

1975 Bill 85  
(Second Session)

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First Session, 18th Legislature, 24 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 85**

**THE REAL ESTATE AGENTS' LICENSING  
AMENDMENT ACT, 1975**

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HON. MR. MCCRAE

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First Reading .....

Second Reading .....

Third Reading .....

# **BILL 85**

1975

(Second Session)

## **THE REAL ESTATE AGENTS' LICENSING AMENDMENT ACT, 1975**

(Assented to \_\_\_\_\_, 1975)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

*1. The Real Estate Agents' Licensing Act is hereby amended.*

*2. Section 2 is amended*

- (a) by renumbering the section as subsection (1);*
- (b) as to renumbered subsection (1), by adding after clause (b) the following clauses:*
  - (b1) "Court" means the Supreme Court of Alberta;
  - (b2) "continuous use" means the right to possession for a period of time which is greater than seven consecutive days but less than 12 consecutive months;
- (c) as to renumbered subsection (1), by adding after clause (c) the following clause:*
  - (c1) "licensed person" means a person who is the holder of a licence issued by the Superintendent under this Act and includes a representative designated under section 7;
- (d) as to renumbered subsection (1), by adding after clause (g) the following:*
  - (g1) "property user's licence" means a licence permitting the residential use of furnished real property under which
    - (i) the licensee may have residential use of that property or any substituted property for two or more periods of continuous use,
    - (ii) at least one period of continuous use following the first period of continuous use

## Explanatory Notes

**1.** This Bill will amend chapter 311 of the Revised Statutes of Alberta 1970.

**2.** Section 2 is renumbered as subsection (1) and defines "Court", "licensed person" and "property user's licence". The new subsection (2) provides for the location of a property user's licence.

Section 2, clauses (h), (j) and (k) presently read:

2. In this Act,

(h) "real estate" means

- (i) real property and leasehold property, and
- (ii) any business, whether with or without premises, and the fixtures, stock-in-trade, goods or chattels in connection with the operation of the business;

(j) "Superintendent" means

- (i) the Superintendent of Insurance, or
- (ii) the Deputy Superintendent of Insurance, appointed under the provisions of The Alberta Insurance Act;

(k) "trade" means

- (i) a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise,
- (ii) any offer or attempt to list real estate for the purpose of such disposition or transaction referred to in subclause (i), and
- (iii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of such a disposition, acquisition, transaction, offer or attempt,

and the verb "trade" has a corresponding meaning.

- commences in a year subsequent to the year in which the first period of continuous use commences, and
- (iii) the licensee is required to pay, during or prior to the year in which any period of continuous use commences, a consideration for the residential use of that property or any substituted property for any period of continuous use commencing in any subsequent year;
- (e) *as to renumbered subsection (1), by striking out clause (h) and by substituting therefor the following:*
- (h) “real estate” means
- (i) any real property, or
  - (ii) any leasehold property, or
  - (iii) any business, whether with or without premises, and the fixtures, stock-in-trade, goods or chattels in connection with the operation of the business, or
  - (iv) any property user’s licence;
- (f) *as to renumbered subsection (1), by striking out clause (j) and by substituting therefor the following:*
- (j) “Superintendent” means
- (i) the Superintendent of Real Estate, or
  - (ii) the Deputy Superintendent of Real Estate;
- (g) *as to clause (k) of renumbered subsection (1), by adding the word “or” at the end of clause (i) and by striking out the word “and” at the end of subclause (ii) and by substituting therefor the word “or”,*
- (h) *by adding after renumbered subsection (1) the following:*
- (2) For the purposes of this Act, a property user’s licence is deemed to be located where the furnished real property in respect of which the licence is granted is located.
3. *Section 3, clause (b) is amended by striking out the word “loan,”.*
4. *Section 4, subsection (1) is amended*
- (a) *by striking out clause (b) and by substituting therefor the following:*
- (b) act as an official of or on behalf of an agent that is a partnership or corporation in connec-

**3. Section 3, clause (b) presently reads:**

3. This Act, except sections 41 to 52, does not apply to
- (b) any bank or any loan, trust or insurance company trading in real estate owned or administered by the company, or

**4. Section 4 (1) presently reads:**

4. (1) No person shall
- (a) trade in real estate unless he is licensed as an agent or as a salesman of a licensed agent, or
  - (b) act as an official of or on behalf of a partnership or corporation in connection with a trade in real estate by the partnership or corporation, unless he or the partnership or corporation is licensed as an agent, or
  - (c) act as a salesman of or on behalf of a partnership or corporation in connection with a trade in real estate by the partnership or corporation unless
    - (i) he is licensed as a salesman of the partnership or corporation, and
    - (ii) the partnership or corporation is licensed as an agent.

tion with a trade in real estate by that agent, unless he is licensed as a salesman of that agent or that agent has designated him as its representative under section 7,

(b) *by striking out clause (c).*

5. *Section 5, subsection (2) is amended by striking out the words "or a renewal thereof".*

6. *Section 6 is struck out and the following is substituted therefor:*

**6.** An agent is not eligible to be licensed or to hold a licence unless he maintains a business office in Alberta.

7. *Section 7 is amended*

(a) *as to subsection (1), by striking out the word "firm,"*

(b) *by striking out subsection (2) and substituting therefor the following:*

(2) An individual shall not be designated as the representative of an agent that is a partnership or corporation unless he meets the qualifications required of an agent under this Act.

