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CHAPTER 171

REAL ESTATE (BROKERS AND SALESMEN)

An Act to incorporate The Bahamas Real Estate Association; to provide for the registration and licensing of real estate brokers and salesmen; to regulate and control real estate brokers and salesmen and for connected purposes. *33 of 1995*

*[Assent 6th December, 1995]
[Commencement 1st January, 1996]*

PART I PRELIMINARY

1. This Act may be cited as the Real Estate (Brokers and Salesmen) Act, 1995. Short title.

2. In this Act — Interpretation.

“the Association” means The Bahamas Real Estate Association established by section 5;

“authorized financial institution” means a bank licensed to carry on banking business under the Banks and Trust Companies Regulation Act; Ch. 316.

“the Board” means the Real Estate Board established under section 6;

“clients’ money” means any money received by a real estate broker or a real estate salesman which is paid to him in his capacity as such being money paid, in whole or in part, as consideration for the disposition of any interest in ;hand or as earnest money paid on the part of any person as evidence of his intention to acquire such interest or as consideration for services rendered in respect of the rental of land;

“developer” means a person who has subdivided land of which he is an owner for the purpose of selling individual lots;

“former Association” means the entity which, before the commencement of this Act, was known as the Bahamas Real Estate Association;

“individual” means a natural person;

“land” includes —

- (a) all estates and interests, whether freehold or leasehold, in real property including (where appropriate) an estate or interest comprised in a condominium title under the Law of Property and Conveyancing (Condominium) Act or a time-sharing interest under The Bahamas Vacation Plan and Time-Sharing Act;
- (b) any building and any part of a building; and
- (c) in relation to any transaction relating to land that also relates to any goods, chattels or other property, those goods, chattels or other property;

Ch. 139.

Ch. 141.

“the practice of real estate business” has the meaning ascribed to that expression in section 3;

“real estate broker” means an individual 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 or an individual who holds himself out as such;

“real estate office” means any premises on or from which the practice of real estate business is carried on;

“real estate salesman” means are individual who engages in the practice of real estate business in whole or in part, as an agent of, or subject to the direction, control or management of, a real estate broker;

“the register” means the Register of Real Estate Brokers and Salesmen referred to in section 11;

“Registrar” means the person appointed as such under section 11.

3. (1) A person engages in the practice of real estate business for the purposes of this Act if, on behalf of another person, for compensation or valuable consideration directly or indirectly paid, or expressly or impliedly promised, or, with intent to collect or receive compensation or valuable consideration therefor, he —

The practice of
real estate
business.

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- (a) appraises, auctions, sells, exchanges, buys, leases, rents or offers, attempts or agrees to appraise, auction or negotiate the sale, exchange, purchase, lease or rental of any land or otherwise functions as a real estate broker or real estate salesman in relation to any land;
 - (b) advertises or holds out to the public by any oral or printed representation that he is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting land;
 - (c) manages land or engages in any other business concerned with the management of land either in a consultative capacity or as an agent;
 - (d) takes any part in the procuring of sellers, purchasers, lessors, lessees, landlords or tenants of land; or
 - (e) directs or assists in the procuring of prospects, or the negotiation or closing of any transaction which results in a sale, exchange, lease or rental of land of another or is calculated to have that result.
- (2) A person shall not be regarded as engaging in the practice of real estate business by reason only of the fact that —
- (a) he acts as an attorney for another under valid power of attorney for the purposes of negotiating or executing contracts, transfers or conveyance in respect of an interest in real estate;
 - (b) being a person practising as a counsel any attorney, he furnishes to any person legal advice and services ancillary thereto in connection with real estate business within the scope of his profession as such or within such narrower limits as may be prescribed by regulations under this Act;
 - (c) he is —
 - (i) an officer of any court acting under or in pursuance of a judgment or order of any court of competent jurisdiction,

Ch. 308.

- (ii) an administrator, executor, receiver or trustee acting under or by virtue of an appointment by will or written instrument or by order of a court of competent jurisdiction, or
- (iii) an assignee, custodian, liquidator, receiver, trustee or other person acting under the Companies Act;
- (d) he deals with land of which he is an owner or a part owner:

Provided that a developer who personally sells subdivided lots shall be deemed to be engaging in the practice of real estate business and shall on payment of the prescribed registration fee and licence fee be deemed to be a broker for the sole purpose of selling such lots;

- (e) he is a public officer acting in the course of his official duties;
- (f) being a person employed as, or acting in the capacity of, a manager of a condominium or co-operative apartment building or complex, he carries out duties in relation to the renting of individual units within that condominium or co-operative apartment or complex;
- (g) being a person employed as or acting as a full time salaried employee of a bank, trust or insurance company trading in real estate owned or administered by the company:

Provided that a person shall be regarded as engaging in the practice of real estate business if he accepts a commission or payment for the services referred to in subsection (1) in addition to payment received in the ordinary course of his employment or profession.

