

[CONFIDENTIAL.]

(Rough-Draft for Consideration Only.)

No. , 1925.

A BILL

To provide for the licensing and regulation of real estate and stock agents; to prohibit certain acts by unregistered agents; and for purposes consequent thereon or incidental thereto.

[MR. J. C. L. FITZPATRICK;— , 1925.]

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

PART I.

PRELIMINARY.

Short title, commencement, and administration.

1. (1) This Act may be cited as the "Real Estate Short title.
10 and Stock Agents Act, 1925."

Real Estate and Stock Agents.

Commencement.

(2) This Act shall except where otherwise specially provided commence and come into operation on its receiving the Royal Assent.

Division into Parts.

Parts of Act.

2. This Act is divided into Parts as follows:—

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PART I.—PRELIMINARY.

PART II.—REGISTRATION OF REAL ESTATE AND STOCK AGENTS.

PART III.—REMOVAL, SUSPENSION, AND CANCELLATION OF REGISTRATION.

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PART IV.—RIGHTS, DUTIES, AND LIABILITIES OF REGISTERED AGENTS.

PART V.—DISABILITIES OF UNREGISTERED AGENTS.

PART VI.—THE REAL ESTATE AND STOCK AGENTS BOARD.

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PART VII.—FINANCE.

PART VIII.—GENERAL.

Definitions.

Interpretation.

3. In this Act, unless inconsistent with the context or subject-matter,—

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“Agent” means real estate and stock agent, and includes a firm which is such agent, and any member thereof.

“The board” means the Real Estate and Stock Agents Board constituted under this Act.

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“Firm” includes a firm, company, partnership, society, association, or body of persons, corporate or unincorporate.

“Member of a firm” means—

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(a) in the case of a firm unincorporate, a member thereof; and

(b)

- (b) in the case of a firm corporate, any director or member of the firm who is actively engaged in the transaction of the firm's business.
- 5 "Prescribed" means prescribed by this Act or by any regulation thereunder.
- "Real estate and stock agent" means—
 - 10 (a) a person or firm whose business, either alone or as part of or in connection with any other business, is to sell or otherwise dispose of or to find tenants for or to collect the rents of land or buildings, or of any estate or interest in land or buildings, as agent on commission; or
 - 15 (b) a person or firm whose business either alone or as part of or in connection with any other business is to sell or otherwise dispose of stock as agent on commission;
 - 20 but does not include a licensed auctioneer whose transactions in the aforesaid business are confined to selling by auction.
- 25 "Recognised Institute of Accountants" means any corporation, society, association, or institute which has been accorded recognition under the ordinances made under the Local Government Act, 1919 (in connection with the issue of certificates of Local Government Auditors).
- "Stock" means cattle, horses, sheep, and pigs.

PART II.

REGISTRATION OF REAL ESTATE AND STOCK AGENTS.

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Register.

- 4. (1) The board shall cause a register to be kept by the registrar. Keeping of register.
- (2) The register shall contain the following particulars of each person and firm whose name is entered Particulars in register.
- 35 therein :— cf. N.Z. Land Agents Act, 1912, ss. 4, 5.
 - (a) full names ;
 - (b)

- (b) business address ;
- (c) the name of the firm (if any) with which the person is connected ;
- (d) in the case of a firm the name of each member thereof ;
- (e) date of registration ; and
- (f) whether the person registered desires for purposes of any nomination for membership of the board, to be classed as engaging primarily in real estate agency, or in stock and station agency, as the case may be.

Alphabetical index.

(3) The names of persons and firms registered shall be numbered consecutively and indexed alphabetically in the register.

Who entitled to registration.

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Qualification.

5. (1) Subject to the provisions of this Act, and upon payment of the prescribed fees, any agent shall be qualified to apply for registration and to be registered—

- (a) if he produces evidence to the satisfaction of the board that he is of or over the age of twenty-one years ;
- (b) if he produces evidence to the satisfaction of the board that he is of good character ;
- (c) if he is not disqualified for registration under this Act ; and
- (d) if he lodges with the board a fidelity bond in the form of Schedule Two hereto for five hundred pounds from some insurance company, or other surety approved by the board, or, having previously lodged a bond as aforesaid, if he lodges a receipt for the renewal premium thereon or a certificate by the insurance company or other surety of the renewal thereof.

Annual renewal.

(2) In connection with any application for renewal of registration the board may dispense with the necessity for the production of evidence under paragraphs (a) and (b) of the preceding subsection.

(3)

(3) In the case of a firm it shall be sufficient if each person registered as connected with the firm complies with paragraphs (a), (b), and (c) of subsection one of this section, and if the firm complies with paragraph 5 (d) of the said subsection giving one bond or surety on behalf of the firm and the persons connected with it.

Registration of firms.
cf. s. 3 (2) of N.Z. Land Agents Act, 1912.
cf. s. 3 (3) of N.Z. Land Agents Act, 1912.