(c) *as to subsection (3), by striking out the word "firm,"*

**5. Section 5, subsection (2) presently reads:**

- (2) Each application for a licence of a salesman or a renewal thereof shall have attached thereto in a form approved by the Superintendent
- (a) a recommendation of the applicant, made by or on behalf of a licensed agent, and
  - (b) a declaration that the applicant, if granted a licence, is to act as a salesman employed by and representing the agent making the declaration or on whose behalf the declaration is made.

**6. Section 6 presently reads:**

6. (1) No agent shall be licensed unless he maintains an office within the Province satisfactory to the Superintendent from which he conducts his real estate business or a portion thereof.
- (2) No person shall be licensed as an agent unless the Superintendent is satisfied after investigation that the person is qualified to be licensed as an agent at the time of his application.

**7. Section 7 presently reads:**

7. (1) A firm, partnership or corporation
- (a) may apply for and obtain a licence in the name of the firm, partnership or corporation, and
  - (b) shall designate one individual who shall act as its or their representative.
- (2) If a licence is granted, when it is issued it shall
- (a) be in the name of the firm, partnership or corporation, and
  - (b) state thereon the name of the individual who is authorized to act as an agent on behalf of the firm, partnership or corporation.
- (3) Any associate, partner or employee of an agent, and any officer, member or employee of a firm, partnership or corporation licensed as an agent may apply for and obtain a licence authorizing the holder thereof to act as a salesman.

*8. Sections 8 and 9 are struck out and the following is substituted therefor:*

**8. (1)** Where a person wishes to be licensed under this Act he shall make application to the Superintendent for a licence.

**(2)** The Superintendent may issue a licence to an applicant

(a) upon an application being made under subsection (1), and

(b) upon being satisfied that the applicant is suitable to be licensed, having regard to that applicant's training, competency and personal integrity.

**(3)** A person is not eligible to be licensed unless

(a) in the case of an individual, that person is a resident of Alberta and has been a resident of Canada for not less than three months immediately prior to the date of his application for a licence, or

(b) in the case of a partnership or corporation, that partnership or corporation, at the time of its application for a licence, maintains a business office in Alberta.

**(4)** The Superintendent may cancel or suspend a licence of a licensed person

(a) where that licensed person contravenes or fails to comply with any provision of this Act or the regulations, or

(b) where, in the case of a licensed agent, the funds in the trust account of that agent are less than the amount that he is accountable for, or

(c) where, in the case of a licensed agent, that agent has misappropriated funds that he holds in trust, or

(d) where it is in the public interest to do so, or

(e) where that licensed person induces or attempts to induce a party to a contract concerning a trade in real estate to breach that contract, or

(f) where, in the case of a licensed agent, that agent fails to maintain at his business office proper records that are available for inspection.

**(5)** A licence expires on the 30th day of September following the date on which it is issued unless the licence has previously terminated or has been previously cancelled.

**(6)** Where a licensed person

(a) makes application for a licence for the succeeding year before his existing licence expires, and

(b) the application is accompanied by the prescribed documents and fees,



**8. Sections 8 and 9 presently read:**

8. (1) When an application for a licence or renewal of a licence is received and the prescribed fee is paid, the Superintendent, if he is satisfied that the applicant is suitable to be licensed, and is not for any reason objectionable, may issue to the applicant a licence authorizing the holder during the term thereof to carry on the business of an agent or act as a salesman within the Province.

(2) If the Superintendent after due investigation made by him or his representative is for any reason of the opinion that the applicant should not be granted a licence, he may refuse a licence to the applicant.

(3) No licence shall be issued under this Act

(a) to a person, other than a corporation, who has not had his usual place of abode in the Province for at least three months before the date of his application for a licence, or

(b) to a corporation that does not at the time of the application for a licence maintain a permanent office in the Province.

(4) The Superintendent may suspend or cancel a licence where in his opinion such action is in the public interest.

(5) A licence

(a) expires on the 30th day of September of each year; and

(b) may be renewed on application to the Superintendent and payment of the prescribed fee,

unless the licence has been previously cancelled or suspended by the Superintendent.

(6) No person whose licence has been cancelled is entitled to a new licence for one year after the date of cancellation.

(7) A person dissatisfied with a decision of the Superintendent under this section may appeal therefrom to the Minister whose decision is final.

9. (1) In deciding an appeal under section 8, subsection (7) the Minister may in any case where he considers it proper appoint an advisory board before which a hearing shall be held.

(2) An advisory board shall consist of

(a) a chairman who shall not be the Superintendent or his representative or a person licensed under this Act, and

(b) not less than two and not more than four other persons who shall be persons licensed under this Act.

(3) When the Minister receives a report from an advisory board appointed pursuant to subsection (2) he shall

(a) decide, taking the report into consideration, whether or not the licence should be granted, renewed, suspended, cancelled or reinstated, as the case may be, and

(b) direct the Superintendent to act accordingly.

