

Real Estate Agents Amendment Act 1968

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An Act to amend the Real Estate Agents Act 1963

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title

This Act may be cited as the Real Estate Agents Amendment Act 1968, and shall be read together with and deemed part of the Real Estate Agents Act 1963 (hereinafter referred to as the principal Act).

2 Interpretation

Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “Minister”, the following definition:

“‘Stock and station agent’ means a company that is a member of a district Stock and Station Agents’ Association for the time being a member of the New Zealand Stock and Station Agents’ Association.”

3 Meaning of “real estate agent”

Section 3 of the principal Act is hereby amended by adding the following subsection:

“(3) The collection or receipt of rent money by—

- “(a) A real estate agent or any employee of a real estate agent; or
- “(b) A director, responsible officer, or employee of a company that is a real estate agent; or
- “(c) A company in which a real estate agent holds, directly or indirectly, a majority of the shares or control of the voting power—

shall, for the purposes of this Act, be deemed to be the carrying on of business as a real estate agent:

“Provided that this subsection shall not apply in respect of the collection or receipt of rent money by a person or company on his or its own behalf.”

4 Information to be supplied with application for licence

- (1) Section 5 of the principal Act is hereby amended by inserting in subsection (3), after the words “business of the applicant”, the words “, including every branch office that will be under his control within the meaning of subsection (4) of section 25 of this Act.”

- (2) The said section 5 is hereby further amended by inserting in subsection (4), after the words “document relating”, the word “exclusively”.
- (3) The said section 5 is hereby further amended by adding the following subsections:

“(5) At the hearing of the application the Magistrate shall require the production of evidence that the applicant has—

- “(a) Served on the Secretary of the Institute a copy of every document that is required to be so served under subsection (4) of this section;
- “(b) Paid the contribution to the Fidelity Guarantee Fund as required under section 44 of this Act;
- “(c) Paid to the Institute the fees required to be paid under the rules of the Institute; and
- “(d) Given notice to the Institute of the nomination of an auditor of his trust accounts and received the Council’s approval thereto.

“(6) For the purposes of subsection (5) of this section, a certificate under the hand of the Secretary of the Institute relating to the matters referred to in paragraphs (a) to (d) of that subsection shall be sufficient evidence of the matters specified in the certificate, in the absence of proof to the contrary.”

5 Repealing provisions relating to fidelity bonds

- (1) The principal Act is hereby further amended by repealing sections 6 and 7 and the First Schedule.
- (2) This section shall be deemed to have come into force on the first day of February, nineteen hundred and sixty-five.

6 Objections relating to inadequate control of place of business

- (1) Section 8 of the principal Act is hereby amended by inserting in subsection (3), before the words “No such objection”, the words “Subject to subsection (4) of this section,”.
- (2) The said section 8 is hereby further amended by adding the following subsections:

“(4) The Magistrate may also consider an objection on the ground that, because of its situation or for other reasons, any proposed office or place of business of the applicant (other than the principal office or place of business) will not be under his effective and adequate control.

“(5) If an objection under subsection (4) of this section is allowed the Magistrate may nevertheless grant a licence, but the proposed office or place of business in respect of which the objection was made shall not be specified in the licence.”

7 Institute to be notified of grant of licence

Section 9 of the principal Act is hereby amended by adding the words “and forthwith give notice in writing thereof to the Institute.”

8 Magistrate to require evidence as to character, fitness, and financial position

- (1) Section 10 of the principal Act is hereby amended by repealing the proviso to subsection (4).
- (2) The said section 10 is hereby further amended by adding the following subsections:

“(5) The Magistrate may, in his discretion, dispense with any of the provisions of subsection (4) of this section, if he is satisfied that the business experience in a field or fields related to real estate agency, judgment, and general knowledge of the person whose fitness is to be determined are such that dispensation is justifiable.

“(6) For the purposes of subsection (5) of this section, the term ‘general knowledge’ includes a reasonable knowledge of law that is of particular concern to real estate agents in the conduct of their business, having regard to the subject-matter and syllabus for the time being approved by Order in Council of the examination to be passed by persons intending to apply for a licence.

“(7) Nothing in subsection (4) of this section shall apply in any case where the person whose fitness is to be determined was, immediately before the commencement of this Act, the holder, or a partner of the holder, of a licence as a land agent under the Land Agents Act 1953 or, where the applicant for a licence is a company holding such a licence, was a director or general manager or other responsible officer of the company.”

9 Licensee not to carry on business under more than one name

Section 11 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1a) No real estate agent shall carry on his business or any part of his business under more than one name or description.”

