



BERMUDA

REAL ESTATE BROKERS' LICENSING ACT 2017

2017 : 28

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#### Further Consequential Amendments

WHEREAS it is expedient to replace the Real Estate Agents' Licensing Act 1976, which has been in existence for over 40 years in its original form, to modernise the operation and regulation of the real estate industry by enacting the Real Estate Brokers' Licensing Act 2017;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### Citation

- 1 This Act may be cited as the Real Estate Brokers' Licensing Act 2017.

#### Interpretation

- 2 In this Act—
  - “agent” means a real estate salesman, and includes a person employed by or associated with a broker to trade in real estate;
  - “bank” means an institution licensed as a bank under the Banks and Deposit Companies Act 1999;
  - “Board” means the Real Estate Brokers' Advisory Board established under section 12;
  - “broker” means a real estate broker, and includes a person who, for another or others, for compensation, gain or reward, or hope or promise of compensation, gain or reward, either alone or through one or more officials or agents, trades in real estate;
  - “Court” means the Supreme Court;

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"licence" means a licence granted under section 13 of this Act;

"Minister" means the Minister responsible for the Registrar of Companies;

"official" means a president, a vice-president, a secretary, a treasurer, a managing director, a general manager, a department manager, a branch office manager and any person acting in a similar capacity whether so designated or not;

"partnership" has the meaning given to it under section 1 of the Partnership Act 1902;

"prescribed" means prescribed by this Act or any regulations made under this Act;

"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;

"Superintendent of Real Estate" means the Registrar of Companies appointed under section 3 of the Companies Act 1981;

"trade" means—

- (a) a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise;
  - (b) any offer or attempt to list real estate for the purpose of such disposition, acquisition or transaction referred to in paragraph (a); or
  - (c) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of such a disposition, acquisition, transaction or offer,
- and the verb "trade" has a corresponding meaning.

### Application of Act

3 This Act does not apply to—

- (a) an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by an Act or under the order of a court, or an administrator of an estate or any executor or trustee selling under the terms of a will, settlement or trust; or
- (b) a person who—
  - (i) acquires real estate in his own name;
  - (ii) disposes of real estate owned by him or in which he has a substantial interest; or
  - (iii) is an official or employee of a person engaged in so acquiring or disposing of real estate in the name of that person.

SUPERINTENDENT OF REAL ESTATE

Supervisory role of the Superintendent of Real Estate

4 (1) For the avoidance of doubt, the Superintendent of Real Estate is the supervisory authority for real estate brokers, for the purpose of detecting or preventing—

- (a) money laundering;
- (b) the financing of terrorism;
- (c) the financing of the proliferation of weapons of mass destruction.

(2) As supervisory authority, the Superintendent of Real Estate shall effectively perform all duties imposed by section 5 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

Functions of Superintendent of Real Estate

5 (1) The Superintendent of Real Estate shall have the powers conferred on him by this Act and the duty generally to supervise the real estate industry in his exercise of those powers.

(2) It shall also be the duty of the Superintendent of Real Estate to keep under review the operation of this Act and developments in the field of real estate which appear to him to be relevant to the exercise of his powers and the discharge of his duties.

(3) The Superintendent of Real Estate shall as soon as may be, and in any case not later than six months after the end of each calendar year, make a report to the Minister on his activities under this Act.

Superintendent of Real Estate's statement of principles

6 (1) The Superintendent of Real Estate shall, as soon as practicable after the coming into operation of this Act, publish in such manner as he thinks fit a statement of principles in accordance with which he is acting or proposes to act—

- (a) in interpreting the minimum criteria specified in Schedule 1 and the grounds for revocation specified in section 17;
- (b) in exercising his power to grant, revoke or refuse a licence;
- (c) in exercising his power to obtain information and reports and to require production of documents; and
- (d) in exercising his powers—
  - (i) under section 35 to impose a civil penalty;
  - (ii) under section 37 to censure publicly;
  - (iii) under section 39 to make a prohibition order; and
  - (iv) under section 47 to publish information about any matter to which a decision notice relates.

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(2) If the Superintendent of Real Estate makes a material change to the principles, he shall publish a statement of the change or the revised statement of principles in the same manner as he published the statement under subsection (1).

Minister to issue directions to Superintendent of Real Estate

7 The Minister may from time to time give to the Superintendent of Real Estate general policy directions, not inconsistent with the provisions of this Act, as to the performance of his functions under this Act and the Superintendent of Real Estate shall give effect to such directions.

### LICENCES

Trading in real estate

8 (1) No person shall—

- (a) trade in real estate, unless he is licensed as a broker or as an agent of a broker; 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 a broker; or
- (c) act as an agent 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 an agent of the partnership or company; and
  - (ii) the partnership or company is licensed as a broker.

