



BERMUDA

REAL ESTATE AGENTS' LICENSING ACT 1976

1976 : 16

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[preamble and words of enactment omitted]

Interpretation

- 1 In this Act—

“agent” means a real estate agent, and includes a person who, for another or others, for compensation, gain or reward, or hope or promise thereof, either alone or through one or more officials or salesmen, trades in real estate, and each person who holds himself out as a real estate agent;

“bank” means an institution licensed as a bank under the Banks and Deposit Companies Act 1999;

“licence” means licence under this Act;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer this Act;

“official” means president, vice-president, secretary, treasurer, managing director, general manager, department manager, branch office manager and each person acting in a similar capacity whether so designed or not;

“prescribed” means prescribed by this Act or the regulations;

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“real estate” means land in Bermuda, including land covered by water and any building erected on land and any estate, interest, right or easement in or over any land or building in Bermuda;

“salesman” means a real estate salesman, and includes a person employed, appointed or authorized by a real estate agent to trade in real estate;

“Superintendent” means the Registrar of Companies;

“trade” means—

- (i) a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise;
- (ii) any offer or attempt to list real estate for the purpose of such disposition or transaction referred to in subparagraph (i); and
- (iii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of such a disposition, acquisition, transaction, offer or attempt,

and the verb “trade” has a corresponding meaning.

[Section 1 “bank” amended by BR81/1999 effective 1 January 2000; “Minister” deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011]

Application of Act

2 This Act does not apply to—

- (a) an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by the provisions of an Act or under the order of a court, or to an administrator of an estate or any executor or trustee selling under the terms of a will, settlement or trust; or
- (b) an auctioneer where the trade is made in the course of and as part of his duties as an auctioneer; or
- (c) a person—
 - (i) who acquires real estate in His own name; or
 - (ii) who disposes of real estate owned by him or in which he has a substantial interest; or
 - (iii) who is an official or employee of a person engaged in so acquiring or disposing of real estate in the name of that person; or
- (d) a member in good standing of the Bermuda Bar Association where the trade is made in the course and as part of his practice as an attorney.

LICENCES

Trading in real estate

- 3 (1) No person shall—
- (a) trade in real estate unless he is licensed as an agent or as a salesman of a licensed agent; or
 - (b) act as an official of or on behalf of a partnership or company in connection with a trade in real estate by the partnership or company, unless he or the partnership or company is licensed as an agent; or
 - (c) act as a salesman of or on behalf of a partnership or company in connection with a trade in real estate by the partnership or company unless—
 - (i) he is licensed as a salesman of the partnership or company; and
 - (ii) the partnership or company is licensed as an agent.
- (2) A change in the membership of a partnership shall be deemed to create a new partnership and to extinguish an existing licence.
- (3) Subject to section 34, no person who is not the holder of a subsisting licence under this Act shall act or directly or indirectly hold himself out as an agent or salesman in Bermuda.

Licensing of salesman

- 4 (1) A salesman may only be licensed where he is the salesman of a licensed agent.
- (2) Each application for a licence of a salesman or a renewal thereof shall have attached thereto in a form approved by the Minister—
- (a) a recommendation of the applicant, made by or on behalf of a licensed agent; and
 - (b) a declaration that the applicant, if granted a licence, is to act as a salesman employed by and representing the agent making the declaration or on whose behalf the declaration is made.
- (3) The licence shall be inscribed with the name of the agent as principal of the licensee.
- (4) Upon a salesman ceasing to be employed with a licensed agent the licence of the salesman shall become void.

Licensing of agent

- 5 (1) No agent shall be licensed unless he maintains an office in Bermuda satisfactory to the Minister from which he conducts his real estate business.

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(2) No person shall be licensed as an agent unless the Minister is satisfied after investigation that the person is qualified to be licensed as an agent at the time of his application.

Application by firm or company

- 6 (1) A partnership or company—
- (a) may apply for and obtain a licence in the name of the partnership or company; and
 - (b) shall designate one individual who shall act as its or their representative.
- (2) If a licence is granted, when it is issued it shall—
- (a) be in the name of the partnership or company; and
 - (b) state thereon the name of the individual who is authorized to act as an agent on behalf of the partnership or company.
- (3) Any associate, partner or employee of an agent, and any officer, member or employee of a partnership or company licensed as an agent may apply for and obtain a licence authorizing the holder thereof to act as a salesman.

