

## THE FIFTEENTH SCHEDULE.

(Section 17.)

LAND DISTRICT OF KENT.

PARISH OF PRICE.

All that area of land containing 101 acres 2 roods 12 perches as the same is shown on Survey Diagram Vol. 12 Folio 32 Kent.

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## THE SIXTEENTH SCHEDULE.

(Section 18.)

TOWN OF BURNIE.

All that area of Crown land containing 30 acres 2 roods 20 perches as the same is shown on Survey Plan No. 2723.

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## AUCTIONEERS AND ESTATE AGENTS.

No. 89 of 1968.

AN ACT to amend the *Auctioneers and Estate Agents Act 1959*. [13 January 1969.]

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 1968*.

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

(3) Each of the provisions of this Act commences on such date as may be fixed by proclamation in relation thereto.

Short title,  
citation, and  
commence-  
ment.

**2** Section three of the Principal Act is amended by adding at the end thereof the following subsection:— Interpretation.

“(2) References in this Act to a person who is disqualified from holding a licence shall be construed as references to a person who is so disqualified pursuant to section forty or section forty A.”.

**3** Section twenty-seven of the Principal Act is amended by inserting in subsection (1), after the words “so long as”, the words “his ordinary place of residence is within the State and”. Managers' licences.

**4** After section twenty-nine of the Principal Act the following section is inserted:—

“29A Regulations under this Act may prescribe rules of practice governing the carrying on of the business of an estate agent, and any person who contravenes, or fails to comply with, any of the provisions of any of those rules is guilty of an offence and liable to a penalty of one hundred dollars.”. Rules of practice.

**5** Section thirty of the Principal Act is amended—

- (a) by omitting from subsection (1) the word “schedule” (first occurring) and substituting therefor the words “scales of commission regulations”;
- (b) by omitting from that subsection the words “the schedule” (second occurring) and substituting therefor the words “those regulations”;
- (c) by omitting from that subsection the words “referred to in that schedule” and substituting therefor the words “so referred to”;
- (d) by omitting from that subsection the words “that schedule” (last occurring) and substituting therefor the words “those regulations”; and
- (e) by inserting, after that subsection, the following subsection:—

“(1A) Regulations under this Act may, for the purposes of subsection (1) of this section—

- (a) specify a maximum commission with respect to any transaction, dealing, or service; and
- (b) authorize in such cases or circumstances as may be prescribed, the making and recovering of other charges in respect of any transaction, dealing, or service, and any regulations made pursuant to this subsection are in this section referred to as ‘the scales of commission regulations’.”. Limitation on commission, &c.

**6** After section thirty-two of the Principal Act the following section is inserted in Part IV:—

False advertisements by estate agents.

“32A—(1) Any person who wilfully and falsely advertises, or in any way wilfully and falsely represents, that, as an estate agent, he has a particular property or business for sale is guilty of an offence.

“(2) A person who, representing himself to be an estate agent, publishes, or allows or authorizes to be published, as part of an advertisement, any false or misleading statement or representation concerning any property or business that is, or is stated or represented to be, for sale is guilty of an offence.

“(3) Without prejudice to the generality of the provisions of subsection (2) of this section, an advertisement shall be deemed to be misleading—

- (a) if it refers to the ‘gross profit’ or ‘clear profit’ of a business stated or represented to be for sale; or
- (b) if it mentions any amount as being the profit of a business stated or represented to be for sale that is not the average weekly net profit of the business for the period of three years immediately before the publication of the advertisement or for the whole of any lesser period during which the business has been carried on by the vendor.

“(4) In any proceedings for an offence under this section, proof of the publication of an advertisement that contains the name of any person and represents that person to be an estate agent is sufficient evidence until the contrary is shown that that person—

- (a) published that advertisement or authorized or allowed it to be published; and
- (b) published, or authorized or allowed to be published, as part of the advertisement, the statements and representations made in or as part of that advertisement.

“(5) In this section references to the publication of an advertisement shall be construed as including references to its publication in a newspaper or other periodical and to its publication by way of exhibition on a hoarding, sign board, or in other like manner, or by means of radio or television.