(2) A change in the membership of a partnership shall be deemed to create a new partnership and any licence existing prior to the change of membership shall be deemed to have been extinguished.

(3) A person who is not the holder of a valid licence under this Act shall not act or directly or indirectly hold himself out as a broker or an agent in Bermuda.

Licensing of broker

9 (1) No broker shall be licensed unless he maintains an office in Bermuda satisfactory to the Superintendent of Real Estate, from which he conducts his real estate business.

(2) No person shall be licensed as a broker unless the Superintendent of Real Estate—

- (a) is satisfied that the minimum criteria set out in Schedule 1 are fulfilled in respect of the applicant's real estate business; and
- (b) is satisfied after investigation that the person is qualified to be licensed as a broker at the time of his application.

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### Licensing of agent

- 10 (1) An agent shall be licensed only where he is the agent of a broker.
- (2) No person shall be licensed as an agent unless the Superintendent of Real Estate is satisfied that the minimum criteria set out in Schedule 1 are fulfilled in respect to the applicant.
- (3) Each application for a licence as an agent or the renewal of a licence as an agent shall have attached to it in a form approved by the Superintendent of Real Estate—
- (a) a recommendation of the applicant, made by or on behalf of a licensed broker; and
  - (b) a declaration that the applicant, if granted a licence, is to act as an agent employed by or associated with and representing the broker making the declaration or on whose behalf the declaration is made.
- (4) The licence shall be inscribed with the name of the broker as principal of the licensee.
- (5) Upon an agent ceasing to be employed by or associated with a licensed broker, the licence of the agent shall become void.
- (6) A person licensed to act as an agent of a broker shall not apply to act as an agent of or to represent another broker, unless he surrenders his licence to the first broker.

### Application by partnership or company

- 11 (1) A partnership or company—
- (a) may apply for and obtain a broker's licence in the name of the partnership or company; and
  - (b) shall designate two individuals who shall act as their or its representatives.
- (2) If a licence is granted, when it is issued it shall—
- (a) be in the name of the partnership or company; and
  - (b) have stated on it the name of the individual who is authorised to act as a broker on behalf of the partnership or company.
- (3) Any associate, partner or employee of a broker, and any officer, member or employee of a partnership or company licensed as a broker may apply for and obtain a licence authorising the holder of the licence to act as an agent.

### Real Estate Brokers' Advisory Board

- 12 (1) There is established for the purposes of this Act an advisory Board to be known as the Real Estate Brokers' Advisory Board.
- (2) The Board shall among other things be responsible for advising the Superintendent of Real Estate on issues affecting the real estate industry.

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(3) Schedule 2 shall have effect in relation to the constitution of and other matters concerning the Board.

### Powers of Superintendent of Real Estate

13 (1) When an application for a licence or the renewal of a licence is received and the prescribed fee is paid, the Superintendent of Real Estate, if he is satisfied that the applicant is suitable to be licensed, may grant or renew a licence, subject to such terms and conditions as he considers appropriate, authorising the holder to, during the term of the licence, carry on the business of a broker or act as an agent in Bermuda.

(2) The Superintendent of Real Estate shall not grant a licence unless he is satisfied that the minimum criteria specified in Schedule 1 are fulfilled with respect to the applicant.

(3) If the Superintendent of Real Estate is for any reason of the opinion that an application for a licence or the renewal of a licence should be refused, he may, in writing, refuse a licence to the applicant.

(4) A licence—

- (a) expires on 30 September of each year; and
- (b) may be renewed on application to the Superintendent of Real Estate and payment of the prescribed fee,

unless the licence has previously been suspended or revoked by the Superintendent of Real Estate.

(5) A person aggrieved by a decision of the Superintendent of Real Estate under this section may appeal to the Supreme Court as provided in section 48.

### Application for licence

14 An application for a licence or the renewal of a licence shall be made in writing on the prescribed form provided by the Superintendent of Real Estate, and shall be accompanied by such fee as may be prescribed under the Government Fees Regulations 1976.

### Address for service

15 (1) An applicant for a licence or the renewal of a licence shall state in the application an address for service in Bermuda.

(2) Notices authorised or required by or under this Act or by or under regulations made thereunder are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service stated as required in subsection (1).

### Information required by Superintendent of Real Estate

16 The Superintendent of Real Estate may at any time require—

- (a) that further information or material be submitted by an applicant or a licensed person within a specified time; and



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- (b) if he so desires, verification by affidavit or otherwise of any information or material then or previously submitted.