Restrictions on engaging in the practice of real estate business.

4. (1) Subject to subsection (3), a person shall not *engage* in the practice of real estate business or in any branch of such practice —

- (a) in the capacity of a real estate broker unless he is the holder of a valid licence issued under subsection (1) of section 22 authorizing him so to do;

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- (b) in the capacity of a real estate salesman unless he is —
- (i) the holder of a valid licence issued under subsection (2) of section 22 authorizing him so to do, and
 - (ii) an employee or agent of a duly authorized real estate broker.

(2) Every person who contravenes subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of three thousand dollars or to imprisonment for twelve months or to both such fine and imprisonment and in the case of a continuing offence to a further fine of one hundred dollars for each day during which the offence continues.

(3) No person shall be deemed to have contravened subsection (1) by reason only of his having engaged in —

- (a) a transaction involving the sale or exchange of land if he proves that the sale or exchange was an isolated transaction not undertaken in the course of, or in the furtherance of, or with intent to carry on the practice of real estate business;
- (b) a transaction involving the lease or rent of any land if he proves that the lease or rent was an isolated transaction not undertaken in the course of, or in furtherance of, or with intent to carry on the practice of real estate business.

PART II

THE BAHAMAS REAL ESTATE ASSOCIATION

5. (1) There shall continue to be a body to be known as The Bahamas Real Estate Association. Incorporation.

(2) The Association shall consist of persons who are enrolled as members under section 10.

(3) The Association shall be a body corporate with perpetual succession and a common seal with power to acquire, hold and dispose of land and other property of whatever kind and to enter into contracts, to sue and be sued in its corporate name and to do all things necessary for the purposes of this Act.

Establishment of Board.

6. (1) There shall be a Real Estate Board which shall be responsible for the management of the affairs of the Association.

Schedule.

(2) The provisions of the Schedule shall have effect with respect to the constitution and operation of the Board and otherwise in relation thereto.

Functions of the Association.

7. The functions of the Association shall be to regulate and control the practice of real estate business, and without prejudice to the generality of the foregoing, the Board shall have power —

- (a) to consider and determine applications for —
 - (i) registration as real estate brokers and real estate salesmen,
 - (ii) enrolment as members of the Association, and
 - (iii) licences and the renewal of licences to engage in the practice of real estate business as real estate brokers and real estate salesmen;
- (b) to make enquiries and collect information as it may think necessary or desirable for the purpose of carrying out its functions;
- (c) to hold and conduct such examinations of applicants for registration as real estate brokers or real estate salesmen as it thinks necessary or desirable; and
- (d) generally to take all such other lawful measures as it may consider necessary or desirable to assist it in carrying out its functions under this Act and in protecting the mutual interests of persons entering into land transactions.

Funds of the Association.

8. (1) The funds of the Association shall consist of such moneys as may be lawfully paid to the Association.

(2) The Board shall manage, administer and keep proper accounts of the funds.

Accounts and audit.

9. (1) The Association shall keep proper accounts and other records in relation to the business of the Association and shall prepare annually a statement of accounts.

(2) The accounts of the Association shall be audited annually by an auditor or auditors appointed by the members of the Association.

(3) A copy of the audited accounts shall be kept at the office of the Association and shall at all reasonable times be open to inspection by any member of the Association.

10. (1) Subject to the provisions of this Act, any individual who satisfies the Board —

Qualifications for membership in the Association.

- (a) that he had attained the age of eighteen years;
- (b) that he is of good character; and
- (c) that he is qualified to be a member, by virtue of being registered under section 15,

is entitled upon approval by the Board of his application made in the prescribed manner and payment of the prescribed fee, to be enrolled as a member of the Association and upon enrolment shall receive from the Board a certificate in the prescribed form evidencing his membership (in this Act referred to as “a membership certificate”).

(2) Every membership certificate shall take effect on the date specified in the membership certificate as the date on which it is to take effect and shall expire on the 31st day of December in the year in which it was issued.

(3) Subject to the provisions of this Act, the Board shall upon application renew each membership certificate every year subject to the payment of the prescribed fee.

PART III REGISTRATION AND LICENSING OF REAL ESTATE BROKERS AND REAL ESTATE SALESMEN

11. (1) The Board shall appoint a Registrar.

Registrar and register.

