

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

R. E. WARD,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 19 March, 1975.*

## New South Wales



ANNO VICESIMO QUARTO

# ELIZABETHÆ II REGINÆ

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Act No.       , 1975.

An Act to make further provisions with respect to the licensing of persons as agents under the Auctioneers and Agents Act, 1941, the directors of corporations licensed under that Act and real estate dealers; for these and other purposes to amend the Auctioneers and Agents Act, 1941, and the Strata Titles Act, 1973; and for purposes connected therewith.

BE

*Auctioneers and Agents (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 **1.** This Act may be cited as the "Auctioneers and Agents Short title. (Amendment) Act, 1975".

**2.** (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act. Commence-  
ment.

10 **(2)** Sections 5 and 6 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**3.** The Auctioneers and Agents Act, 1941, is, in this Act, referred to as the Principal Act. Principal  
Act.

15 **4.** The Principal Act is amended—

Amendment  
of Act No.  
28, 1941.

(a) (i) by omitting from section 19A (2) the word "apply" where firstly occurring and by inserting instead the word "applies"; Sec. 19A.  
(Audit of  
council's  
accounts.)

20 (ii) by omitting from section 19A (2) the words "they apply" and by inserting instead the words "it applies";

(b) by omitting section 20 (4) and by inserting instead the following subsection :— Sec. 20.  
(No person  
to act  
without a  
license.)

25 (4) A person guilty of an offence arising under this section is, in addition to a penalty specified in section 87 (2), liable to a penalty not exceeding ten dollars for each day on which the offence occurs.

(c)

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*Auctioneers and Agents (Amendment).*

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- (c) (i) by inserting after section 38B (2) the following subsections :—

Sec. 38B.  
(Inspection  
of records.)

5 (2AA) Where the council has reasonable grounds for believing that a licensee has received or disbursed moneys in his capacity as a licensee that have not been dealt with in accordance with section 36, the council may  
10 duly authorise in writing the registrar, a member of the police force of or above the rank of sergeant or an officer of the council to inspect any records of the licensee that relate to any account (not being a trust account) kept by the licensee in connection with his business as a licensee.

15 (2AB) A person authorised under subsection (2AA) may require any licensee or, where a licensee has died, the personal representative of the licensee—

20 (a) to produce for inspection such of the records referred to in subsection (2AA) as are in his possession or under his control as the person so authorised requires; and

25 (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

30 (ii) by omitting from section 38B (2A) the words "The registrar, any such member of the police force or an officer of the council" and by inserting instead the words "A person authorised under subsection (1) or (2AA) to make an inspection";

35 (iii) by omitting from section 38B (3) the words "subsection two of this section" and by inserting instead the words "subsections (2) and (2AB)";

(iv)

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(iv) by omitting section 38B (5) and by inserting instead the following subsection :—

5 (5) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a license under this Act or by a person (other than the licensee who made that written record) who has the possession, custody or control of that written record as required by section 38 (2) in the same way as it applies to a record kept by a licensee.

(v) by inserting after section 38B (6) the following subsections :—

15 (7) Where an offence against subsection (2) or (2AB) is proved against a person the court may, in addition to any penalty or imprisonment imposed under section 87 (2), order that person to produce the records in respect of which the offence occurred to the registrar or a member of the police force of or above the rank of sergeant within such time as the court specifies in the order.

25 (8) A person who fails to produce in accordance with an order of a court made under subsection (7) any record specified in that order is guilty of an offence and liable upon conviction to a penalty not exceeding \$10 in respect of each day on which the offence continues.

30 (d) by inserting after section 75 (8) the following subsection :—

35 (9) In respect of any theft or fraudulent misapplication after the date of assent to the Auctioneers and Agents (Amendment) Act, 1975, subsections (3) and (4) shall be construed as

Sec. 75.  
(Claims against the fund.)

though

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*Auctioneers and Agents (Amendment).*

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though the words "five hundred pounds" wherever occurring were omitted therefrom and the words "fifty thousand dollars" substituted therefor.

- 5 (e) (i) by omitting from section 83 (1) the words Sec. 83.  
"trust accounts of any licensee specified in the (Examina-  
appointment" and by inserting instead the tion of  
words "trust and other accounts kept by a accounts.)  
licensee specified in the appointment in  
connection with his business as a licensee";
- 10 (ii) by omitting from section 83 (3) the words  
", so far as the same relate to the trust accounts  
of such licensee".

5. The Principal Act is further amended—

Further  
amendment  
of Act No.  
28, 1941.

- 15 (a) by omitting from the matter relating to Division 2 Sec. 2.  
of Part IV in section 2 the figures "52" and by (Division  
inserting instead the matter "51A"; into Parts.)
- 20 (b) (i) by omitting from paragraph (b) of the Sec. 3.  
definition of "Business agent" in section 3 (1) (Defini-  
the word "of," and by inserting instead the tions.)  
following words and paragraph :—  
of; or
- 25 (c) compiling for publication or compiling  
and publishing a document that  
contains a list relating solely or  
substantially to the acquisition or  
disposal of any person of,

(ii)

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*Auctioneers and Agents (Amendment).*

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- 5 (ii) by omitting from the definition of "Licensee" in section 3 (1) the words "and includes any employee of a corporation in respect of whom the corporation has taken out any such license";
- 10 (iii) by inserting in the definition of "Real estate agent" in section 3 (1) after the words "Strata Titles Act, 1973)" the words ", the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the acquisition or disposal by any person of any such land";
- 15 (iv) by inserting in paragraph (a) of the definition of "Stock and station agent" in section 3 (1) after the word "purposes" the words "or the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the sale, purchase, exchange, letting or taking on lease
- 20 of land used for those purposes";
- (v) by omitting section 3 (2) and by inserting instead the following subsection :—
- 25 (2) A reference in the definition of "Real estate agent" in subsection (1) to the letting or taking on lease of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.
- 30 (vi) by omitting from section 3 (6) the matter "and 52A" and by inserting instead the matter ", 52A and 54";

(vii)

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*Auctioneers and Agents (Amendment).*

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- (vii) by inserting in section 3 (8) (b) after the words "place of business" the words "or the proposed registered place of business";
- 5 (viii) by omitting from section 3 (8) (c) the matter "and 52A" and by inserting instead the matter ", 52A and 54";
- 10 (ix) by omitting from section 3 (8) (c) and (d) the words "or registered" wherever occurring and by inserting instead the words ", registered place of business or proposed registered";
- (c) (i) by omitting from section 20 (3) the words "license on its own behalf and has also taken out, in respect of the employee in charge at its sole or principal place of business," and by inserting instead the words "corporation license and employs as the person in charge of its sole or principal place of business a person who holds"; Sec. 20. (No person to act without a license.)
- 15
- 20 (ii) by omitting from section 20 (3) the words "of this Act" where firstly occurring;
- (iii) by omitting from section 20 (3) the following words :—
- 25 A corporation shall not be entitled to take out or to hold a license in respect of an employee unless it is the holder of a license on its own behalf.
- 30 A corporation which is the holder of a license on its own behalf may take out one or more licenses of any of the classes referred to in section twenty-two of this Act in respect of employees nominated by it for the purpose.

(d)

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- 5 (d) (i) by omitting from section 21 (1) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a stock and station agent's license"; Sec. 21. (Each separate place of business to be in charge of licensee.)
- 10 (ii) by omitting from section 21 (2) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a real estate agent's license";
- 15 (iii) by omitting from section 21 (2A) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a business agent's license";
- 20 (e) (i) by omitting from section 22 (1) the words "on its own behalf"; Sec. 22. (Licenses.)
- 25 (ii) by omitting from section 22 (2) (c) the words "and a corporation that has taken out a chattel auctioneer's license in respect of an employee";
- 30 (iii) by omitting from section 22 (2) (c) the words "or the corporation holds in respect of the employee";
- (iv) by omitting from section 22 (2) (c) the words "or it";
- (v)

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- (v) by omitting from section 22 (2) (d) the words  
“, or a corporation from taking out or holding  
in respect of an employee or different  
employees.”;
- 5 (vi) by omitting from section 22 (3) (c) (i) the  
words “on its own behalf”;
- (vii) by omitting section 22 (3) (c) (ii);
- 10 (f) (i) by omitting from section 23 (4) (b) the words Sec. 23.  
“and the application is for a license, to be (Proce-  
held by the corporation on its own behalf”; dure.)
- (ii) by omitting from section 23 (4) (b) the words  
“license on its own behalf; and” and by  
inserting instead the matter “license.”;
- (iii) by omitting section 23 (4) (c);
- 15 (iv) by omitting from section 23 (9) (a) the words  
“and, where the application is made by a  
corporation in respect of an employee, shall  
also notify such employee”;
- 20 (v) by omitting from section 23 (9) (e) the matter  
“attorney;” and by inserting instead the matter  
“attorney.”;
- (vi) by omitting section 23 (9) (f);
- (vii) by inserting after section 23 (9) the following  
subsections :—
- 25 (9A) In subsection (9B), “license” means  
license or renewed license, as the case may be.

(9B)

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*Auctioneers and Agents (Amendment).*

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(9B) A license shall not be granted to a corporation—

5 (a) where the corporation is the holder of a license at the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, or where the corporation, not being the holder of a license, makes application for a license before that commencement—after a day that is three years after that commencement; or

10 (b) where the corporation makes application for a license after that commencement,

15 unless at least half the number of directors of the corporation are licensed in respect of the class or classes of business that the corporation carries on or proposes to carry on.

20 (viii) by omitting section 23 (10) (a);

(ix) by omitting from section 23 (10) (b) the words “under this Act”;

(x) by omitting section 23 (10) (c) and by inserting instead the following paragraph :—

25 (c) to a corporation where the court is satisfied—

30 (i) that any director or the secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if he were to apply for a license, to hold the license; or

(ii)

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- (ii) that the corporation is not a fit and proper person to hold a license.
- 5 (xi) by omitting from section 23 (10A) the words "or to a corporation in respect of an employee, unless the applicant or employee" and by inserting instead the words "unless the applicant";
- 10 (xii) by omitting from section 23 (10c) the following words and paragraphs :—  
subsection be granted—  
(a) to an applicant, not being a corporation; or  
15 (b) to a corporation in respect of an employee,  
and by inserting instead the words "subsection be granted to an applicant (not being a corporation)";
- 20 (xiii) by omitting from section 23 (12) (b) the words "in respect of a license taken out on its own behalf or taken out in respect of an employee";
- (xiv) by omitting from section 23 (12) the words "or the employee of such corporation";
- 25 (xv) by omitting from section 23 (12) the words ", corporation or employee of a corporation" and by inserting instead the words "or corporation";
- 30 (xvi) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words "or by a corporation in respect of an employee";
- (xvii)

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- 5 (xvii) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (xviii) by omitting from paragraph (b) of the definition of "special application" in section 23 (13) the words "on its own behalf";
- (g) by omitting section 24; Sec. 24.  
(Variation  
of license.)
- 10 (h) (i) by omitting from section 25 (1) the words "on its own behalf" wherever occurring; Sec. 25.  
(Fees  
payable for  
license.)
- (ii) by omitting from section 25 (1) (c) the words "dollar; or" and by inserting instead the matter "dollar.";
- 15 (iii) by omitting section 25 (1) (d);
- (i) (i) by omitting from section 26 (4) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,"; Sec. 26.  
(Interstate  
licenses.)
- 20 (ii) by inserting in section 26 (4) after the word "same" the words "or substantially the same";
- (j) (i) by omitting from section 29 (1) the words "either on its own behalf or in respect of an employee"; Sec. 29.  
(Cancellat-  
ion of  
license.)
- 25 (ii) by omitting from section 29 (1) the words "or, as the case may be, such employee.";
- (iii)

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*Auctioneers and Agents (Amendment).*

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- (iii) by inserting in section 29 (1) (b) after the word "he" the words "or it";
- 5 (iv) by omitting from section 29 (1) (b) the words ", or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee";
- 10 (v) by omitting from section 29 (1) (bi) the words "on its own behalf or in respect of an employee";
- (vi) by omitting from section 29 (1) (c) the words ", or to have a license held in respect of him as an employee, by a corporation,";
- 15 (vii) by omitting from section 29 (1) (c) and (d) the words "on its own behalf or in respect of an employee" wherever occurring;
- 20 (viii) by omitting from section 29 (1) the words "Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.";
- 25 (ix) by omitting from section 29 (2) the words "or, as the case may be, the employee named therein";
- (x) by omitting from section 29 (2) the words ", or, as the case may be, such employee";
- 30 (xi) by omitting from section 29 (3) the words "or such employee, or both,";

(k)

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- (k) (i) by inserting in section 29A (1) (a) after the words "that license;" the word "or"; Sec. 29A.  
(Disquali-  
fication of  
former  
licensees,  
etc.)
- (ii) by omitting section 29A (1) (b);
- 5 (iii) by omitting from section 29A (2) (a) the words "or to have a license held in respect of him by a corporation" wherever occurring;
- (iv) by omitting from section 29A (2) (b) the words "on its own behalf or in respect of an employee" wherever occurring;
- 10 (l) by omitting from section 30 (2) the matter " , variations"; Sec. 30.  
(Register  
to be  
kept by  
registrar.)
- (m) (i) by omitting from section 31 (1) (a) the words "twenty-three, section 23A, or section twenty-four or makes an order under section twenty-nine or 29A of this Act" and by inserting instead the words "23 or 23A or makes an order under section 29 or 29A"; Sec. 31.  
(Appeal.)
- 15 (ii) by omitting from section 31 (1) (b) the words "twenty-three, section 23A, or section twenty-four of this Act" and by inserting instead the matter "23 or 23A";
- 20 (iii) by omitting from section 31 (1) (c) the words "twenty-nine or 29A of this Act" and by inserting instead the matter "29 or 29A";
- 25 (iv) by omitting from section 31 (1) the words "or the employee";
- (v) by omitting from section 31 (1) the words "of this subsection" wherever occurring;
- (vi)

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- (vi) by omitting from section 31 (4) the words  
“, or employee,”;
- (vii) by omitting from section 31 (4) the words  
“twenty-nine or 29A of this Act” wherever  
occurring and by inserting instead the matter  
“29 or 29A”;
- (viii) by omitting from section 31 (4A) the words  
“paragraph (a) of subsection one of this  
section” and by inserting instead the matter  
“subsection (1) (a)”;
- (ix) by omitting from section 31 (4A) the words  
“twenty-nine or 29A of this Act” and by  
inserting instead the matter “29 or 29A”;
- (x) by omitting from section 31 (5) the words  
“paragraph (b) or paragraph (c) of subsection  
one of this section” and by inserting instead  
the words “subsection (1) (b) or (c)”;
- (n) by omitting from section 32 the words “, and no  
corporation shall obtain or continue to hold a  
license in respect of any such person as an  
employee”;
- (o) (i) by omitting from section 34 (3) the words  
“, restoration or variation” and by inserting  
instead the words “or restoration”;
- (ii) by omitting from section 34 (3) the words  
“Provided that” and all words following those  
words;

Sec. 32.  
(Effect of  
disquali-  
fication on  
member-  
ship, etc.,  
of corpora-  
tion.)

Sec. 34.  
(Registered  
office and  
address.)

(iii)

*Auctioneers and Agents (Amendment).*

(iii) by inserting after section 34 (4) the following subsection :—

(4A) Within the prescribed period after a person commences employment as, or ceases to be employed as, the person in charge of a place of business of a corporation the corporation shall lodge with the council—

(a) a notice specifying the name and address of, and the classes of license held by, the person so commencing to be employed; or

(b) a notice specifying the day upon which that person ceased to be so employed, as the case may require.

- 15 (p) (i) by omitting from section 35 (2) the word "employee" wherever occurring and by inserting instead the word "person"; Sec. 35. (Publication of name of licensee.)
- (ii) by omitting from section 35 (2) (a) the word "licensee's" and by inserting instead the word "corporation's";
- 20 (q) (i) by inserting in section 36 (1) after the words "held by the licensee" the words "or, where the licensee is employed by a corporation, by the corporation,"; Sec. 36. (Payment into bank.)
- 25 (ii) by omitting from section 36 (1) the words "in respect of an employee";
- (r) (i) by omitting from section 36D (1) (b) the words "or by any employee in respect of whom the corporation has taken out a license"; Sec. 36D. (Licensees to deposit part of trust account with the council.)
- (ii)

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(ii) by omitting from section 36D (6) the definition of "licensee";

5 (s) (i) by omitting from section 39 (3) the words "or a corporation on whose behalf a license is held";

Sec. 39. (Certain persons not to be employed by licensees.)

(ii) by omitting from section 39 (3) the words "or its";

10 (t) (i) by omitting from section 42 (1) (a) the words "issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act" and by inserting instead the words ", or employed a person so licensed,";

Sec. 42. (Provisions as to commission, etc.)

15 (ii) by inserting in section 42 (1) (b), (c) and (d) after the word "license" wherever occurring the words ", or employed a person so licensed,";

20 (iii) by omitting from section 42 (1) (b) and (c) the words "or such service was done or performed before the expiration of three months after the commencement of this Act" wherever occurring;

(iv) by omitting from section 42 (1) (d) the word "service." and by inserting instead the following words :—

25 service,  
and, in the case of a corporation, unless it was the holder of a corporation license at the time of doing or performing such service.

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- (v) by omitting section 42 (2);
- (u) by omitting from section 43 (c) and (d) the words "or employee of a corporation" wherever occurring; Sec. 43. (Publication of name and place of business in advertisements.)
- 5 (v) by omitting from the definition of "Trainee auctioneer" in section 51 the words "has taken out an auctioneer's license in respect of an employee" and by inserting instead the words "employs a person who is licensed as an auctioneer"; Sec. 51. (Interpretation.)
- 10 (w) by inserting before section 52 the following sections :— Secs. 51A-51F.
- 15 51A. (1) A person who proposes to carry on business as a real estate dealer shall, before commencing business as such, make application in the prescribed form to the registrar for registration as a real estate dealer. Registration of real estate dealers.
- (2) Upon receipt of an application referred to in subsection (1) the registrar shall forward particulars of the application to the superintendent of licenses.
- 20 (3) The council may inquire into, and the superintendent of licenses, upon receipt of the particulars, shall inquire into and report to the council upon—
- 25 (a) where the applicant is an individual—the fame and character of the applicant; and
- (b) where the applicant is a corporation—the fame and character of the directors and secretary of the corporation and whether the corporation is a fit and proper person
- 30 to be registered as a real estate dealer.
- (4)

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*Auctioneers and Agents (Amendment).*

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5 (4) Where no objection is made to registration of the applicant as a real estate dealer the registrar shall record the name and address of the place of business of the applicant, and any change of that address notified under subsection (5), in a register to be kept for that purpose.

10 (5) Notice of any change in the name or situation of the place of business of a person registered pursuant to this section shall be lodged by that person with the registrar within the prescribed time.

15 (6) A person who carries on business as a real estate dealer without being registered as a real estate dealer is liable to a penalty not exceeding ten dollars for every day during which he so carries on business.

20 51B. (1) A member of the police force, with the approval in writing of the superintendent of licenses, or the council, may object to the registration of a person as a real estate dealer and, where he or it does so, a statement setting out the nature of the objection proposed to be made shall be lodged by that member of the police force or the council, as the case may be, with the clerk of the court of petty sessions having jurisdiction under section 3 (8). **Objection to registration as a real estate dealer.**

25 (2) A copy of a statement so lodged by a member of the police force shall be included in a report furnished pursuant to section 51A (3).

