

Hon. Mr. Downie Stewart.

LAND AGENTS.

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A BILL INTITULED

AN ACT to make Better Provision with respect to the Licensing of Land Agents. Title.

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

1. (1.) This Act may be cited as the Land Agents Act, 1921, and shall, except sections ~~four, five, and thirty-four~~ hereof, come into force on the first day of April, nineteen hundred and *twenty-two*. Short Title and commencement.

10 (2.) The said sections ~~four, five, and thirty-four~~ shall come into force on the date of the passing of this Act.

2. (1.) For the purposes of this Act every person shall be deemed to be a land agent whose business is to act as agent in respect of the sale or other disposal of land or of interests in land, or the purchase or other acquisition of land or of interests in land, or the letting of houses. "Land agent" defined.

15 (2.) A person who carries on any such business as aforesaid shall be deemed to be a land agent within the meaning of this Act, notwithstanding that he may carry on any other business either in conjunction with such first-mentioned business or separately therefrom.

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Provided that a solicitor shall not be deemed to be a land agent for the purposes of this Act by reason merely of the fact that he may, in connection with his business as a solicitor, act as agent in respect of the sale or purchase or other disposal or acquisition of land or of interests in land.

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(3.) Where two or more persons carry on business jointly as land agents each of those persons shall be deemed to be a land agent.

(4.) Notwithstanding the foregoing provisions of this section, a person who sells or offers to sell any land or interest in land by auction shall not, by reason of that fact, be deemed to be a land agent within the meaning of this Act.

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Land agents to be licensed.

3. (1.) No person shall carry on business as a land agent unless he is the holder of a license under this Act.

(2.) Where two or more persons carry on business in partnership as land agents, it shall be sufficient compliance with this section if one of those persons is the holder of a license under this Act.

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(3.) Where a company carries on business as a land agent it shall be sufficient compliance with this section if some person appointed in writing by the general manager or pursuant to a resolution of the directors is the holder of a license under this Act.

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Struck out.

Extension of licenses in force on 31st December, 1921.

4. Every license issued under the Land Agents Act, 1912, and in force on the thirty-first day of December, nineteen hundred and *twenty-one*, shall, subject to the provisions of this Act as to cancellation and the payment of fees, continue in force until the thirty-first day of March, nineteen hundred and *twenty-three*.

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Duration of licenses issued after 31st December, 1921, and before commencement of Act.

5. Every license issued under the Land Agents Act, 1912, after the thirty-first day of December, nineteen hundred and *twenty-one*, and before the commencement of this Act shall, subject to the provisions of this Act as to cancellation and the payment of fees, continue in force until the thirty-first day of March, nineteen hundred and *twenty-three*.

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Duration of licenses issued after commencement of Act.

6. Every license issued after the commencement of this Act shall, unless sooner terminated in accordance with this Act, continue in force until the thirty-first day of March then next following, and may from time to time be renewed for the period ending on the thirty-first day of March next after the commencement of an order for renewal.

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Application for license.

7. (1.) Every person, not being the holder of a license as a land agent on the commencement of this Act, who desires to obtain a license under this Act shall make application for such license in the form prescribed by regulations.

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(2.) An application under this section shall be filed in the Magistrate's Court nearest by the most convenient route to the place named in the application as the place of business or principal place of business of the applicant.

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(3.) Every such application shall state the place or places of business of the applicant. Where the applicant has or proposes to have two or more places of business he shall specify in his application which of those places of business is his principal place of business. The application shall also contain such other particulars as may be prescribed.

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8. (1.) With every application for the grant of a license under this Act there shall be filed in the Magistrate's Court an approved fidelity bond to His Majesty in the sum of five hundred pounds.

Applicants to give security by approved bond.

(2.) Every such bond shall be in the form in the Schedule 5 hereto or to the like effect.

(3.) The sum of five hundred pounds named in a fidelity bond under this section shall not be deemed to be a penalty, but shall be liquidated damages, and shall accordingly be recoverable in full, as a debt due by the surety or sureties to His Majesty unless the 10 surety or sureties prove performance of every condition upon which the bond is defeasible.

Application of moneys recovered under bond.