10 Salesmen employed by real estate agents

- (1) Subsection (3) of section 13 of the principal Act is hereby amended—
 - (a) By inserting, after the word “salesman”, the words “together with one copy of each relevant testimonial”:
 - (b) By omitting the words “ten clear days”, and substituting the words “twenty-one clear days”.
- (2) The said section 13 is hereby further amended by adding to subsection (4) the words “and forward it to the real estate agent who applied for it.”

- (3) The said section 13 is hereby further amended by adding to subsection (6) the words “Every such renewal shall be forwarded to the real estate agent who employs the person in respect of whom the renewal was issued.”
- (4) The said section 13 is hereby further amended by repealing subsection (7), and substituting the following subsections:

- “(7) Every licensed real estate agent commits an offence who—
- “(a) Within seven days after any person not holding a certificate of approval as a real estate salesman commences employment as a salesman in his business, fails to apply for such a certificate in respect of that person:
 - “(b) Within seven days after the expiry of the certificate of approval as a real estate salesman held by any person employed as a salesman in his business, fails to apply for a renewal of the certificate:
 - “(c) Employs any person as a salesman in his business after the expiry of a period of nine weeks after the date on which that person commenced employment with him as a salesman, if within that period a certificate of approval as a real estate salesman has not been issued in respect of that person:
 - “(d) Employs any person as a salesman in his business after the expiry of a period of nine weeks after the date on which that person’s certificate of approval as a real estate salesman expired, if within that period a renewal of the certificate has not been issued:
 - “(e) Employs any person as a salesman in his business after the date on which an application in respect of that person for a certificate of approval as a real estate salesman, or a renewal of such a certificate, as the case may be, has been refused by a Magistrate or withdrawn.
- “(7a) Every person commits an offence who, not being the holder of a certificate of approval as a real estate salesman, works for a real estate agent as a salesman—
- “(a) After the expiry of a period of seven days after the date on which he commenced such work, or the date on which his certificate of approval expired, as the case may be, if he knows that within that period an application for a certificate of approval, or a renewal of the expired certificate, as the case may be, has not been made:
 - “(b) After the expiry of a period of nine weeks after the date on which he commenced such work, or the date on which his certificate of approval expired, as the case may be, if within that period a certificate of approval, or a renewal of the expired certificate, as the case may be, has not been issued:

“(c) After the date on which an application in respect of himself for a certificate of approval, or a renewal of such a certificate, as the case may be, has been refused by a Magistrate or withdrawn.”

11 Institute may require list of salesmen to be supplied

The principal Act is hereby further amended by inserting, after section 13, the following section:

“13a.

- “(1) The Institute may at any time by notice in writing direct any licensed real estate agent to supply it with a list containing the full name of every salesman employed by him.
- “(2) Every licensed real estate agent who fails within fourteen days to comply with a direction given under subsection (1) of this section, or who supplies to the Institute an incorrect or incomplete list of salesmen, commits an offence against this Act.”

12 Custody of real estate salesmen’s certificates

The principal Act is hereby further amended by inserting, after section 13a (as inserted by section 11 of this Act) the following section:

“13b.

- “(1) Every certificate of approval as a real estate salesman and every renewal thereof shall at all times be kept in the custody of the real estate agent who employs the salesman in respect of whom the certificate or renewal was issued.
- “(2) When a real estate salesman leaves the employ of a real estate agent, the agent shall, within seven days after the salesman leaves his employment, forward the salesman’s current certificate of approval to the Secretary of the Institute.
- “(3) If any such real estate salesman, in respect of whom a certificate of approval is for the time being in force, commences employment with a real estate agent, the agent shall forthwith request the Secretary of the Institute to forward to him the certificate of approval; and the Secretary of the Institute shall as soon as practicable forward the certificate accordingly.”

13 Carrying on business at place not specified in licence

- (1) Section 14 of the principal Act is hereby amended by repealing the proviso to subsection (1), and substituting the following proviso:

“Provided that it shall not be lawful for a real estate agent to carry on business as such at any place of business not specified in his licence unless he has first—

- “(a) Given to the Registrar of the Magistrate’s Court in which the licence was granted and, unless the real estate agent is a stock and station agent, to the Secretary of the Institute—

“(i) Notice of his intention to carry on business at that place; and
“(ii) Notice of the person who will be in control of that place of business in accordance with subsection (4) of section 25 of this Act; and
“(b) Paid such additional fee (if any) in respect of that place of business as may be prescribed.”

- (2) The said section 14 is hereby further amended by inserting, after subsection (1), the following subsection:

“(1a) If a real estate agent states in any notice of intention given under the proviso to subsection (1) of this section that he proposes to change his registered office to the place to which the notice relates, subsection (3) of section 25 of this Act shall not apply in respect of the change.”

