



ANNO DECIMO SEXTO

GEORGI V REGIS.

A.D. 1925.

No. 1723.

An Act to make Provision with respect to the Licensing of Land Agents, and for other purposes.

[Assented to, January 6th, 1926.]

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 as the "Land Agents Act, 1925," and shall, except section 35 hereof, come into force on a day to be fixed by proclamation.

Short title and commencement.

(2) The said section 35 shall come into force on the date of the passing of this Act.

2. (1) For the purposes of this Act every person shall be deemed to be a land agent whose business is to act as agent in respect of the sale or other disposal of land or of interests in land, or the purchase or other acquisition of land or of interests in land.

"Land Agent" defined.

(2) A person who carries on any such business as aforesaid shall be deemed to be a land agent within the meaning of this Act, notwithstanding that he may carry on any other business either in conjunction with such first-mentioned business or separately therefrom:

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 of interests in land.

(3) Where

Land Agents Act.—1925.

(3) Where two or more persons carry on business jointly as land agents each of those persons shall be deemed to be a land agent.

(4) Notwithstanding the foregoing provisions of this section, a person who sells or offers to sell any land or interest in land by auction shall not, by reason of that fact, be deemed to be a land agent within the meaning of this Act.

Land agents to be licensed.

3. (1) After the expiration of three months after the commencement of this Act, no person shall carry on business as a land agent unless he is the holder of a licence under this Act.

(2) Where two or more persons carry on business in partnership as land agents, it shall be sufficient compliance with this section if one of those persons is the holder of a licence under this Act.

(3) Where a company carries on business as a land agent it shall be sufficient compliance with this section if some person appointed in writing by the general manager or pursuant to a resolution of the directors is the holder of a licence under this Act.

Duration of licences.

4. 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 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.

Application for licence.

5. (1) Every person who desires to obtain a licence under this Act shall make application for such licence in the form prescribed by regulations.

(2) An application under this section shall be filed in the Local Court of Full Jurisdiction 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.

Applicants to give security by approved bond.

6. (1) With every application for the grant of a licence under this Act there shall be filed in the Local Court an approved fidelity bond to His Majesty in the sum of Five Hundred Pounds.

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

(3) The sum of Five Hundred 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 His Majesty unless the surety or sureties prove performance of every condition upon which the bond is defeasible.

(4) Every

Land Agents Act.—1925.

(4) Every sum so recovered shall be paid into the General Revenue, and the residue, after the deduction of costs and other expenses, may, with the approval of the Governor, and without further appropriation than this Act, be applied—

- (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; and
- (b) in refunding to the surety or sureties any balance left after payment of such compensation.

7. (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.

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

(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 Clerk of the Local 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 such notice, and in any such case the Court shall not issue a licence in renewal until another approved bond has been lodged by the applicant.

8. If the person who makes an application pursuant to this Act for the issue or renewal of a licence is a licensed land broker under the Real Property Act, 1886, he shall not be required to pay the licence fee payable pursuant to this Act.

Exemption of licensed land brokers.

9. (1) Notice in the prescribed form of every application for a licence under this Act shall be published by the applicant twice at least in some newspaper to be approved for the purpose by the Clerk of the Local 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 such notice.

Notice of application for licence.

(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 the last preceding subsection, file in the Local 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 application by or on behalf of a company, the financial position of the company or the character of the directors or of the general manager.

10. Every

Land Agents Act.—1925.

Hearing of
application.

10. Every application for a licence under this Act and the objections thereto (if any) shall be heard by a Special Magistrate exercising jurisdiction in the Local Court in which the application is filed, and the Special 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, issue to the applicant a licence in the prescribed form.

Court to require
evidence as to
character and
financial position.

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

(2) Where application for a licence is made by two or more persons in partnership, the Court may, in the exercise of its powers under this section, require the production of evidence as to the character and financial position of each of the partners.

(3) Where application for a licence is made by a company, the Court may, in the exercise of its powers under this section, require the production of evidence as to the financial position of the company, and as to the character of the directors and general manager, and of any other person in respect of whom application to hold the licence on behalf of the company has been made.

Renewal of licences.

12. (1) Application for the renewal of a licence may 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 filed by the applicant in the same manner as if it were an application for the grant of a licence.

(2) Every person who objects to the renewal of a licence under this Act may, at any time before the seventh day of March in any year, file in the Local 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 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 the dishonest or fraudulent conduct of any person in the employ 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 the dishonest or fraudulent conduct of any person in the employ of the firm, or, in the case of an application by or on behalf of a company, the financial position of the company or the character of the directors, or of the general manager or the dishonest or fraudulent conduct of any person in the employ of the company.

(4) Where any objection is lodged to the renewal of a licence, the Court 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

Land Agents Act.—1925.

(5) In the absence of any objection to an application for the renewal of a licence 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.