(2) The Board shall cause the Registrar to keep a register to be known as the Register of Real Estate Brokers and Salesmen which shall contain the name and address of every real estate broker and real estate salesman registered under this Act the qualifications by virtue of which he is registered and whether he is a member in good standing with the Association.

(3) The register shall be kept at such place as the Board may from time to time determine and shall be open to inspection by the public at all reasonable times.

(4) It shall be the duty of the Registrar to make such alterations in the register relating to the addresses or other particulars of persons as are necessary and to remove from the register the name of any person who is deceased or otherwise ceases to be a licensed member of the Association.

(5) It shall be the duty of any person whose name is entered in the register under subsection (2) to inform the Registrar of any change in that person's address or in other particulars relating to him.

Disqualifications
for registration.

12. (1) An individual shall not be qualified for registration as a real estate broker if —

- (a) he does not possess the prescribed qualifications for such registration;
- (b) he is under the age of eighteen years; or
- (c) he has had an order in bankruptcy made against him which remains undischarged.

(2) An individual shall not be qualified for registration as a real estate salesman if —

- (a) he does not possess the prescribed qualifications for registration as a real estate salesman;
- (b) he is under the age of eighteen years; or
- (c) he has had an order in bankruptcy made against him which remains undischarged.

Qualifications for
registration.

13. (1) Subject to subsection (1) of section 12, an individual is qualified to be registered as a real estate broker if —

- (a) he is a Bahamian citizen or the holder of a certificate of permanent residence with the right to work endorsed thereon; and
- (b) he holds a recognized certificate or has to the satisfaction of the Board passed the prescribed examination.

(2) Subject to subsection (2) of section 12, an individual is qualified to be registered as a real estate salesman if —

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- (a) he is a Bahamian citizen or the holder of a certificate of permanent residence with the right to work endorsed thereon; and
 - (b) he holds a recognized certificate or has to the satisfaction of the Board passed the prescribed examination.
- (3) In this section the expression “recognized certificate” means —
- (a) membership in a professional body in the field of real estate or a qualification to trade in real estate in any country outside The Bahamas, which is recognized by the Board;
 - (b) a certificate granted by the Board:

Provided that such membership, qualification or certificate together with practical experience is recognized by the Board as furnishing sufficient evidence that such person possesses the requisite knowledge and skill to trade in real estate.

14. (1) An individual who desires to be registered as a real estate broker or a real estate salesman shall apply to the Board for registration and shall pay the prescribed fee.

Applications for registration.

(2) Every application for registration shall be made in such manner and contain such particulars and be accompanied by such documents as may be prescribed.

15. (1) If, in relation to any application for registration as a real estate broker or real estate salesman the Board is satisfied —

Determination on applications for registration.

- (a) that the provisions of section 13 have been complied with;
- (b) that the applicant is a fit and proper person to be so registered; and
- (c) that the applicant is not disqualified for registration under section 12,

the Board shall, subject to subsection (2), approve the registration of the applicant as a real estate broker or, as the case may be, a real estate salesman.

(2) An approval by the Board pursuant to subsection (1) may be unconditional or subject to such conditions as may be prescribed or such other conditions as the Board may determine and any such conditions may limit the

registration of the applicant to a specified branch or specified branches of the practice of real estate business and may prohibit the issue of a licence under section 22 to the applicant to engage in other branches of such practice.

(3) Upon approval of an application for registration as a real estate broker or a real estate salesman, the Board shall furnish the applicant with a certificate of registration in the prescribed form.

(4) If the Board is not satisfied as to any of the matters specified in subsection (1) the Board shall refuse to register the applicant and shall notify him in writing accordingly and inform him of the right of appeal conferred by section 37.

16. The Board shall cause to be published in the *Gazette* —

- (a) as soon as may be after the expiration of thirty days after the commencement of this Act, a list containing the name and address of every real estate broker or real estate salesman registered on the thirtieth day after such commencement; and
- (b) thereafter in each year as soon as may be —
 - (i) after the 1st day of January a list containing the name and address of every real estate broker or real estate salesman registered on such 1st day of January, and
 - (ii) after the 1st day of July a list containing the name and address of every real estate broker or real estate salesman registered or who ceased to be registered between the 1st day of January and such 1st day of July, both dates being inclusive.

17. (1) If any person registered under this Act as a real estate broker or a real estate salesman —

- (a) is convicted of an offence under this Act or of any offence involving fraud or dishonesty;
- (b) has been deprived of or suspended from membership of any professional body constituted to regulate the practice of real estate brokers or salesmen, whether constituted in The Bahamas or elsewhere, as a disciplinary penalty imposed by such professional body; or
- (c) upon enquiry by the Board has been found —

Publication of list of brokers and salesmen.