Powers of Minister

- 7 (1) When an application for a licence or renewal of a licence is received and the prescribed fee is paid, the Minister, if he is satisfied that the applicant is suitable to be licensed, and is not for any reason objectionable, may issue to the applicant a licence authorizing the holder during the term thereof to carry on the business of an agent or act as a salesman in Bermuda.
- (2) If the Minister is for any reason of the opinion that the applicant should not be granted a licence, he may refuse a licence to the applicant.
- (3) The Minister may suspend or cancel a licence where in his opinion such action is in the public interest.
- (4) A licence—
- (a) expires on the 30th day of September of each year; and
 - (b) may be renewed on application to the Superintendent and payment of the prescribed fee,
- unless the licence has been previously cancelled or suspended by the Minister.
- (5) A person aggrieved by a decision of the Minister under this section may appeal therefrom to the Supreme Court as provided in section 28.

Advisory board

- 8 (1) Before making a decision under section 7, the Minister may where he considers it proper appoint an advisory board before which a hearing shall be held.
- (2) An advisory board shall consist of—

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- (a) a chairman who shall not be the Superintendent or his representative or a person licensed under this Act; and
 - (b) not less than two and not more than four other persons.
- (3) When the Minister receives a report from an advisory board appointed pursuant to subsection (1) he shall—
- (a) decide, taking the report into consideration, whether or not the licence should be granted, renewed, suspended, cancelled or reinstated, as the case may be; and
 - (b) direct the Superintendent to act accordingly.
- (4) Fees shall be paid to members of the advisory board in accordance with the provisions of the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

Application for licence

9 An application for a licence or a renewal of a licence shall be made in writing on the prescribed form provided by the Superintendent, and shall be accompanied by such fee as may be prescribed therefor under the Government Fees Act 1965 [*title 15 item 18*].

Address for service

- 10 (1) An applicant for a licence or a renewal of a licence shall state in the application an address for service in Bermuda.
- (2) Notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service stated as required by subsection (1).

Information required by Superintendent

- 11 The Superintendent at any time may require—
- (a) that further information or material be submitted by an applicant or a licensed person within a specified time limit; and
 - (b) if he so desires, verification by affidavit or otherwise of any information or material then or previously submitted.

Notice of changes

- 12 (1) A licensed agent shall immediately notify the Superintendent in writing of—
- (a) a change in the address for service;
 - (b) a change in the partners in the case of a partnership; and
 - (c) the commencement and termination of employment of each salesman.
- (2) A licensee who ceases to carry on the business of a real estate agent shall immediately notify the Superintendent in writing and shall return his licence with the notice.

INVESTIGATION AND ACTION BY MINISTER

Investigation

- 13 (1) The Minister, or a person authorized by him may—
- (a) on complaint of a person interested, or when the Minister deems it necessary without complaint, investigate and inquire into—
 - (i) any matter concerning the due administration of this Act; or
 - (ii) the circumstances surrounding a transaction or matter or thing done by an agent or salesman whether licensed or not licensed;
 - (b) for the purpose of such an investigation, inquire into and examine any business or employment to which this Act applies of the person in respect of whom the investigation is being made; and examine and inquire into—
 - (i) books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of, in relation to or connected with the person in respect of whom the investigation is being made; and
 - (ii) property, assets or things owned, acquired or alienated in whole or in part by such person or by a person acting on behalf of or as agent for such person.
- (2) A person in respect of whom the investigation is made shall make prompt and explicit answers to such inquiries.

Production of documents

- 14 (1) In order to ensure that the provisions of this Act and any regulations made thereunder are being complied with or for the purposes of an investigation under section 13 the Minister or a person authorized by him may at reasonable times demand the production of and inspect—
- (a) all or any of the books mentioned in section 13; and
 - (b) all or any documents relating to a trade in real estate effected by any agent or salesman.
- (2) A person who has the custody, possession or control of the books or documents referred to in subsection (1) shall produce and permit the inspection of them by the Minister or person authorized by the Minister.
- (3) A person who contravenes subsection (2) by refusal or neglect to produce or permit the inspection of books or documents commits an offence.
- (4) Where an investigation is being carried on under section 13, the Superintendent or the person making the investigation may seize and take possession of documents, books, papers, correspondence, communications or records of the person the business or employment of whom is being investigated.

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General powers of Minister

15 In addition to the powers contained in sections 13 and 14 the Minister or other person conducting an investigation under section 13 has all the powers of a commissioner appointed under the Commissions of Inquiry Act 1935 [*title 28 item 19*].