(6) The Court may, in its discretion, hear and determine any application for the renewal of a licence, or any objection to such renewal, notwithstanding that the application or objection may not have been filed within the times limited by this section in that behalf.

(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, be deemed to be extended until the application is disposed of by a Court in accordance with this Act.

13. On the hearing of any application for a licence or for the renewal of a licence under this Act the Court 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 such costs be paid.

Court may award costs.

14. No licence under this Act shall be issued to an insolvent who has not obtained his certificate of discharge or whose certificate of discharge is suspended for a term not yet expired, or is subject to conditions not yet fulfilled.

Disqualification of applicants.

15. Within ten days after the issue of a licence under this Act, or the renewal of any such licence, the Clerk of the Local Court shall, in the prescribed form, notify the Minister of the fact of such issue or renewal and of such other matters in relation thereto as may be prescribed.

Notice of issue or renewal of licences to be given.

16. The Minister shall cause to be kept a Register of Land Agents, in which shall be recorded—

Register of licences.

- (a) the name and description of every person to whom a licence is issued under this Act:
- (b) the amount of the fees paid or payable in respect thereof;
- (c) the date of the issue of the licence:
- (d) in the case of a licence issued to a person as representative of a firm or company, the name of that firm or company and also the name and description of the partners of such firm:
- (e) particulars as to the place or places of business of the licensee, and in cases where a licensee has two or more places of business, his principal place of business:
- (f) such other particulars as may be prescribed.

17. The Register shall, on payment of the prescribed fee, be open to inspection within ordinary business hours by any person desirous of inspecting the same.

Inspection of Register.

18. (1) A

Land Agents Act.—1925.

Publication of list
of land agents.

18. (1) A list (herein referred to as the main list) of the names and descriptions of all persons licensed to carry on business as land agents, as on a date to be therein specified, together with such of the relevant particulars appearing in the Register as the Minister thinks fit, shall be published in the *Gazette* during the month of May of each year. Supplementary lists may be published in like manner as the Minister may from time to time direct.

(2) The production of copies of the *Gazette* containing the main list and all supplementary lists for any year shall, until the contrary is proved, be sufficient evidence in all judicial proceedings of the contents of the Register, and the absence of the name of any person from the main list and the supplementary lists shall, until the contrary is proved, be sufficient evidence that such person is not registered as a land agent.

(3) A certificate under the hand of the Minister that any person is or is not registered as a land agent on the date of that certificate, or as to any other matter concerning the contents of the Register, shall, in all judicial proceedings, be sufficient evidence of the fact or facts therein certified to, and judicial notice shall in all Courts be taken of the signature of the Minister.

Transfer of licences.

19. (1) A licensee, or the personal representative of a deceased licensee, or the assignee in insolvency of a licensee who has been adjudged insolvent, or the liquidator of a company, being a licensee, may, on payment of the prescribed fee, transfer a licence under this Act to any person approved by a Special Magistrate in that behalf.

(2) Every application for a transfer under this section shall be filed and advertised, and objections may be received, and the application and objections (if any) shall be heard and determined in all respects as if the application for a transfer were an application for the grant of a licence under this Act.

Land agent to have
registered office.

20. (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.

(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.

(3) A land agent may by notice in writing, filed in the Local Court, change his registered office to any other place of business.

(4) Notice of the change of the registered office of a land agent shall be forthwith given by the Clerk of the Local Court to the Minister, who shall cause a memorandum of such change to be entered in the Register of Land Agents.

21. Every

Land Agents Act.—1925.

21. 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, so as to be easily read from 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 such business is not carried on in his own name.

Land agent to display notice on registered office.

22. A licence under this Act shall authorise the holder thereof to act as a land agent in any part of South Australia during the currency of the licence :

Effect of licence

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 Minister notice of his intention to carry on business at such place, and has paid such additional fee (if any) in respect of such place of business as may be prescribed.

23. (1) All moneys received by a land agent in respect of the sale, lease, or other disposal of land or of any interest in land, or in respect of any other transaction in his capacity as a land agent, shall be applied as follows:—

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

- i. In payment of the expenses, commission, and other charges of or incidental to such sale, lease, or other disposal or transaction as aforesaid:
- ii. In payment of the balance (if any) to the person or persons lawfully entitled thereto.

(2) Pending the payment of any balance as aforesaid, it shall be paid by the land agent into a general or separate trust account, and shall not be withdrawn therefrom save for the purpose of paying the same to the person or persons entitled thereto, as hereinbefore provided.

(3) Every person who commits a breach of this section shall be liable to a penalty not exceeding Fifty Pounds.

(4) Save as herein provided, moneys paid into a trust account pursuant to this section shall not be available for payment of the debts of the land agent, or be liable to be attached or taken in execution under the order or process of any Court.

24. (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 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.