Cancellation or suspension of registration and removal from register.

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- (i) to have procured his registration under this Act as a result of any misleading, false or fraudulent representation, or
 - (ii) to have failed to comply with any of the conditions subject to which his registration was approved, or subject to which a licence has been granted to him under section 22,

the Board may, if it thinks fit, exercise in respect of that person any of the powers conferred on the Board by subsection (2).

(2) Where in relation to any person registered as a real estate broker or a real estate salesman the Board is satisfied that any one or more of the matters specified in subsection (1) has been established the Board may —

- (a) cancel the registration of such person;
- (b) suspend the registration of such person for such period as the Board may think fit; or
- (c) censure such person.

(3) Where, in exercise of the powers conferred by subsection (2)(a) or (b) the Board cancels or suspends the registration of any person it shall direct that the name and particulars of such person be removed from the register until further order of the Board or, in the case of suspension, until such time as shall be specified by the Board.

(4) Where in relation to any person registered as a real estate broker or a real estate salesman the Board exercises any of the powers conferred by subsection (2), the Board may order such person to pay to the Board such sum as it shall specify in respect of costs and expenses of and incidental to any enquiry conducted under subsection (1)(c).

(5) Where pursuant to subsection (2)(a) the Board cancels the registration of a real estate broker or a real estate salesman the Board may fix a time before which that real estate broker or that real estate salesman, as the case may be, shall not be eligible to apply to the Board for re-registration under this Act.

18. In any case where the Board has exercised any of the powers conferred by section 17 in respect of any person the Board shall notify that person in writing of its decision and shall inform him of the rights conferred by sections 19 and 37. Notice.

Suspension of directions or orders of the Board.

19. Upon application to the Board made in the prescribed manner and within the prescribed period the Board may direct that any direction or order of the Board given or made in exercise of the powers conferred by section 17 shall be suspended until the expiration of the period within which the person affected by the direction or order may lodge an appeal under section 37, or, if an appeal has been lodged within that period, until the appeal has been heard and no further appeal has been lodged within the time limited for such further appeal.

Costs and expenses of the Board.

20. All costs and expenses payable to the Board pursuant to any order made under subsection (4) of section 17 shall be recoverable as a debt due to the Board.

Application for re-registration.

21. Subject to subsection (5) of section 17, an individual whose name has been removed from the register may apply for re-registration at any time and all the provisions of this Act relating to registration shall *mutatis mutandis* apply to re-registration under this section.

Licensing of real estate brokers and real estate salesmen.

22. (1) Subject to the provisions of this Act, the registration of any individual as a real estate broker under section 15 shall entitle him, upon payment of the prescribed fee, to be granted a licence issued by the Board in the prescribed form authorizing him to engage in the practice of real estate business in the capacity of a real estate broker subject to such prohibitions as may have been imposed upon his registration.

(2) Subject, to the provisions of this Act, any individual who has been registered under section 15 as a real estate salesman shall be entitled, upon payment of the prescribed fee, to be granted a licence issued by the Board in the prescribed form authorizing hire to engage in the practice of real estate business in the capacity of a real estate salesman whilst he is in the employment of any person who is the holder of a licence issued under subsection (1), subject to such prohibitions as may have been imposed upon the registration of that individual or of the person by whom he is employed.

(3) A licence issued in accordance with subsection (1) or subsection (2) shall be granted subject to such conditions, if any, as may be prescribed, and such licence shall, subject to the provisions of this Act, remain in force for such period as may be specified therein not exceeding

one year but may be renewed from time to time for periods not exceeding one year upon payment of the prescribed fee.

(4) If at any time during the period for which a licence has been granted to any individual he becomes disqualified by virtue of subsection (1)(c) or subsection 2(c) of section 12 from being registered or the Board has cancelled his registration under subsection (2) of section 17, the licence so granted shall thereupon determine.

(5) Where the Board has suspended the registration of any individual under subsection (2) of section 17, the licence granted to that person shall cease to have effect for the period of the suspension.

(6) In any proceedings for an offence against this Act or any regulations made thereunder any document purporting to be a copy of a licence under this section and bearing the Board's certificate purporting to have been endorsed thereon that the same is a true copy of a licence issued and granted to any person, shall be *prima facie* evidence of such issue and grant and of the contents of the licence.

23. (1) Upon the determination of any licence pursuant to subsection (4) of section 22 the person to whom such licence was granted shall surrender it to the Board forthwith.

Determination of licences.

(2) Upon suspension of any licence pursuant to subsection (5) of section 22, the Board may require the holder of the licence to surrender it to the Board for the period of the suspension.