“(6) A person who is guilty of an offence under this section is liable to a penalty of four hundred dollars.”

**7** Section thirty-three of the Principal Act is repealed and the following section is substituted therefor:—

“33—(1) Subject to this Act, licences under this Act shall be granted and renewed as follows:— Grant and form of licences.

- (a) Auctioneers' licences, estate agents' licences, and managers' licences, by a police magistrate; and
- (b) Real estate salesmen's licences, by the Council.

“(2) A licence shall be in such form and contain such particulars as are prescribed.”.

**8** Section thirty-four of the Principal Act is amended by omitting from subsection (4) the words “or a real estate salesman's licence”. Applications for grants or renewals of licences.

**9** Section thirty-five of the Principal Act is amended by adding at the end thereof the following subsection:— Hearing of applications for grants or renewals of licences, other than real estate salesmen's licences.

“(8) This section does not apply to real estate salesmen's licences.”.

**10** After section thirty-five of the Principal Act the following section is inserted:—

“35A—(1) A person applying for the grant of a real estate salesman's licence shall cause to be published in a newspaper circulating within the district in which is situated his ordinary place of abode or business a notice of his application stating that objections may be made thereto if, before the date specified in the notice (not being earlier than thirty days after the publication thereof), a notice of those objections, specifying the grounds thereof, is lodged with the Council and a copy of that notice is served on the person making the application. Hearing of applications for real estate salesmen's licences.

“(2) In hearing an application for the grant of a real estate salesman's licence the Council shall consider any objection to the grant of a licence that has been made in accordance with the notice published in accordance with subsection (1) of this section.

“(3) Without prejudice to the provisions of subsection (2) of this section the Council, in hearing an application for the grant or renewal of a real estate salesman's licence, may, if it thinks it desirable in all the circumstances so to do, consider any objection that has been made to the Council in writing to the grant of the licence and has been notified in writing to the applicant at least seven days before the application is heard.

“(4) An application for the grant or renewal of a real estate salesman's licence shall not be heard unless at least seven days' notice of the hearing has been given by the Council to the applicant and, in the case of an application for the grant of a licence, to any person who has made such an objection as is referred to in subsection (2) of this section.

“(5) A person making application for the grant or renewal of a real estate salesman’s licence, and any person who has made objection to the grant or renewal of the licence and to whom notice of the hearing of the application has been given by the Council, is entitled to be heard by the Council in relation to the application and the objections considered by the Council with respect thereto pursuant to this section.

“(6) The Council may from time to time adjourn the hearing of an application for the grant or renewal of a real estate salesman’s licence.”.

Determina-  
tion of  
applications  
in respect of  
auctioneers’  
licences.

**11** Section thirty-six of the Principal Act is amended—

- (a) by omitting from subsection (1) the words “a licence” and substituting therefor the words “an auctioneer’s licence”; and
- (b) by inserting in subsection (2), after the word “Where”, the words “, in the case of such an application as is referred to in subsection (1) of this section,”.

**12** After section thirty-seven of the Principal Act the following sections are inserted:—

Determina-  
tion of  
applications  
in respect of  
estate agents’  
licences and  
managers’  
licences.

“37A—(1) Subject to this section, on the hearing of an application for the grant of an estate agent’s licence or a manager’s licence, the police magistrate shall (unless the applicant is disqualified from holding the licence) grant that licence if he is satisfied that that person was, at the time the application was made, qualified under any of the provisions of section thirty-seven B or section thirty-seven C to hold the licence and that he is a fit and proper person to hold the licence.

“(2) Subject to this section, on the hearing of an application for the renewal of an estate agent’s licence or a manager’s licence the police magistrate shall renew the licence if he is satisfied that the applicant is a fit and proper person to continue to hold the licence.

“(3) An estate agent’s licence shall not be granted to an individual who has not attained the age of twenty-one years.