### Revocation of licence

17 Subject to section 18, the Superintendent of Real Estate may revoke the licence of a broker or an agent if he is satisfied that—

- (a) the minimum criteria specified in Schedule 1 are not or have not been fulfilled, or may not be or may not have been fulfilled, in respect of a broker or an agent;
- (b) a broker or an agent has failed to comply with any terms and conditions of a licence or an obligation imposed on him by or under this Act;
- (c) the Superintendent of Real Estate has been provided with false, misleading or inaccurate information by or on behalf of a broker or an agent or, in connection with an application for a licence, by or on behalf of a person who is or is to be a representative of a partnership or company.

### Notice of revocation of licence

18 (1) Where the Superintendent of Real Estate proposes to revoke a licence under section 17, he shall give to the broker or agent concerned a warning notice under section 44.

(2) Where the ground to impose a proposed revocation is that it appears to the Superintendent of Real Estate that the criterion in paragraph 1 of Schedule 1 is not or has not been fulfilled, or may not be or may not have been fulfilled, the Superintendent of Real Estate shall give that person a copy of the warning notice, but the Superintendent of Real Estate may omit from such copy any matter which does not relate to that person.

(3) After giving a notice under subsection (1) and taking into account any representations made under section 45(2), the Superintendent of Real Estate shall decide—

- (a) whether to proceed with the action proposed in the notice;
- (b) whether to take no further action.

(4) Once the Superintendent of Real Estate has made a decision under subsection (3), he shall forthwith provide either a decision notice under section 45 or a notice of discontinuance under section 46, as the case may be.

(5) The Superintendent of Real Estate shall publish in the Gazette, in such form as he thinks fit, notice of every revocation of a licence under this Act.

### Surrender of licence

19 (1) A broker or an agent may surrender his licence by written notice to the Superintendent of Real Estate.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; where a later date is specified in the notice, a broker or an agent

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may by further written notice to the Superintendent of Real Estate substitute an earlier date, not being earlier than that on which the first notice was given.

### Notice of changes

20 A licensed broker shall immediately notify the Superintendent of Real Estate 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 or association with each agent.

### INVESTIGATION AND ACTION BY SUPERINTENDENT OF REAL ESTATE

#### Investigation

21 (1) The Superintendent of Real Estate, or a person authorised by him, may—

- (a) on complaint of a person interested, or when the Superintendent of Real Estate deems it necessary without complaint, investigate and enquire into—
  - (i) any matter concerning the due administration of this Act or any other Act; or
  - (ii) the circumstances surrounding a transaction or matter or action done by a broker or an agent, whether licensed or not licensed; and
- (b) for the purpose of such an investigation, enquire into and examine any business or employment to which this Act applies or the person in respect of whom the investigation is being made, and examine and enquire 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 items owned, acquired or alienated in whole or in part by such person or by a person acting on behalf of a broker or for such person.

(2) A person in respect of whom the investigation is made shall within five days provide answers to such enquiries.

#### Production of documents

22 (1) In order to ensure that this Act and any regulations made under this Act are being complied with, or for the purposes of an investigation under section 21, the Superintendent of Real Estate or a person authorised by him may require the production of—

- (a) all or any of the books mentioned in section 21; and

- (b) all or any documents relating to a trade in real estate prepared by any broker or agent,

for inspection.

(2) A person who has the custody, possession or control of the books or documents referred to in subsection (1) shall within five business days of a demand produce and permit the inspection of them by the Superintendent of Real Estate or a person authorised by the Superintendent of Real Estate.

(3) A person who contravenes subsection (2), by refusing or neglecting to produce or permit the inspection of books or documents, commits an offence.

(4) Where an investigation is being carried out under section 21, the Superintendent of Real Estate or the person conducting the investigation may seize and take possession of documents, books, papers, correspondence, communications or records of the person or the business which is being investigated.

(5) The power conferred by this section may not be exercised in relation to information or documents in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

#### BROKER'S ACCOUNTS

##### Books of broker

23 (1) A broker 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 broker 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 from the trust accounts; 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 him or to the partnership, in the case of a partnership.

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(3) A broker shall submit to the Superintendent of Real Estate in each year within the time required by subsection (5) a report by the broker's auditors in a form prescribed by the regulations—

- (a) stating that the broker 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 broker;
- (c) stating that the moneys on deposit held in trust for clients have 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;
- (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 30 June or the last day of the broker's financial year.

(5) The report referred to in subsection (3) shall be submitted to the Superintendent of Real Estate 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 to practise as a public accountant.

### RECOVERY OF COMMISSION

#### Unlicensed broker

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

#### Recovery of commission

25 No action shall be brought to charge a person for commission or otherwise for services rendered in connection with the sale or lease 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 broker lawfully authorised 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 or otherwise agreed in writing by either the sale or lease and purchase or listing agreement; and
  - (ii) has duly executed a sale and purchase agreement or lease signed by all necessary parties and delivered it to the purchaser or lessee.

