise provides, all offences are to be dealt with summarily by a Magistrate.

*Clause 29* specifies that nothing in the Bill is to affect any civil remedy that any person may have against a land agent, *clause 30* provides for licence fees to be paid into the Consolidated Fund, *clause 31* prescribes the matters in respect of which regulations may be made, and *clause 32* provides for repeals and savings.

The Bill omits the existing provisions requiring a central Register of Land Agents to be kept and a list of registered land agents to be gazetted annually.

To enable a comparison to be made with the present legislation, references thereto are given in the margin, and a table is annexed which indicates where the present legislation appears (either in the same form or in a modified form) in the Bill, and which indicates what has been omitted.

**TABLE OF CORRESPONDING SECTIONS OF ENACTMENTS REPEALED**

**THE LAND AGENTS ACT 1921-22, No. 56 (REPRINT OF STATUTES, VOL. I, P. 22)**

Section of Act.	Clause of Bill.	Section of Act.	Clause of Bill.
1	Short Title.	19	15
2	2	20	18
3	3	21	19
4	..	22	11
5	12	23	20
6	4	24	21
7	5	25	22
8	6	26	23
9	7	27	24
10	8	28	..
11	9	29	..
12	13	30	25
13	14	31	26
14	10	32	28, 30
15	..	33	29
16	..	34	31
17	..	35	32
18	..	Schedule	Schedule.

**THE SUMMARY JURISDICTION ACT 1952, No. 41**

Schedule of Act.	Clause of Bill.
First Schedule	22



Hon. Mr Webb

## LAND AGENTS

Title.	ANALYSIS
1. Short Title and commencement.	19. Land agent to display notice on registered office.
2. Interpretation.	20. Duty of land agent with respect to moneys received in course of his business.
<i>Licensing of Land Agents</i>	
3. Land agents to be licensed.	21. Land agent to furnish account to principal.
4. Application for licence.	22. Indictable offences by land agents.
5. Applicants to give security by approved bond.	23. Land agent not to act as land broker in connection with same transaction.
6. Fidelity bond may enure so as to apply to renewals of licence.	
7. Notice of application for licence, and provisions as to objections.	<i>Cancellation of Licences</i>
8. Hearing of application.	24. Cancellation of licences.
9. Magistrate to require evidence as to character and financial position.	
10. Disqualification of applicants.	<i>Miscellaneous</i>
11. Effect of licence.	25. Evidence of contracts of agency.
12. Duration of licence.	26. Holding out as land agent without licence.
13. Renewal of licence.	27. Improper use of words, initials, etc., implying membership of Real Estate Institute of New Zealand Incorporated.
14. Magistrate may award costs.	28. General penalty for offences.
15. Transfer of licence.	29. Civil remedies not affected.
16. Temporary licences.	30. Licence fees to be paid into Consolidated Fund.
17. Licensee not to enter into partnership without Magistrate's consent.	31. Regulations.
<i>Duties of Land Agents</i>	
18. Land agent to have registered office.	32. Repeals and savings. Schedule.

## A BILL INTITULED

Title.	AN ACT to consolidate and amend the law relating to the licensing of land agents.	
	BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:	5
Short Title and commencement.	1. This Act may be cited as the Land Agents Act 1953, and shall come into force on the <i>first</i> day of <i>April</i> , nineteen hundred and fifty-four.	
Interpretation. <i>Cf.</i> 1921-22, No. 56, s. 2	2. (1) For the purposes of this Act every person shall be deemed to be a land agent who acts, or holds himself out to the public as ready to act, for reward as an agent in respect of the sale or other disposal of land or businesses (either with or without any interest in land) or the purchase or other acquisition of land or businesses (either with or without any interest in land) or in respect of the leasing or letting of land, notwithstanding that he may carry on any other business either in conjunction with the business of a land agent or separately therefrom:	10 15 20
	Provided that a solicitor shall not be deemed to be a land agent for the purposes of this Act by reason merely of the fact that he may, in connection with his business as a solicitor, act as agent in respect of the sale or purchase or other disposal or acquisition of land or businesses unless he is remunerated for so acting by a commission in addition to, or instead of, his professional charges.	25
	(2) Where two or more persons carry on business jointly as land agents, each of those persons shall be deemed to be a land agent.	30
	(3) Notwithstanding the foregoing provisions of this section, a person who sells or offers to sell any land or business by auction shall not, by reason of that fact, be deemed to be a land agent within the meaning of this Act.	35