“(4) Without prejudice to the provisions of subsection (1) and subsection (2) of this section, where the applicant for the grant or renewal of an estate agent’s licence is a body corporate the police magistrate shall refuse to grant or renew the licence if—

- (a) any director or manager thereof, or any person having a substantial interest in, or substantially controlling, the body corporate is disqualified from holding an estate agent’s licence or a manager’s licence or, in the opinion of the police magistrate, is not a suitable person to take part in the management of the business of an estate agent; or
- (b) he considers its affairs have been or are being conducted in such a manner as to render it unfit to hold the licence.

“37B—(1) A person is qualified to hold an estate agent’s licence or a manager’s licence if—

Qualifications of individuals to hold estate agents’ licences and managers’ licences.

- (a) he has the prescribed educational qualifications;
- (b) he has held an estate agent’s licence, a manager’s licence, or a real estate salesman’s licence at any time within the four years last past; and
- (c) he has, for a period of at least two years, or for separate periods amounting in the aggregate to at least two years, been engaged in appropriate employment.

“(2) A person is qualified to hold an estate agent’s licence or a manager’s licence if at any time, during the five years last past, he has held either of such licences.

“(3) A person is qualified to hold an estate agent’s licence or a manager’s licence if he has within the fifteen years last past been engaged, for a period of at least ten years, or for separate periods amounting in the aggregate to at least ten years, in appropriate employment.

“(4) For a period of three years from the commencement of this section a person is qualified to hold an estate agent’s licence or a manager’s licence if, within the period of four years ending on that commencement, he—

- (a) has, at any time, held an estate agent’s licence, a manager’s licence, or a real estate salesman’s licence; and
- (b) has, for a period of at least three years, or for separate periods amounting in the aggregate to at least three years, been engaged in appropriate employment.

“(5) The educational qualifications that may be prescribed for the purposes of paragraph (a) of subsection (1) of this section are—

- (a) the undergoing of prescribed courses of education, training, or instruction;
- (b) the passing of prescribed examinations;
- (c) the holding of any prescribed degree, diploma, certificate, or other award given or awarded by any prescribed institution or body; or
- (d) the membership of any prescribed institution or body.

“(6) Where the council is satisfied that a person holds an educational qualification that can, for the purposes of this section, be properly regarded as an educational qualification equivalent to an educational qualification that is referred to in the regulations made for the purposes of paragraph (a) of subsection (1) of this section, it may certify to that effect, and thereupon that person shall be regarded, for the purposes of this Act, as a person who holds the educational qualification so referred to.

“(7) For the purposes of this section ‘appropriate employment’, in relation to an applicant for an estate agent’s licence or a manager’s licence, means—

- (a) full-time employment as the manager of the business of an estate agent or of such part thereof as is carried on at any place; or
- (b) full-time employment as a real estate salesman.

“(8) For the purposes of paragraph (a) of subsection (7) of this section a licensed estate agent who carries on the business of an estate agent (either on his own account or in partnership) shall be deemed to be employed as the manager of that business, whether or not any other person is employed in the management thereof or may for the purposes of that paragraph be regarded as a manager thereof.

Qualifications of corporate bodies to hold estate agents’ licences.

“37C—(1) A body corporate is qualified to hold an estate agent’s licence if—

- (a) at least half of its directors have, in relation to that licence, the necessary qualifications referred to in this section; or
- (b) it is an exempt company within the meaning of section thirty-seven D.

“(2) A person has the necessary qualifications in relation to any estate agent’s licence if, in relation to him, any of the following conditions are complied with, that is to say:—

- (a) He holds an estate agent’s licence or a manager’s licence; or
- (b) He is qualified under section thirty-seven B to hold an estate agent’s licence or a manager’s licence.

“(3) Where the name of a person has, in accordance with this section, been endorsed on an estate agent’s licence as a qualified director and, when it was first so endorsed, either of the conditions specified in subsection (2) of this section were complied with in relation to him, he shall be deemed, in relation to that or any other estate agent’s licence, to have the necessary qualifications so long as his name is endorsed on an estate agent’s licence as a qualified director and during the period of five years thereafter.

“(4) Where, since the commencement of this section, a body corporate has continuously held an estate agent’s licence, and any person is, and continuously since that commencement, has been, a director of that body, that person shall in relation to that licence, be deemed to have the necessary qualifications.