30 (3) Where, pursuant to subsection (1), a member of the police force or the council objects to the registration of a person as a real estate dealer—

35 (a) the clerk of the court shall notify the applicant that registration will be objected to, and shall set out shortly in the notice the nature of the objection to be made;

(b)

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- (b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary magistrate or two or more justices;
- 5 (c) the hearing shall not take place until after the expiration of seven days after the lodging of the application;
- (d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding; and
- 10 (e) where the council has objected to the registration it may appear at the hearing by any member of the police force or the registrar or by counsel or attorney.
- 15 (4) The court shall not grant an application for registration as a real estate dealer—
  - 20 (a) where the applicant is an individual—  
if that individual is not of good fame and character or otherwise is not a fit and proper person to be so registered; or
  - (b) where the applicant is a corporation—if any director or the secretary of the corporation is not of good fame and character or otherwise is not a fit and proper person, if he applied for registration as an individual, to be so registered, or if the corporation is not a fit and proper person to be so registered.
- 25 (5) Upon determination of the application the clerk of the court shall notify the decision of the court to the registrar.
- 30

(6)

*Auctioneers and Agents (Amendment).*

5 (6) If the court grants the application the registrar shall, upon receipt of the notification, record the name and address of the place of business of the applicant in the register referred to in section 51A (4).

10 51c. (1) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a real estate dealer registered under section 51A to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why he should not cease to be so registered and why he should not be disqualified either permanently or temporarily from becoming registered on the ground—

Cancellation of registration of real estate dealer.

15 (a) that registration was improperly obtained;

(b) that he or it is not a fit and proper person to continue any longer to be so registered;

20 (c) that a director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation so registered;

25 (d) that he has been guilty of such conduct as renders him unfit to continue any longer to be so registered or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to be so registered; or

30 (e) that a director or the secretary of the corporation has been guilty of such conduct as renders him unfit to be a director or the secretary, as the case may be, of a corporation so registered.

(2)

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*Auctioneers and Agents (Amendment).*

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5 (2) Where the summons alleges a ground specified in subsection (1) (c) or (e), a copy of the summons shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the summons.

10 (3) If upon the day and at the time and place appointed by the summons issued in accordance with subsection (1) the registered real estate dealer does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the court of petty sessions may proceed to hear and determine the matter of the complaint in the absence of the registered real estate dealer.

15 (4) Service of a summons referred to in subsection (1) may be proved by the oath of the person who served it or by affidavit or otherwise.

20 (5) Upon being satisfied as to the truth of any of the grounds specified in subsection (1) the court may order that the registration of the registered real estate dealer be cancelled and that the real estate dealer and, where the court orders the cancellation of the registration of a corporation on a ground specified in subsection (1) (c) or (e),  
25 that any director or the secretary of the corporation, be disqualified either permanently or for such period as the court specifies from becoming registered under section 51A.

30 (6) Upon cancellation of the registration of a real estate dealer the clerk of the court by which the registration is cancelled shall notify the decision of the court to the registrar.

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*Auctioneers and Agents (Amendment).*

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5 51D. (1) In this section and in section 51E, "former real estate dealer" means a person who, within a period of twelve months before a complaint in respect of that person is made under subsection (2)—

Disqualifi-  
cation of  
former  
real estate  
dealer.

- 10 (a) has been registered as a real estate dealer and has ceased to be so registered; or
- (b) has been a director or the secretary of a corporation that, within that period, was so registered.

15 (2) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a former real estate dealer to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why that former real estate dealer should not be disqualified either permanently or temporarily from becoming registered on the

20 ground—

(a) in the case of a former real estate dealer referred to in subsection (1) who is an individual—

- 25 (i) that he is not a fit and proper person to be so registered; or
- (ii) that he has been guilty of conduct that renders him unfit to be so registered; or

30 (b) in the case of a former real estate dealer referred to in subsection (1) (a) that is a corporation—

- (i) that it is not a fit and proper person to be so registered; or

(ii)

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*Auctioneers and Agents (Amendment).*

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(ii) that its affairs have been so conducted as to render it unfit to be so registered.

5 (3) If, upon the day and at the time and place appointed by the summons issued under this section, the former real estate dealer does not appear, the court of petty sessions may, upon proof of the due service of the summons upon the former  
10 real estate dealer a reasonable time before the time appointed for his appearance, proceed to hear and determine the matter of the complaint in the absence of the former real estate dealer.

15 (4) The court may, upon being satisfied as to the truth of any of the grounds specified in the summons, order that the former real estate dealer be disqualified, either permanently or for such period as the court specifies in the order, from becoming registered under section 51A.

20 (5) Upon the disqualification of any person under this section, the clerk of the court by which the disqualification is imposed shall notify the decision of the court to the registrar.

51E. (1) Where the court—

25 (a) refuses an application made under section 51A (1)—the applicant;

Appeals from sections 51A, 51C and 51D determinations.

30 (b) grants an application made under section 51A (1) to the granting of which a member of the police force or the council has objected—the member of the police force or the council; or

(c) dismisses a complaint under section 51C or 51D—the complainant,

may

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*Auctioneers and Agents (Amendment).*

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may, in the manner prescribed by rules of the District Court, appeal to the District Court against the decision of the court.

5 (2) An appeal referred to in subsection (1) shall be in the nature of a rehearing.

(3) Notice of an appeal referred to in subsection (1) shall be given to such persons as may be prescribed by rules of the District Court or as the District Court may direct.

10 (4) For the purposes of an appeal referred to in subsection (1) the parties to the appeal shall be deemed to include any of the following persons :—

15 (a) the person making the application or the real estate dealer or former real estate dealer, or the director or secretary of a corporation referred to in the statement of the ground on which the disqualification was imposed, as the case may be;

20 (b) the member of the police force who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which that member of the police force had objected;

25 (c) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section 51C or 51D; and

30 (d) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the registrar under section 51C or 51D.

35 (5)

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*Auctioneers and Agents (Amendment).*

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5 (5) An appeal against a determination referred to in subsection (1) (a) shall not be commenced after the expiration of twenty-one days after the determination refusing the application or the date of the order under section 51C or 51D, as the case may be.

(6) An appeal against a determination referred to in subsection (1) (b) and (c) shall not be made unless the Minister approves.

10 (7) An appeal shall lie to the Supreme Court against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

15 51F. Notwithstanding anything in this Act, Commencement of certain determinations and orders. where, after the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, the court makes—

(a) a determination refusing an application under section 51A (1); or

20 (b) an order under section 51C or 51D,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period an appeal to the District Court is commenced under section 51E in relation to that determination or order, until the District Court confirms the determination or order or dismisses the appeal.

25

(x) by omitting section 54;

Sec. 54.  
(Real estate dealer to have registered place of business.)

(y)

*Auctioneers and Agents (Amendment).*

- 5 (y) by omitting from section 56 (1A) the words "holds a real estate agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a real estate agent's license"; Sec. 56. (Real estate salesmen to be registered.)
- 10 (z) (i) by omitting from section 56A (2) (a) (i) the words "holds an auctioneer's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of an auctioneer's license"; Sec. 56A. (Trainee auctioneers, business salesmen and stock and station salesmen to be registered.)
- 15 (ii) by omitting from section 56A (2) (a) (ii) the words "in respect of whom that corporation holds an auctioneer's license" and by inserting instead the words "who is the holder of an auctioneer's license";
- 20 (iii) by omitting from section 56A (2) (b) the words "holds a business agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a business agent's license";
- 25 (iv) by omitting from section 56A (2) (c) the words "holds a stock and station agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a stock and station agent's license";
- 30 (aa) by omitting from section 71 (1) the words "Where a corporation holds licenses taken out by it in respect of employees a separate contribution shall be payable in respect of each such employee, and such contribution shall be in addition to the contribution in respect of the license held by the corporation on its own behalf :"; Sec. 71. (Contributions to fund.)
- (bb) by omitting section 72 (4); Sec. 72. (Levies.)
- (cc)

*Auctioneers and Agents (Amendment).*

(cc) by omitting from section 86A (1) (a) the word  
“, variation”.

Sec. 86A.  
(Members  
or officers  
of council  
not to  
disclose  
informa-  
tion.)

6. (1) Where, immediately before the commencement of  
section 5—

Transitional  
and saving  
provisions.

5 (a) a corporation has applied for a license or the  
renewal or restoration of a license in respect of an  
employee as an auctioneer, stock and station, real  
estate or business agent and that application has not  
10 been disposed of, that application shall, after that  
commencement, be disposed of as if it were an  
application by the person named therein as the  
employee for a license or the renewal or restoration  
of a license as an auctioneer, stock and station, real  
estate or business agent, as the case may be;

15 (b) a corporation has applied for the variation of a  
license in respect of an employee as an auctioneer,  
stock and station, real estate or business agent and  
that application has not been disposed of—

20 (i) the employee in respect of whom the license  
to the corporation is held shall be entitled,  
at that commencement, subject to payment  
of the appropriate license and administration  
25 fees and contribution, to be issued with such  
of the class or classes of licenses as an  
auctioneer, stock and station, real estate or  
business agent that the corporation held in  
respect of him; and

30 (ii) that application shall, after that commence-  
ment, be disposed of as if it were an  
application, by the person named therein as

the

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*Auctioneers and Agents (Amendment).*

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5 the person whose name is to be substituted  
for the name of the employee in respect of  
whom the corporation holds the license, for  
a license as an auctioneer, stock and station,  
real estate or business agent, as the case may  
be; and

10 (c) a license to a corporation in respect of an employee  
as an auctioneer, stock and station, real estate or  
business agent is in force and paragraph (b) does  
not apply, the employee in respect of whom the  
license to the corporation is held shall, after that  
commencement, be deemed to be the holder of a  
license as an auctioneer, stock and station, real  
estate or business agent, as the case may be, until  
15 the date of expiry of the license issued to the  
corporation or for such further period as the license  
remains in force by virtue of the operation of  
section 23 (6).

20 (2) Section 40 (1) of the Principal Act does not  
apply to a person referred to in subsection (1) (c) in respect  
of any period during which he is deemed to be the holder of a  
license.

25 (3) The register referred to in section 54 (2) (c) of  
the Principal Act as in force immediately before the com-  
mencement of section 5 shall be deemed to be the register  
required to be kept under section 51A (4) of that Act, as  
amended by that section, and a person whose registered place  
of business was, immediately before that commencement,  
recorded in the register referred to in section 54 (2) (c) of  
30 the Principal Act as so in force shall be deemed to have been,  
at that commencement, duly registered under section 51A of  
that Act as a real estate dealer.

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*Auctioneers and Agents (Amendment).*

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7. The Strata Titles Act, 1973, is amended by inserting  
at the end of section 79 the following subsection :—

Amendment  
of Act No.  
68, 1973.  
Sec. 79.

(2) Subsection (1) does not apply to a person who  
is the holder of a real estate agent's license issued  
pursuant to the Auctioneers and Agents Act, 1941.

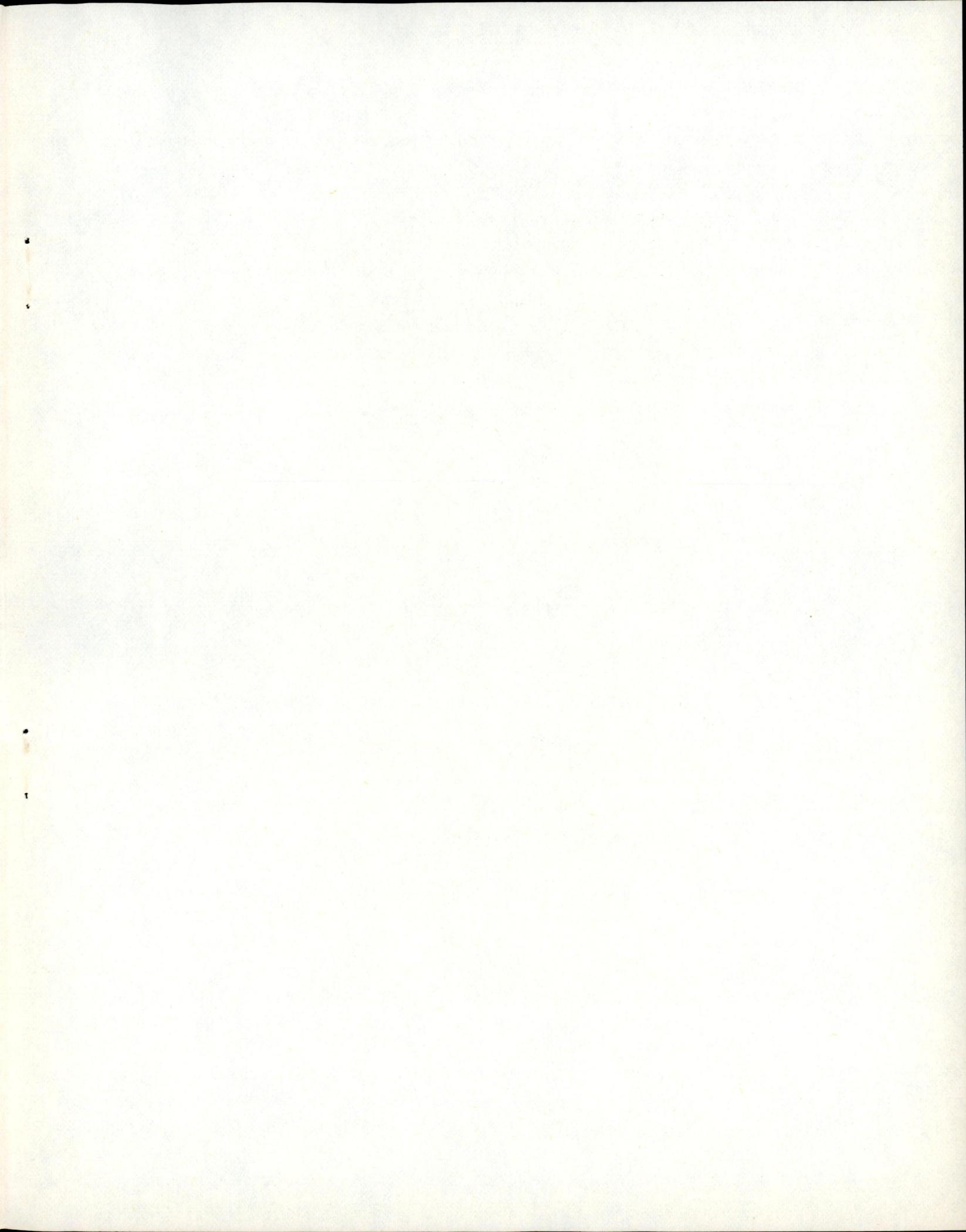
(Managing  
agent to  
lodge  
bond.)

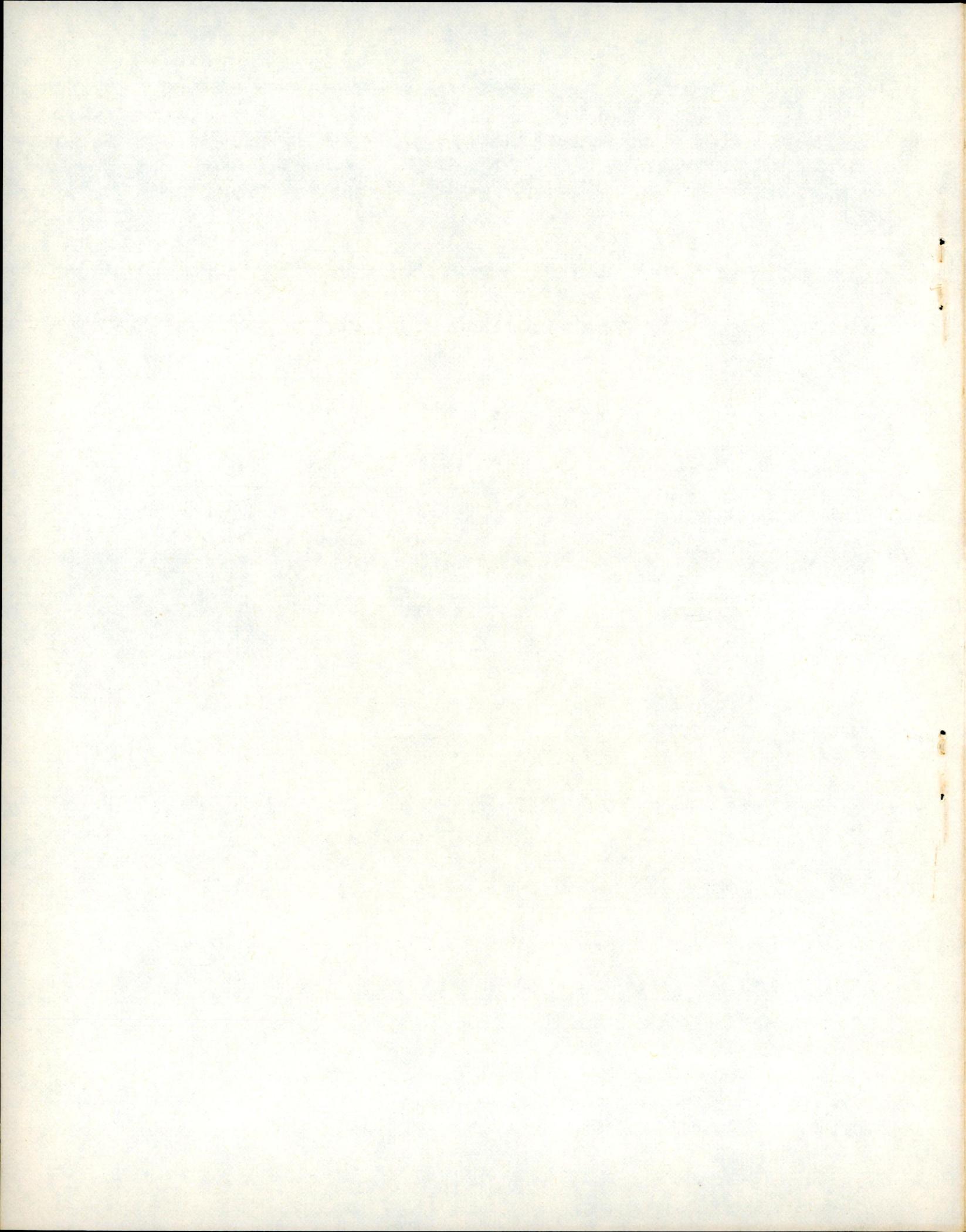
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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975  
[32c]





No. , 1975.

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# A BILL

To make further provisions with respect to the licensing of persons as agents under the Auctioneers and Agents Act, 1941, the directors of corporations licensed under that Act and real estate dealers; for these and other purposes to amend the Auctioneers and Agents Act, 1941, and the Strata Titles Act, 1973; and for purposes connected therewith.

[MR WADDY—11 March, 1975.]

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BE

*Auctioneers and Agents (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows:—

1. This Act may be cited as the "Auctioneers and Agents  
(Amendment) Act, 1975". Short title.

2. (1) Except as provided in subsection (2), this Act  
shall commence on the date of assent to this Act. Commence-  
ment.

10 (2) Sections 5 and 6 shall commence on such day  
as may be appointed by the Governor in respect thereof and  
as may be notified by proclamation published in the Gazette.