*Licensing of Land Agents*

Land agents to be licensed. <i>Cf.</i> 1921-22, No. 56, s. 3	3. (1) No person shall carry on business as a land agent unless he is the holder of a licence under this Act:	
	Provided that where two or more persons carry on business in partnership as land agents it shall be sufficient compliance with this subsection if one of those persons is the holder of a licence under this Act.	40

(2) A barrister or solicitor while in practice as a barrister or solicitor shall not be the holder of a licence under this Act.

4. (1) Every person, not being the holder of a licence as a land agent at the commencement of this Act, who desires to obtain a licence under this Act shall make application for the licence in the form prescribed by regulations under this Act.

Application for licence.  
*Cf. ibid., s. 6*

(2) An application under this section shall be filed in the Magistrate's Court nearest by the most convenient route to the place named in the application as the place of business or principal place of business of the applicant.

(3) Every such application shall state the place or places of business of the applicant. Where the applicant has or proposes to have two or more places of business he shall specify in his application which of those places of business is his principal place of business. The application shall also contain such other particulars as may be prescribed.

5. (1) With every application for the grant of a licence under this Act there shall be filed in the Magistrate's Court an approved fidelity bond to Her Majesty the Queen in the sum of two thousand pounds conditioned to secure the fidelity of the applicant:

Applicants to give security by approved bond.  
*Cf. ibid., s. 7*

Provided that in the case of an application by persons carrying on business as land agents in partnership it shall be sufficient if one bond is filed conditioned to secure the fidelity of each of the partners in the firm.

(2) Every such bond shall be in the form in the Schedule to this Act or to the like effect.

(3) The sum of two thousand pounds named in a fidelity bond under this section shall not be deemed to be a penalty, but shall be liquidated damages, and shall accordingly be recoverable in full as a debt due by the surety or sureties to Her Majesty the Queen unless the surety or sureties prove performance of every condition upon which the bond is defeasible.

(4) Every sum so recovered shall be paid into the Public Account to the credit of the Consolidated Fund, and the residue, after the deduction of costs, and other expenses, may, with the approval of the Minister of Finance, and without further appropriation than this Act, be applied— 5

(a) In compensating any client or customer of the land agent or other person for any loss sustained by reason of the defaults or omissions of the land agent, his servant, or agent, and any person with whom he is carrying on in partnership the business of a land agent; and 10

(b) In refunding to the surety or sureties any balance left after payment of that compensation. 15

Fidelity bond may enure so as to apply to renewals of licence.

*Cf.* 1921-22, No. 56, s. 8

6. (1) A fidelity bond given under this Act may, if so provided therein, enure not only during the term of the licence in respect of which it is originally given, but during the term of any licence to the same person issued in renewal of a licence under this Act. 20

(2) If a fidelity bond is so given as to enure in respect of the renewal or further renewal of a licence, it shall be lawful for the surety or sureties, by notice in writing addressed to the Registrar of the Magistrate's Court, at any time before the issue of a licence in renewal, to determine his or their liability under the bond in respect of any act or default that may be done or made after the thirty-first day of March next following the date of the notice, and in any such case the Magistrate shall not issue a licence in renewal until another approved bond has been lodged by the applicant. 25 30

Notice of application for licence, and provisions as to objections.

*Cf.* 1921-22, No. 56, s. 9

7. (1) Notice in the prescribed form of every application for a licence under this Act shall be published by the applicant twice at least at intervals of not more than fourteen days in some newspaper to be approved for the purpose by the Registrar of the Magistrate's Court in which the application is filed, and the application for the licence shall not be heard before the expiry of one month after the first publication of that notice. 35 40



(2) Any person who objects to the issue of a licence under this Act may, within one month after the first publication of the notice of application pursuant to subsection *one* of this section, file in the Magistrate's Court in which the application for a licence is filed a notice in the prescribed form of his objection to the application and of the grounds thereof.

(3) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant, or, in the case of an application by or on behalf of a firm, the character or financial position of the partners, or, in the case of an application by a company, the financial position of the company or the character of the directors or of the general manager or any other responsible officer of the company.