(4) The Minister may pay to members of the advisory board such fees as may be approved by regulation together with such reasonable travelling and other expenses as he considers proper.

the existing licence remains in force, notwithstanding subsection (5), until the new licence is issued or until the Superintendent notifies the licensed person that he will not be issued a new licence.

(7) Where a person's licence has been cancelled under subsection (4) and that person applies for a new licence, that person is not eligible to be issued a new licence until 12 months have elapsed from the date of the cancellation.

**9.** (1) A person whose licence has been cancelled or suspended under section 8 may appeal the cancellation or suspension to an appeal board.

(2) A person who wishes to appeal the decision of the Superintendent under this section shall, within 30 days of the date that person was served with the notification that his licence was cancelled or suspended, serve the Minister with a notice of appeal.

(3) Upon being served with a notice of appeal under subsection (2), the Minister shall, within 30 days of being served with the notice of appeal, appoint an appeal board to hear the appeal.

(4) Where an appeal board is appointed under subsection (3), the Minister may, from time to time, prescribe the time within which the appeal board shall hear the appeal and render a decision.

(5) Upon hearing an appeal under this section, the appeal board may confirm the decision of the Superintendent, remove or vary the suspension or reinstate the cancelled licence.

(6) Where a person is dissatisfied with the decision of the appeal board, that person may appeal the decision of the appeal board to the Court by way of originating notice within 30 days of the date upon which that person was served with the decision of the appeal board.

(7) An appeal board appointed under this section shall consist of

- (a) a chairman who shall not be the Superintendent or his representative or a person licensed under this Act, and
- (b) not less than two and not more than four other persons who shall be persons licensed under this Act.

(8) The Minister may pay to the members of the appeal board such fees as may be approved by regulation together with such reasonable travelling and other expenses as he considers proper.



*9. Sections 10, 11 and 12 are struck out and the following sections are substituted therefor:*

**10.** (1) Where a person makes application for a licence under section 8, he shall provide the Superintendent with

- (a) a completed application in the form prescribed by the regulations,
- (b) in the case of a person applying to be licensed as an agent, a bond except where that person has previously filed with the Superintendent a bond which remains in full force and effect,
- (c) the fee prescribed by the regulations, and
- (d) the address of the office in Alberta out of which he will conduct his business of trading in real estate.

(2) The Superintendent may from time to time require

- (a) that further information be submitted by an applicant or a licensed person within a time specified by the Superintendent, and
- (b) verification by affidavit or otherwise of any information then or previously submitted.

**11.** A document or other notice under this Act may be served on a licensed person by leaving it at or by sending it by registered post to the address provided by the licensed person pursuant to section 10 or section 13.

*10. Section 13 is amended by striking out subsection (1) and by substituting therefor the following:*

**13.** (1) A licensed agent shall immediately notify the Superintendent in writing of

- (a) a change in the address of his business office;
- (b) the commencement of employment of each salesman employed by him;
- (c) the termination of employment of any salesman employed by him;
- (d) a change in the chartered bank, trust company or treasury branch in which that agent maintains a trust account;
- (e) a change in the partners where that agent is a partnership;
- (f) a change in the officers or directors of a corporation where that agent is a corporation;
- (g) a change of the designated representative where that agent is a partnership or corporation.

**9. Sections 10, 11 and 12 presently read:**

**10.** (1) An application for a licence or a renewal of a licence shall be made in writing on the prescribed form provided by the Superintendent, and shall be accompanied by the prescribed fee.

(2) An application for a licence or a renewal of a licence shall be accompanied by a bond in the prescribed amount and in the prescribed form unless there has been previously filed with the Superintendent a bond which is in full force and effect.

**11.** (1) An applicant for a licence or a renewal of a licence shall state in the application an address for service in Alberta.

(2) The address for service in Alberta shall be at an office operated in the Province by the applicant.

(3) Notices under this Act or the regulations are sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service stated as required by subsection (1).

**12.** The Superintendent at any time may require

- (a) that further information or material be submitted by an applicant or a licensed person within a specified time limit, and
- (b) if he so desires, verification by affidavit or otherwise of any information or material then or previously submitted.

**10. Section 13 (1) presently reads:**

**13.** (1) A licensed agent shall immediately notify the Superintendent in writing of

- (a) a change in the address for service.
- (b) a change in the partners in the case of a partnership, and
- (c) the commencement and termination of employment of each salesman.

*11. Sections 14, 15 and 16 are struck out and the following is substituted therefor:*

**14.** (1) Where an agent who is a principal under a bond mentioned in section 10 has a judgment obtained against him, his designated representative or a salesman employed by him which

- (a) is based on a finding of fraud or breach of trust in respect of a trade in real estate,
- (b) has become final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed, and
- (c) is not satisfied within 30 days of the date that it becomes final,

the bond is forfeited upon the Superintendent notifying the surety in writing that the judgment remains unsatisfied 30 days after the date that it becomes final.

(2) Where a bond is forfeited under subsection (1), the surety shall pay to the Minister

- (a) the amount of the judgment in respect of which the bond was forfeited within 60 days of the date that the bond was forfeited, and
  - (b) the amount of any other judgment obtained against that agent who was the principal under that bond, his designated representative or a salesman employed by him which
    - (i) is based on a finding of fraud or breach of trust in respect of a trade in real estate,
    - (ii) has, within two years of the date that the bond was forfeited, become final by reason of lapse of time or of being confirmed by the highest court to which the judgment may be appealed, and
    - (iii) remains unsatisfied 30 days after the judgment became final,
- within 60 days of being notified in writing by the Superintendent that the judgment has become final.