#### REGULATION OF TRADING

##### Representations by brokers or agents

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

- (a) resell or in any way guarantee or promise to resell real estate offered for sale by him;
- (b) sell any of the purchaser's real estate; or
- (c) 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 electronic copy thereof setting out the representation in clear language.

##### Advertising

27 (1) When advertising to purchase, sell, exchange, or lease any real estate, a broker or agent shall clearly indicate that—

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

(2) A reference to the name of an agent in the advertisement shall clearly indicate that the agent is an associate of the broker.

##### Employment of agent of another broker

28 No broker shall—

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

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### Commission

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

### Purchase by broker or agent

30 No broker or agent 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, unless he has disclosed in writing to the Superintendent of Real Estate and to the listing owner complete details of his negotiations for the sale of the said property to another person.

### Duties of agent

31 No agent—

- (a) shall trade in real estate on behalf of a broker other than the broker who, according to the records of the Superintendent of Real Estate, hold his licence; or
- (b) is entitled to or may accept a commission or other remuneration for trading in real estate from another person, except the broker who holds his licence.

### Breach of contract

32 No broker or agent 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

33 (1) No broker or agent—

- (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 a broker in respect of the sale or lease of real estate shall be on an agreed amount or percentage of the sale price or lease 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 shall be that generally prevailing in Bermuda.

### Agreement to list real estate

34 (1) A broker or agent shall execute an agreement to list with him before listing real estate for sale, exchange, lease or rent.

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(2) A broker or agent, immediately after the execution of the agreement to list in subsection (1), shall deliver to the person who has signed the agreement a true copy of the agreement.

(3) No sole agreement to list real estate for sale, exchange, lease or rental with a broker or agent is valid unless it is provided in the agreement that the agreement expires on a date specified in the agreement.

(4) Where a broker or agent 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 broker or agent shall immediately deliver a true copy of the acceptance to each of the parties to the contract or their legal representatives.

### DISCIPLINARY MEASURES

#### Power to impose civil penalties for breach of requirements

35 (1) Any person who fails to comply with any requirement or contravenes any prohibition imposed by or under this Act shall be liable to a civil penalty not exceeding \$250,000, as the Superintendent of Real Estate considers appropriate, for each such failure or contravention.

(2) For the purposes of subsection (1), "appropriate" means effective, proportionate and dissuasive.

(3) The Superintendent of Real Estate shall not impose a civil penalty under subsection (1) where he is satisfied that the person concerned took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

#### Civil penalties: procedures

36 (1) If the Superintendent of Real Estate proposes to impose a civil penalty, he shall give the person concerned a warning notice.

(2) If the Superintendent of Real Estate decides to impose a civil penalty, he shall give the person concerned a decision notice.

#### Public censure

37 (1) If the Superintendent of Real Estate considers that a broker or an agent has contravened a requirement imposed on him by or under this Act, he may publish a statement to that effect.

(2) After a statement under this section is published, the Superintendent of Real Estate shall send a copy of it to the broker or agent.

#### Public censure: procedures

38 (1) If the Superintendent of Real Estate proposes to publish a statement under section 37 in respect of a broker or an agent, he shall give the broker or agent a warning notice.

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(2) If the Superintendent of Real Estate decides to publish a statement under section 37 (whether or not in the terms proposed), he shall give the broker or agent concerned a decision notice.

### Prohibition orders

39 (1) Subsection (2) applies if it appears to the Superintendent of Real Estate that an individual is not a fit and proper person to perform functions in relation to being a broker or an agent.

(2) The Superintendent of Real Estate may make a prohibition order prohibiting the individual from performing any such function.

(3) In exercising his discretion to make a prohibition order under subsection (2), the Superintendent of Real Estate shall have regard (among other things) to such factors, including assessment criteria, as the Superintendent of Real Estate may establish in the statement of principles.

(4) The Superintendent of Real Estate shall ensure that no function performed in relation to real estate is performed by an individual who is prohibited from performing that function by a prohibition order.

(5) The Superintendent of Real Estate may, on the application of the individual named in a prohibition order, vary or revoke the prohibition order.

(6) The Superintendent of Real Estate shall publish a prohibition order that is in effect, and every variation of such order, in such manner as he considers appropriate to bring the order to the attention of the public.

### Prohibition orders: procedures

40 (1) If the Superintendent of Real Estate proposes to make a prohibition order, he shall give the individual concerned a warning notice.

(2) If the Superintendent of Real Estate decides to make a prohibition order, he shall give the individual concerned a decision notice.

### Applications relating to prohibition orders: procedures

41 (1) This section applies to an application for the variation or revocation of a prohibition order.

(2) If the Superintendent of Real Estate decides to grant the application, he shall give the applicant written notice of his decision.

(3) If the Superintendent of Real Estate decides to refuse the application, he shall give the applicant a decision notice.