(3) Any person who without reasonable excuse (the proof whereof shall lie upon him) contravenes subsection (1) or fails to comply with a requirement of the Board under subsection (2), is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars.

24. (1) A person who is the holder of a licence authorizing him to engage in the practice of real estate business as a real estate broker shall not employ another person to engage in such business in that capacity or in the capacity of a real estate salesman unless the person so employed is the holder of a valid licence authorizing him to engage in such practice in that capacity.

Restriction on employment of unlicensed persons.

(2) Every person who contravenes subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars or to imprisonment for one year or to both such fine and imprisonment and in the case of a continuing offence to a further fine of one hundred dollars for each day during which the offence continues.

PART IV DISCIPLINE

Committees of
the Association.

25. (1) There shall be committees of the Association known as the Investigation Committee and the Disciplinary Committee.

(2) The Investigation Committee shall consist of a chairman who shall be a member of the Board and not more than seven other members of the Association.

(3) The Disciplinary Committee shall consist of —

(a) a Chairman who shall be a member of the Board; and

(b) not more than seven other persons —

(i) three of whom shall be appointed by the Board, and

(ii) four of whom shall be appointed by the Minister from amongst persons who are not members of the Association.

(4) The Minister shall appoint the members of the Investigation Committee and subject to subsection (3)(b) the Disciplinary Committee.

(5) A member of the Investigation Committee shall not at the same time be a member of the Disciplinary Committee.

Professional
misconduct.

26. (1) For the purposes of this Act, it shall be professional misconduct in the case of any real estate broker or real estate salesman licensed under this Act if such person —

(a) is guilty of dishonesty or incompetence in the performance of his professional duties or otherwise breaches the prescribed code of ethics;

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- (b) is guilty in his capacity as a real estate broker or a real estate salesman of grave impropriety, infamous conduct, gross negligence or incompetence in the performance of his duties, or of any act, default or conduct which violates the prescribed code of ethics;
 - (c) engages in the practice of real estate business on or from any premises not specified in a valid licence issued to him under this Act;
 - (d) being a real estate salesman fails to account to the real estate broker to whom he is employed for any money, funds, deposit, cheque, draft, title, mortgage, conveyance, lease or other document or thing of value or for any profit, or any share or portion thereof, which has come into his possession in the course of engaging in the practice of real estate business;
 - (e) subject to subsection (2), being a real estate broker or a real estate salesman fails, without reasonable excuse, to produce any record or document when required by the Board to do so, or to answer any question put to him by the Board at any proceeding of the Board concerning the cancellation or suspension of any registration or the revocation or proposed revocation of a licence under this Act;
 - (f) being a real estate broker carries on business as such or any part of that business under more than one name or description with intent to deceive;
 - (g) knowingly makes any false or misleading statement or any material omission in or from any answer to any question put to him by the Board at any proceeding of the Board under this Act;
 - (h) advertises for sale any land and fails to disclose his name and the fact that he is a real estate broker or real estate salesman in a manner calculated to represent to the public that he is the owner of the land and is selling his own property;
 - (i) as a real estate broker or real estate salesman advertises land without the consent of the owners;
 - (j) acts as a real estate broker, real estate salesman or appraiser and who owns or acquires an interest in

land or whose immediate family or partners in the practice of real estate business owns or acquires an interest in land and fails to notify the owner of such interest;

- (k) acts as a real estate broker or real estate salesman and accepts any commission, rebate or profit on expenditures made whilst acting as an agent in the management of land without the owner's consent;
- (l) in his capacity as a real estate broker misrepresents his ability and makes an appraisal that is outside his field of experience unless he fully discloses his inexperience to the client and obtains the assistance of an appraiser with the necessary expertise and fully identifies to the client the assisting appraiser and the nature of his contribution;
- (m) as a real estate broker fails to notify the owner or another real estate broker of the existence of all written offers made in respect of a specific land.

(2) A person required by the Board to produce any record or document or to answer any question shall be entitled, in relation thereto, to the same right or privilege as before a court of law.

Complaints of professional misconduct.

27. (1) A complaint that any person registered under this Act has been guilty of professional misconduct may be made to the Board in writing by any person and shall bear the date of the complaint and the signature of the complainant but subject to this shall be in no particular form.

(2) Where the Board is of the opinion that any complaint so made might, if established, call for the exercise by the Board of any of the disciplinary powers conferred by section 29, the Board shall refer the complaint to the Investigation Committee.

Functions of Investigation and Disciplinary Committees.

28. (1) It shall be the function of the Investigation Committee to decide whether a complaint ought to be referred to the Disciplinary Committee to be dealt with by it in accordance with the provisions of this Act.