(3) Where the Minister receives money under subsection (2), he shall pay that money into the Court in trust for those persons who obtained judgments referred to in subsection (2) and upon receiving all the money payable under subsection (2) the Court shall, after two years have expired from the date the bond was forfeited, pay out that money to those persons who obtained those judgments.

(4) Where

- (a) the total amount paid to the Minister by the surety under subsection (2) is less than the face value of the bond forfeited under subsection (1),

**11. Sections 14, 15 and 16 presently read:**

14. (1) A bond mentioned in section 10 is forfeited and the amount thereof becomes due and owing by the person bound thereby as a debt due the Crown in right of Alberta upon any person in respect of the conduct of whom the bond has been conditioned,

- (a) being convicted under the Criminal Code of an offence, committed during the period of the bond, involving fraud, theft or conspiracy to commit an offence involving fraud or theft, or
- (b) having a judgment, based on a finding of fraud or breach of trust in respect of any act or omission occurring during the period of the bond awarded against him, or
- (c) making an assignment in bankruptcy or being made the subject of a receiving order or winding-up order pursuant to the Bankruptcy Act (Canada) or any other statute as a result of any act or omission occurring during the period of the bond,

and in each case the conviction, judgment or order has become final by reason of lapse of time or of having been confirmed by the highest court to which an appeal may be taken.

(2) Proceedings in respect of a bond may be brought within, but not after, two years from the date of the termination of the bond.

(3) Notwithstanding any other provision of this Act the total liability of the surety under the bond shall not exceed the face value of the bond.

15. (1) The Lieutenant Governor in Council may direct the Minister to pay any moneys received or recovered under a bond forfeited under the provisions of section 14

- (a) to such person or persons as the order in council may designate, or
- (b) into court in trust for such persons who before the time limited in subsection (2) obtained judgment against the person bonded, based on a finding of fraud in the trading of real estate.

(2) Any moneys remaining in the court two years after the date the bond was forfeited shall be repaid to the Minister.

16. Where a bond has been forfeited under the provisions of section 14 by reason of a conviction or judgment under subsection (1), clause (a) or (b) thereof and the Superintendent has not within two years

- (a) of the conviction or judgment having become final, or
- (b) of the agent or salesman in respect of whom the bond was furnished ceasing to carry on business,

received notice in writing of a claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Minister, the Lieutenant Governor in Council may direct the Minister to pay the proceeds or portion thereof to any person who on forfeiture of the bond made any payments thereunder, after first deducting the amount of expenses that have been incurred in connection with any investigation relating to the agent or salesman, or have been incurred in relation to the agent or salesman in any other way.

- (b) within two years of the date that the bond was forfeited, an action is commenced against that agent who was the principal under that bond, his designated representative or a salesman employed by him alleging fraud or breach of trust in respect of a trade in real estate, and
- (c) judgment is obtained in that action against that agent, his designated representative or a salesman employed by him which
  - (i) is based on a finding of fraud or breach of trust in respect of a trade in real estate,
  - (ii) has become final by reason of lapse of time or of being confirmed by the highest court to which the judgment may be appealed, and
  - (iii) remains unsatisfied 30 days after the judgment became final,

the surety shall pay to the Minister the amount of the judgment within 60 days of being notified in writing by the Superintendent that the judgment has become final.

(5) Where the Minister receives money under subsection (4), he shall pay that money into the Court in trust for those persons who obtained judgments referred to in subsection (4) and upon receiving all the money payable under subsection (4) the Court shall, after determining to its satisfaction that those actions referred to in subsection (4) that were commenced have been concluded, pay out that money to those persons who obtained judgments.

(6) Where the amount of money paid into Court under subsection (3) is insufficient to satisfy the judgments referred to in subsection (2), the Court shall pay out the money on a pro rata basis.

(7) Where the amount of money paid into Court under subsection (5) is insufficient to satisfy the judgments referred to in subsection (4), the Court shall pay out the money on a pro rata basis.

(8) Notwithstanding any other provisions of this Act, the total liability of a surety under a bond shall not exceed the face value of that bond.

*12. The following section is added after section 16:*

**16.1** (1) A licence issued to an agent under this Act terminates upon the bond provided by that agent to the Superintendent under this Act being

- (a) forfeited, or
- (b) terminated unless prior to that bond being terminated that agent provides the Superintendent with a bond to replace the bond being terminated.



**12.** Termination of bond.

*13. The following sections are added after section 18:*

**18.1** Where a licensed agent is being investigated under section 17 and the Superintendent is of the opinion that the agent may have misappropriated funds which that agent holds in trust, the Superintendent may by order suspend the licence of that agent.

**18.2** Where a licence of an agent expires or has been cancelled or suspended and the Superintendent considers it in the public interest to do so, the Superintendent may order the chartered bank, trust company or treasury branch

- (a) with which the person being investigated maintains a trust account, or
- (b) with which are deposited any funds or securities considered by the Superintendent or the person making the investigation to have been deposited in connection with any trade in real estate in respect of which the investigation is being made,

to hold the funds or securities, as the case may be, until the Superintendent in writing either revokes the order or consents to release any particular fund or security or portion of a fund or security from the order.