Inspection of and right to sue on fidelity bond.

10 6. (1) Any person for whom any registered agent is acting or has acted may on payment of a fee of two shillings and sixpence to the board inspect the bond lodged by such agent as hereinbefore provided, and may take a copy thereof.

Inspection of bond.

15 (2) Any such person may, subject to the approval and written authority of the board, sue upon any such bond for indemnity in respect of any loss covered by the said bond.

Person injured may sue on bond.

Who disqualified for registration.

20 7. (1) A person shall be disqualified for registration under this Act if he is proved to the satisfaction of the board to be a person who—

Disqualification.

(a) has been convicted of any felony or misdemeanour in or beyond the Commonwealth of Australia; or

25 (b) has been declared by any court of competent jurisdiction in or beyond the Commonwealth of Australia to have committed any fraud; or

(c) has been guilty of misconduct in his business or of any act or default discreditable to an agent; or

30 (d) has been adjudged bankrupt, or individually or as a partner has made an assignment for the benefit of creditors, or has made any arrangement for the payment of a composition to creditors, and in any such case has not paid his creditors in full:

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Provided

Real Estate and Stock Agents.

Provided that any disqualification under this subsection may be removed by the board if after inquiry it be satisfied that the person concerned has become an honorable and responsible citizen.

(2) A firm shall be disqualified for registration unless its members are or become registered agents. 5

(3) A person shall be disqualified for registration if it be proved to the satisfaction of the Board that such person is not in fact actively conducting the agency on his own behalf but is acting as cover or dummy for another person who is actively conducting the agency and is disqualified for registration. 10

Correction of register.

Alterations. **8.** The board shall from time to time insert in the register any alteration which may come to its knowledge in the name or address or description of any registered agent. 15

List of registered agents.

Publication of list. cf. L.A. Act, 1912 (N.Z.), s. 5. **9.** (1) The board shall cause a list of all registered agents to be from time to time and not less frequently than once in every year printed in the Gazette, and separately printed in pamphlet form and published and sold by the Government Printer and the registrar. 20

List shall be evidence. (2) A copy of any such list for the time being purporting to be printed and published in pursuance of this Act shall be evidence in all cases (unless and until the contrary be made to appear) that the persons and firms therein named are registered agents; and the absence of the name of any person or firm from such copy shall be evidence (unless and until the contrary be made to appear) that such person or firm is not a registered agent: 25 30

Provided that in the case of any person or firm whose name is not entered in such copy a certificate under the hand of the registrar of the entry of the name of such person or firm in the register shall unless his name has been subsequently removed from the register, or unless his registration has been suspended or cancelled, be evidence that such person or firm is a registered agent. 35

Fee

Fee for registration.

10. (1) Subject to this Act the board shall charge a fee for registration of ten pounds and an annual fee of the same amount for renewal of the registration. Fees. cf. L.A. Act, 1912, s. 4 (3), N.Z.

5 (2) In a case where a firm is registered and has paid the prescribed fee, one member of the firm shall on application be registered without fee, and each other member of the firm shall on application be charged one-half the prescribed fee paid by the firm. This provision cf. Auctioneers Licensing Act, 1898, s. 4 (2).

10 shall apply in like manner to renewals.
(3) In the case of the retirement from a firm of any registered agent his registration shall be cancelled, and he shall be entitled, if he apply, and subject to this Act, to be again registered, on payment of a fee of one 15 pound; but this provision shall not apply to renewals of such registration.

(4) In the case of the decease or retirement of any registered agent who is a member of a firm, any person who may within the same licensing year succeed 20 him as a member of that firm shall, subject to this Act, be registered on payment of a fee of one pound; but this provision shall not apply to renewals of such registration.

(5) Where an agent produces a certificate from the Commissioners of Taxation or otherwise satisfies the 25 board that his taxable income from his business as an agent, according to the then last preceding assessment for State income tax, was a stated sum, and such sum is less than one thousand pounds, the board shall reduce the fee for registration or renewal of registration in 30 accordance with the scale prescribed in Schedule One to this Act.

Registration to be annual.

11. Every registration and renewal shall lapse on the expiration of twelve months from the date of registration or renewal as the case may be, but may be renewed. Each renewal shall date from the expiration of the registration renewed. Annual registration. cf. L.A. Act, 1912, N.Z., s. 5.

Certificate of registration.

12. Where any person or firm is registered under this Act the registrar shall on demand furnish him with a certificate of such registration. Certificates. Such

Such certificate shall be in the prescribed form.

Such certificate shall be the property of the board.

Such certificate shall be returned to the board on lawful demand or on failure to renew registration under this Act, or on the ceasing, suspension or cancellation of such registration.

False representations.

Procuring registration improperly.

13. Any person who wilfully procures or attempts to procure himself or any firm to be registered under this Act by making or producing or causing to be made or produced any false or fraudulent declaration, certificate, or representation, either orally or in writing or otherwise, and any person aiding and assisting him therein shall be guilty of a misdemeanour, and shall be liable to a penalty not exceeding *one hundred* pounds or to be imprisoned with or without hard labour for any term not exceeding *twelve* months.

