

REAL ESTATE AGENTS AMENDMENT BILL

EXPLANATORY NOTE

Clause 1 relates to the Short Title.

Clause 2 amends section 2 of the principal Act by inserting a definition of the term "stock and station agent".

The definition is necessary for the purposes of *clauses 13 and 19* of the Bill under which real estate agents that are stock and station agency companies are exempt from giving notice to the Real Estate Institute in respect of new places of business and changes of registered office.

Clause 3 amends section 3 of the principal Act by extending the scope of transactions that come within the business of a real estate agent. The amendment provides that the collection of rents by real estate agents, or by companies controlled by real estate agents, or by employees of real estate agents, shall, for the purposes of the Act, be deemed to be the carrying on of business as a real estate agent. The result will be that all rent money collected by real estate agents or their employees must be paid into the agent's trust account.

Clause 4 amends section 5 of the principal Act.

Subclause (1) provides that an applicant for a real estate agent's licence must state in the application the location of every branch office that will be under his control.

Subclause (2) makes a minor drafting amendment.

Subclause (3) provides that at the hearing of an application for a real estate agent's licence the Magistrate shall require the production of evidence that the applicant has—

- (a) Served on the Real Estate Institute a copy of the application together with a copy of every testimonial or other document relating to the application;
- (b) Paid the required contribution to the Fidelity Guarantee Fund;
- (c) Paid the fees that are payable to the Institute; and
- (d) Given notice to the Institute of the nomination of an auditor of his trust accounts and received the Institute's approval thereto.

A certificate signed by the Secretary of the Institute relating to the above matters shall be sufficient evidence of the matters specified in the certificate.

Clause 5 repeals sections 6 and 7 of, and the First Schedule to, the principal Act, which relate to fidelity bonds.

The provisions are now redundant owing to the establishment of the Fidelity Guarantee Fund. Section 6 (5) of the principal Act provides that sections 6 and 7 and the First Schedule are deemed to be repealed on the date of the commencement of the provisions relating to the Fund, and this clause formally repeals them.

Clause 6 amends section 8 of the principal Act and provides that an objection may be made to the granting of a real estate agent's licence on the ground that, because of its situation or for other reasons, any proposed office or place of business of the applicant (other than the principal one) will not be under his effective and adequate control.

If an objection on the above ground is allowed the Magistrate may nevertheless grant a licence, but the proposed office or place of business concerned shall not be specified in the licence.

Clause 7 amends section 9 of the principal Act and provides that the Real Estate Institute must be notified by the Registrar of the Court of the issue of a real estate agent's licence.

Clause 8: Section 10 (4) of the principal Act provides that to qualify for a licence an applicant for a real estate agent's licence must have passed the prescribed examination and had two year's practical experience in real estate agency work. However, a Magistrate may dispense with these requirements if he is satisfied that the applicant's general knowledge, judgment, and business experience are such that dispensation is justified.

The amendment will now provide that in the above circumstances the applicant's business experience must have been in a field or fields related to real estate agency.

In addition, the amendment provides that the term "general knowledge" includes a reasonable knowledge of law that is of particular concern to real estate agents, having regard to the subject-matter and syllabus of the examination to be passed by persons intending to apply for a real estate agent's licence.

Clause 9 amends section 11 of the principal Act and provides that no real estate agent shall carry on his business or any part of his business under more than one name or description.

Clause 10 amends section 13 of the principal Act, which relates to the licensing of salesmen employed by real estate agents.

Subclause (1) provides that, where a real estate agent applies for a certificate of approval as a real estate salesman in respect of a person he intends to employ, he shall send to the Real Estate Institute a copy of every testimonial relating to the application. This is in addition to the present requirement of sending a copy of the application.

In addition, the documents must now be sent to the Institute 21 days before the date fixed for the hearing of the application instead of 10 days before, as at present.

Subclauses (2) and (3) provide that, where a Registrar of a Magistrate's Court issues a certificate of approval for a salesman or a renewal of such a certificate, he shall forward it to the real estate agent who employs the salesman.