**18.3** (1) Any person aggrieved by an order of the Superintendent made pursuant to section 18.1 or 18.2 may, within 30 days thereof, appeal to the Court by way of originating notice.

(2) The Court may confirm or revoke the order of the Superintendent or make such other order as it considers proper.

**18.4** Where

- (a) pursuant to section 17, an investigation is about to commence, is taking place or has been completed, or
- (b) the Superintendent has made an order under section 18.1 or 18.2, or
- (c) criminal proceedings or proceedings in respect of a contravention of this Act have been instituted against a licensed person that, in the opinion of the Superintendent, are related to trust funds or the use of trust funds,

the Superintendent may apply to the Court by way of originating notice for the appointment of a receiver or a receiver and manager or a trustee to hold or manage, as the case may be, all or part of the property of the licensed person.

**13. Investigation of persons holding licences.**

14. *Section 20 is amended*

(a) *by striking out subsection (2) and by substituting therefor the following:*

(2) Every agent shall

- (a) keep a trust ledger in which he shall maintain a separate record for each person on whose behalf he is acting of all
  - (i) money that he receives in trust,
  - (ii) money that he holds in trust, and
  - (iii) disbursements he makes from money he receives or holds in trust, in respect of a trade in real estate for that person,
- (b) forthwith deposit all money he receives in trust in respect of a trade in real estate into an account
  - (i) maintained in a chartered bank, trust company or treasury branch, and
  - (ii) which is kept in the name of the agent and designated as a trust account,
- (c) keep money he receives or holds in trust in respect of a trade in real estate separate from money which belongs to the agent, and
- (d) only disburse money he receives or holds in trust in respect of a trade in real estate in accordance with the terms of the trust governing the use of that money.

(2.1) All money deposited under subsection (2), clause (b) shall be kept on deposit in Alberta.

(2.2) Subsection (2) does not apply to a security deposit as defined in *The Landlord and Tenant Act*.

(b) *as to subsection (3), clause (c) by striking out the words "loan or",*

(c) *by adding after subsection (3) the following subsection:*

(3.1) An agent shall preserve his books and accounts of his trades in real estate and his accounting records

- (a) for a period of three years after the books, accounts or records came into existence, or
- (b) for such longer period as the Superintendent directs.

**14. Section 20 presently reads:**

**20.** (1) An agent shall keep proper books and accounts of his trades in real estate, and enter in his books and accounts in respect of each trade

- (a) the nature of the trade,
- (b) a description of the real estate involved sufficient to identify it,
- (c) the true consideration for the trade,
- (d) the names of the parties to the trade,
- (e) the amount of deposit received and a record of the disbursement thereof, and
- (f) the amount of his commission or other remuneration and the name of the party paying it.

(2) Every agent shall

- (a) maintain a trust account for each person from whom trust moneys are received in which he shall enter details of the trust moneys received and the disbursements therefrom, and
- (b) maintain an account in a chartered bank, loan or trust company or Province of Alberta treasury branch, in which he shall deposit moneys that come into his hands in trust for other persons in connection with his business, and keep the trust moneys separate and apart from moneys belonging to himself or to the partnership in the case of a partnership.

(3) An agent shall submit to the Superintendent before the 30th day of September in each year a report by the agent's auditors in a form prescribed by the regulations

- (a) stating that the agent has kept proper books and accounts of his trades in real estate,
- (b) stating that the auditor has examined the balances due to clients in trust as at the 30th day of June in that year, and found them in agreement with the accounting records of the agent,
- (c) stating that the moneys on deposit held in trust for clients has been verified by personal inspection or by certificates obtained from the bank, treasury branch or loan or trust company with which the deposit account is maintained,
- (d) stating the amount due to clients in trust as reflected by the records of the agent, as at the 30th day of June in that year,
- (e) stating that the auditor has done a sufficient review of the trust account transactions of the agent for the 12-month period immediately preceding the 30th day of June in that year, to satisfy himself that the trust moneys held for clients are kept separate and apart from moneys belonging to the agent, and
- (f) stating that after due consideration the auditor has formed an independent opinion as to the position of the trust moneys held for clients, and to the best of his information the trust moneys held for clients are maintained in a separate trust account and are not less than the amount of trust moneys received in respect of which there is an undischarged trust obligation.

(4) Subsections (1) to (3) do not apply to a trust company registered under The Trust Companies Act.

(5) A trust company licensed under this Act and registered under The Trust Companies Act shall furnish to the Superintendent a certified copy of each financial statement of the company prepared for distribution to its shareholders and the auditor's report thereon, within five days after they are first mailed or delivered to its shareholders.

*15. Section 23 is struck out and the following sections are substituted therefor:*

**23.** A licensed person shall not,

- (a) subject to section 23.1, make a representation to a vendor that he or another person on his behalf will pay to the vendor of real estate within a fixed or determinable period of time, a fixed or determinable amount of money, or
- (b) subject to section 23.2, make a representation to a person that he or another person will
  - (i) obtain a mortgage, lease or loan, or
  - (ii) have the term of a mortgage or lease altered, or
  - (iii) assume or assign a mortgage or an agreement for sale.