(4.) Every sum so recovered shall be paid into the Consolidated Fund, and the residue, after the deduction of costs and other expenses, may, with the approval of the Governor-General, and 15 without further appropriation than this Act, be applied—

(a.) In compensating any client or customer of the land agent or other person for any loss sustained by reason of the defaults or omissions of the land agent; and

(b.) In refunding to the surety or sureties any balance left after 20 payment of such compensation.

9. (1.) A fidelity bond given under this Act may, if so provided therein, enure not only during the term of the license in respect of which it is originally given, but during the term of any license to the same person issued in renewal of a license under this Act.

Fidelity bond may enure so as to apply to renewals of license.

(2.) If a fidelity bond is so given as to enure in respect of the renewal or further renewal of a license, it shall be lawful for the surety or sureties, by notice in writing addressed to the Clerk of the Magistrate's Court, at any time before the issue of a license in renewal, to determine his or their liability under the bond in respect 30 of any act or default that may be done or made after the thirty-first day of March next following the date of such notice, and in any such case the Magistrate shall not issue a license in renewal until another approved bond has been lodged by the applicant.

10. (1.) Notice in the prescribed form of every application 35 for a license under this Act shall be published by the applicant twice at least in some newspaper to be approved for the purpose by the Clerk of the Magistrate's Court in which the application is filed, and the application for the license shall not be heard before the expiry of one month after the first publication of such 40 notice.

Notice of application for license.

(2.) Any person who objects to the issue of a license under this Act may, within one month after the first publication of the notice of application pursuant to the *last preceding* subsection, file in the Magistrate's Court in which the application for a license 45 is filed a notice in the prescribed form of his objection to the application and of the grounds thereof.

Objections.

(3.) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant,

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or, in the case of an application by or on behalf of a firm, the character or financial position of the partners, or, in the case of an application by or on behalf of a company, the financial position of the company or the character of the directors or of the 55 general manager.

Hearing of
application.

11. Every application for a license under this Act and the objections thereto (if any) shall be heard by a Stipendiary Magistrate exercising jurisdiction in the Court in which the application is filed, and the Magistrate, if satisfied that the provisions of this Act have been complied with, and that the applicant is a fit person to be the holder of a license to carry on business as a land agent, shall, on payment of the prescribed fee, issue to the applicant a license in the prescribed form. 5

Magistrate to
require evidence as
to character and
financial position.

12. (1.) Before granting an application for a license to carry on business as a land agent, the Magistrate shall require the production of sufficient evidence to satisfy him that the character and financial position of the applicant are such that he is, in the opinion of the Magistrate, having regard to the interests of the public, a fit and proper person to carry on business as a land agent. 10 15

Renewal of licenses.

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(2.) Where application for a license is made by two or more persons in partnership, the Magistrate may, in the exercise of his powers under this section, require the production of evidence as to the character and financial position of each of the partners. 20

(3.) Where application for a license is made by a company, the Magistrate may, in the exercise of his powers under this section, require the production of evidence as to the financial position of the company, and as to the character of the directors and general manager, and of any other person in respect of whom application to hold the license on behalf of the company has been made. 25

13. (1.) Application for the renewal of a license may be made not earlier than the first day of January and not later than the last day of February preceding the date of the expiry of the license and shall be filed and advertised by the applicant in the same manner as if it were an application for the grant of a license. 30

(2.) Every person who objects to the renewal of a license under this Act, may, at any time before the seventh day of March in any year, file in the Magistrate's Court in which application for the renewal of the license has been filed, a notice in the prescribed form of his objection to the application and of the grounds thereof. 35

(3.) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant,

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or, in the case of an application by or on behalf of a firm, the character or financial position of the partners, or, in the case of an application by or on behalf of a company, the financial position of the company or the character of the directors or of the general manager. 40 45

(4.) Where any objection is lodged to the renewal of a license, the Magistrate shall hear and determine the application for renewal in the same manner as if it were an application for the issue of a license.

(5.) In the absence of any objection to an application for the renewal of a license the Magistrate may, on payment of the prescribed fee, grant a renewal without further inquiry as to the fitness of the applicant to carry on the business of a land agent. 50

(6.) The Magistrate may, in his discretion, hear and determine any application for the renewal of a license, or any objection to such renewal, notwithstanding that such application or objection may not have been filed within the times limited by this section in that behalf.