### Determination of applications for variation etc.

42 (1) The Superintendent of Real Estate may grant an application made under section 41 if he is satisfied that the applicant is a fit and proper person to perform the function to which the application relates.



(2) In deciding that question, the Superintendent of Real Estate may have regard (among other things) to whether the applicant—

- (a) has obtained a qualification;
- (b) has undergone, or is undergoing, training; or
- (c) possesses a satisfactory level of competence,

required in relation to persons performing functions of the kind to which the application relates.

*Irjunctions*

Irjunctions

43 (1) If, on the application of the Superintendent of Real Estate, the Court is satisfied—

- (a) that there is a reasonable likelihood that any person will contravene a relevant requirement; or
- (b) that any person has contravened a relevant requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the Superintendent of Real Estate, the Court is satisfied—

- (a) that any person has contravened a relevant requirement; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(3) If, on the application of the Superintendent of Real Estate, the Court is satisfied that any person may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of such a requirement,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the court may direct to remedy it.

(4) In subsections (2) and (3), references to remedying a contravention include references to mitigating its effect.

(5) "Relevant requirement" in relation to an application by the Superintendent of Real Estate means a requirement which is imposed by or under this Act.

*Notices*

Warning notices

- 44 (1) A warning notice shall—
- (a) state the action which the Superintendent of Real Estate proposes to take;
  - (b) be in writing; and
  - (c) give reasons for the proposed action.
- (2) The warning notice shall specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the Superintendent of Real Estate, and where such representations are made the Superintendent of Real Estate shall take them into account in deciding whether to give a decision notice.
- (3) The Superintendent of Real Estate may extend the period specified in the notice.
- (4) A warning notice given under section 38 about a proposal to publish a statement shall set out the terms of the statement.
- (5) A warning notice given under section 41(1) shall set out the terms of the prohibition.

Decision notices

- 45 (1) A decision notice shall—
- (a) be in writing;
  - (b) give reasons for the Superintendent of Real Estate's decision to take the action to which the notice relates;
  - (c) give his decision; and
  - (d) give an indication of the right to appeal the decision to the Supreme Court under section 48.
- (2) A decision notice shall be given within 90 days beginning with the day on which a warning notice under section 44 was given, and if no decision notice under subsection (1) is given within that period, the Superintendent of Real Estate shall be treated as having at the end of that period given a notice of discontinuance under section 46.
- (3) A decision notice under section 18(4) imposing a revocation shall set out the terms of the revocation.
- (4) A decision notice under section 37(2) about the imposition of a civil penalty shall state the date of payment.
- (5) A decision notice under section 39(2) about public censure shall—
- (a) set out the terms of the statement;

- (b) give details of the manner in which, and the date on which, the statement will be published.
- (6) A decision notice under section 41(2) about a prohibition order shall—
  - (a) name the individual to whom the prohibition order applies;
  - (b) set out the terms of the order; and
  - (c) be given to the individual named in the order.
- (7) A decision notice shall state the day on which it is to take effect.
- (8) The Superintendent of Real Estate may, before he takes the action to which a decision notice (“the original notice”) relates, give the person concerned a further decision notice which relates to different action in respect of the same matter.
- (9) The Superintendent of Real Estate may give a further decision notice as a result of subsection (8) only if the person to whom the original notice was given consents.
- (10) If the person to whom a decision notice is given under subsection (1) had the right to refer to the Supreme Court the matter to which the original decision notice related, he also has that right as respects the decision notice given under subsection (8).

*Conclusion of action*

Notices of discontinuance

- 46 (1) Subject to section 46(2), if the Superintendent of Real Estate decides not to take the action proposed in a warning notice he shall give a notice of discontinuance to the person to whom the warning notice was given.
- (2) A notice of discontinuance shall identify the action which is being discontinued.

*Publication*

Publication

- 47 (1) Subject to sections 18, 37 and 39, the Superintendent of Real Estate may publish such information about a matter to which a decision notice relates as he considers appropriate.
- (2) The Superintendent of Real Estate shall not publish a decision under subsection (1)—
- (a) before notifying the person concerned; and
  - (b) pending an appeal under section 48.