(2) If after the Investigation Committee has referred a complaint to the Disciplinary Committee, but before the Disciplinary Committee has commenced its enquiry into

the complaint, it appears to the Disciplinary Committee that the question whether an enquiry should be held needs further consideration, it may refer the case back to the Investigation Committee for consideration of that question but, subject to such consideration, it shall be the duty of the Disciplinary Committee to hold an enquiry into any complaint referred to it under this section.

(3) The Disciplinary Committee shall hear complaints referred to it by the Investigation Committee in such manner as may be prescribed.

29. (1) On the hearing of a complaint against a person the Disciplinary Committee shall make to the Board recommendations concerning that complaint and the Board, acting on such recommendations, shall either dismiss the complaint or make an order of a disciplinary nature, and any such order may in particular provide for any of the following matters, that is to say —

Disciplinary powers.

- (a) cancel the registration of such person;
- (b) suspend the registration of such person for such period as the Board may think fit;
- (c) censure such person;
- (d) payment, by any party to the proceedings, of an award of costs or of such sum as the Disciplinary Committee may consider a reasonable contribution towards the costs incurred in connection with those proceedings.

(2) Any payment ordered to be made by any person under subsection (1)(d) may be enforced in a summary manner as a judgment debt owed to the Association.

30. (1) Every order made by the Board under section 29 shall state the findings of the Disciplinary Committee of the facts of the case and shall be signed by the Chairman of the Board.

Order of the Board.

(2) Every such order shall be filed with the Registrar and shall take effect —

- (a) where no appeal under section 37 is brought against the order within the time limited for the appeal, on the expiration of that time;
- (b) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal;

(c) where such an appeal is brought and is not withdrawn or struck out as aforesaid, if and when the appeal is dismissed and not otherwise, and shall thereupon be acted upon and be enforceable in the same manner as a judgment or order of the Magistrates Court to the like effect.

(3) Upon the taking effect of an order filed with him pursuant to subsection (2), the Registrar shall —

- (a) cause a note of the effect of every such order to be entered in the register against the name of the person to whom the order relates; and
- (b) in the case of an order providing for the removal of the name of any person from the register or for the suspension or revocation of a licence, cause a notice stating the effect of the order to be published in the *Gazette*.

Power to order immediate suspension.

31. (1) On making an order under subsection (1)(b) of section 29, the Board if satisfied that to do so is necessary for the protection of members of the public may order that the person's licence be suspended or revoked forthwith in accordance with section 29.

(2) Where an order under subsection (1) is made in respect of any person his licence shall be suspended or revoked (that is to say, shall not have effect) from the time when the order is made until the time when the relevant order takes effect in accordance with subsection (2) of section 30 or an appeal against it under section 37 is determined.

(3) The Supreme Court may revoke any order made under subsection (1) and the decision of the Court on any appeal under this subsection shall be final.

Removal of name from Register.

32. (1) The Registrar shall remove from the register the name of any person registered under this Act —

- (a) upon the application of that person;
- (b) upon the failure of that person to pay any prescribed annual fee within six months after the date on which such fee becomes payable; or
- (c) upon the taking effect of an order of the Board under section 29, in relation to that person.

(2) Where a complaint has been made against any person under subsection (1) of section 27, his name shall not be removed under subsection (1)(a) until the complaint or any appeal in relation thereto has been finally disposed of under this Act.

(3) Where the name of any person has been removed from the register, any licence issued to him shall cease to have effect for as long as his name remains off the register.

33. (1) Where the name of any person has been removed from the register or the licence of any person has been suspended or revoked, the Board may in writing, require such person to return to the Registrar his membership certificate, certificate of registration or licence, as the case may be, and such person shall comply with that requirement.

Return of certificates or licence.

(2) Any person who fails without reasonable excuse to return his membership certificate, certificate of registration or licence as required by subsection (1) is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars.

34. (1) The Board may, at any time upon application in writing by any person whose name has been removed from the register or whose licence has been suspended or revoked, determine, if it thinks fit, that such person's name shall be restored to the register or, that his licence be restored or the suspension cease, as the case may be, with effect from such date as the Board may appoint, and shall forthwith give notice of any such determination to the Registrar.

Restoration to register, etc.

(2) On receipt of notice of a determination made by the Board under subsection (1) in relation to any person, the Registrar shall forthwith cause the name of that person to be restored to the register or, cause a note of the cessation of the suspension or the restoration of his licence to be entered therein, and shall cause notice of the determination by the Board to be published in the *Gazette*.