PART III.

REMOVAL, SUSPENSION, AND CANCELLATION.

Voluntary removal from register. 20

Voluntary surrender of registration.

14. (1) Any registered agent may apply to have his name removed from the register.

(2) Any firm may apply to have any registration altered, in accordance with the facts, consequent upon any change in the membership of the firm. 25

(3) The board may thereupon remove or alter the registration accordingly.

Removal on death.

Removal of name of deceased person.

15. The board shall remove from the register the name of every deceased person. 30

Removal on ceasing to practise.

Ceasing to practise.

16. The board may remove from the register the names of any agents who have ceased to practise as agents; but (save as by this Act expressly provided) shall not do so without first obtaining the consent of those agents. 35

Suspension

Suspension or cancellation.

- 17. The board may suspend or cancel the registration of any registered agent under this Act—
 - 5 (a) if such agent has been registered erroneously or in consequence of any false or fraudulent declaration certificate or representation ; or
 - Suspension or cancellation. cf. L.A. Act, 1912, s. 11, N.Z. cf. Pharmacy Act, 1897, s. 9.
 - (b) if such agent was at the time of registration, or if after registration he became, disqualified for registration under this Act; or
 - cf. Dentists Act, 1912, s. 8.
 - 10 (c) if such agent has failed to pay within three months after service of a written demand from the registrar any fee due from him under this Act; or
 - (d) if such agent is proved to the satisfaction of the board to have been guilty of a breach of this Act in relation to trust moneys; or
 - 15 (e) if such agent is proved to the satisfaction of the board to have failed to render a correct account of trust moneys; or
 - 20 (f) if such agent has failed to lodge or to renew the fidelity guarantee required by this Act, or if such guarantee be cancelled by the guarantor or insurance agency and not replaced by another guarantee.

25 Procedure prior to refusal, suspension, or cancellation.

- 18. (1) Where any information comes to the knowledge of the board which appears to the board to disclose a prima facie case for the suspension or cancellation of the registration of any registered agent the board may direct the registrar to call upon such agent to show cause why his registration should not be suspended or cancelled; and in such case the registrar shall furnish to him reasonable particulars of the aforesaid information.
 - 30 (2) Thereupon the agent so called upon may either show cause in writing, or may request the board to hold a public inquiry.
 - Inquiry re suspension or cancellation.
 - (3) Where the board proposes to refuse to register any agent such agent may request the board to hold a public inquiry.
 - Inquiry re refusal to register.

(4)

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Board may hold inquiry.

(4) Where any agent has shown cause in writing against suspension or cancellation as aforesaid, the board may of its own motion, and where any agent has requested the board as aforesaid, the board shall hold a public inquiry with respect to the matter. 5

(5) If the registered address of the agent be situated outside the county of Cumberland the inquiry shall, if he so request, be held at some place chosen by the board convenient to such address.

Powers of board. cf. Electrical Contractor's Licensing Act, s. 14.

(6) For the purpose of any such inquiry the board and its president shall have power to examine any person on oath or take a statutory declaration from any person. 10

(7) (i) The president of the board may in writing under his hand summon any person to attend before the board for the purpose of being examined with respect to the subject-matter of the inquiry. 15

(ii) Every person duly summoned as aforesaid who does not attend after reasonable expenses have been paid or tendered to him, or refuses to be sworn or to answer any lawful question, shall be liable to a penalty not exceeding *twenty* pounds. 20

Inspection of accounts.

19. (1) The board may at any time on the written request of a client of any agent, or in any case where an agent has been called upon to "show cause," appoint any member of a recognised institute of accountants or officer of the board or of the Public Service an inspector, and authorise him to inspect the books and accounts of the agent. 25

(2) Any person who obstructs an inspector, and any agent or servant of an agent who refuses to answer any question (except upon the ground that to answer would tend to incriminate him) or who gives an untruthful answer to any question asked by an inspector, shall be guilty of an offence, and liable to a penalty not exceeding *fifty* pounds. 30

(3) The inspector shall report to the board.

(4) The board shall furnish to the agent concerned a copy of the inspector's report.

(5) The board may, if it see fit, communicate a portion or the whole of the inspector's report to any client of the agent directly concerned thereby. 40

Notice

Notice to be given by board.

20. (1) Where the board refuses to register any agent, or suspends or cancels the registration of any agent, or where the board removes the name of any agent from the register, notice thereof shall be served upon such agent. Notice of refusal, suspension, or cancellation.

(2) Such agent may within one month after service of such notice appeal therefrom to a judge of the District Court. Appeal to a district court judge.

10 Such appeal shall be a rehearing of the matter in respect of which the decision of the board was given, and the said judge may confirm, amend, or rescind any decision, order, or direction of the board.