3. The Auctioneers and Agents Act, 1941, is, in this  
Act, referred to as the Principal Act. Principal  
Act.

15 4. The Principal Act is amended— Amendment  
of Act No.  
28, 1941.

(a) (i) by omitting from section 19A (2) the word  
"apply" where firstly occurring and by Sec. 19A.  
(Audit of  
council's  
accounts.)  
inserting instead the word "applies";

20 (ii) by omitting from section 19A (2) the words  
"they apply" and by inserting instead the words  
"it applies";

(b) by omitting section 20 (4) and by inserting instead  
the following subsection:— Sec. 20.  
(No person  
to act  
without a  
license.)

25 (4) A person guilty of an offence arising under  
this section is, in addition to a penalty specified  
in section 87 (2), liable to a penalty not exceeding  
ten dollars for each day on which the offence  
occurs.

(c)

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*Auctioneers and Agents (Amendment).*

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- (c) (i) by inserting after section 38B (2) the following subsections :— Sec. 38B.  
(Inspection  
of records.)

5 (2AA) Where the council has reasonable grounds for believing that a licensee has received or disbursed moneys in his capacity as a licensee that have not been dealt with in accordance with section 36, the council may  
10 duly authorise in writing the registrar, a member of the police force of or above the rank of sergeant or an officer of the council to inspect any records of the licensee that relate to any account (not being a trust account) kept by the licensee in connection with his business as a licensee.

15 (2AB) A person authorised under subsection (2AA) may require any licensee or, where a licensee has died, the personal representative of the licensee—

20 (a) to produce for inspection such of the records referred to in subsection (2AA) as are in his possession or under his control as the person so authorised requires; and

25 (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

30 (ii) by omitting from section 38B (2A) the words "The registrar, any such member of the police force or an officer of the council" and by inserting instead the words "A person authorised under subsection (1) or (2AA) to make an inspection";

35 (iii) by omitting from section 38B (3) the words "subsection two of this section" and by inserting instead the words "subsections (2) and (2AB)";

(iv)

*Auctioneers and Agents (Amendment).*

- (iv) by omitting section 38B (5) and by inserting instead the following subsection :—

(5) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a license under this Act or by a person (other than the licensee who made that written record) who has the possession, custody or control of that written record as required by section 38 (2) in the same way as it applies to a record kept by a licensee.

- (v) by inserting after section 38B (6) the following subsections :—

(7) Where an offence against subsection (2) or (2AB) is proved against a person the court may, in addition to any penalty or imprisonment imposed under section 87 (2), order that person to produce the records in respect of which the offence occurred to the registrar or a member of the police force of or above the rank of sergeant within such time as the court specifies in the order.

(8) A person who fails to produce in accordance with an order of a court made under subsection (7) any record specified in that order is guilty of an offence and liable upon conviction to a penalty not exceeding \$10 in respect of each day on which the offence continues.

- (d) by inserting after section 75 (8) the following subsection :—

Sec. 75.  
(Claims  
against  
the fund.)

(9) In respect of any theft or fraudulent misapplication after the date of assent to the Auctioneers and Agents (Amendment) Act, 1975, subsections (3) and (4) shall be construed as

though

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*Auctioneers and Agents (Amendment).*

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though the words "five hundred pounds" wherever occurring were omitted therefrom and the words "fifty thousand dollars" substituted therefor.

- 5 (e) (i) by omitting from section 83 (1) the words "trust accounts of any licensee specified in the appointment" and by inserting instead the words "trust and other accounts kept by a licensee specified in the appointment in connection with his business as a licensee"; Sec. 83. (Examination of accounts.)
- 10 (ii) by omitting from section 83 (3) the words "so far as the same relate to the trust accounts of such licensee".

5. The Principal Act is further amended—

Further amendment of Act No. 28, 1941.

- 15 (a) by omitting from the matter relating to Division 2 of Part IV in section 2 the figures "52" and by inserting instead the matter "51A"; Sec. 2. (Division into Parts.)
- 20 (b) (i) by omitting from paragraph (b) of the definition of "Business agent" in section 3 (1) the word "of," and by inserting instead the following words and paragraph :— Sec. 3. (Definitions.)
- of; or
- 25 (c) compiling for publication or compiling and publishing a document that contains a list relating solely or substantially to the acquisition or disposal of any person of,

(ii)

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*Auctioneers and Agents (Amendment).*

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- 5 (ii) by omitting from the definition of "Licensee" in section 3 (1) the words "and includes any employee of a corporation in respect of whom the corporation has taken out any such license";
- 10 (iii) by inserting in the definition of "Real estate agent" in section 3 (1) after the words "Strata Titles Act, 1973)" the words ", the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the acquisition or disposal by any person of any such land";
- 15 (iv) by inserting in paragraph (a) of the definition of "Stock and station agent" in section 3 (1) after the word "purposes" the words "or the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the sale, purchase, exchange, letting or taking on lease
- 20 of land used for those purposes";
- (v) by omitting section 3 (2) and by inserting instead the following subsection :—
- 25 (2) A reference in the definition of "Real estate agent" in subsection (1) to the letting or taking on lease of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.
- 30 (vi) by omitting from section 3 (6) the matter "and 52A" and by inserting instead the matter ", 52A and 54";

(vii)

*Auctioneers and Agents (Amendment).*

- (vii) by inserting in section 3 (8) (b) after the words "place of business" the words "or the proposed registered place of business";
- 5 (viii) by omitting from section 3 (8) (c) the matter "and 52A" and by inserting instead the matter ", 52A and 54";
- 10 (ix) by omitting from section 3 (8) (c) and (d) the words "or registered" wherever occurring and by inserting instead the words ", registered place of business or proposed registered";
- (c) (i) by omitting from section 20 (3) the words **Sec. 20.** "license on its own behalf and has also taken (No person to act out, in respect of the employee in charge at its sole or principal place of business," and by without a license.) inserting instead the words "corporation license and employs as the person in charge of its sole or principal place of business a person who holds";
- 15 (ii) by omitting from section 20 (3) the words "of this Act" where firstly occurring;
- 20 (iii) by omitting from section 20 (3) the following words :—
- 25 A corporation shall not be entitled to take out or to hold a license in respect of an employee unless it is the holder of a license on its own behalf.
- 30 A corporation which is the holder of a license on its own behalf may take out one or more licenses of any of the classes referred to in section twenty-two of this Act in respect of employees nominated by it for the purpose.
- (d)

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*Auctioneers and Agents (Amendment).*

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- 5 (d) (i) by omitting from section 21 (1) (c) the words Sec. 21.  
“at each such place a person in respect of (Each  
whom it has taken out a license, and such separate  
person shall be in charge at that place” and place of  
by inserting instead the words “as the person business  
in charge of each such place of business a to be in  
person who is the holder of a stock and station charge of  
agent’s license”;
- 10 (ii) by omitting from section 21 (2) (c) the words  
“at each such place a person in respect of  
whom it has taken out a license, and such  
person shall be in charge at that place” and  
by inserting instead the words “as the person  
in charge of each such place of business a  
15 person who is the holder of a real estate agent’s  
license”;
- 20 (iii) by omitting from section 21 (2A) (c) the  
words “at each such place a person in respect  
of whom it has taken out a license, and such  
person shall be in charge at that place” and  
by inserting instead the words “as the person  
in charge of each such place of business a  
person who is the holder of a business agent’s  
license”;
- 25 (e) (i) by omitting from section 22 (1) the words Sec. 22.  
“on its own behalf”; (Licenses.)
- (ii) by omitting from section 22 (2) (c) the words  
“and a corporation that has taken out a chattel  
auctioneer’s license in respect of an employee”;
- 30 (iii) by omitting from section 22 (2) (c) the words  
“or the corporation holds in respect of the  
employee”;
- (iv) by omitting from section 22 (2) (c) the words  
“or it”;

(v)

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*Auctioneers and Agents (Amendment).*

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- (v) by omitting from section 22 (2) (d) the words  
“, or a corporation from taking out or holding  
in respect of an employee or different  
employees.”;
- 5 (vi) by omitting from section 22 (3) (c) (i) the  
words “on its own behalf”;
- (vii) by omitting section 22 (3) (c) (ii);
- (f) (i) by omitting from section 23 (4) (b) the words Sec. 23.  
“and the application is for a license, to be (Proce-  
held by the corporation on its own behalf”; dure.)
- 10 (ii) by omitting from section 23 (4) (b) the words  
“license on its own behalf; and” and by  
inserting instead the matter “license.”;
- (iii) by omitting section 23 (4) (c);
- 15 (iv) by omitting from section 23 (9) (a) the words  
“and, where the application is made by a  
corporation in respect of an employee, shall  
also notify such employee”;
- 20 (v) by omitting from section 23 (9) (e) the matter  
“attorney;” and by inserting instead the matter  
“attorney.”;
- (vi) by omitting section 23 (9) (f);
- (vii) by inserting after section 23 (9) the following  
subsections :—
- 25 (9A) In subsection (9B), “license” means  
license or renewed license, as the case may be.

(9B)

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*Auctioneers and Agents (Amendment).*

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(9B) A license shall not be granted to a corporation—

5 (a) where the corporation is the holder of a license at the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, or where the corporation, not being the holder of a license, makes application for a license before that commencement—after a day that is three years after that commencement; or

10 (b) where the corporation makes application for a license after that commencement,

15 unless at least half the number of directors of the corporation are licensed in respect of the class or classes of business that the corporation carries on or proposes to carry on.

20 (viii) by omitting section 23 (10) (a);

(ix) by omitting from section 23 (10) (b) the words “under this Act”;

(x) by omitting section 23 (10) (c) and by inserting instead the following paragraph :—

25 (c) to a corporation where the court is satisfied—

30 (i) that any director or the secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if he were to apply for a license, to hold the license; or

(ii)

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*Auctioneers and Agents (Amendment).*

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- (ii) that the corporation is not a fit and proper person to hold a license.
- 5 (xi) by omitting from section 23 (10A) the words "or to a corporation in respect of an employee, unless the applicant or employee" and by inserting instead the words "unless the applicant";
- 10 (xii) by omitting from section 23 (10C) the following words and paragraphs :—  
subsection be granted—  
(a) to an applicant, not being a corporation; or  
15 (b) to a corporation in respect of an employee,  
and by inserting instead the words "subsection be granted to an applicant (not being a corporation)";
- 20 (xiii) by omitting from section 23 (12) (b) the words "in respect of a license taken out on its own behalf or taken out in respect of an employee";
- (xiv) by omitting from section 23 (12) the words "or the employee of such corporation";
- 25 (xv) by omitting from section 23 (12) the words ", corporation or employee of a corporation" and by inserting instead the words "or corporation";
- 30 (xvi) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words "or by a corporation in respect of an employee";

(iii)

(xvii)

*Auctioneers and Agents (Amendment).*

- 5 (xvii) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (xviii) by omitting from paragraph (b) of the definition of "special application" in section 23 (13) the words "on its own behalf";
- (g) by omitting section 24; Sec. 24.  
(Variation  
of license.)
- 10 (h) (i) by omitting from section 25 (1) the words "on its own behalf" wherever occurring; Sec. 25.  
(Fees  
payable for  
license.)
- (ii) by omitting from section 25 (1) (c) the words "dollar; or" and by inserting instead the matter "dollar.";
- 15 (iii) by omitting section 25 (1) (d);
- (i) (i) by omitting from section 26 (4) the words "; or an employee of a corporation that was, in respect of the employee, the holder of,"; Sec. 26.  
(Interstate  
licenses.)
- 20 (ii) by inserting in section 26 (4) after the word "same" the words "or substantially the same";
- (j) (i) by omitting from section 29 (1) the words "either on its own behalf or in respect of an employee"; Sec. 29.  
(Cancellat-  
ion of  
license.)
- 25 (ii) by omitting from section 29 (1) the words "or, as the case may be, such employee.";
- (iii)

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*Auctioneers and Agents (Amendment).*

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- (iii) by inserting in section 29 (1) (b) after the word "he" the words "or it";
- 5 (iv) by omitting from section 29 (1) (b) the words ", or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee";
- 10 (v) by omitting from section 29 (1) (bi) the words "on its own behalf or in respect of an employee";
- (vi) by omitting from section 29 (1) (c) the words ", or to have a license held in respect of him as an employee, by a corporation,";
- 15 (vii) by omitting from section 29 (1) (c) and (d) the words "on its own behalf or in respect of an employee" wherever occurring;
- 20 (viii) by omitting from section 29 (1) the words "Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.";
- 25 (ix) by omitting from section 29 (2) the words "or, as the case may be, the employee named therein";
- (x) by omitting from section 29 (2) the words ", or, as the case may be, such employee";
- 30 (xi) by omitting from section 29 (3) the words "or such employee, or both,";

(k)

*Auctioneers and Agents (Amendment).*

- (k) (i) by inserting in section 29A (1) (a) after the words "that license;" the word "or"; Sec. 29A.  
(Disquali-  
fication of  
former  
licensees,  
etc.)
- (ii) by omitting section 29A (1) (b);
- 5 (iii) by omitting from section 29A (2) (a) the words "or to have a license held in respect of him by a corporation" wherever occurring;
- (iv) by omitting from section 29A (2) (b) the words "on its own behalf or in respect of an employee" wherever occurring;
- 10 (l) by omitting from section 30 (2) the matter " , variations"; Sec. 30.  
(Register  
to be  
kept by  
registrar.)
- (m) (i) by omitting from section 31 (1) (a) the words "twenty-three, section 23A, or section twenty-four or makes an order under section twenty-nine or 29A of this Act" and by inserting instead the words "23 or 23A or makes an order under section 29 or 29A"; Sec. 31.  
(Appeal.)
- 15 (ii) by omitting from section 31 (1) (b) the words "twenty-three, section 23A, or section twenty-four of this Act" and by inserting instead the matter "23 or 23A";
- 20 (iii) by omitting from section 31 (1) (c) the words "twenty-nine or 29A of this Act" and by inserting instead the matter "29 or 29A";
- 25 (iv) by omitting from section 31 (1) the words "or the employee";
- (v) by omitting from section 31 (1) the words "of this subsection" wherever occurring;

(vi)

*Auctioneers and Agents (Amendment).*

- (vi) by omitting from section 31 (4) the words  
“, or employee,”;
- (vii) by omitting from section 31 (4) the words  
“twenty-nine or 29A of this Act” wherever  
occurring and by inserting instead the matter  
“29 or 29A”;
- (viii) by omitting from section 31 (4A) the words  
“paragraph (a) of subsection one of this  
section” and by inserting instead the matter  
“subsection (1) (a)”;
- (ix) by omitting from section 31 (4A) the words  
“twenty-nine or 29A of this Act” and by  
inserting instead the matter “29 or 29A”;
- (x) by omitting from section 31 (5) the words  
“paragraph (b) or paragraph (c) of subsection  
one of this section” and by inserting instead  
the words “subsection (1) (b) or (c)”;
- (n) by omitting from section 32 the words “, and no  
corporation shall obtain or continue to hold a  
license in respect of any such person as an  
employee”;
- (o) (i) by omitting from section 34 (3) the words  
“, restoration or variation” and by inserting  
instead the words “or restoration”;
- (ii) by omitting from section 34 (3) the words  
“Provided that” and all words following those  
words;

Sec. 32.  
(Effect of  
disquali-  
fication on  
member-  
ship, etc.,  
of corpora-  
tion.)

Sec. 34.  
(Registered  
office and  
address.)

(iii)

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*Auctioneers and Agents (Amendment).*

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(iii) by inserting after section 34 (4) the following subsection :—

5 (4A) Within the prescribed period after a person commences employment as, or ceases to be employed as, the person in charge of a place of business of a corporation the corporation shall lodge with the council—

10 (a) a notice specifying the name and address of, and the classes of license held by, the person so commencing to be employed; or

(b) a notice specifying the day upon which that person ceased to be so employed, as the case may require.

15 (p) (i) by omitting from section 35 (2) the word “employee” wherever occurring and by inserting instead the word “person”; Sec. 35. (Publication of name of licensee.)

20 (ii) by omitting from section 35 (2) (a) the word “licensee’s” and by inserting instead the word “corporation’s”;

(q) (i) by inserting in section 36 (1) after the words “held by the licensee” the words “or, where the licensee is employed by a corporation, by the corporation,”; Sec. 36. (Payment into bank.)

25 (ii) by omitting from section 36 (1) the words “in respect of an employee”;

(r) (i) by omitting from section 36D (1) (b) the words “or by any employee in respect of whom the corporation has taken out a license”; Sec. 36D. (Licensees to deposit part of trust account with the council.)

(ii)

*Auctioneers and Agents (Amendment).*

(ii) by omitting from section 36D (6) the definition of "licensee";

5 (s) (i) by omitting from section 39 (3) the words "or a corporation on whose behalf a license is held"; Sec. 39. (Certain persons not to be employed by licensees.)

(ii) by omitting from section 39 (3) the words "or its";

10 (t) (i) by omitting from section 42 (1) (a) the words "issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act" and by inserting instead the words ", or employed a person so licensed,;" Sec. 42. (Provisions as to commission, etc.)

15 (ii) by inserting in section 42 (1) (b), (c) and (d) after the word "license" wherever occurring the words ", or employed a person so licensed,;"

20 (iii) by omitting from section 42 (1) (b) and (c) the words "or such service was done or performed before the expiration of three months after the commencement of this Act" wherever occurring;

(iv) by omitting from section 42 (1) (d) the word "service." and by inserting instead the following words :—

25 service,  
and, in the case of a corporation, unless it was the holder of a corporation license at the time of doing or performing such service.

*Auctioneers and Agents (Amendment).*

(v) by omitting section 42 (2);

(u) by omitting from section 43 (c) and (d) the words "or employee of a corporation" wherever occurring;

Sec. 43.  
(Publication of name and place of business in advertisements.)

5 (v) by omitting from the definition of "Trainee auctioneer" in section 51 the words "has taken out an auctioneer's license in respect of an employee" and by inserting instead the words "employs a person who is licensed as an auctioneer";

Sec. 51.  
(Interpretation.)

10 (w) by inserting before section 52 the following sections:—

Secs. 51A-51F.

15 51A. (1) A person who proposes to carry on business as a real estate dealer shall, before commencing business as such, make application in the prescribed form to the registrar for registration as a real estate dealer.

Registration of real estate dealers.

(2) Upon receipt of an application referred to in subsection (1) the registrar shall forward particulars of the application to the superintendent of licenses.

20 (3) The council may inquire into, and the superintendent of licenses, upon receipt of the particulars, shall inquire into and report to the council upon—

25 (a) where the applicant is an individual—the fame and character of the applicant; and

(b) where the applicant is a corporation—the fame and character of the directors and secretary of the corporation and whether the corporation is a fit and proper person to be registered as a real estate dealer.

30

(4)

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*Auctioneers and Agents (Amendment).*

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5 (4) Where no objection is made to registration of the applicant as a real estate dealer the registrar shall record the name and address of the place of business of the applicant, and any change of that address notified under subsection (5), in a register to be kept for that purpose.

10 (5) Notice of any change in the name or situation of the place of business of a person registered pursuant to this section shall be lodged by that person with the registrar within the prescribed time.

15 (6) A person who carries on business as a real estate dealer without being registered as a real estate dealer is liable to a penalty not exceeding ten dollars for every day during which he so carries on business.