PART V MISCELLANEOUS

35. Notwithstanding anything contained in this Act the Board shall not refuse any application under this Act unless it has afforded to the applicant a reasonable

Duty of Board to afford **opportunity to be heard.**

opportunity to be heard in support of his application and any person so entitled to be heard may be represented before the Board by a counsel and attorney or other representative of his choice.

Notices.

36. (1) Any notice required to be given by the Board to any person registered under this Act shall, unless the contrary is proved, be deemed to be served if sent by registered post to the address shown in the register in which his name is entered.

(2) A copy of any notice served on a real estate salesman shall be sent concurrently with the notice, by registered post, to the real estate broker by whom he is employed.

Appeals.

37. (1) Any person aggrieved by a decision of the Board —

- (a) to refuse an application by that person for registration under section 15 or to impose any condition or prohibition in respect of his registration under that section;
- (b) to cancel or suspend his registration under section 17 or to give any direction or make any order under that section;
- (c) to refuse to issue a licence to him under section 22; or
- (d) in relation to an order made against him under section 29,

may, within three months after the date on which he is served with notice of the Board's decision, appeal against the decision to the Supreme Court and in relation to every such appeal section 54 of the Magistrates Act shall *mutatis mutandis* apply as if the matter in respect of which the appeal is brought were a judgment or order of the Magistrates Court.

Ch. 54.

(2) The Supreme Court shall, after considering the appeal, give such directions in the matter as it shall think proper and the Board or, as the case may be, the appellant, shall comply with such directions.

(3) No further appeal shall be allowed from the decision of the Supreme Court on an appeal made under this section.

38. It is hereby declared that clients' money received by a real estate broker or by a real estate salesman —

Clients' money to be held on trust.

- (a) is held by him on trust for the person who is entitled to call for it to be paid over to that person or to be paid on the direction of that person, or to have it otherwise credited to such person; or
- (b) it is received by him as stakeholder and is held by him on trust for the person who may become so entitled on the occurrence of the event against which the money is held,

and accordingly, clients' money shall not be available for payment of any debt or liability of the real estate broker or the real estate salesman to any person other than the person for whom he holds the clients' money in trust.

39. (1) Every real estate broker who receives clients' money (whether paid to himself or to any other real estate broker or real estate salesman employed by him) shall without delay pay such clients' money into an account maintained by him with an authorized financial institution which account shall contain in its title the word "client"; and every real estate broker or real estate salesman who being employed to a real estate broker, receives clients' money shall forthwith pay it to his employer for the purpose of being paid into such clients' account.

Keeping clients' accounts.

(2) Any person who contravenes the provisions of this section is guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months or to both such fine and imprisonment and, in the case of a continuing offence, to a further fine of one hundred dollars for each day during which the offence continues.

40. (1) A person who engages in the practice of real estate business as a real estate broker or a real estate salesman without being the holder of a valid licence issued under section 22 authorising him so to do, or in contravention of any condition of such licence, shall not be entitled to bring any suit or action for the recovery of any fee or reward for, or in respect of, anything done by him on behalf of any other person in the course of engaging in such practice, and shall not be entitled to any lien on money or other property of such other person for the purpose of recovering any such fee or reward.

Exclusion of right to sue or fees, etc.

(2) Nothing in subsection (1) shall prevent a real estate broker or real estate salesman from taking any step or bringing any suit or action for the recovery of any *fee* or reward for, or in respect of, anything lawfully done by him while he was the holder of a valid licence if he subsequently ceases to be the holder of such licence.

Regulations.

41. The Minister upon recommendation of the Association may make regulations for the better carrying out of the objects and purposes of this Act and in particular (but without prejudice to the generality of the foregoing) may make regulations prescribing —

- (a) the form and manner in which applications under this Act shall be made and the particulars to be given in such applications;
- (b) the fees to be paid under the provisions of this Act;
- (c) the form of licence and certificates to be issued under this Act and the conditions which may be imposed therein;
- (d) the manner in which and the time at which the Board shall hear persons whose registration it proposes to cancel or suspend;
- (e) the hearing and determination of complaints brought under the Act;
- (f) any additional qualifications to be satisfied by applicants for registration as real estate brokers and real estate salesmen under this Act;
- (g) any other matter or thing which may be or is required to be prescribed under this Act.

Transitional.