AGENT'S ACCOUNTS

Books of agent

16 (1) An agent shall keep proper books and accounts of his trades in real estate, and enter in his books and accounts in respect of each trade—

- (a) the nature of the trade;
- (b) a description of the real estate involved sufficient to identify it;
- (c) the true consideration for the trade;
- (d) the names of the parties to the trade;
- (e) the amount of deposit received and a record of the disbursement thereof; and
- (f) the amount of his commission or other remuneration and the name of the party paying it.

(2) Every agent shall—

- (a) maintain a ledger trust account for each person from whom moneys are received in trust in which he shall enter details of the trust moneys received and the disbursements therefrom; and
- (b) maintain an account in a bank in which he shall deposit moneys that come into his hands in trust for other persons in connection with his business, and keep such trust moneys separate and apart from moneys belonging to himself or to the partnership in the case of a partnership.

(3) An agent shall submit to the superintendent in each year within the time required by subsection (5) a report by the agent's auditors in a form prescribed by the regulations—

- (a) stating that the agent has kept proper books and accounts of his trades in real estate;
- (b) stating that the auditor has examined the balances due to clients in trust as at the relevant date in that year, and found them in agreement with the accounting records of the agent;
- (c) stating that the moneys on deposit held in trust for clients has been verified by personal inspection or by certificates obtained from the bank with which the account is maintained;
- (d) stating the amount due to clients in trust as reflected by the records of the agent, as at the relevant date in that year;

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- (e) stating that the auditor has done a sufficient review of the trust account transactions of the agent for the 12-month period immediately preceding the relevant date in that year, to satisfy himself that the trust moneys held for clients are kept separate and apart from moneys belonging to the agent; and
- (f) stating that after due consideration the auditor has formed an independent opinion as to the position of the trust moneys held for clients, and to the best of his information the trust moneys held for clients are maintained in a separate trust account and are not less than the amount of trust moneys received in respect of which there is an undischarged trust obligation.

(4) An auditor may select as the relevant date for the purposes of subsection (3) either the 30th day of June or the last day of the agent's financial year.

(5) The report referred to in subsection (3) shall be submitted to the Superintendent within six months of the relevant date selected by the auditor under subsection (4).

(6) The auditor referred to in subsection (3) shall be a person entitled under the Chartered Professional Accountants of Bermuda Act 1973 [*title 30 item 6*] to practise as a public accountant.

[Section 16 amended by 2014 : 8 s. 16 effective 11 April 2014]

RECOVERY OF COMMISSION

Unlicensed agent

17 No action shall be brought for commission or for remuneration for services in connection with a trade in real estate unless at the time of rendering the services the person bringing the action was licensed as an agent.

Recovery of commission

18 No action shall be brought to charge a person by commission or otherwise for services rendered in connection with the sale of real estate unless—

- (a) the contract upon which recovery is sought in the action or some note or memorandum thereof is in writing signed by the party to be charged or by his agent lawfully authorized in writing; or
- (b) the person sought to be charged—
 - (i) has as a result of the services of an agent employed by him for the purpose effected a sale or lease of real estate; and
 - (ii) has duly executed a conveyance or lease signed by all necessary parties and delivered it to the purchaser.

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REGULATION OF TRADING

Representations by agents or salesmen

19 (1) Subject to subsection (2), no agent or salesman shall make a representation that he or another person—

- (a) will re-sell or in any way guarantee or promise to re-sell real estate offered for sale by him; or
- (b) will sell any of the purchaser's real estate; or
- (c) will procure a mortgage, extension of a mortgage, lease or extension of a lease.

(2) Subsection (1) does not apply in the case of a representation made under paragraph (b) or (c) of that subsection if at the time of making the representation the person making it delivers to the person to whom the representation is made a letter or photostatic copy thereof setting out the representation in clear language.

Advertising

20 (1) When advertising to purchase, sell, exchange, or lease any real estate whatsoever an agent or salesman shall clearly indicate—

- (a) that he is the party advertising and
- (b) that he is a real estate agent or salesman, as the case may be.

(2) A reference to the name of a salesman in the advertisement shall clearly indicate that the real estate agent is the employer of the salesman.

Employment of salesman of another agent

21 No agent shall—

- (a) employ, permit or engage the salesman of another agent or an unlicensed salesman to trade in real estate; or
- (b) pay commission or other remuneration to such a salesman.