(7.) If application for the renewal of a license has been filed, but is not determined on or before the thirty-first day of March in any year, the license shall, notwithstanding anything to the contrary in this Act, be deemed to be extended until the application is disposed of by a Magistrate in accordance with this Act.

14. On the hearing of any application for a license or for the renewal of a license under this Act the Magistrate shall, if any objection to the application has been filed, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant respectively, and to adjudge that such costs be paid.

Magistrate may award costs.

15. No license under this Act shall be issued to a bankrupt who has not obtained his order of discharge or whose order of discharge is suspended for a term not yet expired, or is subject to conditions not yet fulfilled.

Disqualification of applicants.

16. Within ten days after the issue of a license under this Act, or the renewal of any such license, the Clerk of the Magistrate's Court shall, in the prescribed form, notify the Minister of Internal Affairs of the fact of such issue or renewal and of such other matters in relation thereto as may be prescribed.

Notice of issue or renewal of licenses to be given.

17. The Minister of Internal Affairs shall cause to be kept a Register of Land Agents, in which shall be recorded—

Register of licenses.

(a.) The name and description of every person to whom a license is issued under this Act:

(b.) The amount of the fees paid or payable in respect thereof:

(c.) The date of the issue of the license:

(d.) In the case of a license issued to a person as representative of a firm or company, the name of that firm or company

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and also the name and description of the partners of such firm:

(e.) Particulars as to the place or places of business of the licensee, and in cases where a licensee has two or more places of business, his principal place of business:

(f.) Such other particulars as may be prescribed.

18. The Register shall, on payment of the prescribed fee, be open to inspection within ordinary business hours by any person desirous of inspecting the same.

Inspection of register.

19. (1.) A list (herein referred to as the main list) of the names and descriptions of all persons licensed to carry on business as land agents, as on a date to be therein specified, together with such of the relevant particulars appearing in the Register as the Minister of Internal Affairs thinks fit, shall be published in the *Gazette* during the month of May of each year. Supplementary lists may be published in like manner as that Minister may from time to time direct.

Publication of list of land agents.

(2.) The production of copies of the *Gazette* containing the main list and all supplementary lists for any year shall, until the

contrary is proved, be sufficient evidence in all judicial proceedings of the contents of the register, and the absence of the name of any person from the main list and the supplementary lists shall, until the contrary is proved, be sufficient evidence that such person is not registered as a land agent.

(3.) A certificate under the hand of the Under-Secretary of the Department of Internal Affairs that any person is or is not registered as a land agent on the date of that certificate, or as to any other matter concerning the contents of the register, shall, in all judicial proceedings, be sufficient evidence of the fact or facts therein certified to, and judicial notice shall in all Courts be taken of the signature of the said official.

Transfer of licenses.

20. (1.) A licensee, or the personal representative of a deceased licensee, or the assignee in bankruptcy of a licensee who has been adjudged bankrupt, *or the liquidator of a company, being a licensee,* may, on payment of the prescribed fee, transfer a license under this Act to any person approved by a Stipendiary Magistrate in that behalf.

(2.) Every application for a transfer under this section shall be filed and advertised, and objections may be received, and the application and objections (if any) shall be heard and determined in all respects as if the application for a transfer were an application for the grant of a license under this Act.

Land agent to have registered office.

21. (1.) Subject to the provisions of this section as to changing the registered office of a land agent, the place of business of a land agent mentioned in his application for a license, or, where a land agent has two or more places of business, his principal place of business, shall be deemed to be the registered office of the land agent.

(2.) Any summons, notice, order, or other document required to be served upon a land agent may be served by leaving the same at his registered office or by sending it through the post in a prepaid and registered letter addressed to the land agent at that office.

(3.) A land agent may by notice in writing, filed in the Magistrate's Court, change his registered office to any other place of business in which he is licensed to carry on business as a land agent.

(4.) Notice of the change of the registered office of a land agent shall be forthwith given by the Clerk of the Magistrate's Court to the Minister of Internal Affairs, who shall cause a memorandum of such change to be entered in the Register of Land Agents.

Land agent to display notice on registered office.

22. Every person to whom a license as a land agent is issued under this Act shall exhibit and keep exhibited in a prominent place on his registered office, *and on every branch office,* so as to be easily read from outside that office, a notice of his name and of the fact that he is licensed as a land agent, together with the name or style under which he carries on business as a land agent, if such business is not carried on in his own name.