42. (1) Subject to subsection (1)(b) or (c) of section 12, for a period of six months from the commencement of this Act an individual is qualified to be registered as a real estate broker if —

- (a) he is a Bahamian citizen or the holder of a certificate of permanent residence with the right to work endorsed thereon; and
- (b) he has regularly practised as a real estate broker and has been a member in good standing in the former Association for a period of at least five years immediately preceding the date of his application or for such shorter period as the Board may, in its absolute discretion, allow; or

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- (c) although not a member of the former Association, he has regularly practised as a real estate broker for a period of at least five years immediately preceding the date of the coming into force of this Act.
- (2) Subject to subsection (2)(b) or (c) of section 12, for a period of six months from the commencement of this Act an individual is qualified to be registered as a real estate salesman if —
- (a) he is a Bahamian citizen or the holder of a certificate of permanent residence with the right to work endorsed thereon; and
 - (b) he has been employed on a full time basis for a period of five years immediately preceding the date of his application for registration by a real estate broker who is a member in good standing with the former Association; or
 - (c) he has regularly practised as a salesman and has been a member in good standing in the former Association for a period of at least five years immediately preceding the date of his application or for such shorter period as the Board may, in its absolute discretion, allow; or
 - (d) although not a member of the former Association, he has regularly practised as a real estate salesman for a period of at least five years immediately preceding the date of the coming into force of this Act.

SCHEDULE (Section 6(2))

1. The Board shall consist of not less than fourteen broker members of the Association who shall be elected in the prescribed manner by the members from amongst the members of the Association in good standing.

2. Subject to the provisions of this Schedule each member of the Board shall serve for a term of two years, five members being elected each year at the Annual General Meeting.

3. The President, Vice-President, Secretary and Treasurer of the Association shall be elected by the Association to the Board at its Annual General Meeting and shall hold office for one year but shall be eligible for re-election.

4. The Board may appoint and fix the remuneration of an Executive Secretary and Executive Treasurer who shall not be members of the Association.

5. The President of the Association shall be Chairman of the Board.

6. Notwithstanding paragraph 2 any member of the Board serving as President shall be returned as a member of the Board for a period of one year unless he declines.

7. Any member of the Board may at any time resign his office by notice in writing addressed to the Secretary.

8. If any vacancy occurs in the membership of the Board, such vacancy shall be filled by the appointment by the Board of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period to be served by the previous member.

9. The names of all members of the Board as first constituted and every change in the membership thereof shall be published by notice in the *Gazette*.

10. The seal of the Board shall be kept in the custody of the Chairman or the Secretary and shall be affixed to instruments in the presence of the Chairman or any other member of the Board.

11. The seal of the Board shall be authenticated by the signatures of the Chairman or a Vice-President and the Secretary or any other Board member authorized to act in that behalf, and shall be officially and judicially noticed.

12. The Board shall meet no fewer than ten times in every year at such time as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such places and times and on such days as the Board may determine.

13. The Chairman may at any time call a special meeting of the Board and shall call a special meeting within seven days of the receipt of a written requisition for the purpose addressed to him by any two members of the Board.

14. The Chairman shall preside at all meetings of the Board at which he is present and, in the case of the Chairman's absence from any meeting or at his request, the Vice-President shall act as Chairman.

15. A quorum of the Board shall be four of its members.

16. The decisions of the Board shall be a majority of votes, and, in addition to an original vote, the Chairman or other person presiding at a meeting shall have a casting vote in any case in which the voting is equal.

17. Minutes in proper form of each meeting of the Board shall be kept by the Secretary.

18. Subject to the provisions of this Schedule the Board may regulate its own proceedings.

19. No decision or act of the Board or act done under the authority of the Board shall be invalid by reason of the fact that —

- (a) the full number of members for which provision is made in paragraph 1 was not appointed or there was a vacancy or vacancies amongst such members; or
- (b) a disqualified person acted as a member of the Board at the time the decision was taken or the act was done or authorized,

if the decision was taken or the act was done or authorized by a majority vote of the persons who at the time were entitled to act as such members.

20. (1) Subject to the provisions of this Act, the Board may appoint such committees from among members and associates as it may think fit and may delegate to any such committee the power and authority to carry out on its behalf such duties as the Board may determine.

(2) The constitution of each committee shall be determined by the Board.

21. (1) No member of the Board or any committee appointed by the Board shall be personally liable for any act or default of the Board or of the committee done or omitted to be done in good faith in the course of the operations of the Board or of the committee.

(2) Where any member of the Board is exempted from liability by reason only of the provisions of subparagraph (1) the Board shall be liable to the extent that it would be if the member was a servant or agent of the Board.

22. (1) Every person who immediately before the date of commencement of this Act was elected or appointed, as the case may be, to any office of the former Association shall be deemed to have been elected or appointed under this Act and, subject to the provisions of this Schedule, shall continue to serve in that office for the unexpired portion of the term remaining to be served.

(2) The committees of the former Association existing immediately before the coming into force of this Act shall be deemed to have been appointed under this Act.