15 For the purpose of such rehearing the judge shall have the powers of a commissioner under the Royal Commissions Act, 1923, and his decision shall be final and shall be carried out by the board and by the registrar.

PART IV.

20 RIGHTS, DUTIES, AND LIABILITIES OF REGISTERED AGENTS.

Right to practise.

21. Registration under this Act shall (except where such registration has been suspended or cancelled, or the name of such person or firm has been removed from the register) authorise the person or firm registered to act as an agent in any place in New South Wales. Right to act as agent.

Trust moneys—How to be dealt with.

22. (1) An agent receiving any moneys on behalf of any person in respect of any sale or disposal of land or buildings or any estate or interest therein, or in respect of the letting or collection of the rents of land or buildings, or in respect of the sale of stock, shall as soon Trust moneys. cf. L.A. Act, 1912, s. 8 (N.Z.).

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soon as is practicable pay such moneys into a bank to a trust account in the name of the agent: Provided that this shall not apply if the agent has already paid to the seller or to his order the amount due in anticipation of its collection.

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(2) All such moneys shall be kept and accounted for separately from the moneys of the agent, who shall cause such trust account to be audited at least once in each six months by a member of any recognised institute of accountants.

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Penalty.

(3) Every agent who commits a breach of this section shall be liable to a penalty not exceeding *fifty* pounds.

Trust moneys not available to pay debts of agent.

(4) Moneys so paid into any such trust account shall not be available for the payment of any debt or claim of any person other than the person on whose behalf it was so received, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other person.

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(5) Notwithstanding any of the provisions of this Act a bank shall not be under any obligation to control or supervise the operations upon any such trust account or to see to the application by the agent of any moneys drawn out of such trust account.

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(6) Upon application made to it by any incorporated company the board may grant to such company an exemption from any of the provisions of this section; and thereupon such provisions shall cease to apply to such company. The board may revoke any such exemption.

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Accounts of trust moneys.

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Account of trust moneys. cf. L.A. Act, 1912, s. 9 (N.Z.).

23. (1) An agent receiving any moneys in respect of any sale, disposal, letting, or collection as aforesaid shall within one month after such receipt render to the person on whose behalf the sale, disposal, letting, or collection was made an account in writing of all such moneys and of the application thereof, except where that person, by order in writing, directs otherwise, in which case the agent shall comply with such order.

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Penalty.

(2) Every agent who fails to render such account, or who fails to comply with any reasonable order

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order

order made as aforesaid, shall be liable to a penalty not exceeding *five* pounds; and the court before which any such penalty is recovered may order the rendering of such an account or compliance with such order within a reasonable time, and may impose a penalty not exceeding *five* pounds per day for each day of delay beyond such time.

Fraud and false accounts.

24. An agent shall be liable on indictment to a ^{Fraud.} penalty not exceeding *five hundred* pounds or at the ^{cf. L.A. Act,} discretion of the court to imprisonment for a term not ^{1912, s. 10} exceeding ten years if he ^{(N.Z.).}

(a) misappropriates or fraudulently converts to his own use any moneys received by him in respect of any sale, disposal, letting, or collection of the rents of any land or buildings, or of any estate or interest in land or buildings or moneys received by him in respect of any sale of stock; or

(b) fraudulently renders an account of any such moneys knowing the same to be false.

Civil remedies not affected.

25. Nothing in this Act shall affect any civil remedy ^{Civil} which any person may have against an agent in respect ^{remedies.} of any matter. ^{cf. L.A. Act,} ^{1912, s. 12} ^{(N.Z.).}

Agent's engagement to be in writing.

26. (1) An agent shall not be entitled to sue for or ^{Written} recover any commission, reward, or remuneration for or ^{engagement.} in respect of the sale or disposal of land or buildings or ^{cf. L.A. Act,} ^{1912 (N.Z.),} ^{s. 13.} any estate therein, or in respect of the letting or collecting of the rents of land or buildings, such sale, disposal, letting, or collecting being made or effected after the expiration of six months from the commencement of this Act, unless his engagement or appointment to act **35** as agent in respect of such sale, disposal, letting, or collecting is in writing signed by the person to be charged with such commission, reward, or remuneration, or by some person firm or company acting by authority of that person. (2)

(2) Unless the amount or rate of such commission, reward, or remuneration is stated in any such written engagement or appointment it shall be understood that commission shall be payable at the usual rates.

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Change of address.

Change of address.

cf. L.A. Act, 1912 (N.Z.), s. 7 (2).

27. Every agent shall forthwith upon any change of his address serve notice thereof on the registrar with a view to the correction of the register.

Sales of stock.

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Proceeds of stock sales.

28. Every agent shall, except where otherwise directed by written authority from his principal, pay to the persons entitled thereto the proceeds of the sale of any stock (less the agent's legitimate charges) within three days after the receipt of such proceeds.

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PART V.

DISABILITIES OF UNREGISTERED AGENTS.