20 51B. (1) A member of the police force, with the approval in writing of the superintendent of licenses, or the council, may object to the registration of a person as a real estate dealer and, where he or it does so, a statement setting out the nature of the objection proposed to be made shall be lodged by that member of the police force or the council, as the case may be, with the clerk of the court of petty sessions having jurisdiction under section 3 (8). **Objection to registration as a real estate dealer.**

25 (2) A copy of a statement so lodged by a member of the police force shall be included in a report furnished pursuant to section 51A (3).

30 (3) Where, pursuant to subsection (1), a member of the police force or the council objects to the registration of a person as a real estate dealer—

35 (a) the clerk of the court shall notify the applicant that registration will be objected to, and shall set out shortly in the notice the nature of the objection to be made;

(b)

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*Auctioneers and Agents (Amendment).*

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- (b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary magistrate or two or more justices;
  - 5 (c) the hearing shall not take place until after the expiration of seven days after the lodging of the application;
  - (d) the hearing of the application shall be in  
10 open court and the consideration of the application shall be deemed to be a judicial proceeding; and
  - (e) where the council has objected to the registration it may appear at the hearing by any  
15 member of the police force or the registrar or by counsel or attorney.
- (4) The court shall not grant an application for registration as a real estate dealer—
- 20 (a) where the applicant is an individual— if that individual is not of good fame and character or otherwise is not a fit and proper person to be so registered; or
  - 25 (b) where the applicant is a corporation— if any director or the secretary of the corporation is not of good fame and character or otherwise is not a fit and proper person, if he applied for registration as an individual, to be so registered, or if the corporation is not a fit and proper person to be so registered.
- 30 (5) Upon determination of the application the clerk of the court shall notify the decision of the court to the registrar.

(6)

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*Auctioneers and Agents (Amendment).*

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5 (6) If the court grants the application the registrar shall, upon receipt of the notification, record the name and address of the place of business of the applicant in the register referred to in section 51A (4).

10 51c. (1) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a real estate dealer registered under section 51A to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why he should not cease to be so registered and why he should not be disqualified either permanently or temporarily from becoming registered on the ground—

Cancellation of registration of real estate dealer.

15 (a) that registration was improperly obtained;

(b) that he or it is not a fit and proper person to continue any longer to be so registered;

20 (c) that a director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation so registered;

25 (d) that he has been guilty of such conduct as renders him unfit to continue any longer to be so registered or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to be so registered; or

30 (e) that a director or the secretary of the corporation has been guilty of such conduct as renders him unfit to be a director or the secretary, as the case may be, of a corporation so registered.

(2)

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*Auctioneers and Agents (Amendment).*

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5 (2) Where the summons alleges a ground specified in subsection (1) (c) or (e), a copy of the summons shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the summons.

10 (3) If upon the day and at the time and place appointed by the summons issued in accordance with subsection (1) the registered real estate dealer does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the court of petty sessions may proceed to hear and determine the matter of the complaint in the absence of the registered real estate dealer.

15 (4) Service of a summons referred to in subsection (1) may be proved by the oath of the person who served it or by affidavit or otherwise.

20 (5) Upon being satisfied as to the truth of any of the grounds specified in subsection (1) the court may order that the registration of the registered real estate dealer be cancelled and that the real estate dealer and, where the court orders the cancellation of the registration of a corporation on a ground specified in subsection (1) (c) or (e),  
25 that any director or the secretary of the corporation, be disqualified either permanently or for such period as the court specifies from becoming registered under section 51A.

30 (6) Upon cancellation of the registration of a real estate dealer the clerk of the court by which the registration is cancelled shall notify the decision of the court to the registrar.

*Auctioneers and Agents (Amendment).*

51D. (1) In this section and in section 51E, Disqualifi-  
"former real estate dealer" means a person who, cation of  
within a period of twelve months before a complaint former  
in respect of that person is made under subsection real estate  
(2)— dealer.

5

- (a) has been registered as a real estate dealer and has ceased to be so registered; or
- (b) has been a director or the secretary of a corporation that, within that period, was so registered.

10

(2) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a former real estate dealer to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why that former real estate dealer should not be disqualified either permanently or temporarily from becoming registered on the ground—

15

20

(a) in the case of a former real estate dealer referred to in subsection (1) who is an individual—

25

- (i) that he is not a fit and proper person to be so registered; or
- (ii) that he has been guilty of conduct that renders him unfit to be so registered; or

30

(b) in the case of a former real estate dealer referred to in subsection (1) (a) that is a corporation—

- (i) that it is not a fit and proper person to be so registered; or

(ii)

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*Auctioneers and Agents (Amendment).*

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(ii) that its affairs have been so conducted as to render it unfit to be so registered.

5 (3) If, upon the day and at the time and place appointed by the summons issued under this section, the former real estate dealer does not appear, the court of petty sessions may, upon proof of the due service of the summons upon the former real estate dealer a reasonable time before the time appointed for his appearance, proceed to hear and determine the matter of the complaint in the absence of the former real estate dealer.

10 (4) The court may, upon being satisfied as to the truth of any of the grounds specified in the summons, order that the former real estate dealer be disqualified, either permanently or for such period as the court specifies in the order, from becoming registered under section 51A.

15 (5) Upon the disqualification of any person under this section, the clerk of the court by which the disqualification is imposed shall notify the decision of the court to the registrar.

20 51E. (1) Where the court—

- 25 (a) refuses an application made under section 51A (1)—the applicant;
- (b) grants an application made under section 51A (1) to the granting of which a member of the police force or the council has objected—the member of the police force or the council; or
- 30 (c) dismisses a complaint under section 51C or 51D—the complainant,

may

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*Auctioneers and Agents (Amendment).*

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may, in the manner prescribed by rules of the District Court, appeal to the District Court against the decision of the court.

5 (2) An appeal referred to in subsection (1) shall be in the nature of a rehearing.

(3) Notice of an appeal referred to in subsection (1) shall be given to such persons as may be prescribed by rules of the District Court or as the District Court may direct.

10 (4) For the purposes of an appeal referred to in subsection (1) the parties to the appeal shall be deemed to include any of the following persons :—

15 (a) the person making the application or the real estate dealer or former real estate dealer, or the director or secretary of a corporation referred to in the statement of the ground on which the disqualification was imposed, as the case may be;

20 (b) the member of the police force who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which that member of the police force had objected;

25 (c) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section 51C or 51D; and

30 (d) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the registrar under section 51C or 51D.

(v) (5)

*Auctioneers and Agents (Amendment).*

5 (5) An appeal against a determination referred to in subsection (1) (a) shall not be commenced after the expiration of twenty-one days after the determination refusing the application or the date of the order under section 51C or 51D, as the case may be.

(6) An appeal against a determination referred to in subsection (1) (b) and (c) shall not be made unless the Minister approves.

10 (7) An appeal shall lie to the Supreme Court against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

15 51F. Notwithstanding anything in this Act, Commence-  
where, after the commencement of section 5 of certain  
the Auctioneers and Agents (Amendment) Act, determina-  
1975, the court makes— tions and  
orders.

(a) a determination refusing an application under section 51A (1); or

20 (b) an order under section 51C or 51D,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period an appeal to the District Court is commenced under  
25 section 51E in relation to that determination or order, until the District Court confirms the determination or order or dismisses the appeal.

(x) by omitting section 54;

Sec. 54.  
(Real estate dealer to have registered place of business.)

(y)

*Auctioneers and Agents (Amendment).*

- 5 (y) by omitting from section 56 (1A) the words "holds a real estate agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a real estate agent's license"; Sec. 56. (Real estate salesmen to be registered.)
- 10 (z) (i) by omitting from section 56A (2) (a) (i) the words "holds an auctioneer's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of an auctioneer's license"; Sec. 56A. (Trainee auctioneers, business salesmen and stock and station salesmen to be registered.)
- 15 (ii) by omitting from section 56A (2) (a) (ii) the words "in respect of whom that corporation holds an auctioneer's license" and by inserting instead the words "who is the holder of an auctioneer's license";
- 20 (iii) by omitting from section 56A (2) (b) the words "holds a business agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a business agent's license";
- 25 (iv) by omitting from section 56A (2) (c) the words "holds a stock and station agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a stock and station agent's license";
- 30 (aa) by omitting from section 71 (1) the words "Where a corporation holds licenses taken out by it in respect of employees a separate contribution shall be payable in respect of each such employee, and such contribution shall be in addition to the contribution in respect of the license held by the corporation on its own behalf :"; Sec. 71. (Contributions to fund.)
- (bb) by omitting section 72 (4); Sec. 72. (Levies.)
- (cc)

*Auctioneers and Agents (Amendment).*

(cc) by omitting from section 86A (1) (a) the word  
“, variation”.

Sec. 86A.  
(Members  
or officers  
of council  
not to  
disclose  
informa-  
tion.)

6. (1) Where, immediately before the commencement of  
section 5—

Transitional  
and saving  
provisions.

5 (a) a corporation has applied for a license or the  
renewal or restoration of a license in respect of an  
employee as an auctioneer, stock and station, real  
estate or business agent and that application has not  
10 been disposed of, that application shall, after that  
commencement, be disposed of as if it were an  
application by the person named therein as the  
employee for a license or the renewal or restoration  
of a license as an auctioneer, stock and station, real  
estate or business agent, as the case may be ;

15 (b) a corporation has applied for the variation of a  
license in respect of an employee as an auctioneer,  
stock and station, real estate or business agent and  
that application has not been disposed of—

20 (i) the employee in respect of whom the license  
to the corporation is held shall be entitled,  
at that commencement, subject to payment  
of the appropriate license and administration  
fees and contribution, to be issued with such  
25 of the class or classes of licenses as an  
auctioneer, stock and station, real estate or  
business agent that the corporation held in  
respect of him ; and

30 (ii) that application shall, after that commence-  
ment, be disposed of as if it were an  
application, by the person named therein as

the

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*Auctioneers and Agents (Amendment).*

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5 the person whose name is to be substituted  
for the name of the employee in respect of  
whom the corporation holds the license, for  
a license as an auctioneer, stock and station,  
real estate or business agent, as the case may  
be; and

10 (c) a license to a corporation in respect of an employee  
as an auctioneer, stock and station, real estate or  
business agent is in force and paragraph (b) does  
not apply, the employee in respect of whom the  
license to the corporation is held shall, after that  
commencement, be deemed to be the holder of a  
license as an auctioneer, stock and station, real  
estate or business agent, as the case may be, until  
15 the date of expiry of the license issued to the  
corporation or for such further period as the license  
remains in force by virtue of the operation of  
section 23 (6).

20 (2) Section 40 (1) of the Principal Act does not  
apply to a person referred to in subsection (1) (c) in respect  
of any period during which he is deemed to be the holder of a  
license.

25 (3) The register referred to in section 54 (2) (c) of  
the Principal Act as in force immediately before the com-  
mencement of section 5 shall be deemed to be the register  
required to be kept under section 51A (4) of that Act, as  
amended by that section, and a person whose registered place  
of business was, immediately before that commencement,  
recorded in the register referred to in section 54 (2) (c) of  
30 the Principal Act as so in force shall be deemed to have been,  
at that commencement, duly registered under section 51A of  
that Act as a real estate dealer.

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*Auctioneers and Agents (Amendment).*

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7. The Strata Titles Act, 1973, is amended by inserting at the end of section 79 the following subsection :—

Amendment  
of Act No.  
68, 1973.  
Sec. 79.

(2) Subsection (1) does not apply to a person who is the holder of a real estate agent's license issued pursuant to the Auctioneers and Agents Act, 1941.

(Managing  
agent to  
lodge  
bond.)

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975  
[32c]





## AUCTIONEERS AND AGENTS (AMENDMENT) BILL, 1975

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### EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to impose a continuing penalty not exceeding \$10 per day, in addition to any other penalty imposed, upon a person who acts as an auctioneer or agent without being licensed under the Auctioneers and Agents Act, 1941;
- (b) to permit persons specially authorised for the purpose by the Council of Auctioneers and Agents to inspect, in addition to trust account records, records of a licensee that are not trust account records;
- (c) to empower a court to order a person who has failed to produce a record referred to in paragraph (b) to produce that record to the authorised person and to impose a penalty not exceeding \$10 per day upon a person who fails to comply with the court's order;
- (d) to increase the maximum amount that may be paid from the Auctioneers and Agents Fidelity Guarantee Fund from \$20,000 to \$50,000;
- (e) to extend the definitions of "business agent", "real estate agent" and "stock and station agent" to include persons who act as listing agents or listing bureaux;
- (f) to extend the definition of "real estate agent" to include persons who act as accommodation agents;
- (g) to abolish licenses to a corporation in respect of an employee but to provide that a corporation desiring to act as an auctioneer or agent must hold a corporation license and employ a person who holds a license in respect of the class of business that the corporation intends to carry on;
- (h) to prevent a corporation that holds a license on the day on which section 5 of the amending Act comes into force, or that has applied for but not been granted a license on or before that day, from obtaining a license after a day that is three years after that day of commencement unless at least half of the directors hold a license of the class that relates to the business carried on by the corporation;
- (i) to prevent a corporation that applies for a license after the day on which section 5 of the amending Act commences from obtaining a license unless at least half of the directors hold a license of the class that relates to the business proposed to be carried on by the corporation;
- (j) to require a corporation to keep the council informed of the name of the person in charge of each of its places of business;

- (k) to require a real estate dealer to apply for registration instead of notifying his place of business, to allow the superintendent of licenses and the council to object to registration, to allow cancellation of the registration of a real estate dealer, to permit disqualification of a person for registration as a real estate dealer and to provide for appeals against certain determinations;
  - (l) to make transitional provisions in respect of certain applications made but not dealt with on the day on which section 5 of the amending Act commences and to effect a saving of certain classes of licenses in force on that day;
  - (m) to amend the Strata Titles Act, 1973, to provide that all persons, other than licensed real estate agents, who act as managing agents shall be bonded; and
  - (n) to make other provisions of a minor, consequential or ancillary nature.
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No. , 1975.

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## A BILL

To make further provisions with respect to the licensing of persons as agents under the Auctioneers and Agents Act, 1941, the directors of corporations licensed under that Act and real estate dealers; for these and other purposes to amend the Auctioneers and Agents Act, 1941, and the Strata Titles Act, 1973; and for purposes connected therewith.

[MR WADDY—11 March, 1975.]

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BE

*Auctioneers and Agents (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
5 the same, as follows :—

1. This Act may be cited as the "Auctioneers and Agents  
(Amendment) Act, 1975". Short title.
  
  2. (1) Except as provided in subsection (2), this Act Commence-  
shall commence on the date of assent to this Act. ment.
  - 10 (2) Sections 5 and 6 shall commence on such day  
as may be appointed by the Governor in respect thereof and  
as may be notified by proclamation published in the Gazette.
  
  3. The Auctioneers and Agents Act, 1941, is, in this Principal  
Act, referred to as the Principal Act. Act.
  
  - 15 4. The Principal Act is amended—  
Amendment  
of Act No.  
28, 1941.
    - (a) (i) by omitting from section 19A (2) the word Sec. 19A.  
"apply" where firstly occurring and by (Audit of  
council's  
accounts.)  
inserting instead the word "applies";
    - 20 (ii) by omitting from section 19A (2) the words  
"they apply" and by inserting instead the words  
"it applies";
    - (b) by omitting section 20 (4) and by inserting instead Sec. 20.  
the following subsection :—  
(No person  
to act  
without a  
license.)
      - 25 (4) A person guilty of an offence arising under  
this section is, in addition to a penalty specified  
in section 87 (2), liable to a penalty not exceeding  
ten dollars for each day on which the offence  
occurs.
- (c)

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*Auctioneers and Agents (Amendment).*

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- (c) (i) by inserting after section 38B (2) the following subsections :—

Sec. 38B.  
(Inspection  
of records.)

5 (2AA) Where the council has reasonable grounds for believing that a licensee has received or disbursed moneys in his capacity as a licensee that have not been dealt with in accordance with section 36, the council may duly authorise in writing the registrar, a member of the police force of or above the rank of sergeant or an officer of the council to inspect any records of the licensee that relate to any account (not being a trust account) kept by the licensee in connection with his business as a licensee.

10 (2AB) A person authorised under subsection (2AA) may require any licensee or, where a licensee has died, the personal representative of the licensee—

15 (a) to produce for inspection such of the records referred to in subsection (2AA) as are in his possession or under his control as the person so authorised requires; and

20 (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

25 (ii) by omitting from section 38B (2A) the words "The registrar, any such member of the police force or an officer of the council" and by inserting instead the words "A person authorised under subsection (1) or (2AA) to make an inspection";

30 (iii) by omitting from section 38B (3) the words "subsection two of this section" and by inserting instead the words "subsections (2) and (2AB)";

(iv)

*Auctioneers and Agents (Amendment).*

(iv) by omitting section 38B (5) and by inserting instead the following subsection :—

5 (5) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has  
10 ceased to hold a license under this Act or by a person (other than the licensee who made that written record) who has the possession, custody or control of that written record as required by section 38 (2) in the same way as it applies to a record kept by a licensee.

(v) by inserting after section 38B (6) the following subsections :—

15 (7) Where an offence against subsection (2) or (2AB) is proved against a person the court may, in addition to any penalty or imprisonment imposed under section 87 (2), order that person to produce the records in respect of which the offence occurred to the registrar or a member of the police force of or above the rank of sergeant within such time as the court specifies in the order.

25 (8) A person who fails to produce in accordance with an order of a court made under subsection (7) any record specified in that order is guilty of an offence and liable upon conviction to a penalty not exceeding \$10 in respect of each day on which the offence continues.

30 (d) by inserting after section 75 (8) the following subsection :—

35 (9) In respect of any theft or fraudulent misapplication after the date of assent to the Auctioneers and Agents (Amendment) Act, 1975, subsections (3) and (4) shall be construed as

though

Sec. 75.  
(Claims against the fund.)

*Auctioneers and Agents (Amendment).*

though the words "five hundred pounds" wherever occurring were omitted therefrom and the words "fifty thousand dollars" substituted therefor.

- 5 (e) (i) by omitting from section 83 (1) the words "trust accounts of any licensee specified in the appointment" and by inserting instead the words "trust and other accounts kept by a licensee specified in the appointment in connection with his business as a licensee";
- 10 (ii) by omitting from section 83 (3) the words ", so far as the same relate to the trust accounts of such licensee".

5. The Principal Act is further amended—

Further amendment of Act No. 28, 1941.

- 15 (a) by omitting from the matter relating to Division 2 of Part IV in section 2 the figures "52" and by inserting instead the matter "51A";
- 20 (b) (i) by omitting from paragraph (b) of the definition of "Business agent" in section 3 (1) the word "of," and by inserting instead the following words and paragraph :—
- of; or
- 25 (c) compiling for publication or compiling and publishing a document that contains a list relating solely or substantially to the acquisition or disposal of any person of,

(ii)

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*Auctioneers and Agents (Amendment).*

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- 5 (ii) by omitting from the definition of "Licensee" in section 3 (1) the words "and includes any employee of a corporation in respect of whom the corporation has taken out any such license";
- 10 (iii) by inserting in the definition of "Real estate agent" in section 3 (1) after the words "Strata Titles Act, 1973)" the words ", the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the acquisition or disposal by any person of any such land";
- 15 (iv) by inserting in paragraph (a) of the definition of "Stock and station agent" in section 3 (1) after the word "purposes" the words "or the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the sale, purchase, exchange, letting or taking on lease
- 20 of land used for those purposes";
- (v) by omitting section 3 (2) and by inserting instead the following subsection :—
- 25 (2) A reference in the definition of "Real estate agent" in subsection (1) to the letting or taking on lease of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.
- 30 (vi) by omitting from section 3 (6) the matter "and 52A" and by inserting instead the matter ", 52A and 54";

(vii)

*Auctioneers and Agents (Amendment).*

- (vii) by inserting in section 3 (8) (b) after the words "place of business" the words "or the proposed registered place of business";
- 5 (viii) by omitting from section 3 (8) (c) the matter "and 52A" and by inserting instead the matter ", 52A and 54";
- (ix) by omitting from section 3 (8) (c) and (d) the words "or registered" wherever occurring and by inserting instead the words ", registered place of business or proposed registered";
- 10

(c) (i) by omitting from section 20 (3) the words "license on its own behalf and has also taken out, in respect of the employee in charge at its sole or principal place of business," and by inserting instead the words "corporation license and employs as the person in charge of its sole or principal place of business a person who holds";

15

Sec. 20.  
(No person to act without a license.)