Commission

22 No licensed agent or salesman shall pay a commission or other fee to an unlicensed person in consideration for furthering a trade in real estate.

Purchase by agent

23 No agent or salesman shall purchase for himself either directly or indirectly real estate listed with him for sale, nor shall he acquire any interest therein either directly, or indirectly, until he has disclosed in writing to the Superintendent and to the listing owner complete details of his negotiations for the sale of the said property to another person.

Duties of salesman

24 No salesman—

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- (a) shall trade in real estate on behalf of an agent other than the agent who, according to the records of the Superintendent, is his employer; or
- (b) is entitled to or may accept a commission or other remuneration for trading in real estate from a person except the agent who is licensed as his employer.

Breach of contract

25 No agent or salesman shall induce a party to a contract for purchase and sale, or rental of real estate, to break the contract for the purpose of entering into a contract with another principal.

Commission

26 (1) No agent or salesman—

- (a) shall request or enter into an arrangement for the payment to him of commission or other remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price thereof; or
- (b) may retain a commission or other remuneration computed on a basis referred to in paragraph (a).

(2) Commission or other remuneration payable to an agent in respect of the sale of real estate shall be on an agreed amount or percentage of the sale price.

(3) Where no agreement as to the amount of commission has been entered into, the rate of commission or other basis or amount of remuneration is that generally prevailing in Bermuda.

Agreement to list real estate

27 (1) An agent or salesman immediately after the execution of an agreement to list with him real estate for sale, exchange, lease or rent shall deliver to the person who has signed the agreement a true copy thereof.

(2) No exclusive agreement to list real estate for sale, exchange, lease or rental with an agent or salesman is valid unless it is provided therein that the agreement expires on a date specified therein.

(3) Where an agent or salesman has secured from the owner of real estate a signed acceptance of an offer to sell, purchase, exchange, lease or rent such real estate, the agent or salesman shall deliver immediately a true copy of the acceptance to each of the parties to the contract or their legal representatives.

APPEAL TO SUPREME COURT

Appeal to Supreme Court

28 (1) An appeal shall lie to the Supreme Court against the decision of the Minister made under section 7 to refuse a licence, or to suspend or cancel a licence.

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(2) An appeal under this section shall lie at the instance of the person aggrieved by the decision of the Minister and shall be commenced by notice of motion filed in the Registry and served on the Attorney General within twenty-one days of the date on which the order took effect.

(3) Rules of Court may be made under section 62 of the Supreme Court Act 1905 [*title 8 item 1*] for the purpose of regulating the practice and procedure on appeals under this section.

(4) On an appeal under this section the Supreme Court may confirm, reverse, vary or modify the decision of the Minister or may remit the matter to him with the opinion of the Supreme Court thereon.

OFFENCES, ETC.

Offences and penalties

29 A person who—

- (a) contravenes a provision of this Act or of a regulation; or
- (b) omits, refuses or neglects to fulfil, perform, observe or carry out a duty or obligation created or imposed by this Act or a regulation,

commits an offence:

Punishment on summary conviction: a fine of \$5,000 for each offence.

Burden of proof

30 In a prosecution under this Act, where the accused pleads that at the time of the act or omission complained of he was the holder of a licence, the burden of proof is on the accused.

Commencement of prosecution

31 A prosecution under this Act may be commenced within two years from the date on which the offence is alleged to have been committed, but not thereafter.

Statement as evidence

32 A statement as to the licensing or non-licensing of a person under this Act, purporting to be certified by the Superintendent, shall, without proof of the office or signature of the person certifying, be receivable in evidence so far as relevant for all purposes in any action, proceeding or prosecution.

REGULATIONS

Regulations

33 (1) The Minister may make regulations—

- (a) prescribing forms for use under this Act and the regulations;

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- (b) prescribing the practice and procedure upon an investigation under sections 13, 14 and 15;
 - (c) providing for the examination of applicants for licences; and
 - (d) generally for the better carrying out of the provisions of this Act, and the more efficient administration thereof.
- (2) The negative resolution procedure shall apply to regulations made under this section.

Saving of rights of certain persons

34 *[omitted]*

Commencement

35 *[omitted]*

[Assent Date: 15 March 1976]

[This Act was brought into operation on 1 December 1977 by GN 454/1977]

[Amended by:

1977 : 35

BR 81 / 1999

BR 5 / 2011

2014 : 8]