“(5) On the grant of an estate agent’s licence to a body corporate, and on the renewal of such a licence, the police magistrate shall cause to be endorsed on the licence the names of the persons that that body requests to be so endorsed as qualified directors thereof, being persons the police magistrate is satisfied have the necessary qualifications in relation to that licence.

“(6) Subject to the following provisions of this subsection, an endorsement made on an estate agent’s licence under subsection (5) of this section ceases to have effect on the renewal of the licence; but the endorsement made under that subsection on the renewal of a licence may take the form of an endorsement confirming the existing endorsement on the licence either without change or with the addition of any names thereto or the deletion of any names therefrom.

“(7) An endorsement made on a prescribed certificate of the renewal of a licence has the like effect as an endorsement made on the licence.

“(8) On an application by a body corporate for the endorsement of the name of a person on an estate agent’s licence held by that body as a qualified director of that body, a police magistrate shall, if he is satisfied that that person has the necessary qualifications in relation to that licence, cause that endorsement to be made.

“(9) An application for the purposes of subsection (8) of this section shall be made to the clerk in the prescribed manner and shall contain such particulars as may be prescribed.

“(10) Subject to this section, section thirty-five applies to an application for the purposes of subsection (8) of this section in like manner as if it were an application for the grant of an estate agent’s licence.

“(11) On application being made to the clerk by a body corporate who holds an estate agent’s licence, the clerk shall amend the endorsement thereon by deleting therefrom the name of the person specified in that behalf in the application.

“(12) Notwithstanding anything in this section, the name of a person shall not be endorsed on an estate agent’s licence as a qualified director if he is disqualified from holding an estate agent’s licence or a manager’s licence.

“37D—(1) The Governor, if he is satisfied that the business of an estate agent is or will constitute a small part of the operations and activities of a body corporate and that by reason thereof it is unreasonable to require that at least half the directors of that body should have the necessary qualifications referred to in section thirty-seven C, may, by order, declare that body to be an exempt company for the purposes of that section. Exempt  
companies.

“(2) The Governor may, by order, declare that the body corporate named therein shall cease to be an exempt company and, upon such date as may be specified in the order (being a date not earlier than six months from the making thereof), that body ceases to be an exempt company for the purposes of section thirty-seven C.



“(3) The Governor shall not make an order under this section except upon a certificate from the Minister stating that—

- (a) the Council has requested the order to be made or consents to the making of the order; or
- (b) the Council was informed, at least one month before the date of the certificate, of the intention to recommend that the Governor make the order.

Real estate  
salesmen's  
licences.

“37E—(1) Subject to this section, on the hearing of an application for the grant or renewal of a real estate salesman's licence, the Council shall (unless the applicant is disqualified from holding the licence) grant or renew the licence if it considers the applicant a fit and proper person to hold the licence.

“(2) Without prejudice to the generality of subsection (1) of this section, the Council shall not grant a real estate salesman's licence to a person who has not previously held such a licence, or an estate agent's licence or a manager's licence, unless he shows, on examination or inquiry made of him by or at the direction of the Council, that he has a knowledge of the business of an estate agent sufficient to enable him to commence to exercise the functions of a real estate salesman.

“(3) Where the Council refuses to grant or renew a real estate salesman's licence the applicant may, within the prescribed time, appeal to a police magistrate against the refusal.

“(4) On the hearing of an appeal under this section, the police magistrate, unless he dismisses the appeal, may direct the Council to grant or renew the licence, as the case may be, and the Council shall forthwith comply with that direction.

“(5) Regulations under this Act may prescribe the procedure for the hearing and determination of an appeal under subsection (4) of this section.

“(6) Upon the hearing of an appeal under this section, a police magistrate may, if he thinks it just so to do, award costs to or against the appellant, and may assess the amount of those costs.

“(7) Costs awarded to the appellant under subsection (6) of this section may be recovered as a debt due to him by the Council, and costs awarded against him under that subsection may be recovered as a debt due to the Council by him.”

Duration  
of licences.