What unregistered agents may not do.

Unregistered agents.

cf. L.A. Act, 1912 (N.Z.), ss. 3 and 14.

cf. ss. 17, 18, Pharmacy Act, 1897.

cf. s. 12, Dentists Act, 1912.

cf. s. 19, Auctioneers' Licensing Act, 1898.

29. (1) After the expiration of six months from the commencement of this Act it shall not be lawful for any person or firm—

- (a) to carry on the business of an agent; or
(b) to hold himself out to the public as or to use any title, description, or addition implying that he is an agent;

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- (c) to sell or otherwise dispose of land or buildings or any estate or interest therein, or to find tenants for, or to collect the rents of land or buildings, as agent for any commission, fee, compensation, or reward;

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- (d) to sell stock as agent for any commission, fee, compensation, or reward,

unless he is registered under this Act as an agent, and such registration is in force.

(2)

(2) Any person acting in contravention of this section shall be liable to a penalty not exceeding *fifty* pounds.

(3) This section shall not extend—

- 5 (i) to the Public Trustee or any trustee company or official assignee ;
- (ii) to any person or firm in the employ of the Crown or of a statutory body constituted for public purposes, and acting in the course of
- 10 such employment ;
- (iii) to any executor, administrator, or other personal representative, or to any trustee however constituted, or to any committee of an insane person or patient, or to any manager of the
- 15 estate of an insane person or patient or incapable person, or to any receiver, sequestrator or liquidator, or to any attorney acting under a power of attorney.

Unregistered person not entitled to recover.

- 20 **30.** A person or firm shall not be entitled to sue for No right of
or recover any commission, reward, or remuneration for recovery.
or in respect of the sale or disposal of land or buildings, cf. s. 13,
or any estate or interest therein, or in respect of the L.A. Act,
letting or collecting of the rents of land or buildings, 1912 (N.Z.).
- 25 or any sale of stock, such sale, disposal, letting, or collecting being made or effected after the expiration of six months from the commencement of this Act unless he was at the time of such sale, disposal, letting, or collecting registered under this Act as an agent.

30 *Onus of proof that person is registered.*

- 31.** In any proceedings in any court against any Proof of
person or firm who is alleged to be not registered under registration.
this Act as an agent, proof that he is so registered shall cf. s. 15,
lie on the defendant. L.A. Act,
1912 (N.Z.).

PART VI.

THE REAL ESTATE AND STOCK AGENTS BOARD.

Establishment of board.

Board. **32.** A board, to be called "The Real Estate and Stock Agents Board," is hereby established. 5

Body corporate.

Body corporate. **33.** The board shall be a body corporate with perpetual succession and a common seal and with power to sue and be sued in its corporate name.

Composition of board.

Membership. **34.** (1) The board shall consist of a president and six other members. 10

(2) The six members, other than the president, shall consist of three persons primarily engaged in real estate agency and three persons primarily engaged in stock and station agency, and after the appointment of the first board any question as to which class of agency an agent is primarily engaged in shall be decided by reference to the register.

(3) The members of the first board shall be 20 appointed by the Governor.

(4) The members of every board after the first, other than the president, shall (except where otherwise provided) be recommended by the registered agents by election in the manner prescribed, and shall be appointed 25 by the Governor.

(5) The president shall be appointed by the Governor on the recommendation of the other members of the board. In the absence of the president the members shall elect a chairman who for the time being 30 may act as president.

Disqualification for membership.

Disqualification for membership. **35.** (1) A person shall be disqualified for nomination, recommendation, or appointment to the office of president or member of the board— 35

(a) if he is an uncertificated bankrupt; or

(b)

- (b) if he has compounded with his creditors; or
- (c) if he has assigned his estate for the benefit of creditors :

Provided that, for the first nomination, recommendation, or appointment of the board, the Governor (and for any subsequent nomination, recommendation, or appointment the board) may remove any such disqualification if he or it be satisfied that any person nominated or recommended for appointment has again become a responsible citizen.

(2) A person shall be disqualified for nomination, recommendation, or appointment to the office of member of the board if he is not a registered agent, or is disqualified for registration as agent, provided that this shall not apply to the president, and provided also that this subsection shall not come into operation until six months after the first appointment of the board.

Term of office.

36. (1) The term of office of the members of the first board shall be one year from the date on which the first appointment of a member is made : and the term of office of the members of each succeeding board shall be three years from the end of the preceding term.

(2) If any delay occur in the appointment of members their term of office shall nevertheless expire at the close of the term as provided in the last preceding subsection.

(3) Notwithstanding the preceding provisions of this section a member due to retire from office by effluxion of time may temporarily continue in office until his successor is appointed.

(4) If the office of the president or of any other member of the board become vacant during the term for which he is appointed his successor shall be appointed by the Governor on the recommendation of the board (without reference to the electors) for the remainder of such term.