APPEAL TO SUPREME COURT

Appeal to Supreme Court

- 48 (1) An appeal shall lie to the Supreme Court against a decision of the Superintendent of Real Estate—

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- (a) to refuse a licence, or to suspend or revoke a licence under section 13;
  - (b) to revoke a licence under section 17;
  - (c) to impose a civil penalty under section 35;
  - (d) to publish a statement pursuant to section 37.
- (2) Any person in respect of whom a decision notice has been issued under section 42(3) refusing a variation or revocation of a prohibition order may appeal to the Supreme Court.
- (3) The revocation of a broker's or an agent's licence pursuant to a decision against which there is a right of appeal under this section shall not have effect—
- (a) until the end of the period within which the appeal can be brought; and
  - (b) if such an appeal is brought, until it is determined or withdrawn.
- (4) An appeal under this section shall lie at the instance of the person aggrieved by the decision of the Superintendent of Real Estate and shall be commenced by notice of motion filed in the Registry and served on the Attorney-General within 21 days of the date on which the notice took effect.
- (5) Rules of Court may be made under section 62 of the Supreme Court Act 1905 for the purpose of regulating the practice and procedure on appeals under this section.
- (6) On an appeal under this section, the Supreme Court may confirm, reverse, vary or modify the decision of the Superintendent of Real Estate or may remit the matter to him with the opinion of the Supreme Court thereon.

### OFFENCES AND EVIDENCE

#### Offences and penalties

- 49 (1) Any person who—
- (a) contravenes a provision of this Act or any regulations made under this Act; or
  - (b) omits, refuses or neglects to fulfil, perform, observe or carry out a duty or obligation created or imposed by this Act or any regulations made under this Act,
- commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for two years or to both.
- (2) Any person who fails to comply with the terms of a prohibition order made under section 40(2) commits an offence and is liable—
- (a) on summary conviction to a fine of \$25,000 or to imprisonment for one year or to both;
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for two years or to both.

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### Civil debt and civil penalties

50 (1) When a person is convicted of an offence under this Act, such person shall not also be liable to a civil penalty imposed by or under section 36 in relation to the same matter.

(2) A civil penalty levied pursuant to this Act may be recovered by the Superintendent of Real Estate as a civil debt.

### Commencement of prosecution

51 Notwithstanding section 80 of the Criminal Jurisdiction and Procedure Act 2015, a prosecution under this Act shall be commenced within three years from the date on which the offence is alleged to have been committed.

### Statement as evidence

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

## MISCELLANEOUS PROVISIONS

### Regulations

53 (1) The Minister may make regulations—

- (a) prescribing forms for use under this Act and regulations made under this Act;
- (b) prescribing the practice and procedure for an investigation under section 21;
- (c) providing for the examination of applicants for licences; and
- (d) generally for the better carrying out of the provisions of this Act.

(2) The negative resolution procedure shall apply to regulations made under this section.

### Protection from liability

54 Neither the Superintendent of Real Estate nor any person who is, or is acting as, an officer or servant on his behalf shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of the functions of the Superintendent of Real Estate under this Act unless it is shown that the act or omission was done or made in bad faith.

### Consequential amendments

55 (1) The First Schedule to the Government Authorities (Fees) Act 1971 is amended in Part B by inserting the following in its proper alphabetical position—

“ Real Estate Brokers' Advisory Board - established by section 12 of the Real Estate Brokers' Licensing Act 2017”.

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(2) Head 59 in the Schedule to the Government Fees Regulations 1976 is repealed and replaced with—

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Head 59

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Real Estate Brokers' Licensing Act 2017

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(1)	Issuing or renewing an annual broker's licence under section 14	\$635
(2)	Issuing or renewing an annual agent's licence under section 14	\$105

”

(3) The legislation specified in Schedule 3 is amended as set out in that Schedule.

Repeal, Savings and transitional provisions

56 (1) The Real Estate Agents' Licensing Act 1976 is repealed.

(2) Notwithstanding subsection (1), any Regulations made under the Real Estate Agents' Licensing Act 1976, shall continue in operation as if made under this Act.

(3) Notwithstanding subsection (1)—

(a) any person who on the day of the coming into operation of this Act was licensed under the Real Estate Agents' Licensing Act 1976 shall be deemed to be licensed under this Act; and

(b) a licence obtained by any person under the Real Estate Agents' Licensing Act 1976 that is due to lapse on the 30 September 2017 shall be deemed to continue to be valid until 30 November 2017.

(4) An application for a licence under section 9 of the Real Estates Agents' Licensing Act 1976 which is wholly or partly heard at the commencement of this Act shall be dealt with under the provisions of this Act.

(5) Any proceeding in respect of section 29 of the Real Estate Agents' Licensing Act 1976 that was filed before the commencement of this Act shall be dealt with under the procedures in operation on the date the matter was filed.

SCHEDULE 1

(Section 6(1)(a))

MINIMUM CRITERIA FOR LICENSING

*REAL ESTATE BROKERS AND AGENTS TO BE FIT AND PROPER PERSONS*

1 (1) The following persons associated with a real estate business must be fit and proper persons—

- (a) a broker or an agent;
- (b) a person who effectively directs or controls the business, including a director, controller or senior executive;
- (c) a person carrying out, in relation to the business or profession, the functions of a reporting officer described in regulation 17 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
- (d) a person carrying out, in relation to the business or profession, the functions of a compliance officer described in regulation 18A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfil those responsibilities and to whether the interests of his clients are, or are likely to be, in any way threatened by his holding that position.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business matters of the person in question and, in particular, to any evidence that he has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Superintendent of Real Estate to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons in the real estate industry;
- (c) engaged in any business practices appearing to the Superintendent of Real Estate to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise bring his profession into disrepute;
- (d) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

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2 (1) In paragraph 1(1)(b), "director", "controller" and "senior executive" shall be construed in accordance with the provisions of this paragraph.