14 Objections to renewal of licence

- (1) Section 16 of the principal Act is hereby amended by inserting in subsection (4), before the words “No such objection”, the words “Subject to subsection (4a) of this section,”.

- (2) The said section 16 is hereby further amended by inserting, after subsection (4), the following subsections:

“(4a) An objection may also be considered on the grounds that—
“(a) Because of its situation or for other reasons, the applicant will not be able to maintain effective and adequate control of the management of any office or place of business, other than the principal office or place of business; or
“(b) The applicant has not maintained effective and adequate control of any office or place of business, other than the principal office or place of business; or
“(c) The applicant has permitted a person, other than a person licensed under this Act as a real estate agent or a person lawfully acting as a real estate salesman, to act as his agent in the conduct of his business.
“(4b) If an objection under paragraph (a) or paragraph (b) of subsection (4a) of this section is allowed the Magistrate may nevertheless grant a renewal of the licence, but all references to the office or place of business in respect of which the objection was made shall be deleted from the licence.”

- (3) The said section 16 is hereby further amended by omitting from subsection (8) the words “but, while section 6 of this Act continues in force, provided an approved fidelity bond is for the time being in force,”.

15 Magistrate may award costs

The principal Act is hereby further amended by repealing section 17, and substituting the following section:

“17 On the hearing by a Magistrate of any application made under this Act in respect of which two or more parties are involved, the Magistrate shall have jurisdiction to determine what costs (if any) shall be paid to or by the applicant or any objector to the application or any other party involved in the application, and to adjudge that those costs be paid; and those costs shall be recoverable accordingly as a final judgment of the Magistrate’s Court.”

16 Temporary licence

- (1) Section 20 of the principal Act is hereby amended by omitting from subsection (1) the words “subject, while section 6 of this Act continues in force, to the person carrying on the business (not being the Public Trustee or the holder of a licence) filing an approved fidelity bond under that section as if he were an applicant for a licence”.

- (2) The said section 20 is hereby further amended by adding the following subsections:

“(3) The granting of a consent under subsection (1) of this section shall be sufficient authority for the person carrying on the business to operate the trust account of the real estate agent concerned.

“(4) A copy of every application for the consent of a Magistrate under subsection (1) of this section shall, not later than twenty-one clear days before the date fixed for the hearing of the application, be sent by the applicant to the Secretary of the Institute; and the Institute shall be entitled to appear and be heard at the hearing of the application.

“(5) The Institute may at any time apply to a Magistrate exercising jurisdiction in the Magistrate’s Court in which the consent was granted for the cancellation of the consent on the grounds that it is not in the public interest for the business to be carried on or that the person carrying on the business has been convicted of an offence against this Act or against any regulations for the time being in force under this Act or has failed to comply with the rules or code of ethics of the Institute.

“(6) A copy of every application made under subsection (5) of this section shall, not later than ten clear days before the date fixed for the hearing of the application, be sent to the person to whom the Magistrate’s consent was granted; and that person shall be entitled to appear and be heard at the hearing of the application.

“(7) On the hearing of an application under subsection (5) of this section the Magistrate, if the grounds of the objection are proved to his satisfaction, may in his discretion cancel the consent, and thereupon the person who

had been carrying on the business shall no longer be deemed to be the holder of a licence in respect of that business.”

17 Restrictions on persons acting as officers of company extended

- (1) Section 21 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

“(2a) If any company to which subsection (2) of this section applies ceases to be qualified to be registered as a private company, that subsection shall continue to apply to it as if it had continued to be so registered.

“(2b) A copy of every application for the consent of a Magistrate under this section shall, not later than twenty-one clear days before the date fixed for the hearing of the application, be sent by the applicant to the Secretary of the Institute; and the Institute shall be entitled to appear and be heard at the hearing of the application.”

- (2) The said section 21 is hereby further amended by omitting from subsection (3) the words “subsection (4)”, and substituting the words “subsections (4) to (7)”.

18 Voluntary surrender of licence

The principal Act is hereby further amended by inserting, after section 24, the following section:

“24a.

- “(1) A licensee may at any time surrender his licence by forwarding a written notice to that effect together with his current licence to the Registrar of the Magistrate’s Court in which the current licence was granted. On the receipt of such a notice by the Registrar the licence shall cease to be operative.
- “(2) Where a licensee gives a notice under subsection (1) of this section, he shall at the same time forward a copy of it to the Secretary of the Institute and to the auditor of his trust accounts.
- “(3) The surrender by a licensee of his licence under subsection (1) of this section shall not affect the liability of the licensee—
- “(a) To pay any fees or other money payable or to be payable in accordance with the provisions of this Act on or before the date on which the licence would, but for its surrender, expire:
- “(b) To perform any obligation required to be performed on or before that date:
- “(c) For any act done or default made before the date of surrender of his licence.”