(5) If a member of the board be sick or be likely to be absent from the meetings of the board for more than

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than three months the Governor may appoint a deputy to act for the member during his sickness or absence. A deputy shall have the same powers, rights, and duties as the member for whom he is appointed to act.

(6) In this section "member" includes "president."

Selection of persons for nomination to Governor.

Selection of members.

37. (1) The selection of persons to be recommended for appointment as members of the board shall (except where otherwise provided) be carried out by election in the manner prescribed by regulation.

(2) Every person who is a registered agent shall be an elector at the election of persons to be recommended for appointment to each board after the first board.

(3) A firm which is a registered agent shall not be an elector, but this subsection shall not prevent persons connected with the firm, if qualified, from exercising their rights as electors.

(4) The election shall be conducted by postal ballot as prescribed.

(5) Each elector shall vote for as many candidates as there are vacancies to be filled.

Governor may appoint in certain cases.

Appointment of members.

38. If there is a failure to recommend members, or a failure to recommend sufficient members, for appointment by the Governor—

(a) within three months before the termination of any board's term of office; or

(b) within two months after the occurrence of an extraordinary vacancy is notified to the board,

the Governor may, in any such case, appoint to the vacant offices persons who are not disqualified.

Vacation of office.

Office vacated.

39. A member of the board shall be deemed to have vacated his office—

(a) if, being a registered agent, his registration be suspended or cancelled; or

(b) if, being a registered agent, he cease to be registered; or

(c)

- (c) if he become a bankrupt ; or
- (d) if he compound with creditors ; or
- (e) if he assign his estate for the benefit of creditors ; or
- 5 (f) if he die or if he become an insane person, an insane patient, or an incapable person within the meaning of the Lunacy Act, 1898 ; or
- (g) if he be absent from three consecutive meetings of the board without leave granted by the
- 10 Governor ; or
- (h) if he resign his office by writing under his hand delivered to the registrar.

Temporary vacation of office.

40. (1) The president or any other member of the Temporary vacation of office. board shall temporarily vacate his office on the board immediately on being called upon under this Act to show cause why his registration should not be suspended or cancelled.

(2) A temporary appointment to the vacant office may be made by the Governor on the recommendation of the board.

(3) The person so appointed shall hold office only until the determination of the question of suspension or cancellation aforesaid.

25 (4) If the registration aforesaid be neither suspended nor cancelled the president or member who has so temporarily vacated his office may resume such office.

Fees.

30 41. (1) The president of the board may be paid such fees for his services as the Governor may approve. Fees and expenses.

(2) Each member of the board shall be paid a fee of one guinea for each meeting of the board which he attends, provided that the fees paid to any member As to accounts, see s: 52 post. during any year shall not exceed twenty-five guineas.

35 (3) The board may grant to any of its members resident more than fifteen miles from the city of Sydney, a reasonable allowance for expenses of travelling and subsistence for the purpose of attending meetings of the board. *Procedure*

Procedure.

Procedure at meetings.

42. The procedure for the calling of the board meetings, and for the conduct of business at such meetings, shall be as fixed by resolution of the board, subject to any regulations with regard thereto.

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Quorum.

Quorum.

43. (1) Three members of the board shall form a quorum.

(2) Any meeting at which a quorum is present shall be competent to transact the business of the board 10 by vote of the majority of those present.

President's powers and casting vote.

President.

44. (1) The president or chairman shall preside at meetings of the board.

(2) The president or chairman shall have a deliberative, but not (save as hereinafter mentioned) a casting vote.

(3) If the voting on any business be equal, such business shall be postponed to the next meeting; and notice of such business and of the fact that the voting 20 was equal shall be given on the notice calling such next meeting.

(4) If the voting at such next meeting be again equal, the president or chairman may give a casting vote or may further postpone such business, and at any 25 postponed consideration if the voting be again equal, he may give a casting vote.

Board's common seal.

Seal.

45. The seal of the board shall not be attached to any document without a resolution of the board for that 30 purpose, and shall be authenticated by the signatures of three members of the board and its registrar.

Evidence on which board may act.

Evidence.

46. In the exercise and performance of its powers and duties under this Act the board may act on such 35 evidence as in each case appears to it to be sufficient.

Premises

Premises of the board.

47. The board may take on lease such offices as may be necessary for transacting its business under this Act. Leasing of premises by board.

5

Staff.

48. A registrar and such other officers as may be necessary may be appointed by the Governor on the recommendation of the Public Service Board. Servants.

Acts valid notwithstanding informalities.

49. All acts and proceedings of the board shall be valid notwithstanding any vacancy in the board or any irregularity in the appointment or continuance in office of any member of the board and notwithstanding that any person not qualified or ceasing to be qualified may have acted as a member of the board. Validation.

10
15

Annual report.

50. The board shall each year submit a report to Parliament, giving information as to its work and as to its general decisions in the course thereof. Report.

20

51. No action shall lie against the president or any member of the board for any act or thing done by him under any authority conferred upon him by this Act or by any regulation thereunder. Freedom from liability.