(2) "Director" in relation to a real estate business, includes any person who occupies the position of director, by whatever name called.

(3) "Controller" in relation to a real estate business means—

- (a) in the case of a real estate business which is a company, a managing director of the company;
- (b) in the case of a real estate business which is a firm—
  - (i) if a partnership, the managing partner; or
  - (ii) if an unincorporated association, a member of the firm;
- (c) in the case of a real estate business which is neither a company nor a firm, a sole proprietor;
- (d) a chief executive of the real estate business or of its parent entity; and
- (e) a person who—
  - (i) holds ten percent or more of the shares in a real estate business which is a company, or in its parent entity;
  - (ii) is entitled to exercise or control the exercise of ten percent or more of the voting power in the real estate business, or in the parent entity; or
  - (iii) is able to exercise a significant influence over the management of the real estate business, or the parent entity by virtue of the voting power in the real estate business or the parent entity;
- (f) a person in accordance with whose directions or instructions the following persons are accustomed to act—
  - (i) the directors of the real estate business;
  - (ii) the directors of the parent entity of the real estate business; and
  - (iii) persons who are controllers by virtue of paragraph (e).

(4) "Senior executive", in relation to a real estate business, means a person who, under the immediate authority of a director or chief executive of the real estate business,—

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the real estate business or profession.

*BUSINESS TO BE CONDUCTED IN PRUDENT MANNER*

3 (1) The person conducts, or, in the case of a person not yet carrying on in the real estate business, will conduct, his business in a prudent manner.



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(2) A person shall not be regarded as conducting his business in a prudent manner unless he makes or, as the case may be, will maintain adequate accounting and other records of his business and adequate systems of control of his business and records.

(3) Those records and systems shall not be regarded as adequate unless they are such as to enable the business to be prudently managed and the person to comply with the duties imposed on him by or under this Act and, in determining whether those systems are adequate, the Superintendent of Real Estate shall have regard to the functions and responsibilities in respect of the nature and scale of the business's operations.

(4) In determining whether a person is conducting his business in a prudent manner, the Superintendent of Real Estate shall take into account any failure by the person to comply with the provisions of—

- (a) this Act;
- (b) any other law, including provisions of the law pertaining to anti-money laundering and financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008; and
- (c) international sanctions in force in Bermuda.

### *INTEGRITY AND SKILL*

4 The business of the broker or agent is or, in the case of a broker or an agent who is not yet carrying on real estate business, will be carried on with integrity and the professional skills appropriate to the nature and scale of his activities.

SCHEDULE 2

(Section 12(3))

REAL ESTATE BROKERS' ADVISORY BOARD

CONSTITUTION AND PROCEDURE

Constitution of the Board

1 The Board shall consist of—

- (a) a Chairman who shall not be the Superintendent of Real Estate or his representative or a person licensed under this Act;
- (b) not less than six and not more than seven other persons, as follows—
  - (i) at least four persons from a list of full time practising licensed brokers and agents with no less than five years' practice in real estate;
  - (ii) one barrister and attorney with not less than five years' experience in property law;
  - (iii) one professionally qualified chartered surveyor,

appointed by the Minister.

Tenure of office

2 A person appointed to be a member of the Board shall, unless his appointment is sooner terminated, hold office for a period not exceeding two years as shall be specified in his instrument of appointment, but he shall be eligible for reappointment upon the expiration of his term of office.

Chairman and Deputy Chairman

3 There shall be a Chairman and a Deputy Chairman of the Board, both of whom shall be appointed by the Minister from among the members of the Board and each of whom shall hold office, subject to paragraph 2.

Temporary appointment

4 In case of the absence or inability of any member to act, the Minister may appoint a person to act temporarily in his place.

Resignation

5 (1) Any member, other than the Chairman, may at any time resign his office in writing addressed to the Minister and transmitted through the Chairman and, from the date of receipt by the Minister of such writing, such member shall cease to be a member.

(2) The Chairman may at any time resign his office in writing addressed to the Minister and, from the date of receipt by the Minister of such correspondence, the Chairman shall cease to be a member.

Removal of member

6 The Minister may at any time declare the office of a member of the Board vacant if he is satisfied that the member—

- (a) has failed without sufficient cause to attend three consecutive meetings of the Board;
- (b) is incapacitated by physical or mental illness; or
- (c) has otherwise become unable or unfit to perform his duties as a member.