19 Change of registered office

- (1) Section 25 of the principal Act is hereby amended by adding to subsection (3) the words “Within seven days after the notice has been filed a copy of it shall,

unless it has been filed by a stock and station agent, be forwarded by the real estate agent to the Secretary of the Institute.”

- (2) The said section 25 is hereby further amended by omitting from subsection (4) the words “the real estate agency business at”.
- (3) The said section 25 is hereby further amended by omitting from subsection (5) the words “the real estate agency business at”.

20 Real estate agent to display notice on registered office, and on notices, etc.

Section 26 of the principal Act is hereby amended by omitting from subsection (3) the words “a statement indicating that he is a member of the Institute”, and substituting the words “the letters ‘m.r.e.i.n.z.’”.

21 Members of Institute to pay fees, etc.

Section 32 of the principal Act is hereby amended by adding the following subsections:

“(4) Every member of the Institute shall from time to time pay to the Institute the fees or other payments, annual or otherwise, that are payable in respect of his membership.

“(5) If any fee or other payment payable to the Institute by a real estate agent under subsection (4) of this section is not paid within four months after it is due, the Council may apply to a Magistrate exercising jurisdiction in the Court in which the licence of the real estate agent was granted for an order for the suspension of that licence, and the Magistrate may make an order accordingly. While a licence is suspended under this subsection, the real estate agent shall be deemed not to be licensed.

“(6) If any person whose licence is suspended under this section pays all such fees and other payments, the suspension of his licence shall be deemed to be cancelled.”

22 Rules of Institute

- (1) Section 35 of the principal Act is hereby amended by omitting from paragraph (n) of subsection (1) the words “the manner in which a scale of charges may be fixed”, and substituting the words “a scale of charges”.
- (2) The said section 35 is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) No rules or amendments to rules made under any of the provisions of paragraphs (f), (h), (l), (m), (n), and (p) of subsection (1) of this section shall come into force unless and until they are approved by the Minister.”

23 Expenditure from Fund

Section 40 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

- “(2) While the amount of the Fund exceeds one hundred and fifty thousand dollars, the income derived from the investment, in accordance with section 47 of this Act, of any money that is in the Fund, may be expended by the Council in or towards meeting the costs involved in—
- “(a) The administration of any regulations for the time being in force under this Act relating to the audit of trust accounts:
 - “(b) The provision of educational programmes and other facilities for the purpose of improving the efficiency and promoting the welfare of real estate agents:
 - “(c) The administration by the Institute of the provisions of this Act and the conduct of the affairs of the Institute to such extent and in accordance with such conditions (if any) as the Council from time to time determines.”

24 Contributions to Fund while it exceeds \$150,000

The principal Act is hereby further amended by repealing section 45, and substituting the following section:

- “45. While the amount of the Fund (including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fund) exceeds one hundred and fifty thousand dollars, the amount of the annual contribution payable by a real estate agent shall, from a date fixed by resolution of the Council,—
- “(a) Be two dollars, in the case of an individual or a member of a partnership who has already paid contributions totalling one hundred dollars or more or who has paid the sum of sixty dollars in accordance with the proviso to subsection (1) of section 44 of this Act:
 - “(b) Be six dollars, in the case of a company that has already paid contributions totalling three hundred dollars or more or that has paid the sum of one hundred and eighty dollars in accordance with the said proviso and subsection (3) of the said section.”

25 Claims by Fund against companies

Section 51 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

- “(2) Notwithstanding anything to the contrary in the Companies Act 1955 or in any other Act or in any rule of law, if a claim is made against the Fund in respect of theft by a director, officer, employee, or agent of a company licensed under this Act, a Magistrate may, if he thinks

fit, on the application of the Institute, declare that any person who was knowingly a party to the theft shall be personally responsible, without any limitation of liability, for the repayment to the Fund of the amount paid from the Fund in settlement of the claim.”

26 Purchase or lease by agent voidable

Section 78 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Any contract made in contravention of the provisions of this section shall be voidable at the option of the principal. No commission shall be payable in respect of any such contract, whether the principal has avoided it or not; and any commission paid in respect thereof shall be repayable by the real estate agent to his principal and be recoverable by the principal as a debt.”

27 Regulations

Section 83 of the principal Act is hereby amended by repealing paragraph (m) of subsection (1).

This Act is administered in the Department of Justice.