**23.1** (1) In this section, "guaranteed sale agreement" means an agreement in writing whereby a licensed agent or other person on behalf of or to the benefit of a licensed agent undertakes to pay to the vendor of real estate within a fixed or determinable period of time a fixed or determinable amount of money in respect of that vendor's real estate.

(2) Every licensed agent who enters into a guaranteed sale agreement or has another person enter into a guaranteed sale agreement on behalf of or to the benefit of that licensed agent, shall maintain a separate trust account in a chartered bank, trust company or treasury branch in which money payable under this section shall be deposited.

(3) Where a guaranteed sale agreement is entered into by a licensed agent or other person on behalf of or to the benefit of a licensed agent, that agent shall deposit into the trust account maintained under subsection (2) not less than 5 per cent of the amount that may be payable to the vendor under the guaranteed sale agreement.

(4) Where money is deposited under subsection (3), it shall be held in trust for the vendor and shall be

- (a) paid to the vendor as part of the total amount payable under the guaranteed sale agreement, or
- (b) forfeited to the vendor where he is not paid in accordance with the guaranteed sale agreement, or
- (c) returned to the agent where, pursuant to the terms of the guaranteed sale agreement, there is no longer any money payable to the vendor under that guaranteed sale agreement.

(5) Any money deposited under subsection (3) shall remain on deposit in Alberta until it is paid out under subsection (4).

**15. Section 23 presently reads:**

**23.** (1) Subject to subsection (2), no agent or salesman shall make a representation that he or another person

(a) will re-sell or in any way guarantee or promise to re-sell real estate offered for sale by him, or

(b) will sell any of the purchaser's real estate, or

(c) will procure a mortgage, extension of a mortgage, lease or extension of a lease.

(2) Subsection (1) does not apply in the case of a representation made under clause (b) or (c) of that subsection if at the time of making the representation the person making it delivers to the person to whom the representation is made a letter or photostatic copy thereof setting out the representation in clear language.

(6) Where a deposit is forfeited under subsection (4), clause (b),

- (a) the forfeiture shall not prejudice any action that the vendor may have against the agent or other parties to the guaranteed sale agreement, and
- (b) the moneys forfeited may be applied toward any sums which that vendor may be entitled to receive as damages arising out of the non-performance of the guaranteed sale agreement.

(7) Where a licensed agent or other person who entered into a guaranteed sale agreement with a vendor purchases the vendor's real estate pursuant to that sale agreement, no commission shall be payable to that licensed agent or other person by that vendor in respect of that trade.

(8) A licensed salesman or a designated representative shall not enter into a guaranteed sales agreement except in the course of his employment on behalf of the agent by whom that licensed salesman or designated representative is employed.

**23.2** An agent may undertake to

- (a) obtain a mortgage, lease or loan, or
- (b) have a term of a mortgage or lease altered, or
- (c) assume or assign a mortgage or an agreement for sale,

if the undertaking is set forth in writing and a copy of that undertaking is delivered to the person to whom the undertaking is made.

*16. Sections 24 and 25 are struck out.*

*17. Section 26, subsection (1) is amended*

- (a) by striking out the words "an agent or salesman" and by substituting therefor the words "a licensed person", and*
- (b) as to clause (b) by striking out the words "real estate agent or salesman" and by substituting therefor the words "licensed person".*

*18. The following section is added after section 26:*



**16. Sections 24 and 25 presently read:**

24. No agent or salesman shall trade in real estate until notified in writing by the Superintendent that he is licensed.

25. Unless otherwise directed by the Superintendent, a partnership and a corporation licensed as an agent shall publish the names of each person having an interest either directly or indirectly to the extent of not less than 10 per cent in the capital of the partnership or corporation, on letterheads and circulars in which the name of the partnership or corporation appears.

**17.** Replaces the reference to agent or salesman, or real estate agent or salesman with the term "licensed person".

**18.** Self-explanatory.

**26.1** A licensed person shall not trade in real estate

- (a) as an agent or salesman in any other name than that which appears on his licence;
- (b) on behalf of himself or another person without disclosing to the parties he is dealing with that he is licensed under this Act;
- (c) on behalf of another licensed person without disclosing to the parties he is dealing with that he and that other licensed person are licensed under this Act.

*19. Section 28 is struck out and the following section is substituted therefor:*

**28.** A licensed agent shall not pay a commission or other fee for services rendered in connection with a trade in real estate except to a licensed salesman employed by him or to an agent who is licensed pursuant to this Act or comparable legislation in another jurisdiction in Canada or elsewhere.

*20. Section 31 is struck out.*

*21. Section 33 is struck out and the following is substituted therefor:*

**33.** Where a licensed person receives an offer or an acceptance of an offer in writing from a party to a trade in real estate, he shall, as soon as practicable,

- (a) provide that party with a true copy of that offer or acceptance, and
- (b) deliver a true copy of that offer or acceptance to the other parties to that trade.