Effect of license.

23. A license under this Act shall authorize the holder thereof to act as a land agent in any part of New Zealand during the currency of the license :

Provided that it shall not be lawful for a land agent to carry on business as such at any place of business not specified in his license, unless he has first given to the Minister of Internal Affairs notice of

his intention to carry on business at such place, and has paid such additional fee (if any) in respect of such place of business as may be prescribed.

24. (1.) All moneys received by a land agent in respect of the sale, lease, or other disposal of land or of any interest in land, or in respect of any other transaction in his capacity as a land agent, shall be applied as follows:—

Duty of land agent with respect to moneys received in course of his business.

(a.) In payment of the expenses, commission, and other charges of or incidental to such sale, lease, or other disposal or transaction as aforesaid:

(b.) In payment of the balance (if any) to the person or persons lawfully entitled thereto.

(2.) Pending the payment of any balance as aforesaid, it shall be paid by the land agent into a general or separate trust account, and shall not be withdrawn therefrom save for the purpose of paying the same to the person or persons entitled thereto, as hereinbefore provided.

(3.) Every person who commits a breach of this section shall be liable on summary conviction to a fine of *fifty* pounds.

(4.) Save as herein provided, moneys paid into a trust account pursuant to this section shall not be available for payment of the debts of the land agent, or be liable to be attached or taken in execution under the order or process of any Court.

25. (1.) Forthwith on the demand of the person for whom he has acted as agent, or, if no such demand is made, then within twenty-eight days after the receipt by him of any moneys in respect of the sale, lease, or other disposal of land, or in respect of any other transaction in his capacity as a land agent, every land agent shall render to the person on whose behalf he has acted as agent an account in writing, setting forth particulars of all such moneys, and as to the application thereof.

Land agent to furnish account to principals.

(2.) If any land agent refuses, or for a period of seven days after demand neglects or fails to render an account as aforesaid, or, in the absence of a demand, neglects or fails to render an account within the period of twenty-eight days aforesaid, he commits an offence, and shall be liable on summary conviction to a fine of *ten* pounds.

26. Every person is liable on indictment to imprisonment for *five* years or to a fine of *two hundred* pounds who—

Indictable offence by land agents.

(a.) Fraudulently converts to his own use any moneys received by him in his capacity as a land agent; or

(b.) Renders an account purporting to be an account of any moneys received by him as aforesaid, knowing the same to be false in any material particular.

27. (1.) A license under this Act may be cancelled on any of the grounds following, namely:—

Cancellation of licenses.

(a.) If the licensee is convicted of an offence against section *twenty-four*, or section *twenty-five*, or section *twenty-six* of this Act; or

(b.) If the licensee, having been convicted of an offence against this Act (not being an offence referred to in the *last preceding* paragraph) is, within twelve months after such conviction, again convicted of an offence against this Act; or

(c.) If the licensee is convicted, whether summarily or on indictment, of any offence involving moral turpitude, or dishonouring him in the public estimation.

(2.) The Court before whom any person is convicted of any offence may of its own motion cancel his license in any case where such conviction is a ground for the cancellation of the license. 5

(3.) Application for the cancellation of a license on any of the grounds aforesaid may be made by any person, and shall be made by filing the same in the Magistrate's Court nearest by the most convenient route to the place of business or the principal place of business of the licensee, and thereupon any Magistrate exercising jurisdiction in that Court shall have power to hear the application and to cancel the license. 10

Notice of cancellation.

28. Forthwith after the cancellation of a license as herein provided, whether by a Court of its own motion or on application, 15 the Registrar or the Clerk of the Court, as the case may be, shall send notice in writing of such cancellation and of the grounds thereof to the Minister of Internal Affairs.

Removal of name from register on cancellation of license.

29. The Minister shall cause to be removed from the Register the name of every land agent whose license has been cancelled as 20 aforesaid, and also the name of every land agent who—

(a.) Dies; or

(b.) Is adjudged bankrupt; or

(c.) Has not before the first day of May of any year obtained a renewal of his license pursuant to the provisions of this 25 Act.

Evidence of contracts of agency.

30. No person shall be entitled to sue for or recover any commission, reward, or other valuable consideration, in respect of the sale, lease, exchange, or other disposal of land or any interest in land, or in respect of his services as agent in any other like transaction, 30 unless his appointment to act as agent is in writing signed *either before or after such transaction* by the person to be charged with such commission, reward, or consideration, or by some person on his behalf lawfully authorized to sign such appointment.

