

# AGENTS

## No. 26 of 1968

### An Ordinance relating to the Licensing of Agents.

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Agents Ordinance* 1968.\* Short title.
2. This Ordinance shall come into operation on the seventeenth day of December, One thousand nine hundred and sixty-eight. Commencement.
3. This Ordinance does not apply to or in relation to— Application of Ordinance.
  - (a) an executor, an administrator, the Curator of Intestate Estates, a trustee, a trustee company, a liquidator, the master in lunacy, the committee of the estate of a lunatic, the manager of the estate of an incapable person, a bailiff, a court officer, or a bank, as defined by the *Banking Act* 1959-1966, in the exercise of rights and powers, or the performance of duties and obligations, as such;
  - (b) the holder of a licence under the *Auctioneers Ordinance* 1959-1966 in conducting a sale by auction within the meaning of that Ordinance; or
  - (c) a person practising as a solicitor, or as a barrister and solicitor, in the Territory in the exercise of rights and powers or the performance of duties and obligations in his professional capacity.
4. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary (Sections 1-7).
  - Part II.—The Agents Board (Sections 8-17).
  - Part III.—Prohibition of Carrying on Business as Agents by Unlicensed Persons (Sections 18-19).
  - Part IV.—Registration of Agents.
    - Division 1.—General (Sections 20-23).
    - Division 2.—Qualifications Required for Registration as Real Estate Agents (Sections 24-27).
    - Division 3.—Qualifications Required for Registration as Stock and Station Agents (Sections 28-31).
    - Division 4.—Qualifications Required for Registration as Business Agents (Sections 32-35).
    - Division 5.—Applications for Registration and Objections to Applications (Sections 36-37).
    - Division 6.—Determination by the Board of Applications (Sections 38-41).

\* Made on 13 December 1968; notified in the *Commonwealth Gazette* on 16 December 1968. ✓

- Part V.—Licences to Carry on Business as Agents.
- Division 1.—Eligibility for Grant of Licence as Real Estate Agent (Sections 42-43).
- Division 2.—Eligibility for Grant of Licence as Stock and Station Agent (Sections 44-45).
- Division 3.—Eligibility for Grant of Licence as Business Agent (Sections 46-47).
- Division 4.—Applications, Objections and Determination of Applications for Licences (Sections 48-54).
- Part VI.—Trust Moneys, Trust Accounts and Agents' Records.
- Division 1.—Trust Moneys (Section 55).
- Division 2.—Trust Accounts (Sections 56-59).
- Division 3.—Agents' Records (Sections 60-61).
- Division 4.—Audit and Inspection of Trust Accounts (Sections 62-69).
- Division 5.—Other Records to be kept by Licensed Agents (Section 70).
- Division 6.—Information to be furnished by Banks (Section 71).
- Part VII.—Rules of Conduct for Agents (Sections 72-73).
- Part VIII.—Proceedings for Breaches of Rules of Conduct for Agents (Sections 74-75).
- Part IX.—Surrender and Revocation of Licences (Sections 76-83).
- Part X.—Appointment of Receivers (Sections 84-87).
- Part XI.—Inquiries by the Agents Board (Sections 88-97).
- Part XII.—Appeals to the Supreme Court (Section 98).
- Part XIII.—Miscellaneous (Sections 99-122).

#### Interpretation.

- 5.—(1.) In this Ordinance, unless the contrary intention appears—
- “agent” means a real estate agent, business agent or stock and station agent, as the case requires;
- “applicant” means an applicant for registration or for a licence;
- “company” has the same meaning as “corporation” has in the *Companies Ordinance* 1962-1966;
- “inquiry” means an inquiry by the Board under section 88 of this Ordinance;
- “inspector” means an inspector appointed by the Minister under this Ordinance;
- “lease” includes a sub-lease;
- “licensed agent” means an agent to whom a licence, being a licence that is in force under this Ordinance, has been granted;
- “member” means a member of the Board, and includes the Chairman and an Acting Chairman;
- “register” means a register kept by the Registrar under this Ordinance;

- "registered" means registered under this Ordinance;
- "rural purposes" has the same meaning as in section 4AA of the *Leases Ordinance* 1918-1966;
- "the Board" means the Agents Board of the Australian Capital Territory;
- "the Chairman" means the Chairman of the Board;
- "the departmental member" means the member of the Board who is an officer of the Department of the Interior, whether appointed as such under section 9 or 15 of this Ordinance;
- "the Deputy Chairman" means the Deputy Chairman of the Board;
- "the Registrar" means the Registrar of Agents appointed under section 6 of this Ordinance;
- "trust account" means an account referred to in sub-section (1.) of section 56 of this Ordinance;
- "trust money" means money received by an agent in his capacity as an agent in the course of the business that he is licensed to carry on.

**(2.) For the purposes of this Ordinance but subject to section 3 of this Ordinance—**

- (a) a person carries on business as a real estate agent if in the course of carrying on business in the Territory he acts, or holds himself out as being prepared to act, as agent for principals—**
  - (i) in the sale, purchase, exchange, leasing or letting of land, whether used for rural purposes or other purposes and whether within or outside the Territory;**
  - (ii) in the collection of rents payable under leases, or in respect of the letting, of land whether within or outside the Territory; or**
  - (iii) in the collection of payments under a mortgage of land or payments under a terms contract in respect of land;**
- (b) a person carries on business as a stock and station agent if in the course of carrying on business in the Territory he acts, or holds himself out as being prepared to act, as agent for principals—**
  - (i) in the sale, purchase, exchange, leasing or letting of land, whether within or outside the Territory, used for rural purposes;**
  - (ii) in the collection of rents payable under leases, or in respect of the letting, of land, whether within or outside the Territory, used for rural purposes;**
  - (iii) in the sale, purchase or exchange of livestock;**
  - (iv) in the provision of agistment for livestock; or**
  - (v) in the collection of charges for the agistment of livestock; and**

- (c) a person carries on business as a business agent if in the course of carrying on business in the Territory he acts, or holds himself out as being prepared to act, as agent for principals in the sale, purchase or exchange, or in other dealings with, or in the disposition of, or in the negotiations for the sale, purchase, exchange or other dealing with, or disposition of, the goodwill in, or stock-in-trade of, businesses.

Registrar,  
Deputy  
Registrar,  
inspectors.

6.—(1.) For the purposes of this Ordinance, there shall be a Registrar of Agents who shall be an officer of the Department of the Interior appointed by the Minister.

(2.) The Minister may appoint such Deputy Registrars, inspectors and other officers as he considers necessary for the purposes of this Ordinance.

(3.) The Minister may appoint an officer of the Department of the Interior to act in the office of Registrar of Agents during any vacancy in that office or in the event of the illness or absence of the Registrar.

(4.) A person appointed in pursuance of sub-section (2.) of this section shall perform such duties for the purposes of this Ordinance as the Minister directs.

Registers.

7.—(1.) The Registrar shall keep the following registers:—

- (a) the Register of Real Estate Agents;
- (b) the Register of Stock and Station Agents; and
- (c) the Register of Business Agents.

(2.) The Registrar shall enter in a register such particulars as are prescribed or as the Board directs.

#### PART II.—THE AGENTS BOARD.

The Agents  
Board.

8.—(1.) For the purposes of this Ordinance, there shall be an Agents Board of the Australian Capital Territory.

(2.) The Board—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal; and
- (c) may sue and be sued in its corporate name.

(3.) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

Appointment  
of members of  
the Board and  
tenure.

9.—(1.) The Board shall consist of the following members, who shall be appointed by the Minister—

- (a) an officer of the Department of the Interior;
- (b) a solicitor having the right to practise in the Supreme Court; and
- (c) three other persons.

(2.) Each of the three other persons referred to in paragraph (c) of the last preceding sub-section shall, in the case of the members first appointed after the commencement of this Ordinance, be a person who has, in the period of three years immediately before the commencement of this Ordinance, carried on business, or was employed as an agent by a company carrying on business, as an agent in the Territory.

(3.) The persons who are first appointed as the members of the Board referred to in paragraph (b) and (c) of sub-section (1.) of this section hold office, subject to this Ordinance, until the thirtieth day of September, One thousand nine hundred and seventy-one.

(4.) A person shall not be appointed to hold office as a member referred to in paragraph (c) of sub-section (1.) of this section on or after the thirtieth day of September, One thousand nine hundred and seventy-one, unless he is a registered agent who has, except as provided by sub-section (10.) of this section, been elected by persons who are registered agents as a person eligible for appointment as a member.

(5.) The regulations may make provision for or in relation to the holding of elections for the purposes of determining the registered agents who are eligible for appointment as members and, in particular, may make provision for or in relation to—

- (a) the number of registered agents who are to be so elected;
- (b) the number of the registered agents so elected who shall be licensed agents or registered agents who are directors of companies that hold licences; and
- (c) the total number of registered agents who shall be so elected.

(6.) The departmental member holds office during the pleasure of the Minister.

(7.) A person appointed as a member by reason of an election held under sub-section (4.) of this section holds office, subject to this Ordinance, for a period of three years.

(8.) The member referred to in paragraph (b) of sub-section (1.) of this section holds office, subject to this Ordinance, for a period of three years.

(9.) In the event of an office of a member referred to in paragraph (b) or (c) of sub-section (1.) of this section becoming vacant before the expiration of his term of office, the Minister may appoint—

- (a) a solicitor having the right to practise in the Supreme Court; or
- (b) a registered agent,

as the case requires, to hold that office for the unexpired part of that term.

(10.) A member is eligible for re-appointment.

Chairman and  
Deputy  
Chairman of  
the Board.

**10.—**(1.) The Chairman of the Board shall be the person who is, for the time being, the departmental member of the Board.

(2.) There shall be a Deputy Chairman of the Board who shall be one of the members of the Board (other than the Chairman of the Board) elected by members of the Board.

(3.) The Deputy Chairman holds office for a period of one year but is eligible for re-election.

Fees and  
allowances.

**11.** A member (other than the departmental member) shall be paid such fees and allowances, if any, as the Minister determines.

Removal of  
member  
from office.

**12.** The Minister may remove a member from office for misbehaviour or incapacity.

Vacation of  
office  
by member.

**13.** If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) becomes of unsound mind;
- (c) is convicted in Australia of an offence punishable by imprisonment for one year or longer;
- (d) is absent, except on leave granted by the Minister, from three consecutive meetings of the Board; or
- (e) ceases to have the qualification by reference to which he was appointed or, being a person referred to in paragraph (c) of sub-section (1.) of section 9 of this Ordinance, does not, within the period of one year after the commencement of this Ordinance, become a registered agent,

the Minister shall remove the member from office.

Resignation  
of members.

**14.** A member (other than the departmental member) may resign his office by writing under his hand addressed to the Minister.

Acting  
appointments.

**15.—**(1.) In the event of the illness or absence from the Territory of a member, or of the temporary inability of a member to perform the duties of his office, or in the event of the office of a member becoming vacant before the expiration of his term of office, the Minister may, subject to this section, appoint a person to act during that illness, absence or temporary inability, or until the appointment of a new member, as the case may be, and a person so acting has all the powers and shall perform all the duties of a member.

(2.) A person appointed under this section to act in the place of the departmental member shall be a person who is an officer of the Department of the Interior.

(3.) A person appointed under this section to act in the place of the member referred to in paragraph (b) of sub-section (1.) of section 9 of this Ordinance shall be a person practising as a solicitor, or as a barrister and solicitor, in the Territory.

(4.) A person appointed under this section to act in the place of a member referred to in paragraph (c) of that sub-section shall be a person who is a registered agent.

(5.) A person appointed under this section (other than a person referred to in sub-section (2.) of this section) shall be paid such fees and allowances, if any, as the Minister determines.

16.—(1.) The Board shall meet as and when necessary and so that not more than six months elapses between any two meetings of the Board. Meetings of the Board.

(2.) A meeting of the Board shall be convened by the Chairman by notice in writing to other members of the Board, and shall be held at the time and place specified in the notice.

(3.) The Chairman shall preside at all meetings of the Board at which he is present.

(4.) At a meeting of the Board at which the departmental member is not present, the Deputy Chairman shall preside.

(5.) At a meeting of the Board, the Chairman or Deputy Chairman and two other members constitute a quorum.

(6.) A question arising at a meeting of the Board shall be determined by a majority of votes of the members present and voting.

(7.) The member presiding at a meeting of the Board has a deliberative vote and, in the event of any equality of votes, also has a casting vote.

(8.) A member of the Board shall withdraw from any meeting of the Board when—

(a) an application by the member for registration or the grant of a licence; or

(b) another matter directly affecting the member,  
is being dealt with by the Board.

(9.) The Board shall keep a record of its proceedings.

(10.) Subject to this Ordinance, the procedure at meetings of the Board shall be as the Board determines.

17.—(1.) The Board may, either generally or in relation to a matter or class of matters, by writing under its seal, delegate to a member or to a committee consisting of members any of its powers under this Ordinance, except this power of delegation. Delegation by Board.

(2.) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Board.

### PART III.—PROHIBITION OF CARRYING ON BUSINESS AS AGENTS BY UNLICENSED PERSONS.

Business to  
be licensed.

**18.—**(1.) A person (other than a company) shall not carry on business in the Territory as a real estate agent unless—

- (a) he is the holder of a real estate agent's licence; or
- (b) he is a member of a partnership or firm carrying on business as real estate agents, he is a registered agent and another member of the partnership or firm is the holder of a real estate agent's licence.

(2.) A person (other than a company) shall not carry on business in the Territory as a stock and station agent unless—

- (a) he is a holder of a stock and station agent's licence; or
- (b) he is a member of a partnership or firm carrying on business as stock and station agents, he is a registered agent and another member of the partnership or firm is the holder of a stock and station agent's licence.

(3.) A person (other than a company) shall not carry on business in the Territory as a business agent unless—

- (a) he is a holder of a business agent's licence; or
- (b) he is a member of a partnership or firm carrying on business as business agents, he is a registered agent and another member of the partnership or firm is the holder of a business agent's licence.

Penalty: Four hundred dollars.

Companies to  
be licensed.

**19.—**(1.) A company shall not carry on business as a real estate agent unless the company is the holder of a real estate agent's licence.

(2.) A company shall not carry on business as a stock and station agent unless the company is the holder of a stock and station agent's licence.

(3.) A company shall not carry on business as a business agent unless the company is the holder of a business agent's licence.

Penalty: One thousand dollars.

### PART IV.—REGISTRATION OF AGENTS.

#### *Division 1.—General.*

Definition.

**20.** In this Part, "prescribed date" means the date fixed, for the purposes of this Division, under the next succeeding section.



21. The regulations may specify, for the purposes of this Division, a date, not being a date earlier than three years after the date of commencement of this Ordinance, as the date after which applicants for registration shall hold the educational qualifications required by the regulations to be held by applicants for registration.

Prescribed date.

22. The regulations may make provision for or in relation to the educational qualifications to be held by persons who apply, after the date specified under the last preceding section, for registration as real estate agents, as stock and station agents and as business agents.

Regulations to prescribe educational qualifications to be held after the prescribed date.

23.—(1.) This section applies—

- (a) to a person who, having held a licence or been registered under the law of a State providing for the licensing or registration of real estate agents, of stock and station agents, of business agents or of auctioneers, is no longer the holder of such a licence or so registered; and
- (b) to a person whose application for a licence or registration under such a law has been refused.

Certain persons ineligible to apply for registration without leave of the Board.

(2.) A person to whom this section applies is ineligible to apply for registration as an agent unless the Board has, on an application made by the person under this section, granted special leave to that person to apply for registration as an agent.

(3.) If, after an application for registration has been made, the Board is satisfied that the applicant is a person to whom this section applies and certifies accordingly, the application for registration shall, unless the Board grants special leave under this section, be deemed to have been withdrawn.

(4.) The grant under this section of special leave to apply for registration does not in any way affect the onus placed on an applicant for registration to establish that he has the required qualifications for registration.

### *Division 2.—Qualifications Required for Registration as Real Estate Agents.*

24. A person who—

- (a) has attained the age of twenty-one years;
- (b) is of good fame and character; and
- (c) was, on the day immediately before the commencement of this Ordinance, carrying on business in the Territory as a real estate agent on his own account or as a member of a partnership or firm,

Qualifications for registration for persons engaged in business at the commencement of this Ordinance.

has the required qualifications for registration as a real estate agent if he applies for registration as such within one month after the commencement of this Ordinance.

25.—(1.) A person (including a person referred to in the last preceding section who has not applied for registration within the period of one month referred to in that section) who—

- (a) has attained the age of twenty-one years;
- (b) is of good fame and character;

Qualifications of persons other than those referred to in section 24 who apply for registration before prescribed date.

- (c) has carried on business as a real estate agent, or has been employed by a person, partnership, firm or company carrying on business as a real estate agent, either within or outside the Territory, for a period of, or for periods that aggregate, not less than three years; and
- (d) has an adequate knowledge of the duties, obligations and rights of a real estate agent,

has the required qualifications for registration as a real estate agent if he applies for registration before the prescribed date.

(2.) A person who is licensed or registered as a real estate agent under the law of a State providing for the licensing or registration of real estate agents has the required qualifications for registration if he applies for registration before the prescribed date.

Qualifications for registration by persons who apply for registration after the prescribed date.

**26.** A person who applies, after the prescribed date, for registration as a real estate agent has the required qualifications for registration as a real estate agent if—

- (a) he has attained the age of twenty-one years;
- (b) he is of good fame and character;
- (c) he holds the educational qualifications required by the regulations to be held by an applicant for registration as a real estate agent; and
- (d) he has been employed by a person, partnership, firm or company carrying on business either within or outside the Territory as a real estate agent for a period of, or for periods that aggregate, not less than three years.

Provisions applicable in relation to periods of employment.

**27.—(1.)** Where an applicant for registration as a real estate agent—

- (a) is an employee of a person, partnership, firm or company carrying on within the Territory business as a real estate agent; and
- (b) before becoming such an employee carried on, within or outside the Territory, business as a real estate agent on his own account or as a member of a partnership or firm for a period,

the applicant shall, for the purposes of this Division, be deemed to have been, during the period referred to in paragraph (b) of this sub-section, employed by a person, partnership, firm or company carrying on business as a real estate agent.

(2.) Where—

- (a) the period for which an applicant for registration as a real estate agent has been, or is to be deemed to have been, employed by a person, partnership, firm or company carrying on business as a real estate agent is a period that is less than three years; and

- (b) the applicant has been employed by a person, partnership, firm or company carrying on, within or outside the Territory, business as a stock and station agent or a business agent, for a period which, when added to the period for which he was employed as a real estate agent, exceeds three years,

the Board may, in its discretion, regard that person as being a person who has been employed by a person, partnership, firm or company carrying on business as a real estate agent for a period of, or for periods that aggregate, not less than three years.

(3.) In this Division, a reference to a person, partnership, firm or company carrying on business as a real estate agent outside the Territory shall be read as a reference to a person, partnership, firm or company who is, under the law of the State where the business is carried on, licensed to carry on that business.

(4.) In this Division, a reference to a person, partnership, firm or company carrying on business as a real estate agent within the Territory shall, on and after the date of commencement of this Ordinance, be read as a reference to a person carrying on business as a licensed real estate agent, to a partnership or firm one of the members of which is a licensed real estate agent or to a company which is a licensed real estate agent, as the case requires.

*Division 3.—Qualifications Required for Registration as Stock and Station Agents.*

**28. A person who—**

- (a) has attained the age of twenty-one years;
- (b) is of good fame and character; and
- (c) was, on the day immediately before the commencement of this Ordinance, carrying on business in the Territory as a stock and station agent on his own account or as a member of a partnership or firm,

Qualifications for registration for persons engaged in business at the commencement of this Ordinance.

has the required qualifications for registration as a stock and station agent if he applies for registration as such within one month after the commencement of this Ordinance.

**29.—(1.) A person (including a person referred to in the last preceding section who has not applied for registration within the period of one month referred to in that section) who—**

- (a) has attained the age of twenty-one years;
- (b) is of good fame and character;
- (c) has carried on business as a stock and station agent, or has been employed by a person, partnership, firm or company carrying on business as a stock and station agent, either within or outside the Territory, for a period of, or for periods that aggregate, not less than three years; and

Qualifications of persons other than those referred to in section 28 who apply for registration before prescribed date.