*22. Section 34 is amended by renumbering the section as subsection (1) and by adding the following subsection:*

- (2) Where a person is convicted
  - (a) of trading in real estate without being licensed contrary to section 4, subsection (1), or
  - (b) of employing a salesman who is not licensed contrary to section 27,

he shall, notwithstanding that a fine has been imposed upon him, return to any person on whose behalf he acted in respect of a trade while not being licensed or while employing a salesman who was not licensed any commission or other remuneration he or that salesman received from that person in respect of that trade.

**19. Section 28 presently reads:**

28. No licensed agent or salesman shall pay a commission or other fee to an unlicensed person in consideration for furthering a trade in real estate.

**20. Section 31 presently reads:**

31. No agent or salesman shall induce a party to a contract for purchase and sale, or rental of real estate, to break the contract for the purpose of entering into a contract with another principal.

A similar provision is now contained in section 8.

**21. Section 33 presently reads:**

33. (1) An agent or salesman immediately after the execution of an agreement to list with him real estate for sale, exchange, lease or rent shall deliver to the person who has signed the agreement a true copy thereof.

(2) No exclusive agreement to list real estate for sale, exchange, lease or rental with an agent or salesman is valid unless it is provided therein that the agreement expires on a date specified therein.

(3) Where an agent or salesman has secured from the owner of real estate a signed acceptance of an offer to sell, purchase, exchange, lease or rent such real estate, the agent or salesman shall deliver immediately a true copy of the acceptance to each of the parties to the contract or their legal representatives.

**22. Section 34 presently reads:**

34. A person who

(a) contravenes a provision of this Act or of a regulation, or

(b) omits, refuses or neglects to fulfil, perform, observe or carry out a duty or obligation created or imposed by this Act or a regulation,

is guilty of an offence and liable on summary conviction for each offence to a fine of not less than \$20, and not more than \$500.

*23. Section 39 is struck out and the following section is substituted therefor:*

**39.** In accordance with *The Public Service Act* there may be appointed a Superintendent of Real Estate, a Deputy Superintendent of Real Estate, inspectors and such other employees as may be required for the purposes of this Act.

*24. Section 40, clause (b), subclause (i) is amended by striking out the words "and renewals of licences".*

*25. Section 41 is struck out.*

*26. Section 42 is struck out and the following sections are substituted therefor:*

**42.** (1) A person shall not, directly or indirectly, trade in real estate that is located outside of Alberta unless

- (a) that trade takes place through an agent licensed under this Act, and
- (b) that person has
  - (i) received written authorization under section 42.1 from the Superintendent to trade in that real estate, or
  - (ii) filed a prospectus with the Superintendent and been issued a certificate of acceptance under section 47 in respect of that prospectus.

(2) Subsection (1) does not apply in respect of an isolated trade in real estate where that trade is not part of continued successive transactions of a like nature.

(3) Notwithstanding subsection (1), clause (a), where a person is trading in real estate that is located outside of Alberta and has, in respect of those trades, filed a prospectus with the Superintendent and been issued a certificate of acceptance under section 47 in respect of that prospectus at the time this section comes into force, he shall not be required to trade through an agent licensed under this Act until January 1, 1977.

(4) A person shall not make any representation, written or oral, that the Superintendent has passed upon

- (a) the financial standing, fitness or conduct of any person in connection with the filed prospectus, or

**23. Section 39 presently reads:**

39. The Lieutenant Governor in Council may appoint inspectors and such other officers as are deemed necessary for the administration of this Act.

**24. Section 40, clause (b), subclause (i) presently reads:**

40. For the purpose of carrying out the provisions of this Act according to their true intent and of supplying any deficiency therein, the Lieutenant Governor in Council may make regulations

(b) prescribing

(i) the fees payable on applications for licences and renewals of licenses.  
and

**25. Section 41 presently reads:**

41. (1) In this section and sections 42 to 52 "subdivision" means improved or unimproved land divided or proposed to be divided into five or more lots or other units for the purpose of sale or lease.

(2) Sections 42 to 52 do not apply in respect of an isolated trade in one or more lots or units in a subdivision by or on behalf of the owner and for the owner's account where the trade is not made in the course of continued and successive transactions of a like nature.

**26. Section 42 (2) presently reads:**

(2) No person shall make any representation, written or oral, that the Superintendent has passed upon the financial standing, fitness or conduct of any person in connection with the filed prospectus or upon the merits of the prospectus.

Section 42.1 provides for written authorization.

(b) the merits of the prospectus.

**42.1** (1) Where a person wishes to be given written authorization to trade in real estate without filing a prospectus, he shall

(a) make application to the Superintendent, and

(b) provide such information as the Superintendent requires.

(2) Where the Superintendent is satisfied that a trade may take place without the necessity of a prospectus being filed, he may give written authorization for that trade to take place.

(3) The Superintendent may at any time cancel a written authorization and require that a prospectus be filed in respect of a trade.

(4) Upon the Superintendent giving written authorization under this section, sections 43, 44, 45, 47, 48, 50 and 51 do not apply in respect of the trade during the period that the written authorization is in force.