Subclause (4): At present it is an offence for a real estate agent to employ a salesman, in respect of whom a certificate of approval is not in force, for more than 14 days. It is also an offence for a person to act as a salesman for more than 14 days if he is not the holder of a certificate of approval.

These provisions are repealed and replaced by new provisions that have the following effect.

A real estate agent may employ any person as a salesman for nine weeks without the person being the holder of a certificate of approval, either because he has not previously held one or because his previous certificate has expired.

However, the real estate agent must apply for a certificate of approval within seven days after the salesman started working for him, or within seven days after the salesman's previous certificate expired, as the case may be. Failure to do so constitutes an offence. In addition, it will be an offence for the salesman to continue working after the seven-day period if he knows that an application for a certificate or a renewal of a certificate has not been made.

After the seven-day period the salesman may continue working for a further eight weeks without a certificate of approval, while the application is being considered by a Magistrate.

However, on the expiry of the period of eight weeks, it will be an offence for the real estate agent to continue to employ the salesman unless a certificate of approval or a renewal has been issued. The salesman also commits an offence if he continues to work in those circumstances.

It will also be an offence for a real estate agent to continue employing a salesman, and for the salesman to continue working, after the date on which an application for a certificate of approval has been refused by a Magistrate or withdrawn.

Clause 11 inserts a new section 13A in the principal Act.

The new section provides that the Institute may at any time direct any real estate agent to supply it with a list of salesmen employed by him.

If a real estate agent fails within 14 days to comply with such a direction, or supplies an incorrect or incomplete list, he commits an offence.

Clause 12 inserts a new section 13B in the principal Act. The new section provides that every certificate of approval as a real estate salesman and every renewal thereof shall be kept in the custody of the real estate agent who employs the salesman.

When a salesman leaves the employ of an agent the agent must forward the salesman's current certificate of approval to the Real Estate Institute.

If a salesman in respect of whom a certificate of approval is in force commences employment with a real estate agent, the agent must request the Secretary of the Institute to forward the certificate to him.

Clause 13 amends section 14 of the principal Act.

Subclause (1): At present a real estate agent may not carry on business at any place of business not specified in his licence unless he has first given, to the Registrar of the Magistrate's Court in which the licence was granted, notice of his intention to do so, and has paid any additional fee required.

The amendment provides that the notice must also specify the person who will be in control of the place of business. In addition, notice must also be given to the Real Estate Institute unless the real estate agent is a stock and station agency company.

Subclause (2): At present, under section 25 (3) of the principal Act, a real estate agent may change his registered office only to a place of business already specified in his licence. If he wishes to change his registered office to a new place of business he must first give notice under section 14 of the principal Act of his intention to carry on business at the new place and subsequently give notice of the change of registered office.

The amendment eliminates the necessity of giving two notices by providing that section 25 (3) will not apply if a real estate agent states in a notice given under section 14 that he proposes to change his registered office to the new place of business.

Clause 14 amends section 16 of the principal Act by extending the grounds on which objections to the renewal of a real estate agent's licence may be made.

An objection will be able to be made on the grounds that—

- (a) Because of its situation or for other reasons, the applicant will not be able to maintain effective and adequate control of the management of any office or place of business, other than the principal one.
- (b) The applicant has not maintained effective and adequate control of any office or place of business, other than the principal one.
- (c) The applicant has permitted a person, other than a licensed real estate agent or a person lawfully acting as a real estate salesman, to act as his agent.

In addition, the reference to fidelity bonds in subsection (8) has been deleted. The reference is redundant owing to the establishment of the Fidelity Guarantee Fund.

Clause 15: Under section 17 of the principal Act, a Magistrate has the power to award costs on the hearing of an application for the grant or renewal of a real estate agent's licence, if an objection has been filed.

The power to so award costs is extended to include hearings for the grant or renewal of certificates of approval as real estate salesmen.

Clause 16 amends section 20 of the principal Act, which relates to temporary licences for persons to act as real estate agents on the death or incapacity of a real estate agent.