(ii) by omitting from section 20 (3) the words "of this Act" where firstly occurring;

20

(iii) by omitting from section 20 (3) the following words :—

A corporation shall not be entitled to take out or to hold a license in respect of an employee unless it is the holder of a license on its own behalf.

25

A corporation which is the holder of a license on its own behalf may take out one or more licenses of any of the classes referred to in section twenty-two of this Act in respect of employees nominated by it for the purpose.

30

(d)

*Auctioneers and Agents (Amendment).*

- 5 (d) (i) by omitting from section 21 (1) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a stock and station agent's license";
- 10 (ii) by omitting from section 21 (2) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a real estate agent's license";
- 15 (iii) by omitting from section 21 (2A) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a business agent's license";
- 20 (e) (i) by omitting from section 22 (1) the words "on its own behalf";
- 25 (ii) by omitting from section 22 (2) (c) the words "and a corporation that has taken out a chattel auctioneer's license in respect of an employee";
- 30 (iii) by omitting from section 22 (2) (c) the words "or the corporation holds in respect of the employee";
- (iv) by omitting from section 22 (2) (c) the words "or it";

Sec. 21.  
(Each separate place of business to be in charge of licensee.)

Sec. 22.  
(Licenses.)

(v)

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*Auctioneers and Agents (Amendment).*

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- (v) by omitting from section 22 (2) (d) the words  
“, or a corporation from taking out or holding  
in respect of an employee or different  
employees.”;
- 5 (vi) by omitting from section 22 (3) (c) (i) the  
words “on its own behalf”;
- (vii) by omitting section 22 (3) (c) (ii) ;
- (f) (i) by omitting from section 23 (4) (b) the words Sec. 23.  
“and the application is for a license, to be (Proce-  
held by the corporation on its own behalf”; dure.)
- 10 (ii) by omitting from section 23 (4) (b) the words  
“license on its own behalf; and” and by  
inserting instead the matter “license.”;
- (iii) by omitting section 23 (4) (c) ;
- 15 (iv) by omitting from section 23 (9) (a) the words  
“and, where the application is made by a  
corporation in respect of an employee, shall  
also notify such employee”;
- (v) by omitting from section 23 (9) (e) the matter  
20 “attorney;” and by inserting instead the matter  
“attorney.”;
- (vi) by omitting section 23 (9) (f) ;
- (vii) by inserting after section 23 (9) the following  
subsections :—
- 25 (9A) In subsection (9B), “license” means  
license or renewed license, as the case may be.

(9B)

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*Auctioneers and Agents (Amendment).*

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(9B) A license shall not be granted to a corporation—

5 (a) where the corporation is the holder of a license at the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, or where the corporation, not being the holder of a license, makes application for a license before that commencement—after a day that is three years after that commencement; or

10 (b) where the corporation makes application for a license after that commencement,

15 unless at least half the number of directors of the corporation are licensed in respect of the class or classes of business that the corporation carries on or proposes to carry on.

20 (viii) by omitting section 23 (10) (a);

(ix) by omitting from section 23 (10) (b) the words “under this Act”;

(x) by omitting section 23 (10) (c) and by inserting instead the following paragraph :—

25 (c) to a corporation where the court is satisfied—

30 (i) that any director or the secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if he were to apply for a license, to hold the license; or

(ii)

*Auctioneers and Agents (Amendment).*

(ii) that the corporation is not a fit and proper person to hold a license.

5 (xi) by omitting from section 23 (10A) the words "or to a corporation in respect of an employee, unless the applicant or employee" and by inserting instead the words "unless the applicant";

10 (xii) by omitting from section 23 (10c) the following words and paragraphs :—

subsection be granted—

(a) to an applicant, not being a corporation; or

15 (b) to a corporation in respect of an employee,

and by inserting instead the words "subsection be granted to an applicant (not being a corporation)";

20 (xiii) by omitting from section 23 (12) (b) the words "in respect of a license taken out on its own behalf or taken out in respect of an employee";

(xiv) by omitting from section 23 (12) the words "or the employee of such corporation";

25 (xv) by omitting from section 23 (12) the words ", corporation or employee of a corporation" and by inserting instead the words "or corporation";

30 (xvi) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words "or by a corporation in respect of an employee";

(xvii)

*Auctioneers and Agents (Amendment).*

- 5 (xvii) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (xviii) by omitting from paragraph (b) of the definition of "special application" in section 23 (13) the words "on its own behalf";
- (g) by omitting section 24; Sec. 24.  
(Variation  
of license.)
- 10 (h) (i) by omitting from section 25 (1) the words "on its own behalf" wherever occurring; Sec. 25.  
(Fees  
payable for  
license.)
- (ii) by omitting from section 25 (1) (c) the words "dollar; or" and by inserting instead the matter "dollar.";
- 15 (iii) by omitting section 25 (1) (d);
- (i) (i) by omitting from section 26 (4) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,"; Sec. 26.  
(Interstate  
licenses.)
- 20 (ii) by inserting in section 26 (4) after the word "same" the words "or substantially the same";
- (j) (i) by omitting from section 29 (1) the words "either on its own behalf or in respect of an employee"; Sec. 29.  
(Cancellation  
of  
license.)
- 25 (ii) by omitting from section 29 (1) the words "or, as the case may be, such employee.";
- (iii)

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*Auctioneers and Agents (Amendment).*

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- (iii) by inserting in section 29 (1) (b) after the word "he" the words "or it";
- 5 (iv) by omitting from section 29 (1) (b) the words ", or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee";
- 10 (v) by omitting from section 29 (1) (bi) the words "on its own behalf or in respect of an employee";
- (vi) by omitting from section 29 (1) (c) the words ", or to have a license held in respect of him as an employee, by a corporation,";
- 15 (vii) by omitting from section 29 (1) (c) and (d) the words "on its own behalf or in respect of an employee" wherever occurring;
- 20 (viii) by omitting from section 29 (1) the words "Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.";
- 25 (ix) by omitting from section 29 (2) the words "or, as the case may be, the employee named therein";
- (x) by omitting from section 29 (2) the words ", or, as the case may be, such employee";
- 30 (xi) by omitting from section 29 (3) the words "or such employee, or both,";

(k)

*Auctioneers and Agents (Amendment).*

- (k) (i) by inserting in section 29A (1) (a) after the words "that license;" the word "or"; Sec. 29A.  
(Disquali-  
fication of  
former  
licensees,  
etc.)
- (ii) by omitting section 29A (1) (b);
- 5 (iii) by omitting from section 29A (2) (a) the words "or to have a license held in respect of him by a corporation" wherever occurring;
- (iv) by omitting from section 29A (2) (b) the words "on its own behalf or in respect of an employee" wherever occurring;
- 10 (l) by omitting from section 30 (2) the matter " , variations"; Sec. 30.  
(Register  
to be  
kept by  
registrar.)
- (m) (i) by omitting from section 31 (1) (a) the words "twenty-three, section 23A, or section twenty- Sec. 31.  
(Appeal.) four or makes an order under section twenty-nine or 29A of this Act" and by inserting instead the words "23 or 23A or makes an order under section 29 or 29A";
- 15 (ii) by omitting from section 31 (1) (b) the words "twenty-three, section 23A, or section twenty-four of this Act" and by inserting instead the matter "23 or 23A";
- 20 (iii) by omitting from section 31 (1) (c) the words "twenty-nine or 29A of this Act" and by inserting instead the matter "29 or 29A";
- 25 (iv) by omitting from section 31 (1) the words "or the employee";
- (v) by omitting from section 31 (1) the words "of this subsection" wherever occurring;

(vi)

*Auctioneers and Agents (Amendment).*

5 (vi) by omitting from section 31 (4) the words  
“, or employee.”;

(vii) by omitting from section 31 (4) the words  
“twenty-nine or 29A of this Act” wherever  
occurring and by inserting instead the matter  
“29 or 29A”;

10 (viii) by omitting from section 31 (4A) the words  
“paragraph (a) of subsection one of this  
section” and by inserting instead the matter  
“subsection (1) (a)”;

(ix) by omitting from section 31 (4A) the words  
“twenty-nine or 29A of this Act” and by  
inserting instead the matter “29 or 29A”;

15 (x) by omitting from section 31 (5) the words  
“paragraph (b) or paragraph (c) of subsection  
one of this section” and by inserting instead  
the words “subsection (1) (b) or (c)”;

20 (n) by omitting from section 32 the words “, and no  
corporation shall obtain or continue to hold a  
license in respect of any such person as an  
employee”;

Sec. 32.  
(Effect of  
disquali-  
fication on  
member-  
ship, etc.,  
of corpora-  
tion.)

(o) (i) by omitting from section 34 (3) the words  
“, restoration or variation” and by inserting  
instead the words “or restoration”;

Sec. 34.  
(Registered  
office and  
address.)

25 (ii) by omitting from section 34 (3) the words  
“Provided that” and all words following those  
words;

(iii)

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*Auctioneers and Agents (Amendment).*

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(iii) by inserting after section 34 (4) the following subsection :—

5 (4A) Within the prescribed period after a person commences employment as, or ceases to be employed as, the person in charge of a place of business of a corporation the corporation shall lodge with the council—

10 (a) a notice specifying the name and address of, and the classes of license held by, the person so commencing to be employed; or

(b) a notice specifying the day upon which that person ceased to be so employed, as the case may require.

15 (p) (i) by omitting from section 35 (2) the word "employee" wherever occurring and by inserting instead the word "person"; Sec. 35. (Publication of name of licensee.)

20 (ii) by omitting from section 35 (2) (a) the word "licensee's" and by inserting instead the word "corporation's";

(q) (i) by inserting in section 36 (1) after the words "held by the licensee" the words "or, where the licensee is employed by a corporation, by the corporation,"; Sec. 36. (Payment into bank.)

25 (ii) by omitting from section 36 (1) the words "in respect of an employee";

(r) (i) by omitting from section 36D (1) (b) the words "or by any employee in respect of whom the corporation has taken out a license"; Sec. 36D. (Licensees to deposit part of trust account with the council.)

(ii)

*Auctioneers and Agents (Amendment).*

(ii) by omitting from section 36D (6) the definition of "licensee";

(s) (i) by omitting from section 39 (3) the words "or a corporation on whose behalf a license is held"; Sec. 39. (Certain persons not to be employed by licensees.)

(ii) by omitting from section 39 (3) the words "or its";

(t) (i) by omitting from section 42 (1) (a) the words "issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act" and by inserting instead the words ", or employed a person so licensed,"; Sec. 42. (Provisions as to commission, etc.)

(ii) by inserting in section 42 (1) (b), (c) and (d) after the word "license" wherever occurring the words ", or employed a person so licensed,";

(iii) by omitting from section 42 (1) (b) and (c) the words "or such service was done or performed before the expiration of three months after the commencement of this Act" wherever occurring;

(iv) by omitting from section 42 (1) (d) the word "service." and by inserting instead the following words :—

service,

and, in the case of a corporation, unless it was the holder of a corporation license at the time of doing or performing such service.

*Auctioneers and Agents (Amendment).*

- (v) by omitting section 42 (2);
- (u) by omitting from section 43 (c) and (d) the words "or employee of a corporation" wherever occurring;
- 5 (v) by omitting from the definition of "Trainee auctioneer" in section 51 the words "has taken out an auctioneer's license in respect of an employee" and by inserting instead the words "employs a person who is licensed as an auctioneer";
- 10 (w) by inserting before section 52 the following sections :—
- 15 51A. (1) A person who proposes to carry on business as a real estate dealer shall, before commencing business as such, make application in the prescribed form to the registrar for registration as a real estate dealer.
- (2) Upon receipt of an application referred to in subsection (1) the registrar shall forward particulars of the application to the superintendent of licenses.
- 20 (3) The council may inquire into, and the superintendent of licenses, upon receipt of the particulars, shall inquire into and report to the council upon—
- 25 (a) where the applicant is an individual—the fame and character of the applicant; and
- (b) where the applicant is a corporation—the fame and character of the directors and secretary of the corporation and whether the corporation is a fit and proper person
- 30 to be registered as a real estate dealer.
- (4)

Sec. 43.  
(Publica-  
tion of  
name and  
place of  
business in  
advertisements.)

Sec. 51.  
(Interpreta-  
tion.)

Secs. 51A-  
51F.

Registration  
of real  
estate  
dealers.

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*Auctioneers and Agents (Amendment).*

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5 (4) Where no objection is made to registration of the applicant as a real estate dealer the registrar shall record the name and address of the place of business of the applicant, and any change of that address notified under subsection (5), in a register to be kept for that purpose.

10 (5) Notice of any change in the name or situation of the place of business of a person registered pursuant to this section shall be lodged by that person with the registrar within the prescribed time.

15 (6) A person who carries on business as a real estate dealer without being registered as a real estate dealer is liable to a penalty not exceeding ten dollars for every day during which he so carries on business.

20 51B. (1) A member of the police force, with the approval in writing of the superintendent of licenses, or the council, may object to the registration of a person as a real estate dealer and, where he or it does so, a statement setting out the nature of the objection proposed to be made shall be lodged by that member of the police force or the council, as the case may be, with the clerk of the court of petty sessions having jurisdiction under section 3 (8). Objection to registration as a real estate dealer.

25 (2) A copy of a statement so lodged by a member of the police force shall be included in a report furnished pursuant to section 51A (3).

30 (3) Where, pursuant to subsection (1), a member of the police force or the council objects to the registration of a person as a real estate dealer—

35 (a) the clerk of the court shall notify the applicant that registration will be objected to, and shall set out shortly in the notice the nature of the objection to be made;

(b)

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*Auctioneers and Agents (Amendment).*

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- (b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary magistrate or two or more justices;
- 5 (c) the hearing shall not take place until after the expiration of seven days after the lodging of the application;
- (d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding; and
- 10 (e) where the council has objected to the registration it may appear at the hearing by any member of the police force or the registrar or by counsel or attorney.
- 15

(4) The court shall not grant an application for registration as a real estate dealer—

- (a) where the applicant is an individual— if that individual is not of good fame and character or otherwise is not a fit and proper person to be so registered; or
- 20 (b) where the applicant is a corporation—if any director or the secretary of the corporation is not of good fame and character or otherwise is not a fit and proper person, if he applied for registration as an individual, to be so registered, or if the corporation is not a fit and proper person to be so registered.
- 25

(5) Upon determination of the application the clerk of the court shall notify the decision of the court to the registrar.

(6)

*Auctioneers and Agents (Amendment).*

5 (6) If the court grants the application the registrar shall, upon receipt of the notification, record the name and address of the place of business of the applicant in the register referred to in section 51A (4).

10 51c. (1) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a real estate dealer registered under section 51A to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why he should not cease to be so registered and why he should not be disqualified either permanently or temporarily from becoming registered on the ground—

Cancellation of registration of real estate dealer.

- 15 (a) that registration was improperly obtained;
- (b) that he or it is not a fit and proper person to continue any longer to be so registered;
- 20 (c) that a director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation so registered;
- 25 (d) that he has been guilty of such conduct as renders him unfit to continue any longer to be so registered or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to be so registered; or
- 30 (e) that a director or the secretary of the corporation has been guilty of such conduct as renders him unfit to be a director or the secretary, as the case may be, of a corporation so registered.

(2)

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*Auctioneers and Agents (Amendment).*

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5 (2) Where the summons alleges a ground specified in subsection (1) (c) or (e), a copy of the summons shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the summons.

10 (3) If upon the day and at the time and place appointed by the summons issued in accordance with subsection (1) the registered real estate dealer does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the court of petty sessions may proceed to hear and determine the matter of the complaint in the absence of the registered real estate dealer.

15 (4) Service of a summons referred to in subsection (1) may be proved by the oath of the person who served it or by affidavit or otherwise.

20 (5) Upon being satisfied as to the truth of any of the grounds specified in subsection (1) the court may order that the registration of the registered real estate dealer be cancelled and that the real estate dealer and, where the court orders the cancellation of the registration of a corporation on a ground specified in subsection (1) (c) or (e),  
25 that any director or the secretary of the corporation, be disqualified either permanently or for such period as the court specifies from becoming registered under section 51A.

30 (6) Upon cancellation of the registration of a real estate dealer the clerk of the court by which the registration is cancelled shall notify the decision of the court to the registrar.

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*Auctioneers and Agents (Amendment).*

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5 51D. (1) In this section and in section 51E, Disqualifi-  
“former real estate dealer” means a person who, cation of  
within a period of twelve months before a complaint former  
in respect of that person is made under subsection real estate  
(2)— dealer.

- (a) has been registered as a real estate dealer and has ceased to be so registered; or
- (b) has been a director or the secretary of a corporation that, within that period, was so registered.

10 (2) Upon complaint being made to him  
by a member of the police force, with the approval  
of the superintendent of licenses, or by the registrar  
any justice of the peace may summon a former  
15 real estate dealer to appear before a court of petty  
sessions constituted by a stipendiary magistrate to  
show cause why that former real estate dealer  
should not be disqualified either permanently or  
temporarily from becoming registered on the  
20 ground—

(a) in the case of a former real estate dealer referred to in subsection (1) who is an individual—

- (i) that he is not a fit and proper person to be so registered; or
- (ii) that he has been guilty of conduct that renders him unfit to be so registered; or

30 (b) in the case of a former real estate dealer referred to in subsection (1) (a) that is a corporation—

- (i) that it is not a fit and proper person to be so registered; or

(ii)

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*Auctioneers and Agents (Amendment).*

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(ii) that its affairs have been so conducted as to render it unfit to be so registered.

5 (3) If, upon the day and at the time and place appointed by the summons issued under this section, the former real estate dealer does not appear, the court of petty sessions may, upon proof of the due service of the summons upon the former  
10 real estate dealer a reasonable time before the time appointed for his appearance, proceed to hear and determine the matter of the complaint in the absence of the former real estate dealer.

15 (4) The court may, upon being satisfied as to the truth of any of the grounds specified in the summons, order that the former real estate dealer be disqualified, either permanently or for such period as the court specifies in the order, from becoming registered under section 51A.

20 (5) Upon the disqualification of any person under this section, the clerk of the court by which the disqualification is imposed shall notify the decision of the court to the registrar.

51E. (1) Where the court—

25 (a) refuses an application made under section 51A (1)—the applicant;

(b) grants an application made under section 51A (1) to the granting of which a member of the police force or the council has objected—the member of the police force or the council; or  
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(c) dismisses a complaint under section 51C or 51D—the complainant,

Appeals from section 51A, 51C and 51D determinations.