Holding out as land agent without license.

31. Every person, not being the holder of a license under this 35 Act, commits an offence and is liable to a fine of *fifty* pounds who describes himself in writing or holds himself out as a land agent,

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or carries on business as a land agent, or accepts any remuneration for his services as agent in respect of the purchase or sale or other 40 disposal of any land or of any interest in land.

Summary proceedings to be before Magistrate.

32. (1.) All summary proceedings in respect of offences against this Act shall be heard and determined by a Magistrate sitting alone.

(2.) All fines recovered and license fees received under this Act shall be paid into the Public Account and form part of the 45 Consolidated Fund.

(3.) The amount of the fees received as aforesaid, after deducting all expenses or charges in respect of the issue, renewal, or transfer of licenses, may be applied without further appropriation than this Act in accordance with regulations under this Act. 50

Civil remedies not affected.

33. Nothing in this Act shall affect any civil remedy that any person may have against a land agent in respect of any matter.

34. (1.) The Governor-General may from time to time, by Order in Council, make regulations under this Act— Regulations.

(a.) Prescribing forms of applications for licenses, and of objections to the granting or renewal of licenses under this Act:

(b.) Prescribing forms of advertisements and other notices under this Act:

(c.) Prescribing the fees payable on the issue or renewal or transfer of licenses under this Act, *including fees payable in respect of the extension of licenses by section five hereof*, and the purposes for which such fees shall be applied:

(d.) Providing for an annual audit of the trust accounts of every land agent, *and the manner in which, and the persons or class of persons by whom, such audit shall be conducted*, and for a report of the result of such audit:

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(e.) Defining a class or classes of accountants authorized to make such audits:

(f.) Requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed:

(g.) Prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record:

(h.) Prescribing a scale of fees to be paid to such auditors:

(i.) Prescribing that, in the absence of any agreement in writing to the contrary, the auditor's fees shall be paid by the land agent:

(j.) Generally to ensure that all such trust accounts shall be duly kept and audited:

(k.) Prescribing penalties, not exceeding one hundred pounds in any case, for the breach of any regulation under this Act, and generally for the purpose of carrying this Act into effect.

(2.) All information obtained by an auditor in the course of the audit of any trust account under this Act shall be treated as confidential, subject only to such rights of publication as may be prescribed in furtherance of the proper purposes of the audit.

(3.) The fees payable in respect of the issue or renewal of licenses shall be uniform, save that additional rates may be prescribed for every place of business in addition to the registered office in which the applicant for a license carries on or proposes to carry on business, and save also that reduced fees may be prescribed in respect of licenses issued after the first day of April in any year.

(4.) All such regulations shall be laid before Parliament within fourteen days after the making thereof if Parliament is then in session, and, if not, then within fourteen days after the commencement of the next ensuing session.

35. (1.) The Land Agents Act, 1912, is hereby repealed.

(2.) All proceedings in respect of offences committed before the commencement of this Act against the Land Agents Act, 1912, or any regulations thereunder (including proceedings for the recovery of any damages payable under any fidelity bond) may be instituted or continued as if this Act had not been passed.

Repeal.
Saving.

Schedule.

SCHEDULE.

FIDELITY BOND.

Know all men by these presents that _____, of _____, is [are] held and firmly bound unto His Majesty the King in the sum of five hundred pounds (£500), for the payment of which sum to His Majesty the said _____ doth [do jointly and severally] bind itself and its successors [ourselves, our executors, and administrators] firmly by these presents.

Whereas _____, of _____, has made application for the issue to him of a license under the Land Agents Act, 1921 :

Now the condition of the above-written bond is such that if such license shall be granted to the said _____ and if the said _____ shall during the currency of the term of such license [and during the currency of the term of every license granted to him in renewal of such license]—

(a.) Always duly apply all moneys received by him in the manner required by the said Act :

(b.) Always duly render accounts in writing of all moneys received by him within the times and to the persons required by the said Act :

then the above-written obligation shall be void, but otherwise shall remain in full force and effect.

Signed, sealed, and delivered, &c.

By Authority : MARCUS F. MARKS, Government Printer, Wellington.—1921.