Subclause (1) deletes references to fidelity bonds. They are now redundant owing to the establishment of the Fidelity Guarantee Fund.

Subclause (2) adds new subsections (3) to (7) to section 20.

The new subsection (3) provides that the granting of a Magisterial consent to carry on business temporarily as a real estate agent shall be sufficient authority for the person in respect of whom it was granted to operate the real estate agent's trust account.

The new subsection (4) provides that a copy of every application for a consent under section 20 is to be sent by the applicant to the Real Estate Institute not later than 21 days before the hearing. The Institute will be entitled to appear and be heard at the hearing.

The new subsection (5) provides that the Real Estate Institute may at any time apply to a Magistrate for the cancellation of the consent on the grounds that it is not in the public interest for the business to be carried on, or that the person carrying on the business has been convicted of an offence against the principal Act or against any regulations in force under the Act or has failed to comply with the rules or code of ethics of the Institute.

The new subsection (6) provides that the person to whom consent was given shall be entitled to appear and be heard at the hearing of an application by the Real Estate Institute under the new subsection (5).

The new subsection (7) empowers a Magistrate to cancel the consent to carry on business if the grounds of any objection have been proved to his satisfaction.

Clause 17 amends section 21 of the principal Act.

At present, where a private company is a licensed real estate agent, no person who is not, at the date of issue of the licence or the renewal of the licence, a director, general manager, or other principal officer of the company may act as such for more than 14 days without the consent of a Magistrate.

This provision is extended to apply to private companies that convert to public companies.

In addition, it is provided that a copy of every application for Magisterial consent under section 21 must be sent to the Real Estate Institute, which will be entitled to appear and be heard at the hearing of the application.

Clause 18 inserts a new section 24A in the principal Act. The new section will enable real estate agents' licences to be voluntarily surrendered.

Clause 19 amends section 25 of the principal Act.

Subclause (1) provides that where a real estate agent, other than a stock and station agency company, notifies a Magistrate's Court of a change of registered office, a copy of the notice is to be forwarded to the Real Estate Institute.

Subclauses (2) and (3) make minor drafting amendments.

Clause 20 amends section 26 of the principal Act and provides that use of the letters "M.R.E.I.N.Z." in notices, advertisements, etc., will be sufficient to indicate membership of the Institute.

Clause 21 amends section 32 of the principal Act and provides that members of the Real Estate Institute shall pay to the Institute the fees or other payments payable in respect of membership.

If any fee or other payment payable to the Institute by a real estate agent is not paid within four months after it is due, the Institute may apply to a Magistrate for the suspension of the real estate agent's licence. However, on payment of the fees or other money due, the suspension shall be deemed to be cancelled.

Clause 22 amends section 35 of the principal Act, which relates to the rules of the Real Estate Institute.

At present, no rules made by the Institute come into force unless and until they are approved by the Minister of Justice.

It is now provided that this provision will only apply to rules made in connection with audits, examinations, fees, the code of ethics, scales of charges, and generally giving effect to the objects of the Institute.

Clause 23 amends section 40 of the principal Act, which relates to expenditure from the Fidelity Guarantee Fund.

The amendment provides that, while the amount of the Fund exceeds \$150,000, the income derived from the investment of money in the Fund may be expended in or towards meeting the costs involved in—

- (a) The administration of any regulations relating to trust account audits.
- (b) The provision of educational programmes and other facilities for the purpose of improving the efficiency and promoting the welfare of real estate agents.
- (c) The administration by the Institute of the provisions of the principal Act.

Clause 24 repeals section 45 of the principal Act and substitutes a new section.

At present, no real estate agent is liable to pay any contributions to the Fidelity Guarantee Fund while it exceeds \$150,000.

It is now provided that while the amount of the Fund exceeds \$150,000, the amount of the annual contribution by real estate agents shall, from a date fixed by resolution of the Council,—

- (a) Be \$2, in the case of an individual or a member of a partnership who has already paid contributions totalling \$100 or more or who has paid a lump sum of \$60 in respect of the first year after the commencement of the Fund.