8. Every application for a licence under this Act and the objections thereto (if any) shall be heard by a Magistrate exercising jurisdiction in the Court in which the application is filed; and the Magistrate, if satisfied that the provisions of this Act have been complied with, and that the applicant is a fit person to be the holder of a licence to carry on business as a land agent, shall, on payment of the prescribed fee, grant to the applicant a licence in the prescribed form.

Hearing of application.  
*Cf. ibid., s. 10*

9. (1) Before granting an application for a licence to carry on business as a land agent, the Magistrate shall require the production of sufficient evidence to satisfy him that the character, fitness, and financial position of the applicant are such that he is, in the opinion of the Magistrate, having regard to the interests of the public, a fit and proper person to carry on business as a land agent.

Magistrate to require evidence as to character and financial position.  
*Cf. ibid., s. 11*

(2) Where application for a licence is made by a person carrying on or proposing to carry on business as a land agent in partnership with any other person, the Magistrate shall require the production of evidence as to the character, fitness, and financial position of each of the partners.

(3) Where application for a licence is made by a company, the Magistrate shall, unless in the circumstances he otherwise decides, require the production of evidence as to the financial position of the company, and as to the character and fitness of the directors and general manager, and of such other responsible officers of the company as the Magistrate thinks fit. 5

(4) No licensee shall carry on business as a land agent under any name that is not his own name or the name of his partner in the business or, in the case of a company, the name of the company, unless that name has first been approved by a Magistrate; and the Magistrate shall refuse to approve any name if he considers that the proposed name is that of a person whose licence has been cancelled under section *twenty-four* of this Act or whose application for a licence has been refused or who is disqualified from holding a licence under this Act. 10 15

(5) Every person who commits a breach of subsection *four* of this section commits an offence against this Act. 20

Disqualification  
of applicants.  
*Cf.* 1921-22,  
No. 56, s. 14

**10.** (1) No licence under this Act shall be issued to any person, not being a company, who—

- (a) Is under the age of twenty-one years; or
- (b) Is a bankrupt who has not obtained his order of discharge, or whose order of discharge is suspended for a term not yet expired or is subject to conditions not yet fulfilled. 25

(2) No person shall become or act as a director or the principal officer of any company holding a land agent's licence who is disqualified from obtaining a licence under paragraph (a) or paragraph (b) of subsection *one* of this section, or who, if he held a land agent's licence, would be liable to have his licence cancelled on any of the grounds specified in subsection *one* of section *twenty-four* of this Act. 30 35

(3) Every person who commits a breach of subsection *two* of this section commits an offence against this Act.

Effect of  
licence.  
*Cf.* 1921-22,  
No. 56, s. 22

**11.** (1) A licence under this Act shall authorize the licensee to act as a land agent in any part of New Zealand during the currency of the licence: 40

Provided that it shall not be lawful for a land agent to carry on business as such at any place of business not specified in his licence, unless he has first given to the Registrar of the Magistrate's Court in which the  
 5 licence was granted notice of his intention to carry on business at that place, and has paid such additional fee (if any) in respect of that place of business as may be prescribed.

(2) Every person who commits a breach of sub-  
 10 section *one* of this section commits an offence against this Act.

12. Every licence shall, unless sooner terminated in accordance with this Act, continue in force until the thirty-first day of March then next following, and may  
 15 from time to time be renewed for the period ending on the thirty-first day of March next after the commencement of an order for renewal.

Duration of  
 licence.  
*Cf. ibid., s. 5*

13. (1) Application for the renewal of a licence may be made not earlier than the first day of January  
 20 and not later than the last day of February preceding the date of the expiry of the licence, and shall be filed by the applicant in the same manner as if it were an application for the grant of a licence.

Renewal  
 of licence.  
*Cf. 1921-22,  
 No. 56. s. 12*

(2) Every person who objects to the renewal of  
 25 a licence under this Act may, at any time before the seventh day of March in any year, file in the Magistrate's Court in which application for the renewal of the licence has been filed a notice in the prescribed form of his objection to the application and of the  
 30 grounds thereof.