(ii) may

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*Auctioneers and Agents (Amendment).*

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may, in the manner prescribed by rules of the District Court, appeal to the District Court against the decision of the court.

5 (2) An appeal referred to in subsection (1) shall be in the nature of a rehearing.

(3) Notice of an appeal referred to in subsection (1) shall be given to such persons as may be prescribed by rules of the District Court or as the District Court may direct.

10 (4) For the purposes of an appeal referred to in subsection (1) the parties to the appeal shall be deemed to include any of the following persons :—

15 (a) the person making the application or the real estate dealer or former real estate dealer, or the director or secretary of a corporation referred to in the statement of the ground on which the disqualification was imposed, as the case may be;

20 (b) the member of the police force who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which that member of the police force had objected;

25 (c) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section 51C or 51D; and

30 (d) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the registrar under section 51C or 51D.

(5)

*Auctioneers and Agents (Amendment).*

5 (5) An appeal against a determination referred to in subsection (1) (a) shall not be commenced after the expiration of twenty-one days after the determination refusing the application or the date of the order under section 51C or 51D, as the case may be.

(6) An appeal against a determination referred to in subsection (1) (b) and (c) shall not be made unless the Minister approves.

10 (7) An appeal shall lie to the Supreme Court against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

15 51F. Notwithstanding anything in this Act, Commencement of certain determinations and orders. where, after the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, the court makes—

(a) a determination refusing an application under section 51A (1); or

20 (b) an order under section 51C or 51D,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period an appeal to the District Court is commenced under section 51E in relation to that determination or order, until the District Court confirms the determination or order or dismisses the appeal.

(x) by omitting section 54;

Sec. 54.  
(Real estate dealer to have registered place of business.)

(y)

*Auctioneers and Agents (Amendment).*

- 5 (y) by omitting from section 56 (1A) the words "holds a real estate agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a real estate agent's license"; Sec. 56. (Real estate salesmen to be registered.)
- 10 (z) (i) by omitting from section 56A (2) (a) (i) the words "holds an auctioneer's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of an auctioneer's license"; Sec. 56A. (Trainee auctioneers, business salesmen and stock and station salesmen to be registered.)
- 15 (ii) by omitting from section 56A (2) (a) (ii) the words "in respect of whom that corporation holds an auctioneer's license" and by inserting instead the words "who is the holder of an auctioneer's license";
- 20 (iii) by omitting from section 56A (2) (b) the words "holds a business agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a business agent's license";
- 25 (iv) by omitting from section 56A (2) (c) the words "holds a stock and station agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a stock and station agent's license";
- 30 (aa) by omitting from section 71 (1) the words "Where a corporation holds licenses taken out by it in respect of employees a separate contribution shall be payable in respect of each such employee, and such contribution shall be in addition to the contribution in respect of the license held by the corporation on its own behalf :"; Sec. 71. (Contributions to fund.)
- (bb) by omitting section 72 (4); Sec. 72. (Levies.)
- (cc)

*Auctioneers and Agents (Amendment).*

(cc) by omitting from section 86A (1) (a) the word  
“, variation”.

Sec. 86A.  
(Members  
or officers  
of council  
not to  
disclose  
informa-  
tion.)

6. (1) Where, immediately before the commencement of  
section 5—

Transitional  
and saving  
provisions.

5 (a) a corporation has applied for a license or the  
renewal or restoration of a license in respect of an  
employee as an auctioneer, stock and station, real  
estate or business agent and that application has not  
10 been disposed of, that application shall, after that  
commencement, be disposed of as if it were an  
application by the person named therein as the  
employee for a license or the renewal or restoration  
of a license as an auctioneer, stock and station, real  
estate or business agent, as the case may be;

15 (b) a corporation has applied for the variation of a  
license in respect of an employee as an auctioneer,  
stock and station, real estate or business agent and  
that application has not been disposed of—

20 (i) the employee in respect of whom the license  
to the corporation is held shall be entitled,  
at that commencement, subject to payment  
of the appropriate license and administration  
25 fees and contribution, to be issued with such  
of the class or classes of licenses as an  
auctioneer, stock and station, real estate or  
business agent that the corporation held in  
respect of him; and

30 (ii) that application shall, after that commence-  
ment, be disposed of as if it were an  
application, by the person named therein as

the

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*Auctioneers and Agents (Amendment).*

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5 the person whose name is to be substituted  
for the name of the employee in respect of  
whom the corporation holds the license, for  
a license as an auctioneer, stock and station,  
real estate or business agent, as the case may  
be; and

10 (c) a license to a corporation in respect of an employee  
as an auctioneer, stock and station, real estate or  
business agent is in force and paragraph (b) does  
not apply, the employee in respect of whom the  
license to the corporation is held shall, after that  
commencement, be deemed to be the holder of a  
license as an auctioneer, stock and station, real  
estate or business agent, as the case may be, until  
15 the date of expiry of the license issued to the  
corporation or for such further period as the license  
remains in force by virtue of the operation of  
section 23 (6).

20 (2) Section 40 (1) of the Principal Act does not  
apply to a person referred to in subsection (1) (c) in respect  
of any period during which he is deemed to be the holder of a  
license.

25 (3) The register referred to in section 54 (2) (c) of  
the Principal Act as in force immediately before the com-  
mencement of section 5 shall be deemed to be the register  
required to be kept under section 51A (4) of that Act, as  
amended by that section, and a person whose registered place  
of business was, immediately before that commencement,  
recorded in the register referred to in section 54 (2) (c) of  
30 the Principal Act as so in force shall be deemed to have been,  
at that commencement, duly registered under section 51A of  
that Act as a real estate dealer.

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*Auctioneers and Agents (Amendment).*

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7. The Strata Titles Act, 1973, is amended by inserting at the end of section 79 the following subsection :—

Amendment  
of Act No.  
68, 1973.  
Sec. 79.

(2) Subsection (1) does not apply to a person who is the holder of a real estate agent's license issued pursuant to the Auctioneers and Agents Act, 1941.

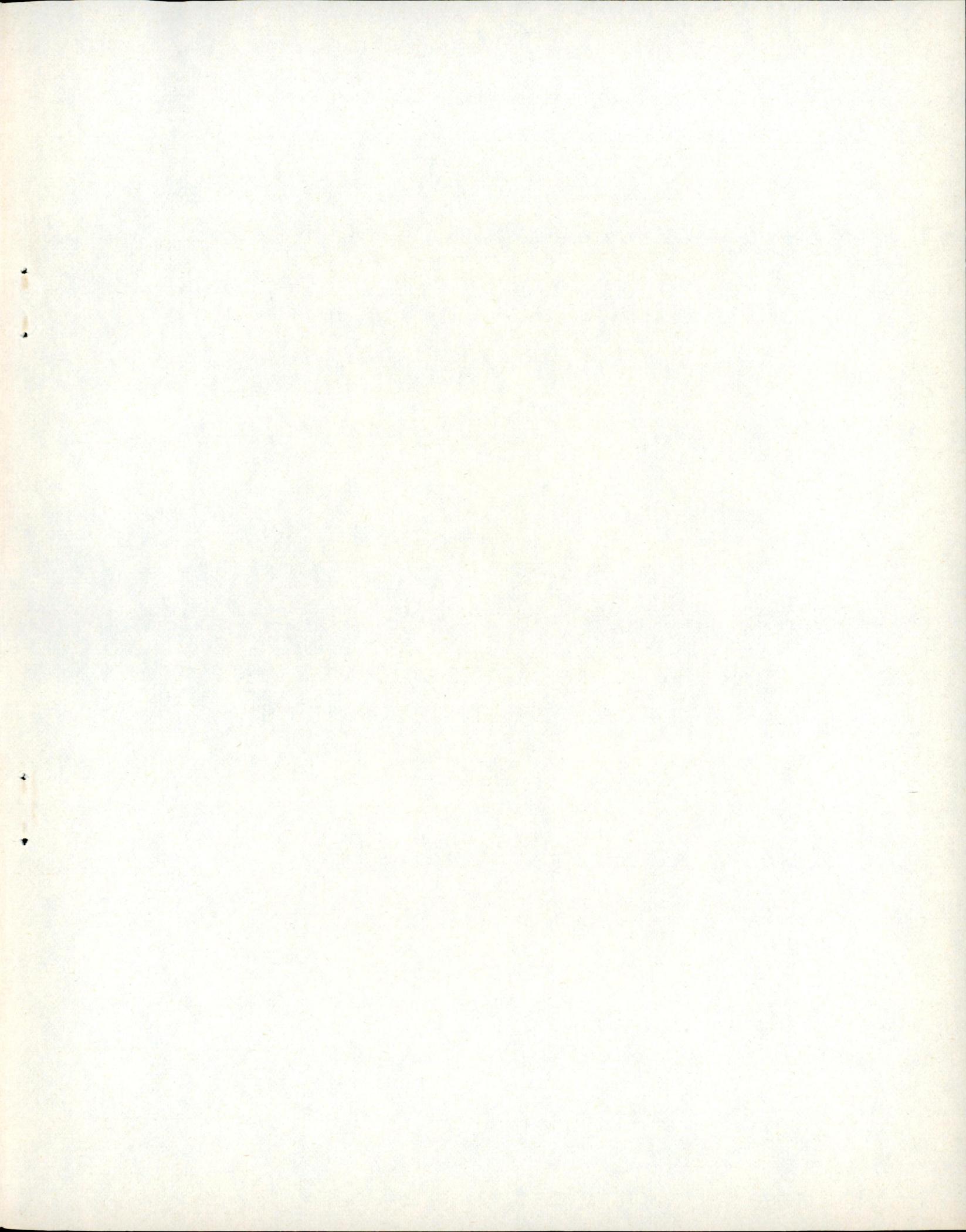
(Managing  
agent to  
lodge  
bond.)

5

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975  
[32c]





*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

R. E. WARD,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 20 March, 1975.*

## New South Wales



ANNO VICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 29, 1975.**

An Act to make further provisions with respect to the licensing of persons as agents under the Auctioneers and Agents Act, 1941, the directors of corporations licensed under that Act and real estate dealers; for these and other purposes to amend the Auctioneers and Agents Act, 1941, and the Strata Titles Act, 1973; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

H. G. COATES,  
*Acting Chairman of Committees of the Legislative Assembly.*

*Auctioneers and Agents (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**      **1.** This Act may be cited as the "Auctioneers and Agents (Amendment) Act, 1975".

**Commence-  
ment.**            **2.** (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Sections 5 and 6 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal  
Act.**              **3.** The Auctioneers and Agents Act, 1941, is, in this Act, referred to as the Principal Act.

**Amendment  
of Act No.  
28, 1941.**        **4.** The Principal Act is amended—

**Sec. 19A.**            (a) (i) by omitting from section 19A (2) the word  
(Audit of            "apply" where firstly occurring and by  
council's            inserting instead the word "applies";  
accounts.)

(ii) by omitting from section 19A (2) the words  
"they apply" and by inserting instead the words  
"it applies";

**Sec. 20.**            (b) by omitting section 20 (4) and by inserting instead  
(No person        the following subsection:—  
to act  
without a  
license.)

(4) A person guilty of an offence arising under this section is, in addition to a penalty specified in section 87 (2), liable to a penalty not exceeding ten dollars for each day on which the offence occurs.

(c)

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*Auctioneers and Agents (Amendment).*

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- (c) (i) by inserting after section 38B (2) the following subsections :—

Sec. 38B.  
(Inspection  
of records.)

(2AA) Where the council has reasonable grounds for believing that a licensee has received or disbursed moneys in his capacity as a licensee that have not been dealt with in accordance with section 36, the council may duly authorise in writing the registrar, a member of the police force of or above the rank of sergeant or an officer of the council to inspect any records of the licensee that relate to any account (not being a trust account) kept by the licensee in connection with his business as a licensee.

(2AB) A person authorised under subsection (2AA) may require any licensee or, where a licensee has died, the personal representative of the licensee—

- (a) to produce for inspection such of the records referred to in subsection (2AA) as are in his possession or under his control as the person so authorised requires; and
- (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

- (ii) by omitting from section 38B (2A) the words "The registrar, any such member of the police force or an officer of the council" and by inserting instead the words "A person authorised under subsection (1) or (2AA) to make an inspection";

- (iii) by omitting from section 38B (3) the words "subsection two of this section" and by inserting instead the words "subsections (2) and (2AB)";

(iv)

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*Auctioneers and Agents (Amendment).*


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- (iv) by omitting section 38B (5) and by inserting instead the following subsection :—

(5) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a license under this Act or by a person (other than the licensee who made that written record) who has the possession, custody or control of that written record as required by section 38 (2) in the same way as it applies to a record kept by a licensee.

- (v) by inserting after section 38B (6) the following subsections :—

(7) Where an offence against subsection (2) or (2AB) is proved against a person the court may, in addition to any penalty or imprisonment imposed under section 87 (2), order that person to produce the records in respect of which the offence occurred to the registrar or a member of the police force of or above the rank of sergeant within such time as the court specifies in the order.

(8) A person who fails to produce in accordance with an order of a court made under subsection (7) any record specified in that order is guilty of an offence and liable upon conviction to a penalty not exceeding \$10 in respect of each day on which the offence continues.

Sec. 75.  
(Claims  
against  
the fund.)

- (d) by inserting after section 75 (8) the following subsection :—

(9) In respect of any theft or fraudulent misapplication after the date of assent to the Auctioneers and Agents (Amendment) Act, 1975, subsections (3) and (4) shall be construed as

though

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*Auctioneers and Agents (Amendment).*

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though the words "five hundred pounds" wherever occurring were omitted therefrom and the words "fifty thousand dollars" substituted therefor.

- (e) (i) by omitting from section 83 (1) the words "trust accounts of any licensee specified in the appointment" and by inserting instead the words "trust and other accounts kept by a licensee specified in the appointment in connection with his business as a licensee"; Sec. 83. (Examination of accounts.)
- (ii) by omitting from section 83 (3) the words "so far as the same relate to the trust accounts of such licensee".

5. The Principal Act is further amended—

Further  
amendment  
of Act No.  
28, 1941.

- (a) by omitting from the matter relating to Division 2 of Part IV in section 2 the figures "52" and by inserting instead the matter "51A"; Sec. 2. (Division into Parts.)
- (b) (i) by omitting from paragraph (b) of the definition of "Business agent" in section 3 (1) the word "of," and by inserting instead the following words and paragraph :— Sec. 3. (Definitions.)
- of; or
- (c) compiling for publication or compiling and publishing a document that contains a list relating solely or substantially to the acquisition or disposal of any person of,

(ii)

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*Auctioneers and Agents (Amendment).*

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(ii) by omitting from the definition of "Licensee" in section 3 (1) the words "and includes any employee of a corporation in respect of whom the corporation has taken out any such license";

(iii) by inserting in the definition of "Real estate agent" in section 3 (1) after the words "Strata Titles Act, 1973)" the words ", the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the acquisition or disposal by any person of any such land";

(iv) by inserting in paragraph (a) of the definition of "Stock and station agent" in section 3 (1) after the word "purposes" the words "or the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the sale, purchase, exchange, letting or taking on lease of land used for those purposes";

(v) by omitting section 3 (2) and by inserting instead the following subsection :—

(2) A reference in the definition of "Real estate agent" in subsection (1) to the letting or taking on lease of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.

(vi) by omitting from section 3 (6) the matter "and 52A" and by inserting instead the matter ", 52A and 54";

(ii)

(vii)

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*Auctioneers and Agents (Amendment).*

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- (vii) by inserting in section 3 (8) (b) after the words "place of business" the words "or the proposed registered place of business";
- (viii) by omitting from section 3 (8) (c) the matter "and 52A" and by inserting instead the matter ", 52A and 54";
- (ix) by omitting from section 3 (8) (c) and (d) the words "or registered" wherever occurring and by inserting instead the words ", registered place of business or proposed registered";

(c) (i) by omitting from section 20 (3) the words "license on its own behalf and has also taken out, in respect of the employee in charge at its sole or principal place of business," and by inserting instead the words "corporation license and employs as the person in charge of its sole or principal place of business a person who holds";

**Sec. 20.**  
(No person to act without a license.)

- (ii) by omitting from section 20 (3) the words "of this Act" where firstly occurring;
- (iii) by omitting from section 20 (3) the following words :—

A corporation shall not be entitled to take out or to hold a license in respect of an employee unless it is the holder of a license on its own behalf.

A corporation which is the holder of a license on its own behalf may take out one or more licenses of any of the classes referred to in section twenty-two of this Act in respect of employees nominated by it for the purpose.

(d)

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*Auctioneers and Agents (Amendment).*

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Sec. 21.  
(Each  
separate  
place of  
business  
to be in  
charge of  
licensee.)

- (d) (i) by omitting from section 21 (1) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a stock and station agent's license";
- (ii) by omitting from section 21 (2) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a real estate agent's license";
- (iii) by omitting from section 21 (2A) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a business agent's license";

Sec. 22.  
(Licenses.)

- (e) (i) by omitting from section 22 (1) the words "on its own behalf";
- (ii) by omitting from section 22 (2) (c) the words "and a corporation that has taken out a chattel auctioneer's license in respect of an employee";
- (iii) by omitting from section 22 (2) (c) the words "or the corporation holds in respect of the employee";
- (iv) by omitting from section 22 (2) (c) the words "or it";

(v)

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*Auctioneers and Agents (Amendment).*

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- (v) by omitting from section 22 (2) (d) the words  
“, or a corporation from taking out or holding  
in respect of an employee or different  
employees,”;
  - (vi) by omitting from section 22 (3) (c) (i) the  
words “on its own behalf”;
  - (vii) by omitting section 22 (3) (c) (ii);
- (f) (i) by omitting from section 23 (4) (b) the words <sup>Sec. 23.</sup>  
“and the application is for a license, to be <sup>(Proce-</sup>  
held by the corporation on its own behalf”; <sup>dure.)</sup>
- (ii) by omitting from section 23 (4) (b) the words  
“license on its own behalf; and” and by  
inserting instead the matter “license.”;
  - (iii) by omitting section 23 (4) (c);
  - (iv) by omitting from section 23 (9) (a) the words  
“and, where the application is made by a  
corporation in respect of an employee, shall  
also notify such employee”;
  - (v) by omitting from section 23 (9) (e) the matter  
“attorney;” and by inserting instead the matter  
“attorney.”;
  - (vi) by omitting section 23 (9) (f);
  - (vii) by inserting after section 23 (9) the following  
subsections :—
    - (9A) In subsection (9B), “license” means  
license or renewed license, as the case may be.

(9B)

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*Auctioneers and Agents (Amendment).*

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(9B) A license shall not be granted to a corporation—

(a) where the corporation is the holder of a license at the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, or where the corporation, not being the holder of a license, makes application for a license before that commencement—after a day that is three years after that commencement; or

(b) where the corporation makes application for a license after that commencement,

unless at least half the number of directors of the corporation are licensed in respect of the class or classes of business that the corporation carries on or proposes to carry on.

