



ANNO TRICESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1987

No. 98 of 1987

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

[Assented to 17 December 1987]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the "Land Agents, Brokers and Valuers Act Amendment Act (No. 2), 1987". Short title.

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

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

3. Section 57 of the principal Act is amended by inserting after paragraph (b) the following paragraph: Amendment of s. 57—
Entitlement to be licensed.

(ba) is neither bankrupt nor insolvent;

4. Section 62 of the principal Act is amended—

(a) by striking out the definition of "agent" and substituting the following definitions: Amendment of s. 62—
Interpretation.

"agent" includes—

(a) a land broker;

(b) a financier that is an associate of an agent or a land broker;

(c) a person who carries on a business of a prescribed class:

"associate"—see subsection (2);

(b) by striking out the definition of "fiduciary default" and substituting the following definitions:

"fiduciary default" means a defalcation, misappropriation or misapplication of trust money occurring while the money is in the possession or control of—

(a) an agent;

or

(b) a firm of which an agent is a member:

“financial business” means the business of providing (as principal or agent) loans secured by mortgage over land:

“financier” means a person by whom a financial business is carried on;:

(c) by striking out the definition of “trust money” and substituting:

“trust money” means money in the possession or control of a person who is not wholly entitled to it both at law and in equity;:

and

(d) by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) A person is an associate of another if—

(a) they are partners;

(b) one is a spouse, parent or child of the other;

(c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;

(d) one is a body corporate and the other is a director of the body corporate;

(e) one is a body corporate and the other is a person who has a legal or equitable interest in 5% or more of the share capital of the body corporate;

(f) a chain of relationships can be traced between them under any one or more of the above paragraphs.

5. Section 68 of the principal Act is repealed and the following section is substituted:

Repeal of s. 68
and substitution
of new section.

68. (1) An agent who maintains a trust account must—

(a) have the accounts and records kept under this Division audited by an auditor in respect of each audit period prescribed by regulation;

and

(b) lodge a copy of the auditor's report with the Registrar.

(2) An agent, who did not maintain a trust account during a particular audit period, must make and lodge with the Registrar a declaration, in the prescribed form, setting out the reasons for not maintaining a trust account during that period.

(3) An agent who—

(a) fails to have accounts and records audited as required by this section;

or

Audit of trust
accounts.

- (b) fails to lodge the auditor's report, or the declaration required by subsection (2), within the time allowed by or under the regulations,

is guilty of an offence.

Penalty: \$5 000.

(4) Where an agent fails to lodge the auditor's report, or the declaration required by subsection (2), within the time allowed by or under the regulations, the Registrar may, by notice in writing, require the agent to make good the default and, in addition, to pay to the Registrar the amount prescribed by the regulations as a civil penalty for the default.

(5) Where an agent fails to comply with a notice under subsection (4) within 14 days after service of the notice, the agent's licence is, by force of this subsection, suspended until the agent complies with the notice.

(6) The Registrar will cause notice of a suspension under subsection (5) to be published in a newspaper circulating throughout the State.

(7) Where a licence has been suspended by virtue of subsection (5) for a continuous period of six months, the licence is by force of this subsection, cancelled.

(8) An agent is not liable to both a civil penalty and a criminal penalty in respect of the same default under this section; hence, payment of the civil penalty exonerates the agent from liability to a criminal penalty and payment of a criminal penalty exonerates the agent from liability to the civil penalty.

6. Section 76 of the principal Act is amended—

- (a) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) suffers pecuniary loss as a result of a fiduciary default;

and

- (b) by striking out paragraph (a) of subsection (3) and substituting the following paragraph:

(a) the agent by whom the fiduciary default was committed, or to whom the fiduciary default relates, was required to be licensed under this Act;

7. Section 85a of the principal Act is amended by inserting after paragraph (b) of subsection (4) the following paragraph:

- (ba) that person is an undischarged bankrupt or is bound by a substituting composition or deed or scheme of arrangement with or for the benefit of creditors;

Amendment of
s. 76—
Claims on the
fund.

Amendment of
s. 85a—
Cause for
disciplinary
action.

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

D. B. DUNSTAN, Governor