(3) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant, or, in the case of an application by a person carrying on business  
 35 as a land agent in partnership with any other person, the character or financial position of any of the partners, or, in the case of an application by a company, the financial position of the company or the character of the directors or of the general manager or any other  
 40 responsible officer of the company.

(4) Where any objection is lodged to the renewal of a licence, the Magistrate shall hear and determine the application for renewal in the same manner as if it were an application for the issue of a licence.

(5) In the absence of any objection to an application for the renewal of a licence the Registrar of the Court may, on payment of the prescribed fee, grant a renewal without further inquiry as to the fitness of the applicant to carry on the business of a land agent. 5

(6) The Magistrate may, in his discretion, hear and determine any application for the renewal of a licence, or any objection to any such renewal, notwithstanding that the application or objection may not have been filed within the times limited by this section in that behalf, provided the application was filed not later than the thirty-first day of March. 10

(7) If application for the renewal of a licence has been filed, but is not determined on or before the thirty-first day of March in any year, the licence shall, notwithstanding anything to the contrary in this Act, but provided an approved fidelity bond is for the time being in force, be deemed to be extended until the application is disposed of by a Magistrate in accordance with this Act. 15 20

(8) Where at the commencement of this Act any person holds a licence as a land agent on behalf of a company carrying on business as a land agent, that licence may be renewed under this Act in the name of the company. 25

Magistrate may award costs.  
Cf. 1921-22, No. 56, s. 13

14. On the hearing of any application for a licence or for the renewal of a licence under this Act, the Magistrate shall, if any objection to the application has been filed, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant respectively, and to adjudge that those costs be paid, and those costs shall be recoverable accordingly as a final judgment of the Magistrate's Court. 30

Transfer of licence.  
Cf. 1921-22, No. 56, s. 19

15. (1) Any person, being— 35

(a) The licensee; or

(b) In the case of a licensee whose estate the Public Trustee is authorized to administer under the Mental Defectives Act 1911, or of whose estate the Public Trustee or any other person has been appointed the committee under that Act, the Public Trustee or, as the case may be, the committee of the estate of the licensee; or 40

See Reprint of Statutes, Vol. V, p. 743

- (c) In the case of a licensee in respect of whom a protection order is in force under the Aged and Infirm Persons Protection Act 1912, the manager of his estate; or
- 5 (d) The personal representative of a deceased licensee; or
- (e) The assignee in bankruptcy of a licensee who has been adjudged a bankrupt; or
- (f) The liquidator of a company which is a licensee,—
- 10 may, on payment of the prescribed fee, transfer the licence under this Act to any person approved by a Magistrate in that behalf.
- (2) Every application for a transfer under this section shall be filed and advertised, and objections may
- 15 be received, and the application and objections (if any) shall be heard and determined in all respects as if the application were an application for the grant of a licence under this Act.
16. (1) Any person, being—
- 20 (a) In the case of a licensee whose estate the Public Trustee is authorized to administer under the Mental Defectives Act 1911, or of whose estate the Public Trustee or any other person has been appointed the committee under that Act, the Public Trustee, or, as the case may be,
- 25 the committee of the estate of the licensee; or
- (b) In the case of a licensee in respect of whom a protection order is in force under the Aged and Infirm Persons Protection Act 1912, the
- 30 manager of his estate; or
- (c) The personal representative of a deceased licensee,—
- may, with the consent of a Magistrate, carry on or appoint some other person to carry on the business
- 35 as a land agent of the licensee for such period as the Magistrate determines, subject to the person carrying on the business (not being the Public Trustee or the holder of a licence under this Act) filing an approved fidelity bond under section *five* of this Act as if he
- 40 were an applicant for a licence under this Act.

Ibid., Vol. II,  
p. 887

Temporary  
licences.

(2) While any person carries on any business pursuant to subsection *one* of this section he shall, for the purposes of this Act, be deemed to be the holder of the licence.

Licensee not to enter into partnership without Magistrate's consent.