(viii) by omitting section 23 (10) (a);

(ix) by omitting from section 23 (10) (b) the words “under this Act”;

(x) by omitting section 23 (10) (c) and by inserting instead the following paragraph:—

(c) to a corporation where the court is satisfied—

(i) that any director or the secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if he were to apply for a license, to hold the license; or

(ii)

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*Auctioneers and Agents (Amendment).*

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- (ii) that the corporation is not a fit and proper person to hold a license.
- (xi) by omitting from section 23 (10A) the words "or to a corporation in respect of an employee, unless the applicant or employee" and by inserting instead the words "unless the applicant";
- (xii) by omitting from section 23 (10c) the following words and paragraphs :—
  - subsection be granted—
  - (a) to an applicant, not being a corporation; or
  - (b) to a corporation in respect of an employee,and by inserting instead the words "subsection be granted to an applicant (not being a corporation)";
- (xiii) by omitting from section 23 (12) (b) the words "in respect of a license taken out on its own behalf or taken out in respect of an employee";
- (xiv) by omitting from section 23 (12) the words "or the employee of such corporation";
- (xv) by omitting from section 23 (12) the words ", corporation or employee of a corporation" and by inserting instead the words "or corporation";
- (xvi) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words "or by a corporation in respect of an employee";

(iii)

(xvii)

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*Auctioneers and Agents (Amendment).*


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- (xvii) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (xviii) by omitting from paragraph (b) of the definition of "special application" in section 23 (13) the words "on its own behalf";
- Sec. 24.  
(Variation  
of license.) (g) by omitting section 24;
- Sec. 25.  
(Fees  
payable for  
license.) (h) (i) by omitting from section 25 (1) the words "on its own behalf" wherever occurring;
- (ii) by omitting from section 25 (1) (c) the words "dollar; or" and by inserting instead the matter "dollar.";
- (iii) by omitting section 25 (1) (d);
- Sec. 26.  
(Interstate  
licenses.) (i) (i) by omitting from section 26 (4) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (ii) by inserting in section 26 (4) after the word "same" the words "or substantially the same";
- Sec. 29.  
(Cancell-  
ation of  
license.) (j) (i) by omitting from section 29 (1) the words "either on its own behalf or in respect of an employee";
- (ii) by omitting from section 29 (1) the words "or, as the case may be, such employee,";
- (iii)

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*Auctioneers and Agents (Amendment).*

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- (iii) by inserting in section 29 (1) (b) after the word "he" the words "or it";
- (iv) by omitting from section 29 (1) (b) the words ", or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee";
- (v) by omitting from section 29 (1) (bi) the words "on its own behalf or in respect of an employee";
- (vi) by omitting from section 29 (1) (c) the words ", or to have a license held in respect of him as an employee, by a corporation,";
- (vii) by omitting from section 29 (1) (c) and (d) the words "on its own behalf or in respect of an employee" wherever occurring;
- (viii) by omitting from section 29 (1) the words "Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.";
- (ix) by omitting from section 29 (2) the words "or, as the case may be, the employee named therein";
- (x) by omitting from section 29 (2) the words ", or, as the case may be, such employee";
- (xi) by omitting from section 29 (3) the words "or such employee, or both,";

(k)

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*Auctioneers and Agents (Amendment).*


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Sec. 29A.  
(Disquali-  
fication of  
former  
licensees,  
etc.)

- (k) (i) by inserting in section 29A (1) (a) after the words "that license;" the word "or";
- (ii) by omitting section 29A (1) (b);
- (iii) by omitting from section 29A (2) (a) the words "or to have a license held in respect of him by a corporation" wherever occurring;
- (iv) by omitting from section 29A (2) (b) the words "on its own behalf or in respect of an employee" wherever occurring;

Sec. 30.  
(Register  
to be  
kept by  
registrar.)

- (l) by omitting from section 30 (2) the matter  
", variations";

Sec. 31.  
(Appeal.)

- (m) (i) by omitting from section 31 (1) (a) the words "twenty-three, section 23A, or section twenty-four or makes an order under section twenty-nine or 29A of this Act" and by inserting instead the words "23 or 23A or makes an order under section 29 or 29A";
- (ii) by omitting from section 31 (1) (b) the words "twenty-three, section 23A, or section twenty-four of this Act" and by inserting instead the matter "23 or 23A";
- (iii) by omitting from section 31 (1) (c) the words "twenty-nine or 29A of this Act" and by inserting instead the matter "29 or 29A";
- (iv) by omitting from section 31 (1) the words "or the employee";
- (v) by omitting from section 31 (1) the words "of this subsection" wherever occurring;

(vi)

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*Auctioneers and Agents (Amendment).*

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- (vi) by omitting from section 31 (4) the words  
“, or employee,”;
- (vii) by omitting from section 31 (4) the words  
“twenty-nine or 29A of this Act” wherever  
occurring and by inserting instead the matter  
“29 or 29A”;
- (viii) by omitting from section 31 (4A) the words  
“paragraph (a) of subsection one of this  
section” and by inserting instead the matter  
“subsection (1) (a)”;
- (ix) by omitting from section 31 (4A) the words  
“twenty-nine or 29A of this Act” and by  
inserting instead the matter “29 or 29A”;
- (x) by omitting from section 31 (5) the words  
“paragraph (b) or paragraph (c) of subsection  
one of this section” and by inserting instead  
the words “subsection (1) (b) or (c)”;
- (n) by omitting from section 32 the words “, and no  
corporation shall obtain or continue to hold a  
license in respect of any such person as an  
employee”;
- (o) (i) by omitting from section 34 (3) the words  
“, restoration or variation” and by inserting  
instead the words “or restoration”;
- (ii) by omitting from section 34 (3) the words  
“Provided that” and all words following those  
words;

Sec. 32.  
(Effect of  
disquali-  
fication on  
member-  
ship, etc.,  
of corpora-  
tion.)

Sec. 34.  
(Registered  
office and  
address.)

(iii)

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*Auctioneers and Agents (Amendment).*

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- (iii) by inserting after section 34 (4) the following subsection :—

(4A) Within the prescribed period after a person commences employment as, or ceases to be employed as, the person in charge of a place of business of a corporation the corporation shall lodge with the council—

(a) a notice specifying the name and address of, and the classes of license held by, the person so commencing to be employed; or

(b) a notice specifying the day upon which that person ceased to be so employed,

as the case may require.

Sec. 35.  
(Publica-  
tion of  
name of  
licensee.)

- (p) (i) by omitting from section 35 (2) the word “employee” wherever occurring and by inserting instead the word “person”;

- (ii) by omitting from section 35 (2) (a) the word “licensee’s” and by inserting instead the word “corporation’s”;

Sec. 36.  
(Payment  
into bank.)

- (q) (i) by inserting in section 36 (1) after the words “held by the licensee” the words “or, where the licensee is employed by a corporation, by the corporation,”;

- (ii) by omitting from section 36 (1) the words “in respect of an employee”;

Sec. 36D.  
(Licensees  
to deposit  
part of  
trust  
account  
with the  
council.)

- (r) (i) by omitting from section 36D (1) (b) the words “or by any employee in respect of whom the corporation has taken out a license”;

(ii)

*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

**R. E. WARD,**  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 20 March, 1975.*

## **New South Wales**



ANNO VICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 29, 1975.**

An Act to make further provisions with respect to the licensing of persons as agents under the Auctioneers and Agents Act, 1941, the directors of corporations licensed under that Act and real estate dealers; for these and other purposes to amend the Auctioneers and Agents Act, 1941, and the Strata Titles Act, 1973; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

**H. G. COATES,**  
*Acting Chairman of Committees of the Legislative Assembly.*

*Auctioneers and Agents (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title.**      **1.** This Act may be cited as the "Auctioneers and Agents (Amendment) Act, 1975".

**Commence-  
ment.**            **2.** (1) Except as provided in subsection (2), this Act shall commence on the date of assent to this Act.

(2) Sections 5 and 6 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal  
Act.**              **3.** The Auctioneers and Agents Act, 1941, is, in this Act, referred to as the Principal Act.

**Amendment  
of Act No.  
28, 1941.**        **4.** The Principal Act is amended—

**Sec. 19A.**        (a) (i) by omitting from section 19A (2) the word  
(Audit of        "apply" where firstly occurring and by  
council's        inserting instead the word "applies";  
accounts.)

(ii) by omitting from section 19A (2) the words  
"they apply" and by inserting instead the words  
"it applies";

**Sec. 20.**        (b) by omitting section 20 (4) and by inserting instead  
(No person     the following subsection:—  
to act  
without a  
license.)

(4) A person guilty of an offence arising under this section is, in addition to a penalty specified in section 87 (2), liable to a penalty not exceeding ten dollars for each day on which the offence occurs.

(c)

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*Auctioneers and Agents (Amendment).*

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- (c) (i) by inserting after section 38B (2) the following subsections :—

Sec. 38B.  
(Inspection  
of records.)

(2AA) Where the council has reasonable grounds for believing that a licensee has received or disbursed moneys in his capacity as a licensee that have not been dealt with in accordance with section 36, the council may duly authorise in writing the registrar, a member of the police force of or above the rank of sergeant or an officer of the council to inspect any records of the licensee that relate to any account (not being a trust account) kept by the licensee in connection with his business as a licensee.

(2AB) A person authorised under subsection (2AA) may require any licensee or, where a licensee has died, the personal representative of the licensee—

- (a) to produce for inspection such of the records referred to in subsection (2AA) as are in his possession or under his control as the person so authorised requires; and
- (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

- (ii) by omitting from section 38B (2A) the words "The registrar, any such member of the police force or an officer of the council" and by inserting instead the words "A person authorised under subsection (1) or (2AA) to make an inspection";

- (iii) by omitting from section 38B (3) the words "subsection two of this section" and by inserting instead the words "subsections (2) and (2AB)";

(iv)

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*Auctioneers and Agents (Amendment).*


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- (iv) by omitting section 38B (5) and by inserting instead the following subsection :—

(5) This section applies to and in respect of a written record preserved in accordance with section 38 (2) by a person who has ceased to hold a license under this Act or by a person (other than the licensee who made that written record) who has the possession, custody or control of that written record as required by section 38 (2) in the same way as it applies to a record kept by a licensee.

- (v) by inserting after section 38B (6) the following subsections :—

(7) Where an offence against subsection (2) or (2AB) is proved against a person the court may, in addition to any penalty or imprisonment imposed under section 87 (2), order that person to produce the records in respect of which the offence occurred to the registrar or a member of the police force of or above the rank of sergeant within such time as the court specifies in the order.

(8) A person who fails to produce in accordance with an order of a court made under subsection (7) any record specified in that order is guilty of an offence and liable upon conviction to a penalty not exceeding \$10 in respect of each day on which the offence continues.

Sec. 75.  
(Claims  
against  
the fund.)

- (d) by inserting after section 75 (8) the following subsection :—

(9) In respect of any theft or fraudulent misapplication after the date of assent to the Auctioneers and Agents (Amendment) Act, 1975, subsections (3) and (4) shall be construed as

though

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*Auctioneers and Agents (Amendment).*

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though the words "five hundred pounds" wherever occurring were omitted therefrom and the words "fifty thousand dollars" substituted therefor.

- (e) (i) by omitting from section 83 (1) the words "trust accounts of any licensee specified in the appointment" and by inserting instead the words "trust and other accounts kept by a licensee specified in the appointment in connection with his business as a licensee"; Sec. 83. (Examination of accounts.)
- (ii) by omitting from section 83 (3) the words "so far as the same relate to the trust accounts of such licensee".

5. The Principal Act is further amended—

Further  
amendment  
of Act No.  
28, 1941.

- (a) by omitting from the matter relating to Division 2 of Part IV in section 2 the figures "52" and by inserting instead the matter "51A"; Sec. 2. (Division into Parts.)
- (b) (i) by omitting from paragraph (b) of the definition of "Business agent" in section 3 (1) the word "of," and by inserting instead the following words and paragraph :— Sec. 3. (Definitions.)
- of; or
- (c) compiling for publication or compiling and publishing a document that contains a list relating solely or substantially to the acquisition or disposal of any person of,

(ii)

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*Auctioneers and Agents (Amendment).*

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(ii) by omitting from the definition of "Licensee" in section 3 (1) the words "and includes any employee of a corporation in respect of whom the corporation has taken out any such license";

(iii) by inserting in the definition of "Real estate agent" in section 3 (1) after the words "Strata Titles Act, 1973)" the words ", the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the acquisition or disposal by any person of any such land";

(iv) by inserting in paragraph (a) of the definition of "Stock and station agent" in section 3 (1) after the word "purposes" the words "or the compiling for publication or the compiling and publishing of a document that contains a list relating solely or substantially to the sale, purchase, exchange, letting or taking on lease of land used for those purposes";

(v) by omitting section 3 (2) and by inserting instead the following subsection :—

(2) A reference in the definition of "Real estate agent" in subsection (1) to the letting or taking on lease of land includes a reference to the introduction, or arranging for the introduction, of a prospective lessee or licensee of premises to another licensed agent or to the owner, or the agent of the owner, of premises.

(vi) by omitting from section 3 (6) the matter "and 52A" and by inserting instead the matter ", 52A and 54";

(ii)

(vii)

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*Auctioneers and Agents (Amendment).*

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- (vii) by inserting in section 3 (8) (b) after the words "place of business" the words "or the proposed registered place of business";
- (viii) by omitting from section 3 (8) (c) the matter "and 52A" and by inserting instead the matter ", 52A and 54";
- (ix) by omitting from section 3 (8) (c) and (d) the words "or registered" wherever occurring and by inserting instead the words ", registered place of business or proposed registered";

(c) (i) by omitting from section 20 (3) the words "license on its own behalf and has also taken out, in respect of the employee in charge at its sole or principal place of business," and by inserting instead the words "corporation license and employs as the person in charge of its sole or principal place of business a person who holds";

**Sec. 20.**  
(No person to act without a license.)

- (ii) by omitting from section 20 (3) the words "of this Act" where firstly occurring;
- (iii) by omitting from section 20 (3) the following words :—

A corporation shall not be entitled to take out or to hold a license in respect of an employee unless it is the holder of a license on its own behalf.

A corporation which is the holder of a license on its own behalf may take out one or more licenses of any of the classes referred to in section twenty-two of this Act in respect of employees nominated by it for the purpose.

(d)

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*Auctioneers and Agents (Amendment).*

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Sec. 21.  
(Each  
separate  
place of  
business  
to be in  
charge of  
licensee.)

- (d) (i) by omitting from section 21 (1) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a stock and station agent's license";
- (ii) by omitting from section 21 (2) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a real estate agent's license";
- (iii) by omitting from section 21 (2A) (c) the words "at each such place a person in respect of whom it has taken out a license, and such person shall be in charge at that place" and by inserting instead the words "as the person in charge of each such place of business a person who is the holder of a business agent's license";

Sec. 22.  
(Licenses.)

- (e) (i) by omitting from section 22 (1) the words "on its own behalf";
- (ii) by omitting from section 22 (2) (c) the words "and a corporation that has taken out a chattel auctioneer's license in respect of an employee";
- (iii) by omitting from section 22 (2) (c) the words "or the corporation holds in respect of the employee";
- (iv) by omitting from section 22 (2) (c) the words "or it";

(v)

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*Auctioneers and Agents (Amendment).*

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- (v) by omitting from section 22 (2) (d) the words  
“, or a corporation from taking out or holding  
in respect of an employee or different  
employees.”;
  - (vi) by omitting from section 22 (3) (c) (i) the  
words “on its own behalf”;
  - (vii) by omitting section 22 (3) (c) (ii);
- (f) (i) by omitting from section 23 (4) (b) the words Sec. 23.  
“and the application is for a license, to be (Proce-  
held by the corporation on its own behalf”; dure.)
- (ii) by omitting from section 23 (4) (b) the words  
“license on its own behalf; and” and by  
inserting instead the matter “license.”;
  - (iii) by omitting section 23 (4) (c);
  - (iv) by omitting from section 23 (9) (a) the words  
“and, where the application is made by a  
corporation in respect of an employee, shall  
also notify such employee”;
  - (v) by omitting from section 23 (9) (e) the matter  
“attorney;” and by inserting instead the matter  
“attorney.”;
  - (vi) by omitting section 23 (9) (f);
  - (vii) by inserting after section 23 (9) the following  
subsections :—
    - (9A) In subsection (9B), “license” means  
license or renewed license, as the case may be.

(9B)

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*Auctioneers and Agents (Amendment).*

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(9B) A license shall not be granted to a corporation—

(a) where the corporation is the holder of a license at the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, or where the corporation, not being the holder of a license, makes application for a license before that commencement—after a day that is three years after that commencement; or

(b) where the corporation makes application for a license after that commencement,

unless at least half the number of directors of the corporation are licensed in respect of the class or classes of business that the corporation carries on or proposes to carry on.

(viii) by omitting section 23 (10) (a);

(ix) by omitting from section 23 (10) (b) the words “under this Act”;

(x) by omitting section 23 (10) (c) and by inserting instead the following paragraph:—

(c) to a corporation where the court is satisfied—

(i) that any director or the secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if he were to apply for a license, to hold the license; or

(ii)

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*Auctioneers and Agents (Amendment).*

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- (ii) that the corporation is not a fit and proper person to hold a license.
- (xi) by omitting from section 23 (10A) the words "or to a corporation in respect of an employee, unless the applicant or employee" and by inserting instead the words "unless the applicant";
- (xii) by omitting from section 23 (10C) the following words and paragraphs :—
  - subsection be granted—
  - (a) to an applicant, not being a corporation; or
  - (b) to a corporation in respect of an employee,and by inserting instead the words "subsection be granted to an applicant (not being a corporation)";
- (xiii) by omitting from section 23 (12) (b) the words "in respect of a license taken out on its own behalf or taken out in respect of an employee";
- (xiv) by omitting from section 23 (12) the words "or the employee of such corporation";
- (xv) by omitting from section 23 (12) the words ", corporation or employee of a corporation" and by inserting instead the words "or corporation";
- (xvi) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words "or by a corporation in respect of an employee";

(iii)

(xvii)

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*Auctioneers and Agents (Amendment).*

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- (xvii) by omitting from paragraph (a) of the definition of "special application" in section 23 (13) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (xviii) by omitting from paragraph (b) of the definition of "special application" in section 23 (13) the words "on its own behalf";
- Sec. 24.**  
(Variation of license.)
- (g) by omitting section 24;
- Sec. 25.**  
(Fees payable for license.)
- (h) (i) by omitting from section 25 (1) the words "on its own behalf" wherever occurring;
- (ii) by omitting from section 25 (1) (c) the words "dollar; or" and by inserting instead the matter "dollar.";
- (iii) by omitting section 25 (1) (d);
- Sec. 26.**  
(Interstate licenses.)
- (i) (i) by omitting from section 26 (4) the words ", or an employee of a corporation that was, in respect of the employee, the holder of,";
- (ii) by inserting in section 26 (4) after the word "same" the words "or substantially the same";
- Sec. 29.**  
(Cancellation of license.)
- (j) (i) by omitting from section 29 (1) the words "either on its own behalf or in respect of an employee";
- (ii) by omitting from section 29 (1) the words "or, as the case may be, such employee,";
- (iii)

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*Auctioneers and Agents (Amendment).*

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- (iii) by inserting in section 29 (1) (b) after the word "he" the words "or it";
- (iv) by omitting from section 29 (1) (b) the words ", or to have a license held in respect of him as an employee, by a corporation, or that the corporation is not a fit and proper person any longer to continue to hold a license on its own behalf or in respect of an employee";
- (v) by omitting from section 29 (1) (bi) the words "on its own behalf or in respect of an employee";
- (vi) by omitting from section 29 (1) (c) the words ", or to have a license held in respect of him as an employee, by a corporation,";
- (vii) by omitting from section 29 (1) (c) and (d) the words "on its own behalf or in respect of an employee" wherever occurring;
- (viii) by omitting from section 29 (1) the words "Where the licensee named in the summons is a corporation which holds the license in respect of an employee, a copy of the summons shall be served personally or by post on such employee.";
- (ix) by omitting from section 29 (2) the words "or, as the case may be, the employee named therein";
- (x) by omitting from section 29 (2) the words ", or, as the case may be, such employee";
- (xi) by omitting from section 29 (3) the words "or such employee, or both,";

(k)

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*Auctioneers and Agents (Amendment).*


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Sec. 29A.  
(Disquali-  
fication of  
former  
licensees,  
etc.)