*27. Section 43 is amended*

(a) *by striking out subsection (1) and by substituting therefor the following:*

**43.** (1) A person shall not, either as a vendor or as an agent or salesman, enter into or negotiate any contract in respect of a trade in real estate which is located outside of Alberta unless

(a) a copy of the prospectus referred to in section 42 has been delivered to the prospective purchaser, tenant or licensee, as the case may be, and

(b) the prospective purchaser, tenant or licensee has in writing acknowledged receipt of a copy of the prospectus and that he has been afforded the opportunity to read it.

(b) *by striking out subsection (3) and by substituting therefor the following:*

(3) Where a purchaser, tenant or licensee has entered into a contract to which subsection (1) applies, he may rescind the contract

(a) within 30 days of entering into the contract, or

(b) if subsection (1) has not been complied with.

(3.1) Where subsection (1) has not been complied with, the contract is unenforceable by the vendor or his agent and any money paid under the

**27. Section 43 presently reads:**

43. (1) No person shall, either as a vendor or as an agent or salesman, enter into or negotiate any contract for the sale or lease of a lot or a unit of land in a subdivision located outside Alberta unless

- (a) a copy of the prospectus referred to in section 42 has been delivered to the prospective purchaser or tenant, as the case may be, and
- (b) the prospective purchaser or tenant has in writing acknowledged receipt of a copy of the prospectus and that he has been afforded the opportunity to read it.

(2) Every acknowledgment referred to in subsection (1) shall be retained by the vendor or agent and be available for inspection by the Superintendent for a period of not less than three years.

(3) A purchaser or tenant who has entered into a contract to which subsection (1) applies is entitled to rescission of the contract if

- (a) subsection (1) has not been complied with, and
- (b) written notice of exercising the right of rescission is served on the vendor or agent within 90 days of the signing of the contract.

(4) In an action for rescission under subsection (3), the onus of proving compliance with subsection (1) rests upon the vendor.

(5) The right of rescission provided in this section is in addition to any other rights that the purchaser or tenant may have in respect of the contract.

contract shall be returned to the purchaser, tenant or licensee at the option of the purchaser, tenant or licensee.

- (c) *as to subsection (4) by adding after the words "subsection (3)," the words "clause (b),"*.

28. *Section 44 is amended by adding after clause (d) the following:*

- (d1) a performance bond, surety bond or such other security as the Superintendent may require,

29. *The following section is added after section 44:*

**44.1** (1) The Superintendent may require that a prospectus filed under section 42 contain

- (a) an audited financial statement of the owner for the last fiscal year and reported upon by the owner's auditor, and
- (b) current unaudited financial statements dated not more than 90 days prior to the date of the acceptance of the prospectus by the Superintendent where the audited financial statements are dated more than 120 days prior to the date that the prospectus was submitted to the Superintendent for filing.

(2) The financial statements shall be in a form acceptable to the Superintendent and shall contain such information as the Superintendent may require.

30. *Section 46 is amended*

(a) *as to subsection (1)*

(i) *by adding after the word "before" the words "giving written authorization or", and*

(ii) *by striking out the word "subdivision" wherever it appears and by substituting therefor the words "real estate", and*

(b) *as to subsection (2) by adding after the words "by the person" the words "who wishes the written authorization or".*



**28. Section 44 presently reads:**

**44.** Each prospectus submitted to the Superintendent for filing shall be accompanied by

- (a) an affidavit of the owner of the subdivision or, where the owner is a corporation, any three directors thereof, as to the correctness of every matter of fact stated in the prospectus,
- (b) a copy of every plan referred to in the prospectus,
- (c) a copy of every form of contract referred to in the prospectus,
- (d) such documents as the Superintendent may require to support any statement of fact, proposal or estimate set out in the prospectus,
- (e) such financial particulars of the owner as the Superintendent may require, and
- (f) the prescribed fees.

**29. Financial statements.**

**30. Section 46 presently reads:**

**46.** (1) The Superintendent may, before issuing a certificate of acceptance, make such inquiries as he considers necessary, including

- (a) an examination of the subdivision and any of the surrounding circumstances, and
- (b) the obtaining of reports from public authorities or others in the jurisdiction in which the subdivision is located.

(2) The reasonable and proper costs of any such inquiry or report shall be borne by the person on whose behalf the prospectus was filed or submitted for filing.

*31. Section 48 is amended by striking out the word “sub-division” and by substituting therefor the words “real estate”.*

*32. (1) The Superintendent of Insurance appointed under The Alberta Insurance Act shall be the Superintendent of Real Estate until a Superintendent of Real Estate is appointed under this Act.*

*(2) The Deputy Superintendent of Insurance appointed under The Alberta Insurance Act shall be the Deputy Superintendent of Real Estate until a Deputy Superintendent of Real Estate is appointed under this Act.*

*33. (1) This Act, except for sections 9, 11 and 12 comes into force on the day upon which it is assented to.*

*(2) Sections 9, 11 and 12 come into force on a date to be fixed by Proclamation.*

**31. Section 48 presently reads:**

48. Where it appears to the Superintendent, subsequent to the filing of a prospectus and the granting of a certificate of acceptance therefor, that any of the conditions referred to in section 45 exist or where in his opinion such action is necessary in the public interest, the Superintendent may, after giving the person on whose behalf the prospectus was filed an opportunity to be heard, cancel the certificate of acceptance and order that all trading in the subdivision to which the prospectus refers shall cease forthwith.

**32. Transitional.**