17. (1) No licensee shall, after the issue of his licence, enter into any partnership with any person in respect of his business as a land agent without the prior consent of a Magistrate; and the Magistrate shall refuse to grant that consent unless he is satisfied as to the character and financial position of the proposed partner. 5 10

(2) Every person who commits a breach of this section commits an offence against this Act, and, in addition to any penalty to which he may be liable in respect of the offence, his licence shall be liable to cancellation under section *twenty-four* of this Act. 15

#### *Duties of Land Agents*

Land agent to have registered office.  
Cf. *ibid.*, s. 20

18. (1) Subject to the provisions of this section as to changing the registered office of a land agent, the place of business of a land agent mentioned in his application for a licence, or, where a land agent has two or more places of business, his principal place of business, shall be deemed to be the registered office of the land agent. 20

(2) Any summons, notice, order, or other document required to be served upon a land agent may be served by leaving the same at his registered office or by sending it through the post in a prepaid and registered letter addressed to the land agent at that office. 25

(3) A land agent may by notice in writing, filed in the Magistrate's Court in which his licence was granted, change his registered office to any other place of business in which he is licensed to carry on business as a land agent. 30

Land agent to display notice on registered office.  
Cf. 1921-22, No. 56, s. 21

19. (1) Every person to whom a licence as a land agent is issued under this Act shall exhibit and keep exhibited in a prominent place on his registered office, and on every branch office in which the business of a land agent is conducted, so as to be easily read from 35

outside that office, a notice of his name and of the fact that he is licensed as a land agent, together with the name or style under which he carries on business as a land agent, if the business is not carried on in his own name.

5 (2) The information required by subsection *one* of this section to be specified in the notice referred to in that subsection shall also be clearly shown on all notices, advertisements, and other publications issued by the  
10 licensee and in all letters, accounts, agreements, and other documents set out, entered into, or published by or on behalf of the licensee in or in the course of or in connection with his business as a land agent.

15 (3) Every person who commits a breach of this section commits an offence against this Act.

20 **20.** (1) All moneys received for or on behalf of any person by any land agent in respect of his business as a land agent shall be held by him exclusively for that person and shall be paid to that person or as he directs; and until so paid those moneys shall be paid into a general trust account or separate trust account at any bank carrying on business in New Zealand under the authority of any Act of the General Assembly.

Duty of land agent with respect to moneys received in course of his business.

*Cf. ibid., s. 23*

25 (2) No such moneys shall be available for payment of the debts of the land agent to any other creditor of the land agent, nor shall they be liable to be attached or taken in execution under the order or process of any Court at the instance of any such creditor.

30 (3) Nothing in this section shall be construed as to take away or affect any just lien or claim which the land agent may have on or in respect of any moneys so received by him.

(4) Every person who commits a breach of this section commits an offence against this Act.

35 **21.** (1) Forthwith on the demand of the person for whom he has acted as agent, or if no such demand is made, then within twenty-eight days after the receipt by him of any moneys in respect of the sale, lease, or other disposal of land, or in respect of any other transaction  
40 in his capacity as a land agent, every land agent shall render to the person on whose behalf he has acted as agent an account in writing, setting forth particulars of all such moneys, and as to the application thereof.

Land agent to furnish account to principal.

*Cf. 1921-22, No. 56, s. 24*

(2) If any land agent refuses or for a period of seven days after demand neglects or fails to render an account as aforesaid, or, in the absence of a demand, neglects or fails to render an account within the period of twenty-eight days aforesaid, he commits an offence against this Act. 5

(3) Subject to the provisions of subsection *four* of this section, where any land agent who is liable to pay any moneys received by him on behalf of any person refuses or for a period of ten days after demand fails to pay those moneys to that person or as that person directs, he commits an offence against this Act. 10

(4) Except in pursuance of an order of a Court of competent jurisdiction or an authority signed by all the parties to the transaction, where a land agent receives any moneys on behalf of any person in respect of any transaction, he shall not pay those moneys to any person for a period of ten days after the date on which he received them; and, if at any time while he holds any moneys on behalf of any party to the transaction he receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, he shall not at any time pay those moneys to any person except in pursuance of such an order or authority as aforesaid. 20 25

(5) Every person who commits a breach of subsection *four* of this section commits an offence against this Act.

Indictable offences by land agents. Cf. 1921-22, No. 56, s. 25

**22.** (1) Every person is liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred pounds who-- 30

- (a) Fraudulently converts to his own use any moneys received by him in his capacity as a land agent; or 35
- (b) Renders an account purporting to be an account of any moneys received by him as aforesaid, knowing the same to be false in any material particular.