(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

Land Agents Act.—1925.

the absence of a demand, neglects or fails to render on account within the period of twenty-eight days aforesaid, he shall be liable to a fine not exceeding Ten Pounds.

Indictable offence
by land agents.

25. Every person is liable on indictment to imprisonment for five years or to a fine of Two Hundred Pounds who —

- (a) fraudulently converts to his own use any moneys received by him in his capacity as a land agent; or
- (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.

Land agent not to
act as land broker
in connection with
same transaction.

26. (1) A land agent who is also a licensed land broker under the Real Property Act, 1886, shall not act as a land broker for either party in connection with or in the completion of any transaction in which he is employed as a land agent, without the consent in writing of the purchaser.

(2) A land agent who acts in contravention of this section shall be liable to a penalty not exceeding Fifty Pounds.

Cancellation of
licences.

27. (1) A licence under this Act may be cancelled on any of the grounds following, namely:—

- I. If the licensee is convicted of an offence against section 23, or section 24, or section 25, or section 26 of this Act; or
- II. If the licensee, having been convicted of an offence against this Act (not being an offence referred to in the last preceding paragraph) is, within twelve months after such conviction, again convicted of an offence against this Act; or
- III. If the licensee is convicted, whether summarily or on indictment, of any offence involving moral turpitude, or dishonoring him in the public estimation.

(2) The Court before whom any person is convicted of any offence may of its own motion cancel his licence in any case where such conviction is a ground for the cancellation of the licence.

(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 same in the Local Court of Full Jurisdiction nearest by the most convenient route to the place of business or the principal place of business of the licensee, and thereupon any Special Magistrate exercising jurisdiction in that Court shall have power to hear the application and to cancel the licence.

28. Forthwith

Land Agents Act.—1925.

28. Forthwith after the cancellation of a licence as herein provided, whether by a Court of its own motion or on application, the Clerk of the Court shall send notice in writing of such cancellation and of the grounds thereof to the Minister.

Notice of
cancellation.

29. The Minister shall cause to be removed from the Register the name of every land agent whose licence has been cancelled as aforesaid, and also the name of every land agent who—

Removal of name
from register on
cancellation of
licence.

(a) dies; or

(b) is adjudged insolvent; or

(c) has not before the first day of May of any year obtained a renewal of his licence pursuant to the provisions of this Act.

30. No person shall be entitled to sue for or recover any commission, reward, or other valuable consideration, in respect of the sale, lease, exchange, or other disposal of land or any interest in land, or in respect of his services as agent in any other like transaction, unless his appointment to act as agent is in writing signed either before or after such transaction by the person to be charged with such commission, reward, or consideration, or by some person on his behalf lawfully authorised to sign such appointment.

Evidence of contracts
of agency.

31. Every person, not being the holder of a licence under this Act, commits an offence and is liable to a fine of Fifty Pounds who describes himself in writing or holds himself out as a land agent, or carries on business as a land agent.

Holding out as land
agent without
licence.

32. All proceedings in respect of offences against this Act (not being indictable offences) shall be disposed of summarily and shall be heard and determined by a Special Magistrate sitting alone.

Summary
proceedings to be
before Magistrate.

33. Nothing in this Act shall affect any civil remedy that any person may have against a land agent in respect of any matter.

Civil remedies not
affected.

34. Any term of any agreement for the sale or purchase of land or any interest in land made before or after the passing of this Act which provides that the vendor of the land or interest in land is not responsible for any representation made to the purchaser by any salesman, agent, or other person acting on behalf of the vendor, shall be void and of no effect.

Nullifying of certain
terms of agreements
for sale of land.

35. (1) The Governor may from time to time, make regulations under this Act—

Regulations.

(a) prescribing forms of applications for licences, and of objections to the granting or renewal of licences under this Act:

(b) prescribing forms of advertisements and other notices under this Act:

Land Agents Act.—1925.

- (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, such audit shall be conducted, and for a report of the result of such audit:
- (e) requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed:
- (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 such auditors:
- (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) prescribing various maximum rates of commission which may be charged by land agents for their services in transactions of various natures defined in such regulations:
- (j) generally to ensure that all such trust accounts shall be duly kept and audited:
- (k) prescribing penalties, not exceeding One Hundred Pounds in any case, for the breach of any regulation under this Act, and generally for the purpose of carrying this Act into effect.

(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.

(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 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.

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

TOM BRIDGES, Governor.

Land Agents Act.—1925.

THE SCHEDULE.

FIDELITY BOND.

Know all men by these presents that _____, of _____, is [are] 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 _____ doth [do jointly and severally] bind itself and its successors [ourselves, our executors, and administrators] firmly by these presents.

Whereas _____, of _____, has made application for the issue to him of a licence under the Land Agents Act, 1925 :

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 Act :
- (b) Always duly render accounts in writing of all moneys received by him 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.

Signed, sealed, and delivered, &c.