NOTE—Until contributions total \$100, the annual contribution is \$20. If the lump sum has been paid, the annual contribution is \$10.

- (b) Be \$6, in the case of a company that has already paid contributions totalling \$300 or more, or that has paid a lump sum of \$180 in respect of the first year after the commencement of the Fund.

NOTE—Until contributions total \$300, the annual contribution is \$60. If the lump sum has been paid, the annual contribution is \$30.

Clause 25 adds a new subsection (2) to section 51 of the principal Act, which relates to the subrogation to the Institute of rights of action against defaulting real estate agents where a claim has been settled by payment out of the Fidelity Guarantee Fund.

The new subsection provides that if a claim is made against the fund in respect of theft by a director, officer, employee, or agent of a company that is a licensed real estate agent, a Magistrate may, on the application of the Institute, declare that any person who was knowingly a party to the theft shall be personally responsible, without any limitation of liability, for the repayment to the Fund of the amount paid from the Fund in settlement of the claim.

Clause 26 amends section 78 of the principal Act, which prohibits any real estate agent from purchasing or leasing any land or business which he is commissioned to sell or lease, unless his principal consents in writing.

At present, any contract made in contravention of the section is void. It is now provided that such a contract will be voidable at the option of the principal.

Clause 27 amends section 83 of the principal Act, which relates to regulation-making powers.

The provision whereby regulations may be made prescribing maximum rates of commission chargeable by real estate agents is repealed.

These will now be fixed by the rules of the Real Estate Institute.

Hon. Mr Hanan

REAL ESTATE AGENTS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Real Estate Agents Act 1963

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, 5 as follows:

1. Short Title—This Act may be cited as the Real Estate Agents Amendment Act 1968, and shall be read together with and deemed part of the Real Estate Agents Act 1963* (hereinafter referred to as the principal Act).

*1963, No. 135
Amendment: 1967, No. 114

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “Minister”, the following definition:

“‘Stock and station agent’ means a company carrying on business as a stock and station agent, whether in conjunction with any other business or not:”.

3. Meaning of “real estate agent”—Section 3 of the principal Act is hereby amended by adding the following subsection:

“(3) The collection or receipt of rent money by—

“(a) A real estate agent or any employee of a real estate agent; or

“(b) A director, responsible officer, or employee of a company that is a real estate agent; or

“(c) A company in which a real estate agent holds, directly or indirectly, a majority of the shares or control of the voting power—

shall, for the purposes of this Act, be deemed to be the carrying on of business as a real estate agent:

“Provided that this subsection shall not apply in respect of the collection or receipt of rent money by a person or company on his or its own behalf.”

4. Information to be supplied with application for licence—(1) Section 5 of the principal Act is hereby amended by inserting in subsection (3), after the words “business of the applicant”, the words “, including every branch office that will be under his control within the meaning of subsection (4) of section 25 of this Act,”.

(2) The said section 5 is hereby further amended by inserting in subsection (4), after the words “document relating”, the word “exclusively”.

(3) The said section 5 is hereby further amended by adding the following subsections:

“(5) At the hearing of the application the Magistrate shall require the production of evidence that the applicant has—

“(a) Served on the Secretary of the Institute a copy of every document that is required to be so served under subsection (4) of this section;

“(b) Paid the contribution to the Fidelity Guarantee Fund as required under section 44 of this Act;

“(c) Paid to the Institute the fees required to be paid under the rules of the Institute; and

“(d) Given notice to the Institute of the nomination of an auditor of his trust accounts and received the Council’s approval thereto.

“(6) For the purposes of subsection (5) of this section, a certificate under the hand of the Secretary of the Institute relating to the matters referred to in paragraphs (a) to (d) of that subsection shall be sufficient evidence of the matters
5 specified in the certificate, in the absence of proof to the contrary.”

5. Repealing provisions relating to fidelity bonds—(1) The principal Act is hereby further amended by repealing sections 6 and 7 and the First Schedule.

10 (2) This section shall be deemed to have come into force on the first day of February, nineteen hundred and sixty-five.

6. Objections relating to inadequate control of place of business—(1) Section 8 of the principal Act is hereby amended by inserting in subsection (3), before the words
15 “No such objection”, the words “Subject to subsection (4) of this section,”.

(2) The said section 8 is hereby further amended by adding the following subsections:

20 “(4) The Magistrate may also consider an objection on the ground that, because of its situation or for other reasons, any proposed office or place of business of the applicant (other than the principal office or place of business) will not be under his effective and adequate control.

25 “(5) If an objection under subsection (4) of this section is allowed the Magistrate may nevertheless grant a licence, but the proposed office or place of business in respect of which the objection was made shall not be specified in the licence.”

7. Institute to be notified of grant of licence—Section 9 of the principal Act is hereby amended by adding the words
30 “and forthwith give notice in writing thereof to the Institute.”

8. Magistrate to require evidence as to character, fitness, and financial position—(1) Section 10 of the principal Act is hereby amended by repealing the proviso to subsection (4).

35 (2) The said section 10 is hereby further amended by adding the following subsections:

40 “(5) The Magistrate may, in his discretion, dispense with any of the provisions of subsection (4) of this section, if he is satisfied that the business experience in a field or fields related to real estate agency, judgment, and general knowledge of the person whose fitness is to be determined are such that dispensation is justifiable.

“(6) For the purposes of subsection (5) of this section, the term ‘general knowledge’ includes a reasonable knowledge of law that is of particular concern to real estate agents in the conduct of their business, having regard to the subject-matter and syllabus for the time being approved by Order in Council of the examination to be passed by persons intending to apply for a licence. 5

“(7) Nothing in subsection (4) of this section shall apply in any case where the person whose fitness is to be determined was, immediately before the commencement of this Act, the holder, or a partner of the holder, of a licence as a land agent under the Land Agents Act 1953 or, where the applicant for a licence is a company holding such a licence, was a director or general manager or other responsible officer of the company.” 10 15

9. Licensee not to carry on business under more than one name—Section 11 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) No real estate agent shall carry on his business or any part of his business under more than one name or description.” 20

10. Salesmen employed by real estate agents—(1) Subsection (3) of section 13 of the principal Act is hereby amended—

(a) By inserting, after the word “salesman”, the words “together with one copy of each relevant testimonial”: 25

(b) By omitting the words “ten clear days”, and substituting the words “twenty-one clear days”.

(2) The said section 13 is hereby further amended by adding to subsection (4) the words “and forward it to the real estate agent who applied for it.” 30

(3) The said section 13 is hereby further amended by adding to subsection (6) the words “Every such renewal shall be forwarded to the real estate agent who employs the person in respect of whom the renewal was issued.” 35

(4) The said section 13 is hereby further amended by repealing subsection (7), and substituting the following subsections:

“(7) Every licensed real estate agent commits an offence who—

5 “(a) Within seven days after any person not holding a certificate of approval as a real estate salesman commences employment as a salesman in his business, fails to apply for such a certificate in respect of that person:

10 “(b) Within seven days after the expiry of the certificate of approval as a real estate salesman held by any person employed as a salesman in his business, fails to apply for a renewal of the certificate:

15 “(c) Employs any person as a salesman in his business after the expiry of a period of nine weeks after the date on which that person commenced employment with him as a salesman, if within that period a certificate of approval as a real estate salesman has not been issued in respect of that person:

20 “(d) Employs any person as a salesman in his business after the expiry of a period of nine weeks after the date on which that person’s certificate of approval as a real estate salesman expired, if within that period a renewal of the certificate has not been issued:

25 “(e) Employs any person as a salesman in his business after the date on which an application in respect of that person for a certificate of approval as a real estate salesman, or a renewal of such a certificate, as the case may be, has been refused by a Magistrate or withdrawn.

30 “(7A) Every person commits an offence who, not being the holder of a certificate of approval as a real estate salesman, works for a real estate agent as a salesman—

35 “(a) After the expiry of a period of seven days after the date on which he commenced such work, or the date on which his certificate of approval expired, as the case may be, if he knows that within that period an application for a certificate of approval, or a renewal of the expired certificate, as the case may be, has not been made:

40 “(b) After the expiry of a period of nine weeks after the date on which he commenced such work, or the date on which his certificate of approval expired, as the case may be, if within that period a certificate of approval, or a renewal of the expired certificate, as the case may be, has not been issued:

“(c) After the date on which an application in respect of himself for a certificate of approval, or a renewal of such a certificate, as the case may be, has been refused by a Magistrate or withdrawn.”

11. Institute may require list of salesmen to be supplied—The principal Act is hereby further amended by inserting, after section 13, the following section: 5

“13A. (1) The Institute may at any time by notice in writing direct any licensed real estate agent to supply it with a list containing the full name of every salesman employed by him. 10

“(2) Every licensed real estate agent who fails within fourteen days to comply with a direction given under subsection (1) of this section, or who supplies to the Institute an incorrect or incomplete list of salesmen, commits an offence against this Act.” 15

12. Custody of real estate salesmen’s certificates—The principal Act is hereby further amended by inserting, after section 13A (as inserted by section 11 of this Act) the following section: 20

“13B. (1) Every certificate of approval as a real estate salesman and every renewal thereof shall at all times be kept in the custody of the real estate agent who employs the salesman in respect of whom the certificate or renewal was issued.

“(2) When a real estate salesman leaves the employ of a real estate agent, the agent shall, within seven days after the salesman leaves his employment, forward the salesman’s current certificate of approval to the Secretary of the Institute. 25

“(3) If any such real estate salesman, in respect of whom a certificate of approval is for the time being in force, commences employment with a real estate agent, the agent shall forthwith request the Secretary of the Institute to forward to him the certificate of approval; and the Secretary of the Institute shall as soon as practicable forward the certificate accordingly.” 30 35

13. Carrying on business at place not specified in licence—(1) Section 14 of the principal Act is hereby amended by repealing the proviso to subsection (1), and substituting the following proviso:

“Provided that it shall not be lawful for a real estate agent to carry on business as such at any place of business not specified in his licence unless he has first—

5 “(a) Given to the Registrar of the Magistrate’s Court in which the licence was granted and, unless the real estate agent is a stock and station agent, to the Secretary of the Institute—

“ (i) Notice of his intention to carry on business at that place; and

10 “ (ii) Notice of the person who will be in control of that place of business in accordance with subsection (4) of section 25 of this Act; and

“(b) Paid such additional fee (if any) in respect of that place of business as may be prescribed.”

15 (2) The said section 14 is hereby further amended by inserting, after subsection (1), the following subsection:

20 “(1A) If a real estate agent states in any notice of intention given under the proviso to subsection (1) of this section that he proposes to change his registered office to the place to which the notice relates, subsection (3) of section 25 of this Act shall not apply in respect of the change.”

14. Objections to renewal of licence—(1) Section 16 of the principal Act is hereby amended by inserting in subsection (4), before the words “No such objection”, the words “Subject to subsection (4A) of this section,”.

(2) The said section 16 is hereby further amended by inserting, after subsection (4), the following subsections:

“(4A) An objection may also be considered on the grounds that—

30 “(a) Because of its situation or for other reasons, the applicant will not be able to maintain effective and adequate control of the management of any office or place of business, other than the principal office or place of business; or

35 “(b) The applicant has not maintained effective and adequate control of any office or place of business, other than the principal office or place of business; or

40 “(c) The applicant has permitted a person, other than a person licensed under this Act as a real estate agent or a person lawfully acting as a real estate salesman, to act as his agent in the conduct of his business.

“(4B) If an objection under paragraph (a) or paragraph (b) of subsection (4A) of this section is allowed the Magistrate may nevertheless grant a renewal of the licence, but all references to the office or place of business in respect of which the objection was made shall be deleted from the licence.” 5

(3) The said section 16 is hereby further amended by omitting from subsection (8) the words “but, while section 6 of this Act continues in force, provided an approved fidelity bond is for the time being in force,”.