PART VII.

25

FINANCE.

Income.

52. All moneys received by the board under this Act shall be paid into the Consolidated Revenue Fund. Accounts.

Expenditure.

30

53. The expenses of the administration of this Act shall be paid out of moneys appropriated therefor by Parliament. Expenses.

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PART VIII.

GENERAL.

Falsification of register.

Offences.
cf. s. 14,
Pharmacy
Act, 1897.
cf. s. 14,
Dentists Act,
1912.

54. Any person who wilfully makes or causes to be made any falsification in the register or in any certificate of registration shall be deemed guilty of a misdemeanour and shall be liable to a penalty not exceeding *one hundred* pounds or to be imprisoned with or without hard labour for any term not exceeding *twelve* months.

5
10

Service of notices.

Notices.

55. (1) Notices under this Act or the regulations may be served by post or personally.
(2) Notices to "show cause," if served by post, shall be registered.

15

Registered address of agent.

Service of
writs, &c.

56. All writs, notices, or other documents required to be served or given to an agent shall be deemed to be duly served or given if left at his registered business address.

20

Offences.

Agent
receiving
bonus.

57. (1) Any agent who charges or receives from any person, in respect of the renting of any premises for purposes of residence, any fee, bonus or reward other than the usual commission or fee payable by the owner, lessor or person entitled to the rent of the premises shall be liable to a penalty not exceeding *fifty* pounds.

25

Agent
sharing
commission.

(2) Any agent who, in connection with any sale made through his agency, makes any payment of part or the whole of his commission to the buyer shall be liable to a penalty of *fifty* pounds.

30

Recovery of penalties.

Proceedings
for penalties.

58. Penalties under this Act or the regulations may be recovered in a summary way before any two justices in petty sessions.

35

Regulations

Regulations.

59. (1) The Governor may make regulations for carrying this Act into effect, and in particular for and with respect to—

Regulations.
cf. s. 17 L.A.
Act, 1912
(N.Z.).

- 5 (a) the form and manner of application for registration ;
- (b) the procedure at meetings of the board ;
- (c) notices, documents, and forms ;
- 10 (d) the procedure in relation to the removal of names from the register, and in relation to the suspension or cancellation of registration ;
- (e) a common form of instructions suitable to be given by owners when authorising the sale of stock ; and
- 15 (f) matters which may be prescribed.

(2) After the first appointment of the board the power to make regulations under this section shall be subject to the recommendation of the board.

(3) By such regulations a penalty not exceeding 20 five pounds may be imposed for any breach thereof, or for any breach of any provision of this Act for which no specific penalty is provided.

(4) A regulation shall—

- 25 (a) be published in the Gazette ;
- (b) take effect from the date of publication or from a later date to be specified in the regulation ; and
- (c) be laid before both Houses of Parliament within 30 fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament pass a resolution, of which notice has been given, at any time 35 within fifteen sitting days after such regulation has been laid before such House disallowing the regulation or any part thereof, such regulation or part shall thereupon cease to have effect.

(6) Subject to the provisions of this section, a 40 regulation shall have the force of law.

Continuation

211

Continuation of name in register.

Continuation
of name of
deceased
agent.

60. Notwithstanding any other provision of this Act, upon the death of an agent the board may refrain from removing his name from the register, and may permit his executor, administrator, or trustee to carry on under the name of the deceased agent the business formerly carried on by him, provided that the business shall be carried on under the personal superintendence of an agent whose name shall be registered as superintendent of the business. 5 10

Saving for members of other professions.

Rights of
others.

61. Nothing in this Act shall be construed as prohibiting any person not being a licensed auctioneer or registered agent from performing any function or exercising any power which if this Act had not been passed he would have been entitled to perform or exercise under the express authority or direction of any public or private Act, or as prohibiting any person enrolled as a solicitor or as a member of any recognised institute of accountants from performing in the course of his regular professional practice any service customarily performed by solicitors or public accountants for clients and arising out of such regular professional practice, or as preventing any such person from recovering the customary remuneration therefor, or as rendering any such person liable to any proceedings or to any penalty for performing such function or exercising such power. 15 20 25

Act not to affect obligation to take out license under other Acts.

Licenses
under other
Acts.
See
Auctioneers
Licensing
Act, 1898.

62. (1) Nothing in this Act shall be construed as relieving any person from any obligation to take out any license for the performance of any function or the exercise of any power for which such a license would have been required if this Act had not been passed, or from any obligation to pay the fees payable upon taking out any such license. 30 35

(2)

(2) Nothing in this Act shall operate so as to prohibit or prevent the holder of any such license from performing any such function or exercising any such power, or to render him liable to any penalty in respect thereof.

Powers.