**13** Section thirty-eight of the Principal Act is amended by adding at the end thereof the following subsections:—

“(2) An estate agent's licence held by a body corporate that is not an exempt company ceases to be of any further effect if at any time less than half of its directors are persons whose names are endorsed on that licence as qualified directors.

“(3) An estate agent’s licence held by an exempt company ceases to be of any further effect if that company ceases to be an exempt company unless at the time at which it ceases to be an exempt company at least half of its directors are persons whose names are endorsed on that licence as qualified directors.”.

**14** Section thirty-nine of the Principal Act is amended by omitting the words “to the clerk” and substituting therefor the words “, if it is not a real estate salesman’s licence, to the clerk, or if it is such a licence, to the Council,”. Surrender of licences.

**15** Section forty of the Principal Act is amended— Revocation of licences.

(a) by inserting in paragraph (b) of subsection (1), after the word “licence” (first occurring), the words “, other than a real estate salesman’s licence,”;

(b) by omitting from that paragraph the word “or” at the end thereof; and

(c) by inserting, after that paragraph, the following paragraph:—

“(ba) revoke a real estate salesman’s licence on the ground that the person by whom it is held is not a fit and proper person to hold the licence; or”.

**16** Section forty-one of the Principal Act is amended by omitting from subsection (2) the word “clerk” and substituting therefor the word “Council”. Alteration of addresses, &c., in licences.

**17** Section forty-three of the Principal Act is amended by omitting from subsection (1) the words “to the clerk”. Fees.

**18** Section forty-four of the Principal Act is amended by inserting, after subsection (2), the following subsection:— Register.

“(2A) Where a real estate salesman’s licence is granted or renewed by the Council, the Council shall forthwith give notice in writing thereof to the Minister.”.

**19** Section forty-nine of the Principal Act is amended— Record of transactions.

(a) by inserting, after subsection (1), the following subsection:—

“(1A) Except as otherwise may be approved in writing by the Council, a licensee shall keep all books of account and other records relating to his trust account at the place specified in his licence as his sole or principal place of business or at such other of the places of business specified in the licence as the Council may approve in writing.

Penalty: Two hundred dollars.”;

- (b) by inserting in subsection (2), after the word "records", the words "and books of account";
- (c) by inserting in that subsection, after the words "subsection (1)", the words "or subsection (1A)"; and
- (d) by omitting from subsection (3) the words "a statutory record" and substituting therefor the words "any record or book of account".

Furnishing particulars of trust account, &c., to Minister or Council.

**20** Section fifty of the Principal Act is amended by omitting from subsection (1) the words "with the approval of the Minister,".

Inspection of documents.

**21** Section fifty-one of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by inserting in sub-paragraph (i) of paragraph (b) of subsection (2), after the word "business" (first occurring), the words "any record or book of account required to be kept at that place of business,";
- (c) by adding at the end of sub-paragraph (ii) of that paragraph the words "or in the possession, custody, or control of the licensee or that person"; and
- (d) by adding at the end thereof the following subsection:—

"(6) Where an authorized officer exercises the powers conferred on him under this section he shall, as soon as practicable thereafter, make a report to the Council as to the result of the exercise of those powers."

Publication of name of licensees.

**22** Section fifty-four of the Principal Act is amended—

- (a) by omitting from subsection (3) the word "firm-name" (wherever occurring) and substituting therefor, in each case, the words "business name"; and
- (b) by omitting from that subsection the words "*Registration of Firms Act 1899*" and substituting therefor the words "*Business Names Act 1962*".

The schedule.

**23** The schedule to the Principal Act is repealed.

Transitory provisions.

**24**—(1) Where—

- (a) an application for the grant or renewal of an estate agent's licence has been made before the commencement of section eleven of this Act; or

(b) an application for the grant or renewal of a real estate salesman's licence has been made before the commencement of section nine of this Act, the like proceedings shall be had on that application, and it shall be heard and determined in like manner as if this Act had not been enacted.

(2) Subsection (2) of section thirty-eight of the Principal Act does not apply to an estate agent's licence in force at the commencement of section thirteen of this Act until the first renewal of that licence after that commencement.