(2) Every offence under this section is hereby declared to be an offence that may be dealt with by a Magistrate under and subject to the provisions of the Summary Jurisdiction Act 1952, and the provisions of that Act shall apply accordingly. 40



23. (1) A land agent who is also a licensed land broker under the Land Transfer Act 1952 shall not act as a land broker for the purchaser in connection with or in the completion of any transaction in which he is employed as a land agent, without the request in writing of the purchaser.
- (2) A land agent who acts in contravention of this section commits an offence against this Act.

Land agent not to act as land broker in connection with same transaction.  
Cf. 1921-22, No. 56, s. 26  
1952, No. 52

#### *Cancellation of Licences*

24. (1) A licence under this Act may be cancelled on any of the grounds following, namely:
- (a) If the licensee or any partner of the licensee is convicted of an offence against section *twenty*, or section *twenty-one*, or section *twenty-two* of this Act; or
- (b) If the licensee or any partner of the licensee, having been convicted of an offence against this Act, is within twelve months after that conviction again convicted of an offence against this Act; or
- (c) If the licensee or any partner of the licensee is convicted, whether summarily or on indictment, of any offence involving moral turpitude, or dishonouring him in the public estimation; or
- (d) If the licensee, without the prior consent of a Magistrate, knowingly employs in or about his business of a land agent any person as a salesman, clerk, or otherwise who has been convicted of any offence mentioned in the foregoing provisions of this subsection, or knowingly permits any such person to act as a salesman, clerk, or otherwise in or about the licensee's business of a land agent; or
- (e) If after the issue of the licence the licensee, without the prior consent of a Magistrate, enters into any partnership with any other person in respect of his business as a land agent; or
- (f) If the licensee or any partner of the licensee is adjudged bankrupt or makes any assignment for the benefit of his creditors or makes any composition with his creditors; or

Cancellation of licences.  
Cf. 1921-22, No. 56, s. 27

- (g) If the licensee or any partner of the licensee has failed to observe or comply with any lawful requirement relating to his general trust account or any separate trust account or the auditing of any such account; or 5
- (h) In the case of a licence issued to a company, if any director or the general manager or other principal officer of the company is convicted of any offence referred to in paragraph (c) of this subsection or is adjudged bankrupt or makes any assignment for the benefit of his creditors or makes any composition with his creditors. 10
- (2) The Court before which any person is convicted of any offence may of its own motion cancel his licence in any case where the conviction is a ground for the cancellation of the licence. 15
- (3) Application for the cancellation of a licence on any of the grounds aforesaid may be made by any person, and shall be made by filing the application in the Magistrate's Court nearest by the most convenient route to the place of business or the principal place of business of the licensee, and thereupon any Magistrate exercising jurisdiction in that Court shall have power to hear the application and to cancel the licence. 20 25

*Miscellaneous*

Evidence of contracts of agency. Cf. 1921-22, No. 56, s. 30

25. No person shall be entitled to sue for or recover any commission, reward, or other valuable consideration in respect of any service or work performed by him as a land agent, unless— 30
- (a) He was the holder of a licence as a land agent at the time of the performing of the service or work; and
- (b) His appointment to act as agent or perform that service or work is in writing signed either before or after the performance of that service or work by the person to be charged with the commission, reward, or consideration or by some person on his behalf lawfully authorized to sign the appointment. 35 40

- 26.** (1) Every person, not being the holder of a licence under this Act, commits an offence and is liable to a fine not exceeding two hundred pounds who describes himself in writing or holds himself out as a land agent, or carries on business as a land agent, and shall be liable to forfeit to Her Majesty the Queen all moneys received by him by way of remuneration for any services or work performed by him as a land agent.
- (2) All moneys forfeited to Her Majesty under subsection *one* of this section shall be recoverable at the suit of Her Majesty in any Court of competent jurisdiction, or may be assessed by the Court by which the defendant is convicted and be recoverable in like manner as a fine.
- 27.** Every person commits an offence against this Act who, not being a member of the Real Estate Institute of New Zealand Incorporated, uses or causes or permits to be used any written words, titles, or initials, or any abbreviation of any words, titles, or initials, which are intended to cause or may reasonably cause any person to believe that he is a member of that Institute.
- 28.** (1) Except where this Act otherwise provides, every person who commits an offence against this Act or against any regulations under this Act is liable to a fine not exceeding fifty pounds.
- (2) Except where this Act otherwise provides, every offence against this Act or against any regulations under this Act shall be punishable on summary conviction before a Magistrate.
- 29.** Nothing in this Act shall affect any civil remedy that any person may have against a land agent in respect of any matter.
- 30.** All licence fees received under this Act shall be paid into the Public Account to the credit of the Consolidated Fund.
- 31.** (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