- 63.** (1) The board may examine any person on oath or take a statutory declaration from any person for the purposes of this Act. Power of board to examine on oath.
- 10 (2) If any person wilfully makes any false statement on such examination, or in such declaration, or utters, or attempts to utter, or put off as true before the board, any false, forged, or counterfeit certificate, letter, testimonial, or other document or writing, he shall be
- 15 guilty of a misdemeanour, and shall be liable to imprisonment with or without hard labour for any period not exceeding *twelve* months, or to a penalty not exceeding *one hundred* pounds.
- 64.** (1) The president of the board may, in writing Power to summon witnesses.
- 20 under his hand, summon any person to attend before the board for the purpose of being examined with respect to any matter within the jurisdiction of the board.
- (2) Every person duly summoned as aforesaid who does not attend after reasonable expenses have been
- 25 paid or tendered to him, or, attending, refuses to be sworn or to make statutory declaration or refuses to be examined or to give evidence or to answer any question that the board may legally ask him, shall be liable to a penalty not exceeding *twenty* pounds.

SCHEDULES.

SCHEDULE ONE.

Scale of Fees for registration or renewal of registration.

Income from business of "Agent."	Fee.
Under £250	£ s. d. 2 10 0
£300 and under £400	3 0 0
£400 and under £500	4 0 0
£500 and under £600	5 0 0
£600 and under £700	6 0 0
£700 and under £800	7 0 0
£800 and under £900	8 0 0
£900 and under £1,000	9 0 0
£1,000 and over	10 0 0

SCHEDULE TWO.

15

FORM OF FIDELITY BOND.

In the matter of the "Real Estate and Stock Agents Act, 1925,"
and

In the matter of an application by.....
of..... 20
for a license under the said Act.

Fidelity Bond.

Know all men by these presents that.....(obligor)
.....(address) is bound to the Real
Estate and Stock Agents Board in accordance with the provisions of 25
the Real Estate and Stock Agents Act, 1925, in the sum of five
hundred pounds (£500) for the payment by way of indemnity only to
any person for any loss sustained by such person during the currency
of this Bond by reason of the misappropriation or fraudulent conversion
of any trust moneys as defined by the said Act and received on behalf 30
of such person by.....(agent) whilst acting
for such person as agent within the meaning of the said Act.

For which payment the said.....(obligor)
hereby binds itself firmly by these presents.

The

Real Estate and Stock Agents.

The condition of the above-written Bond is that if the abovenamed
(agent) shall obtain a license as
 required by the said Act to carry on the business of agent and as such
 agent shall at all times during the continuance of such license and
 5 during the currency of the said Bond duly and punctually account for
 all moneys received by him (or his firm or any member thereof) in
 manner provided by the said Act then the said Bond shall be void but
 (unless cancelled as provided herein) the said Bond shall remain in full
 force and virtue for a period of one year from the date hereof, and
 10 thereafter for one year from the date of any subsequent renewal.

Provided always that the said.....(obligor)
 may terminate the above-written Bond at any time by giving twenty-
 eight (28) days' notice in writing thereof to the Real Estate and Stock
 Agents' Board of its (his) intention so to do.

15. Signed, &c.

Real Estate and Stock Agents Bill, 1925.

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Real Estate and Stock Agents Bill, 1925.

EXPLANATORY NOTE.

THE object of this Bill is to provide for the registration of Real Estate Agents and Stock and Station Agents, in order to afford protection to the public against unscrupulous agents, and to afford protection to reputable agents. The need for such protection has been brought prominently before the public by recent disclosures in the Courts as to the practices of a certain class of agents; and both the Courts and the public Press have urged the need for a measure of regulation and control in the interests of the general public.

The Bill was originally prepared in consultation with bodies representing the Real Estate Agents and the Stock and Station Agents. When it was previously presented to Parliament there was a certain amount of opposition from a new Association which was formed to represent what were described as "the smaller Agents." The objections of this body were considered, and amendments were made in the Bill, as the result of which their objections were withdrawn. Since then the two Associations have amalgamated.

The Bill provides that a person shall not practise as a Real Estate Agent or a Stock and Station Agent unless he is registered, and he must be registered in respect of a definite office address, thus abolishing the "kerbstone" type of agent. The only qualifications necessary for registration will be:—Age 21, good character, and fidelity guarantee. There will not therefore be any danger of the Bill closing the calling of estate agent to any man of good character.

There is provision, however, whereby persons of bad character can be refused registration, or if admitted can subsequently be excluded after being duly given an opportunity to "show cause."

The administration of the measure is proposed to be placed in the hands of a "Real Estate Agents Board," which (though at first appointed by the Governor) will eventually be elected by the registered agents, except that the Chairman will be appointed by the Governor.

The Bill contains provision requiring agents to keep proper accounts, to keep clients' moneys apart from their own moneys (in a Trust Account), to furnish prompt accounts to clients, and so on.

The agents will pay an annual registration fee according to a scale in the Bill ranging from £2 10s. to £10. It is estimated that the income will be about £15,000, and the cost of administration about £1,400, leaving a net gain to the Treasury of £13,600.