- (k) (i) by inserting in section 29A (1) (a) after the words "that license;" the word "or";
- (ii) by omitting section 29A (1) (b);
- (iii) by omitting from section 29A (2) (a) the words "or to have a license held in respect of him by a corporation" wherever occurring;
- (iv) by omitting from section 29A (2) (b) the words "on its own behalf or in respect of an employee" wherever occurring;

Sec. 30.  
(Register  
to be  
kept by  
registrar.)

- (l) by omitting from section 30 (2) the matter  
", variations";

Sec. 31.  
(Appeal.)

- (m) (i) by omitting from section 31 (1) (a) the words "twenty-three, section 23A, or section twenty-four or makes an order under section twenty-nine or 29A of this Act" and by inserting instead the words "23 or 23A or makes an order under section 29 or 29A";
- (ii) by omitting from section 31 (1) (b) the words "twenty-three, section 23A, or section twenty-four of this Act" and by inserting instead the matter "23 or 23A";
- (iii) by omitting from section 31 (1) (c) the words "twenty-nine or 29A of this Act" and by inserting instead the matter "29 or 29A";
- (iv) by omitting from section 31 (1) the words "or the employee";
- (v) by omitting from section 31 (1) the words "of this subsection" wherever occurring;

(vi)

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*Auctioneers and Agents (Amendment).*


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- (vi) by omitting from section 31 (4) the words  
“, or employee,”;
- (vii) by omitting from section 31 (4) the words  
“twenty-nine or 29A of this Act” wherever  
occurring and by inserting instead the matter  
“29 or 29A”;
- (viii) by omitting from section 31 (4A) the words  
“paragraph (a) of subsection one of this  
section” and by inserting instead the matter  
“subsection (1) (a)”;
- (ix) by omitting from section 31 (4A) the words  
“twenty-nine or 29A of this Act” and by  
inserting instead the matter “29 or 29A”;
- (x) by omitting from section 31 (5) the words  
“paragraph (b) or paragraph (c) of subsection  
one of this section” and by inserting instead  
the words “subsection (1) (b) or (c)”;
- (n) by omitting from section 32 the words “, and no  
corporation shall obtain or continue to hold a  
license in respect of any such person as an  
employee”;
- (o) (i) by omitting from section 34 (3) the words  
“, restoration or variation” and by inserting  
instead the words “or restoration”;
- (ii) by omitting from section 34 (3) the words  
“Provided that” and all words following those  
words;
- (iii)

Sec. 32.  
(Effect of  
disquali-  
fication on  
member-  
ship, etc.,  
of corpora-  
tion.)

Sec. 34.  
(Registered  
office and  
address.)

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*Auctioneers and Agents (Amendment).*


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- (iii) by inserting after section 34 (4) the following subsection :—

(4A) Within the prescribed period after a person commences employment as, or ceases to be employed as, the person in charge of a place of business of a corporation the corporation shall lodge with the council—

(a) a notice specifying the name and address of, and the classes of license held by, the person so commencing to be employed; or

(b) a notice specifying the day upon which that person ceased to be so employed,

as the case may require.

Sec. 35.  
(Publica-  
tion of  
name of  
licensee.)

- (p) (i) by omitting from section 35 (2) the word “employee” wherever occurring and by inserting instead the word “person”;

- (ii) by omitting from section 35 (2) (a) the word “licensee’s” and by inserting instead the word “corporation’s”;

Sec. 36.  
(Payment  
into bank.)

- (q) (i) by inserting in section 36 (1) after the words “held by the licensee” the words “or, where the licensee is employed by a corporation, by the corporation,”;

- (ii) by omitting from section 36 (1) the words “in respect of an employee”;

Sec. 36D.  
(Licensees  
to deposit  
part of  
trust  
account  
with the  
council.)

- (r) (i) by omitting from section 36D (1) (b) the words “or by any employee in respect of whom the corporation has taken out a license”;

(ii)

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*Auctioneers and Agents (Amendment).*


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- (ii) by omitting from section 36D (6) the definition of "licensee";
- (s) (i) by omitting from section 39 (3) the words "or a corporation on whose behalf a license is held"; Sec. 39. (Certain persons not to be employed by licensees.)
- (ii) by omitting from section 39 (3) the words "or its";
- (t) (i) by omitting from section 42 (1) (a) the words "issued under the Auctioneers' Licensing Act, 1898-1934, or under this Act" and by inserting instead the words ", or employed a person so licensed,"; Sec. 42. (Provisions as to commission, etc.)
- (ii) by inserting in section 42 (1) (b), (c) and (d) after the word "license" wherever occurring the words ", or employed a person so licensed,";
- (iii) by omitting from section 42 (1) (b) and (c) the words "or such service was done or performed before the expiration of three months after the commencement of this Act" wherever occurring;
- (iv) by omitting from section 42 (1) (d) the word "service." and by inserting instead the following words :—

service,

and, in the case of a corporation, unless it was the holder of a corporation license at the time of doing or performing such service.

(v)

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*Auctioneers and Agents (Amendment).*


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(v) by omitting section 42 (2);

Sec. 43.  
(Publica-  
tion of  
name and  
place of  
business in  
advertis-  
ments.)

(u) by omitting from section 43 (c) and (d) the words  
“or employee of a corporation” wherever occurring;

Sec. 51.  
(Interpreta-  
tion.)

(v) by omitting from the definition of “Trainee  
auctioneer” in section 51 the words “has taken out  
an auctioneer’s license in respect of an employee”  
and by inserting instead the words “employs a  
person who is licensed as an auctioneer”;

Secs. 51A-  
51F.

(w) by inserting before section 52 the following  
sections :—

Registration  
of real  
estate  
dealers.

51A. (1) A person who proposes to carry on  
business as a real estate dealer shall, before com-  
mencing business as such, make application in the  
prescribed form to the registrar for registration as  
a real estate dealer.

(2) Upon receipt of an application  
referred to in subsection (1) the registrar shall  
forward particulars of the application to the  
superintendent of licenses.

(3) The council may inquire into, and the  
superintendent of licenses, upon receipt of the  
particulars, shall inquire into and report to the  
council upon—

(a) where the applicant is an individual—the  
fame and character of the applicant; and

(b) where the applicant is a corporation—the  
fame and character of the directors and  
secretary of the corporation and whether  
the corporation is a fit and proper person  
to be registered as a real estate dealer.

(4)

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*Auctioneers and Agents (Amendment).*

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(4) Where no objection is made to registration of the applicant as a real estate dealer the registrar shall record the name and address of the place of business of the applicant, and any change of that address notified under subsection (5), in a register to be kept for that purpose.

(5) Notice of any change in the name or situation of the place of business of a person registered pursuant to this section shall be lodged by that person with the registrar within the prescribed time.

(6) A person who carries on business as a real estate dealer without being registered as a real estate dealer is liable to a penalty not exceeding ten dollars for every day during which he so carries on business.

51B. (1) A member of the police force, with the approval in writing of the superintendent of licenses, or the council, may object to the registration of a person as a real estate dealer and, where he or it does so, a statement setting out the nature of the objection proposed to be made shall be lodged by that member of the police force or the council, as the case may be, with the clerk of the court of petty sessions having jurisdiction under section 3 (8). **Objection to registration as a real estate dealer.**

(2) A copy of a statement so lodged by a member of the police force shall be included in a report furnished pursuant to section 51A (3).

(3) Where, pursuant to subsection (1), a member of the police force or the council objects to the registration of a person as a real estate dealer—

(a) the clerk of the court shall notify the applicant that registration will be objected to, and shall set out shortly in the notice the nature of the objection to be made;

(b)

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*Auctioneers and Agents (Amendment)*

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- (b) the application shall be heard and determined by the court, which for that purpose shall be constituted by a stipendiary magistrate or two or more justices;
- (c) the hearing shall not take place until after the expiration of seven days after the lodging of the application;
- (d) the hearing of the application shall be in open court and the consideration of the application shall be deemed to be a judicial proceeding; and
- (e) where the council has objected to the registration it may appear at the hearing by any member of the police force or the registrar or by counsel or attorney.

(4) The court shall not grant an application for registration as a real estate dealer—

- (a) where the applicant is an individual—  
if that individual is not of good fame and character or otherwise is not a fit and proper person to be so registered; or
- (b) where the applicant is a corporation—if any director or the secretary of the corporation is not of good fame and character or otherwise is not a fit and proper person, if he applied for registration as an individual, to be so registered, or if the corporation is not a fit and proper person to be so registered.

(5) Upon determination of the application the clerk of the court shall notify the decision of the court to the registrar.

(6)

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*Auctioneers and Agents (Amendment).*

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(6) If the court grants the application the registrar shall, upon receipt of the notification, record the name and address of the place of business of the applicant in the register referred to in section 51A (4).

51c. (1) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a real estate dealer registered under section 51A to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why he should not cease to be so registered and why he should not be disqualified either permanently or temporarily from becoming registered on the ground—

Cancellation of registration of real estate dealer.

- (a) that registration was improperly obtained;
- (b) that he or it is not a fit and proper person to continue any longer to be so registered;
- (c) that a director or the secretary of the corporation is not a fit and proper person to be a director or the secretary, as the case may be, of a corporation so registered;
- (d) that he has been guilty of such conduct as renders him unfit to continue any longer to be so registered or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to be so registered; or
- (e) that a director or the secretary of the corporation has been guilty of such conduct as renders him unfit to be a director or the secretary, as the case may be, of a corporation so registered.

(2)

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*Auctioneers and Agents (Amendment)*

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(2) Where the summons alleges a ground specified in subsection (1) (c) or (e), a copy of the summons shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the summons.

(3) If upon the day and at the time and place appointed by the summons issued in accordance with subsection (1) the registered real estate dealer does not appear then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the court of petty sessions may proceed to hear and determine the matter of the complaint in the absence of the registered real estate dealer.

(4) Service of a summons referred to in subsection (1) may be proved by the oath of the person who served it or by affidavit or otherwise.

(5) Upon being satisfied as to the truth of any of the grounds specified in subsection (1) the court may order that the registration of the registered real estate dealer be cancelled and that the real estate dealer and, where the court orders the cancellation of the registration of a corporation on a ground specified in subsection (1) (c) or (e), that any director or the secretary of the corporation, be disqualified either permanently or for such period as the court specifies from becoming registered under section 51A.

(6) Upon cancellation of the registration of a real estate dealer the clerk of the court by which the registration is cancelled shall notify the decision of the court to the registrar.

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*Auctioneers and Agents (Amendment).*

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51D. (1) In this section and in section 51E, "former real estate dealer" means a person who, within a period of twelve months before a complaint in respect of that person is made under subsection (2)—

Disqualifi-  
cation of  
former  
real estate  
dealer.

- (a) has been registered as a real estate dealer and has ceased to be so registered; or
- (b) has been a director or the secretary of a corporation that, within that period, was so registered.

(2) Upon complaint being made to him by a member of the police force, with the approval of the superintendent of licenses, or by the registrar any justice of the peace may summon a former real estate dealer to appear before a court of petty sessions constituted by a stipendiary magistrate to show cause why that former real estate dealer should not be disqualified either permanently or temporarily from becoming registered on the ground—

- (a) in the case of a former real estate dealer referred to in subsection (1) who is an individual—
  - (i) that he is not a fit and proper person to be so registered; or
  - (ii) that he has been guilty of conduct that renders him unfit to be so registered; or
- (b) in the case of a former real estate dealer referred to in subsection (1) (a) that is a corporation—
  - (i) that it is not a fit and proper person to be so registered; or

(ii)

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*Auctioneers and Agents (Amendment).*


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(ii) that its affairs have been so conducted as to render it unfit to be so registered.

(3) If, upon the day and at the time and place appointed by the summons issued under this section, the former real estate dealer does not appear, the court of petty sessions may, upon proof of the due service of the summons upon the former real estate dealer a reasonable time before the time appointed for his appearance, proceed to hear and determine the matter of the complaint in the absence of the former real estate dealer.

(4) The court may, upon being satisfied as to the truth of any of the grounds specified in the summons, order that the former real estate dealer be disqualified, either permanently or for such period as the court specifies in the order, from becoming registered under section 51A.

(5) Upon the disqualification of any person under this section, the clerk of the court by which the disqualification is imposed shall notify the decision of the court to the registrar.

Appeals  
from sections 51A,  
51C and  
51D determinations.

51E. (1) Where the court—

- (a) refuses an application made under section 51A (1)—the applicant;
- (b) grants an application made under section 51A (1) to the granting of which a member of the police force or the council has objected—the member of the police force or the council; or
- (c) dismisses a complaint under section 51C or 51D—the complainant,

may

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*Auctioneers and Agents (Amendment).*

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may, in the manner prescribed by rules of the District Court, appeal to the District Court against the decision of the court.

(2) An appeal referred to in subsection (1) shall be in the nature of a rehearing.

(3) Notice of an appeal referred to in subsection (1) shall be given to such persons as may be prescribed by rules of the District Court or as the District Court may direct.

(4) For the purposes of an appeal referred to in subsection (1) the parties to the appeal shall be deemed to include any of the following persons :—

- (a) the person making the application or the real estate dealer or former real estate dealer, or the director or secretary of a corporation referred to in the statement of the ground on which the disqualification was imposed, as the case may be;
- (b) the member of the police force who objected to the grant of the application—in any case where the appeal is in proceedings arising out of an application to the granting of which that member of the police force had objected;
- (c) the member of the police force who made the complaint—in any case where the appeal is in proceedings arising out of a complaint made by him under section 51c or 51D; and
- (d) the council—in any case where the appeal is in proceedings arising out of an application to the granting of which the council had objected, or out of a complaint made by the registrar under section 51c or 51D.

(5)

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*Auctioneers and Agents (Amendment).*

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(5) An appeal against a determination referred to in subsection (1) (a) shall not be commenced after the expiration of twenty-one days after the determination refusing the application or the date of the order under section 51C or 51D, as the case may be.

(6) An appeal against a determination referred to in subsection (1) (b) and (c) shall not be made unless the Minister approves.

(7) An appeal shall lie to the Supreme Court against any ruling, order, direction or decision of the District Court in point of law or upon the admission or rejection of any evidence.

**Commence-  
ment of  
certain  
determina-  
tions and  
orders.**

51F. Notwithstanding anything in this Act, where, after the commencement of section 5 of the Auctioneers and Agents (Amendment) Act, 1975, the court makes—

(a) a determination refusing an application under section 51A (1); or

(b) an order under section 51C or 51D,

the determination or order shall have no force or effect until the expiration of twenty-one days after the making thereof and, where within that period an appeal to the District Court is commenced under section 51E in relation to that determination or order, until the District Court confirms the determination or order or dismisses the appeal.

**Sec. 54.  
(Real estate  
dealer to  
have regis-  
tered place  
of business.)**

(x) by omitting section 54;

(y)

*Auctioneers and Agents (Amendment).*

- (y) by omitting from section 56 (1A) the words "holds a real estate agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a real estate agent's license"; Sec. 56. (Real estate salesmen to be registered.)
- (z) (i) by omitting from section 56A (2) (a) (i) the words "holds an auctioneer's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of an auctioneer's license"; Sec. 56A. (Trainee auctioneers, business salesmen and stock and station salesmen to be registered.)
- (ii) by omitting from section 56A (2) (a) (ii) the words "in respect of whom that corporation holds an auctioneer's license" and by inserting instead the words "who is the holder of an auctioneer's license";
- (iii) by omitting from section 56A (2) (b) the words "holds a business agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a business agent's license";
- (iv) by omitting from section 56A (2) (c) the words "holds a stock and station agent's license in respect of another employee" and by inserting instead the words "employs a person who is the holder of a stock and station agent's license";
- (aa) by omitting from section 71 (1) the words "Where a corporation holds licenses taken out by it in respect of employees a separate contribution shall be payable in respect of each such employee, and such contribution shall be in addition to the contribution in respect of the license held by the corporation on its own behalf :"; Sec. 71. (Contributions to fund.)
- (bb) by omitting section 72 (4); Sec. 72. (Levies.)
- (cc)

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*Auctioneers and Agents (Amendment).*

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Sec. 86A.  
(Members  
or officers  
of council  
not to  
disclose  
informa-  
tion.)

(cc) by omitting from section 86A (1) (a) the word  
“, variation”.

Transitional  
and saving  
provisions.

**6. (1) Where, immediately before the commencement of section 5—**

(a) a corporation has applied for a license or the renewal or restoration of a license in respect of an employee as an auctioneer, stock and station, real estate or business agent and that application has not been disposed of, that application shall, after that commencement, be disposed of as if it were an application by the person named therein as the employee for a license or the renewal or restoration of a license as an auctioneer, stock and station, real estate or business agent, as the case may be;

(b) a corporation has applied for the variation of a license in respect of an employee as an auctioneer, stock and station, real estate or business agent and that application has not been disposed of—

(i) the employee in respect of whom the license to the corporation is held shall be entitled, at that commencement, subject to payment of the appropriate license and administration fees and contribution, to be issued with such of the class or classes of licenses as an auctioneer, stock and station, real estate or business agent that the corporation held in respect of him; and

(ii) that application shall, after that commencement, be disposed of as if it were an application, by the person named therein as

the

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*Auctioneers and Agents (Amendment).*

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the person whose name is to be substituted for the name of the employee in respect of whom the corporation holds the license, for a license as an auctioneer, stock and station, real estate or business agent, as the case may be; and

- (c) a license to a corporation in respect of an employee as an auctioneer, stock and station, real estate or business agent is in force and paragraph (b) does not apply, the employee in respect of whom the license to the corporation is held shall, after that commencement, be deemed to be the holder of a license as an auctioneer, stock and station, real estate or business agent, as the case may be, until the date of expiry of the license issued to the corporation or for such further period as the license remains in force by virtue of the operation of section 23 (6).

(2) Section 40 (1) of the Principal Act does not apply to a person referred to in subsection (1) (c) in respect of any period during which he is deemed to be the holder of a license.

(3) The register referred to in section 54 (2) (c) of the Principal Act as in force immediately before the commencement of section 5 shall be deemed to be the register required to be kept under section 51A (4) of that Act, as amended by that section, and a person whose registered place of business was, immediately before that commencement, recorded in the register referred to in section 54 (2) (c) of the Principal Act as so in force shall be deemed to have been, at that commencement, duly registered under section 51A of that Act as a real estate dealer.

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*Auctioneers and Agents (Amendment).*

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Amendment  
of Act No.  
68, 1973.  
Sec. 79.  
(Managing  
agent to  
lodge  
bond.)

7. The Strata Titles Act, 1973, is amended by inserting at the end of section 79 the following subsection :—

(2) Subsection (1) does not apply to a person who is the holder of a real estate agent's license issued pursuant to the Auctioneers and Agents Act, 1941.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*Lieutenant-Governor.*

*Government House,  
Sydney, 16th April, 1975.*