Holding out as land agent without licence.  
*Cf. ibid.*, s. 31

Improper use of words, initials, etc., implying membership of Real Estate Institute of New Zealand Incorporated.

General penalty for offences.  
*Cf. 1921-22*, No. 56, s. 32

Civil remedies not affected.  
*Cf. ibid.*, s. 33

Licence fees to be paid into Consolidated Fund.  
*Cf. ibid.*, s. 32 (2)

Regulations.  
*Cf. ibid.*, s. 34

(2) Without limiting the general power to make regulations conferred by subsection *one* of this section, regulations may be made under this section for any of the following purposes:

- (a) Prescribing forms of applications for licences and renewals of licences and forms of licences and of objections to the granting or renewal of licences under this Act: 5
  - (b) Prescribing forms of advertisements and other notices under this Act: 10
  - (c) Prescribing the fees payable on the issue or renewal or transfer of licences under this Act:
  - (d) Providing for an annual audit of the trust accounts of every land agent, and the manner in which, and the persons or class of persons by whom, that audit shall be conducted, and for a report of the result of the audit: 15
  - (e) Requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed: 20
  - (f) Prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record:
  - (g) Prescribing a scale of fees to be paid to the auditor: 25
  - (h) Prescribing that, in the absence of any agreement in writing to the contrary, the auditor's fees shall be paid by the land agent:
  - (i) Generally to ensure that all such trust accounts shall be duly kept and audited: 30
  - (j) Prescribing various maximum rates of commission that may be charged by land agents for their services in transactions of various natures defined in the regulations.
- (2) All information obtained by an auditor in the course of the audit of any trust account under this Act shall be treated as confidential, subject only to such rights of publication as may be prescribed in furtherance of the proper purposes of the audit. 35

(3) The fees payable in respect of the issue or renewal of licences shall be uniform, save that additional rates may be prescribed for every place of business in addition to the registered office in which the applicant  
 5 for a licence carries on or proposes to carry on business, and save also that reduced fees may be prescribed in respect of licences issued after the first day of April in any year.

(4) All regulations made under this section shall  
 10 be laid before Parliament within twenty-eight days after the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session.

15 **32.** (1) The following enactments are hereby repealed, namely:

(a) The Land Agents Act 1921-22:

(b) So much of the First Schedule to the Summary  
 20 Jurisdiction Act 1952 as relates to the Land Agents Act 1921-22.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the  
 25 repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been  
 30 made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

Repeals and savings.

See Reprint of Statutes, Vol. V, p. 22  
 1952, No. 41

See Reprint of Statutes, Vol. VIII, p. 568

Schedule.

Section 5 (2)

## SCHEDULE

## FIDELITY BOND

KNOW all men by these presents that \_\_\_\_\_, of \_\_\_\_\_, is [are] held and firmly bound unto Her Majesty the Queen in the sum of two thousand pounds (£2,000), for the payment of which sum to Her Majesty the said \_\_\_\_\_ doth [do jointly and severally] bind itself and its successors [ourselves, our executors, and administrators] firmly by these presents.

Whereas \_\_\_\_\_, of \_\_\_\_\_ (hereinafter referred to as the licensee), has made application for the issue to him of a licence under the Land Agents Act 1953:

Now, the condition of the above-written bond is such that if the licence is granted to the licensee, and if the licensee during the currency of the term of the licence (and during the currency of the term of every licence granted to the licensee in renewal of the licence)—

(a) Always duly applies all moneys received by the licensee in the manner required by the said Act:

(b) Always duly renders accounts in writing of all moneys received by the licensee within the times and to the persons required by the said Act,—

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

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Signed by the above-named \_\_\_\_\_  
 in the presence of [Or, as the  
 case may require, in the case of  
 a company]: