

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 10 November 1982.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*Hon. Mr McLay*

## REAL ESTATE AGENTS AMENDMENT

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### A BILL INTITULED

#### **An Act to amend the Real Estate Agents Act 1976**

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

**1. Short Title and commencement**—(1) This Act may be cited as the Real Estate Agents Amendment Act 1982, and shall be read together with and deemed part of the Real Estate Agents Act 1976\* (hereinafter referred to as the principal Act).

(2) Except as provided in section 2 (3) of this Act, this Act shall come into force on the day after the date of the Governor-General's assent.

\*1976, No. 9

Amendments: 1977, No. 173; 1978, No. 120; 1981, No. 92

**2. Qualified persons—***Struck Out*

(1) Section 2 (1) of the principal Act is hereby amended by inserting in paragraph (b) (iii) of the definition of the term “qualified person” after the word “experience”, the words “working full-time or primarily and predominantly”.

*New*

(1) Section 2 (1) of the principal Act is hereby amended by repealing paragraph (b) (iii) of the definition of the term “qualified person”, and substituting the following paragraph:

“(iii) Had, during the preceding 5 years, at least 3 years’ practical experience working full-time or primarily and predominantly in real estate agency work; or”.

(2) Subject to subsection (3) of this section, paragraph (c) of the said definition of the term “qualified person” is hereby repealed.

(3) Subsection (2) of this section shall come into force on the 1st day of April 1983, but nothing in this section shall affect the status of any person who, as at the commencement of this Act, was recognised and employed or engaged as a qualified person pursuant to the said paragraph (c).

**3. Deputies of members—**Section 5 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) The Minister may, from time to time and at any time, appoint such persons as he thinks fit to be deputies to act for members of the Board in any case where—

“(a) A member of the Board is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office; or

“(b) The member is unable to perform those duties for any other reason and the Board resolves that a deputy shall act for him.

“(1A) The Minister shall not appoint any person as a deputy who would not be qualified in his own right to be appointed to the Board in the place of the member for whom he is deputising; and any appointment made under this section may be revoked at any time by the Minister.

“(1B) Notwithstanding that the member of the Board for whom he is deputising is again available to perform the duties of office, the deputy of that member shall continue to act as such until the determination of any matter which the deputy has heard or part heard and which has not been determined.”

**4. Chairman may exercise Board’s jurisdiction in respect of certain matters**—The principal Act is hereby amended by inserting, after section 9, the following section:

“9A. (1) Notwithstanding anything in any of the foregoing provisions of this Part of this Act, the Chairman of the Board may, on behalf of the Board, exercise the Board’s jurisdiction in respect of any of the following matters except where the Institute has objected to the application within 14 days after receiving notice from the Registrar:

“(a) An application, pursuant to section 25 of this Act, for the approval of a name under which a licensee may conduct his business:

“(b) An application, pursuant to section 27 of this Act, for approval to carry on business at a place not presently specified in the applicant’s licence:

“(c) An application, pursuant to section 34 of this Act, for a permit.

“(2) The Chairman of the Board may also, on behalf of the Board, make an order relating to the interim suspension of a licensee, officer of a company, or salesman pursuant to section 98 of this Act.

“(3) Every decision of the Chairman in relation to any matter under this section shall, for all purposes, be the decision of the Board.”

**5. Eligibility for licences—**

*New*

(1) Section 17 (1) of the principal Act is hereby amended by inserting, as paragraph (ca), the following paragraph:

“(ca) Has surrendered a licence pursuant to section 31 of this Act and has been approved by the Board for the purposes of this section; or”.

(2) Section 17 (2) of the principal Act is hereby amended—

- (a) By inserting in paragraph (c) after the word “experience”, the words “working full-time or primarily and predominantly”; and
- (b) By inserting in paragraph (d) after the word “experience”, the words “working full-time or primarily and predominantly”.

**6. Application for licence**—Section 18 (2) (b) of the principal Act is hereby amended by omitting the words “registered office”, and substituting the words “principal place of business”.

**7. Licence to be held in licensee’s own name unless Board otherwise approves**—Section 25 (1) (c) of the principal Act is hereby repealed.

**8. Carrying on business at branch not specified in licence**—(1) Section 27 (1) of the principal Act is hereby amended by omitting the words “place of business”, and substituting the words “branch office”.

(2) The said section 27 is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) A licensee may at any time apply in the manner prescribed by the Board to the Board for approval for the purposes of subsection (1) of this section, and in the application shall—

- “(a) Give the address of the proposed branch office; and
- “(b) Give the name and qualifications of the person who will be in effective control of the branch.”

(3) The said section 27 is hereby further amended by inserting, after subsection (5), the following subsections: 30

“(5A) The Board shall not give an approval under this section unless it is satisfied that the person under whose control the branch office will be is a qualified person, and that that person will be in effective control of that branch.

“(5B) The Institute may at any time apply to the Board for an order cancelling the approval granted under this section in respect of the qualified person purporting to be in effective control of the branch office on the grounds that that person is not in effective control of that branch.” 35

(4) Section 27 (6) of the principal Act is hereby amended— 40

- (a) By omitting the words “registered office”, and substituting the words “principal place of business”; and

(b) By omitting the expression “section 52”, and substituting the expression “section 54 (2B)”.

**9. Renewal of licence**—(1) Section 29 (4) of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) Subject to section 44 of this Act, that any qualified person engaged in any approved place of business of the applicant has not worked primarily and predominantly at or from that place during the period he was so engaged; or”.

(2) Section 29 of the principal Act is hereby further amended by repealing subsection (5), and substituting the following subsections:

“(5) In any case where no notice of objection is given under subsection (3) or subsection (4) of this section, the Board may either—

“(a) Grant the application without further inquiry; or

“(b) Call and hear the applicant on any matter affecting the application.

“(5A) After calling and hearing the applicant under subsection (5) (b) of this section, the Board—

“(a) May grant the application; or

“(b) Where it considers the Institute would have made an objection under this section if it had been aware of the matters known to the Board in respect of the application, shall refer the matters to the Institute.

“(5B) The Institute may, within 14 clear days after the date of the receipt of any matters referred to it under subsection (5A) (b) of this section, give to the Board notice of its desire to object to the renewal of the licence, and any such notice shall, for the purposes of subsection (6) of this section, be deemed to have been given within the time allowed.”

**10. Limit on employment of unqualified persons**—

(1) Section 43 (1) of the principal Act is hereby amended by adding the words “who work primarily and predominantly at or from that place”.

(2) Section 43 of the principal Act is hereby further amended—

(a) By repealing subsections (2), (3), (4), and (5); and

(b) By omitting from subsection (6) the words “without the Board’s approval”.

(3) Section 45 (2) of the principal Act is hereby consequentially amended by omitting the words “except

where approved by the Board pursuant to section 43 (2) of this Act”, and substituting the words “who work or will work primarily and predominantly at or from that place”.

*New*

**10A. Objection to recognition as qualified person—** 5

The principal Act is hereby amended by inserting, after section 44, the following new section:

“44A. (1) Any qualified person who, during the previous 5 years, has not been employed or engaged full-time or principally or predominantly in real estate agency work for at least 3 of those years shall, upon application by the Institute, be declared by the Board to no longer be recognised as a qualified person for the purposes of this Act, and the provisions of section 44 of this Act shall apply in respect of that person as if he had ceased to be engaged as a salesman. 15

“(2) Any qualified person to which subsection (1) of this section had applied shall, upon satisfying the Board that the required 3 years’ experience has again been attained, be declared by the Board to again be a qualified person for the purposes of this Act.” 20

**11. Custody of certificates of approval—**Section 50 (2) of the principal Act is hereby amended by adding the words “and shall at the same time advise the Registrar in writing whether or not the salesman was a qualified person for the purposes of section 43 (1) of this Act”. 25

**12. Registered office—**(1) Section 52 of the principal Act (as amended by section 2 of the Real Estate Agents Amendment Act 1978) and the cross-heading to that section are hereby repealed.

(2) The Real Estate Agents Amendment Act 1978 is hereby 30 repealed.

**13. Supervision of business—**(1) Section 54 of the principal Act (as amended by section 3 of the Real Estate Agents Amendment Act 1977) is hereby amended by repealing subsections (1) and (2), and substituting the 35 following subsections:

“(1) A licensee or, if the licensee is a company, an officer of the company who is eligible to hold a licence shall be in effective control of the principal place of business of a real estate agent. 40

“(2) Every branch office of a real estate agent (as specified in his licence) shall be under the effective control of a qualified person.

“(2A) Where, in any approved place of business, a qualified person is required to be employed or engaged for the purposes of section 43 (1) of this Act, that qualified person shall work primarily and predominantly at or from that place.

“(2B) A licensee may at any time, by notice in writing given to the Registrar, change the address of his principal place of business to that of any of his branch offices, and shall forward a copy of any such notice to the Institute within 7 days after having been given to the Registrar.

“(2C) For the purposes of this section, the Board may, on application made in writing in that behalf by either the licensee or the Institute, determine which place of business of that licensee is his principal place of business.”

(2) Section 3 of the Real Estate Agents Amendment Act 1977 is hereby consequentially repealed.

**14. Approvals for remote located salesmen**—The principal Act is hereby amended by inserting, after section 54, the following section:

“54A. (1) In this section, the term ‘remote located salesman’ means a salesman who is not under the effective control of a qualified person and who is employed or engaged to work at or from a place of business which is neither an approved principal place of business nor a branch office.

“(2) A licensee may apply to the Board for approval to employ or engage (one remote located salesman) remote located salesmen in the following circumstances:

“(a) (The) Each salesman will work solely within a defined geographical area; and

*Struck Out*

“(b) There is no approved place of business of any licensed real estate agent within that area at the time of the application; and

“(c) (The) Each salesman will be under the effective supervision of the licensee or a qualified person who is at the approved place of business of the

applicant nearest to the place at or from which the salesman will be working, and, for the purposes of the limit prescribed by section 43 of this Act, the salesman will be regarded as being employed at that approved place of business. 5

“(3) The applicant shall, as soon as practicable after making application to the Board, send a copy of the application to the Institute.

“(4) The application shall not be heard or considered by the Board within 14 clear days after the date of the receipt of 10 the copy of the application by the Institute.

“(5) The Institute shall be entitled to appear and be heard by the Board in respect of the application.

“(6) The Board, after being satisfied of the matters referred to in subsection (2) of this section, may grant an approval 15 under this section subject to such conditions as it thinks fit and, where it grants an approval, the licence of the applicant shall be endorsed accordingly upon payment of the prescribed fee (if any), and the Registrar shall note the Register.

“(7) The Institute may at any time apply to the Board for 20 an order cancelling an approval granted under this section on either or both of the following grounds:

“(a) That the remote located salesman is not being effectively supervised pursuant to subsection (2) (c) of this section: 25

“(b) That the licensee has breached or failed to comply with any condition imposed by the Board in granting its approval.

“(8) Any approval granted pursuant to this section shall cease to have effect— 30

“(a) Where an order is made by the Board pursuant to subsection (7) of this section, from the day specified in the order:

“(b) Where the licensee who engages or employs the remote located salesman receives approval from 35 the Board to establish a branch office within the area in which the salesman works, from the date of the approval.

*Struck Out*

“(c) Where any other licensee establishes an approved 40 place of business within the area in which the salesman works, with the expiry of a period of 3 months from the date of the Board’s approval to that place of business.”



*New*

“(9) Where any other licensee establishes an approved place of business within the area in which a remote located salesman works, that licensee may apply to the Board for an order cancelling the approval for that or any remote located salesman working within the area on the ground that a sufficient real estate agency service is being offered in that area, and subsections (3) to (4) of this section shall apply in respect of any such application as if it were an application to which those subsections relate.

“(10) The Board may, if it thinks fit, order the cancellation of an approval pursuant to an application made under subsection (9) of this section, and the approval shall thereupon cease to have effect from a day specified in the order, being any day not earlier than 3 months from the day the order was made.”

**15. Real estate agent to provide valuation**—The principal Act is hereby amended by repealing section 64, and substituting the following section:

“64. (1) This section shall apply to every real estate agent, partner or employee of a real estate agent, or officer of a company that is a real estate agent; but, in relation to any real estate agent (whether a company or not) that carries on other business in addition to its business as a real estate agent, shall not apply to any employee of that real estate agent whose work primarily and predominantly relates to that other business.

“(2) Every person to whom this section applies shall either—

“(a) Before seeking the consent of a principal for the purposes of section 63 of this Act; or

“(b) With the agreement of the principal, within 14 days after obtaining that consent—

supply, at his own expense to that principal, a valuation made by an independent registered valuer of the land or business in question.

“(3) Every consent given under section 63 of this Act without the valuation being supplied to the principal in accordance with subsection (2) of this section shall be deemed not to have been given.”

**16. Rules of Institute**—(1) Section 70 (1) of the principal Act is hereby amended by inserting, after paragraph (m), the following paragraphs:

“(ma) For the purposes of establishing Regional Disciplinary Committees within a region to deal with matters relating to the discipline of persons engaged in real estate business in that region, creating regions by amalgamating 2 or more districts, and amalgamating or abolishing any such region created: 5 10

“(mb) Establishing Regional Disciplinary Committees, one in each region, (*consisting of 5 members appointed by the Council from members of the Institute within each region,*) constituted pursuant to section 101 of the Real Estate Agents Act 1976, prescribing the 15 matters relating to discipline to be dealt with by a Regional Disciplinary Committee, and regulating the methods and powers of investigation and determination by a Disciplinary Committee of those matters: 20

*New*

“(mc) Establishing sub-committees of Regional Disciplinary Committees within each district (consisting of not more than 3 real estate agents who need not be carrying on business outside that district) 25 for the purpose of determining such minor matters relating to discipline as may be referred to it from time to time by the Institute, and regulating the procedure of, and methods of determination by, such a sub-committee of those 30 minor matters:”

(2) Section 2 (1) of the principal Act is hereby consequentially amended by repealing the definition of the term “Disciplinary Committee”, and substituting the following definition: 35

“ ‘Disciplinary Committee’ means a Regional Disciplinary Committee established pursuant to the rules of the Institute under section 70 of this Act; and a reference to ‘the Disciplinary Committee’ means a reference to all Regional Disciplinary Committees 40 together, or, as the case may require, the particular Regional Disciplinary Committee to which a matter has been referred:”.

**17. Fidelity Guarantee Fund**—(1) Section 75 (2) of the principal Act is hereby amended by omitting the expression “\$150,000”, and substituting the expression “\$500,000”.

5 (2) Section 76 (1) of the principal Act is hereby amended by omitting the words “the basic contribution specified in that behalf in the Schedule to this Act”, and substituting the words “such basic contribution as may be prescribed”.

(3) The proviso to section 77 of the principal Act is hereby amended by omitting the expression “\$150,000”, and  
10 substituting the expression “\$500,000”.

(4) Section 78 of the principal Act is hereby amended—

(a) By omitting the expression “\$150,000”, and substituting the expression “\$500,000”:

15 (b) By omitting the words “the amounts specified in that behalf in the Schedule to this Act”, and substituting the words “such amounts as may be prescribed”.

(5) Section 123 of the principal Act is hereby amended by omitting the words “contributions or”.

20 (6) The Schedule to the principal Act is hereby consequentially amended by repealing those items relating to section 76 (1) and section 78 of the principal Act.

**18. Grounds on which licence may be cancelled by Board**—Section 94 (1) of the principal Act is hereby amended by inserting, after paragraph (c), the following  
25 paragraph:

30 “(ca) That a licensee or, in the case of a licensee company, the chief executive officer of the company, has failed to be in effective control of any place of business in respect of which it is that person’s duty to be in effective control or has failed to ensure that any qualified person in control of a branch office has been in effective control of that branch, and it is in the interests of the public that the licence be cancelled:”.

35 **19. Board may hold inquiry**—Section 97 (3) of the principal Act is hereby amended by inserting, after the words “Chairman and”, the words “at least”.

**20. Interim suspension pending determination of complaint**—The principal Act is hereby amended by  
40 repealing section 98, and substituting the following section:

“98. (1) Where an application has been made to the Board under section 94 (1) or section 99 (1) of this Act and the

Board is satisfied that it is necessary or desirable to do so having regard to the interests of the public, and to the possibility of further loss or damage occurring if it does not make an order under this section, it may make an order suspending the licensee or salesman in respect of whom the application has been made or, where the licensee is a company, the company or any officer of the company, until the application has been heard and determined. 5

“(2) The Board shall not be obliged to give any notice to the licensee, officer, or salesman that it intends to make an order of suspension under this section. 10

“(3) The Board shall notify the licensee, officer, or salesman in writing of any order of suspension made by it under this section and of its reasons for making the order, and shall, as soon as practicable thereafter, afford the licensee, officer, or salesman an opportunity to make representations to the Board for the revocation of the order. 15

“(4) An order of suspension made under this section shall come into force when the licensee, officer, or salesman is notified of the order in accordance with subsection (3) of this section, and, while it continues in force,— 20

“(a) The licence of the licensee shall cease to have effect and shall not be renewed nor a new licence granted:

“(b) The officer of the company shall (if applicable) cease to be eligible to apply for a licence in his own right for the purposes of section 17 (3) of this Act: 25

“(c) The certificate of approval of the salesman shall cease to have effect and shall not be renewed nor a new certificate granted. 30

“(5) The Board may at any time, on its own motion or on the application of the licensee, officer, or salesman, revoke an order of suspension made under this section.”

**21. Regional Disciplinary Committees**—(1) The principal Act is hereby amended by repealing section 101, and substituting the following section: 35

*Struck Out*

“101. (1) For the purposes of the succeeding provisions of this Part of this Act, a Regional Disciplinary Committee shall have a barrister or solicitor as its Chairman, such Chairman being one of the 5 members constituting the Committee. 40

*New*

“101. (1) For the purposes of the succeeding provisions of this Part of this Act, a Regional Disciplinary Committee shall consist of—

5 “(a) A barrister or solicitor as its Chairman:

“(b) Three members appointed by the Council from members of the Institute within the region for which the Committee is established:

10 “(c) One lay member (not being a real estate agent) appointed by the Minister.”

“(2) Three members of a Regional Disciplinary Committee, including its Chairman, shall constitute a quorum.”

(2) Section 102 (3) and section 103 of the principal Act are hereby consequentially repealed.

15 (3) Section 107 of the principal Act is hereby amended by omitting the words “registered office”, and substituting the words “principal place of business”.

**22. Increase in fines and penalties**—The principal Act is hereby amended in the manner specified in the Schedule to  
20 this Act.

Section 22**SCHEDULE****INCREASE IN FINES AND PENALTIES PRESCRIBED IN PRINCIPAL ACT**

Provision of Principal Act	Amendment
Sections 16 (2), 27 (8), 30 (b), 40, 59, and 95 (3)	By omitting the expression "\$1,000", and substituting the expression "\$2,000".
Sections 25 (8), 42, 43 (b), 88 (3), and 89 (2)	By omitting the expression "\$750", and substituting the expression "\$1,500".
Sections 119 (a) and 122 (1) (l)	By omitting the expression "\$500", and substituting the expression "\$1,000".
Section 70 (1) (o)	By omitting the expression "\$100", and substituting the expression "\$750".
Section 96	By omitting the expression "\$500", and substituting the expression "\$5,000".
Section 99 (4)	By omitting the expression "\$200", and substituting the expression "\$750".
Section 102 (2) (b)	By omitting the expression "\$200", and substituting the expression "\$2,000".