Effect of vacancy on the Board

7 Subject to this Schedule, the Board shall be deemed to be properly constituted notwithstanding that there is a vacancy in the office of Chairman or any other member.

Procedure at meeting

8 (1) The Board shall meet at such times and on such days as may be necessary or expedient for the transaction of its business.

(2) The minutes of each meeting of the Board shall be kept in proper form.

(3) The Chairman may at any time call a meeting of the Board and shall call a meeting within five days of a written request for that purpose addressed to him by any three members.

(4) The Chairman shall preside at all meetings of the Board at which he is present, and in his absence the Deputy Chairman shall preside, and in the absence of the Chairman and the Deputy Chairman the members present and constituting a quorum shall elect a chairman from among the members to preside at that meeting.

(5) Every member shall have one vote; the Chairman shall have an original vote but in the event of an equality of votes he shall have a casting vote.

(6) Subject to sub-paragraph (5), decisions of the Board shall be by majority vote.

(7) A quorum of the Board shall be three.

(8) Subject to this Schedule, the Board may regulate its own proceedings.

(9) The validity of any proceedings of the Board shall not be affected by any defect in the appointment of a member.

Protection of members

9 No action, suit, prosecution or other proceeding shall be brought or instituted personally against any member of the Board in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

Office of member not public office

10 The office of Chairman, Deputy Chairman or member of the Board shall not, by virtue of this Act alone, be a public office.

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Remuneration

11 Fees shall be paid to members of the Board in accordance with the Government Authorities (Fees) Act 1971.

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SCHEDULE 3

(Section 55)

FURTHER CONSEQUENTIAL AMENDMENTS

Legislation amended	Delete	Insert
1. Anti-Terrorism (Financial and Other Measures) Act 2004—		
section 2	definition of “real estate agent”	in its proper alphabetic place— “real estate agent” means a person licensed under the Real Estate Brokers’ Licensing Act 2017 as an agent; “real estate broker” means a person licensed under the Real Estate Brokers’ Licensing Act 2017 as a broker;
section 12O(1)(2)(e)	real estate agents	real estate brokers
2. Base Lands Development Act 1996 — section 13	Real Estate Agents’ Licensing Act 1976	Real Estate Brokers’ Licensing Act 2017
Barristers’ Code of Professional Conduct 1981— paragraph 32	Real Estate Agents’ Licensing Act 1976	Real Estate Brokers’ Licensing Act 2017
3. Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 —		

REAL ESTATE BROKERS' LICENSING ACT 2017

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Legislation amended	Delete	Insert
section 2(1)	definition of "real estate agent"	in its proper alphabetic place— "real estate agent" means a person licensed under the Real Estate Brokers' Licensing Act 2017 as an agent; "real estate broker" means a person licensed under the Real Estate Brokers' Licensing Act 2017 as a broker;
section 2(1) in the definition of "Superintendent of Real Estate"	Real Estate Agents' Licensing Act 1976	Real Estate Brokers' Licensing Act 2017
section 3(1)(aa)	real estate agents	real estate brokers and real estate agents
section 6A(3)	a) real estate agents b) Real Estate Agents' Licensing Act 1976	a) real estate brokers and real estate agents b) Real Estate Brokers' Licensing Act 2017
section 8(1)(b)(ia)	real estate agents	real estate brokers, real estate agents
section 20(1)(a) and (b)	real estate agent	real estate broker, real estate agent
section 20(3)(b)	real estate agents	real estate brokers and real estate agents
4. Proceeds of Crime Act 1997—		
section 42A(1)—	(a) definition of "real estate agent"	in its proper alphabetic place— "real estate agent" means a person licensed under the Real Estate Brokers' Licensing Act 2017 as an agent; "real estate broker" means a person licensed under the Real Estate Brokers' Licensing Act 2017 as a broker;

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Legislation amended	Delete	Insert
	(b) in the definition of “supervisory authority” in paragraph (ab) “Real Estate Agents’ Licensing Act 1976”	Real Estate Brokers’ Licensing Act 2017
section 49(4)(ib)	real estate agents	real estate brokers and real estate agents
5. Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 — regulation 2	definition of “real estate agent”	in its proper alphabetic place— “real estate agent” means a person licensed under the Real Estate Brokers’ Licensing Act 2017 as an agent; “real estate broker” means a person licensed under the Real Estate Brokers’ Licensing Act 2017 as a broker;
regulation 2 in the definition of “supervisory authority” in paragraph (ab)	real estate agents	real estate brokers and real estate agents
regulation 4(e)	real estate agents	real estate brokers and real estate agents

[Assent Date: 02 October 2017]

[Operative Date: 02 October 2017]