15. Magistrate may award costs—Section 17 of the principal Act is hereby amended by inserting, after the words “renewal of a licence”, the words “or on the hearing of any application for the grant or renewal of a certificate of approval as a real estate salesman”.

16. Temporary licence—(1) Section 20 of the principal Act is hereby amended by omitting from subsection (1) the words “subject, while section 6 of this Act continues in force, to the person carrying on the business (not being the Public Trustee or the holder of a licence) filing an approved fidelity bond under that section as if he were an applicant for a licence”.

(2) The said section 20 is hereby further amended by adding the following subsections:

“(3) The granting of a consent under subsection (1) of this section shall be sufficient authority for the person carrying on the business to operate the trust account of the real estate agent concerned. 25

“(4) A copy of every application for the consent of a Magistrate under subsection (1) of this section shall, not later than twenty-one clear days before the date fixed for the hearing of the application, be sent by the applicant to the Secretary of the Institute; and the Institute shall be entitled to appear and be heard at the hearing of the application. 30

“(5) The Institute may at any time apply to a Magistrate exercising jurisdiction in the Magistrate’s Court in which the consent was granted for the cancellation of the consent on the grounds that it is not in the public interest for the business to be carried on or that the person carrying on the business has been convicted of an offence against this Act or against any regulations for the time being in force under this Act or has failed to comply with the rules or code of ethics of the Institute. 35 40

“(6) A copy of every application made under subsection (5) of this section shall, not later than ten clear days before the date fixed for the hearing of the application, be sent to the person to whom the Magistrate’s consent was granted; and
5 that person shall be entitled to appear and be heard at the hearing of the application.

“(7) On the hearing of an application under subsection (5) of this section the Magistrate, if the grounds of the objection are proved to his satisfaction, may in his discretion cancel the
10 consent, and thereupon the person who had been carrying on the business shall no longer be deemed to be the holder of a licence in respect of that business.”

17. Restrictions on persons acting as officers of company extended—Section 21 of the principal Act is hereby amended
15 by inserting, after subsection (2), the following subsections:

“(2A) If any company to which subsection (2) of this section applies ceases to be qualified to be registered as a private company, that subsection shall continue to apply to it as if it had continued to be so registered.

20 “(2B) A copy of every application for the consent of a Magistrate under subsection (2) of this section shall, not later than twenty-one clear days before the date fixed for the hearing of the application, be sent by the applicant to the Secretary of the Institute; and the Institute shall be entitled
25 to appear and be heard at the hearing of the application.”

18. Voluntary surrender of licence—The principal Act is hereby further amended by inserting, after section 24, the following section:

30 “24A. (1) A licensee may at any time surrender his licence by forwarding a written notice to that effect together with his current licence to the Registrar of the Magistrate’s Court in which the current licence was granted. On the receipt of such a notice by the Registrar the licence shall cease to be operative.

35 “(2) Where a licensee gives a notice under subsection (1) of this section, he shall at the same time forward a copy of it to the Secretary of the Institute and to the auditor of his trust accounts.

40 “(3) The surrender by a licensee of his licence under subsection (1) of this section shall not affect the liability of the licensee—

45 “(a) To pay any fees or other money payable or to be payable in accordance with the provisions of this Act on or before the date on which the licence would, but for its surrender, expire:

“(b) To perform any obligation required to be performed on or before that date:

“(c) For any act done or default made before the date of surrender of his licence.”

19. Change of registered office—(1) Section 25 of the principal Act is hereby amended by adding to subsection (3) the words “Within seven days after the notice has been filed a copy of it shall, unless it has been filed by a stock and station agent, be forwarded by the real estate agent to the Secretary of the Institute.” 5

(2) The said section 25 is hereby further amended by omitting from subsection (4) the words “the real estate agency business at”. 10

(3) The said section 25 is hereby further amended by omitting from subsection (5) the words “the real estate agency business at”. 15

20. Real estate agent to display notice on registered office, and on notices, etc.—Section 26 of the principal Act is hereby amended by omitting from subsection (3) the words “a statement indicating that he is a member of the Institute”, 20 and substituting the words “the letters ‘M.R.E.I.N.Z.’”.

21. Members of Institute to pay fees, etc.—Section 32 of the principal Act is hereby amended by adding the following subsections:

“(4) Every member of the Institute shall from time to time 25 pay to the Institute the fees or other payments, annual or otherwise, that are payable in respect of his membership.

“(5) If any fee or other payment payable to the Institute by a real estate agent under subsection (4) of this section is not paid within four months after it is due, the Council may 30 apply to a Magistrate exercising jurisdiction in the Court in which the licence of the real estate agent was granted for an order for the suspension of that licence, and the Magistrate may make an order accordingly. While a licence is suspended under this subsection, the real estate agent shall be deemed 35 not to be licensed.

“(6) If any person whose licence is suspended under this section pays all such fees and other payments, the suspension of his licence shall be deemed to be cancelled.”

22. Rules of Institute—(1) Section 35 of the principal Act is hereby amended by omitting from paragraph (n) of subsection (1) the words “the manner in which a scale of charges may be fixed”, and substituting the words “a scale of charges”.

5 (2) The said section 35 is hereby further amended by repealing subsection (4), and substituting the following subsection:

10 “(4) No rules or amendments to rules made under any of the provisions of paragraphs (f), (h), (l), (m), (n), and (p) of subsection (1) of this section shall come into force unless and until they are approved by the Minister.”

23. Expenditure from Fund—Section 40 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

15 “(2) While the amount of the Fund exceeds one hundred and fifty thousand dollars, the income derived from the investment, in accordance with section 47 of this Act, of any money that is in the Fund, may be expended by the Council in or towards meeting the costs involved in—

20 “(a) The administration of any regulations for the time being in force under this Act relating to the audit of trust accounts:

25 “(b) The provision of educational programmes and other facilities for the purpose of improving the efficiency and promoting the welfare of real estate agents:

30 “(c) The administration by the Institute of the provisions of this Act and the conduct of the affairs of the Institute to such extent and in accordance with such conditions (if any) as the Council from time to time determines.”

24. Contributions to Fund while it exceeds \$150,000—The principal Act is hereby further amended by repealing section 45, and substituting the following section:

35 “45. While the amount of the Fund (including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the Fund) exceeds one hundred and fifty thousand dollars, the amount of the annual contribution payable by a real estate agent shall, from a date fixed by resolution of the Council,—

40 “(a) Be two dollars, in the case of an individual or a member of a partnership who has already paid contributions totalling one hundred dollars or more or who has paid the sum of sixty dollars in accordance with the proviso to subsection (1) of section 44 of this Act:

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“(b) Be six dollars, in the case of a company that has already paid contributions totalling three hundred dollars or more or that has paid the sum of one hundred and eighty dollars in accordance with the said proviso and subsection (3) of the said section.” 5

25. Claims by Fund against companies—Section 51 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) Notwithstanding anything to the contrary in the Companies Act 1955 or in any other Act or in any rule of law, 10 if a claim is made against the Fund in respect of theft by a director, officer, employee, or agent of a company licensed under this Act, a Magistrate may, if he thinks fit, on the application of the Institute, declare that any person who was knowingly a party to the theft shall be personally responsible, 15 without any limitation of liability, for the repayment to the Fund of the amount paid from the Fund in settlement of the claim.”

26. Purchase or lease by agent voidable—Section 78 of the principal Act is hereby amended by repealing subsection (3), 20 and substituting the following subsection:

“(3) Any contract made in contravention of the provisions of this section shall be voidable at the option of the principal. No commission shall be payable in respect of any such contract, whether the principal has avoided it or not; and 25 any commission paid in respect thereof shall be repayable by the real estate agent to his principal and be recoverable by the principal as a debt.”

27. Regulations—Section 83 of the principal Act is hereby amended by repealing paragraph (m) of subsection (1). 30