(d) has an adequate knowledge of the duties, obligations and rights of a stock and station agent,  
has the required qualifications for registration as a stock and station agent if he applies for registration before the prescribed date.

(2.) A person who is licensed or registered as a stock and station agent under the law of a State providing for the licensing or registration of stock and station agents has the required qualifications for registration if he applies for registration before the prescribed date.

Qualifications  
for registration  
by persons  
who apply for  
registration  
after the  
prescribed date.

**30.** A person who applies, after the prescribed date, for registration as a stock and station agent has the required qualifications for registration as a stock and station agent if—

- (a) he has attained the age of twenty-one years;
- (b) he is of good fame and character;
- (c) he holds the educational qualifications required by the regulations to be held by an applicant for registration as a stock and station agent; and
- (d) he has been employed by a person, partnership, firm or company carrying on business either within or outside the Territory as a stock and station agent for a period of, or for periods that aggregate, not less than three years.

Provisions  
applicable  
in relation to  
periods of  
employment.

**31.—(1.)** Where an applicant for registration as a stock and station agent—

- (a) is an employee of a person, partnership, firm or company carrying on, within the Territory, business as a stock and station agent; and
- (b) before becoming such an employee carried on, within or outside the Territory, business as a stock and station agent on his own account or as a member of a partnership or firm for a period,

the applicant, shall, for the purposes of this Division, be deemed to have been, during the period referred to in paragraph (b) of this subsection, employed by a person, partnership, firm or company carrying on business as a stock and station agent.

(2.) Where—

- (a) the period for which an applicant for registration as a stock and station agent has been, or is to be deemed to have been, employed by a person, partnership, firm or company carrying on business as a stock and station agent is a period that is less than three years; and
- (b) the applicant has been employed by a person, partnership, firm or company carrying on, within or outside the Territory, business as a real estate agent or a business agent, for a period which when added to the period for which he was employed as a stock and station agent exceeds three years,

the Board may, in its discretion, regard that person as being a person who has been employed by a person, partnership, firm or company carrying on business as a stock and station agent for a period of, or for periods that aggregate, not less than three years.

(3.) In this Division, a reference to a person, partnership, firm or company carrying on business as a stock and station agent outside the Territory shall be read as a reference to a person, partnership, firm or company who is, under the law of the State where the business is carried on, licensed to carry on that business.

(4.) In this Division, a reference to a person, partnership, firm or company carrying on business as a stock and station agent within the Territory shall, on and after the date of commencement of this Ordinance be read as a reference to a person carrying on business as a licensed stock and station agent, to a partnership or firm one of the members of which is a licensed stock and station agent or to a company which is a licensed stock and station agent, as the case requires.

*Division 4.—Qualifications Required for Registration as Business Agents.*

**32.** A person who—

- (a) has attained the age of twenty-one years;
- (b) is of good fame and character; and
- (c) was, on the day immediately before the commencement of this Ordinance, carrying on business in the Territory as a business agent on his own account or as a member of a partnership or firm,

Qualifications for registration for persons engaged in business at the commencement of this Ordinance.

has the required qualifications for registration as a business agent if he applies for registration as such within one month after the commencement of this Ordinance.

**33.—(1.)** A person (including a person referred to in the last preceding section who has not applied for registration within the period of one month referred to in that section) who—

- (a) has attained the age of twenty-one years;
- (b) is of good fame and character;
- (c) has carried on business as a business agent, or has been employed by a person, partnership, firm or company carrying on business as a business agent, either within or outside the Territory, for a period of, or periods that aggregate, not less than three years; and
- (d) has an adequate knowledge of the duties, obligations and rights of a business agent,

Qualifications of persons other than those referred to in section 32 who apply for registration before prescribed date.

has the required qualifications for registration as a business agent if he applies for registration before the prescribed date.

(2.) A person who is licensed or registered as a business agent under the law of a State providing for the licensing or registration of business agents has the required qualifications for registration if he applies for registration before the prescribed date.

Qualifications  
for registration  
by persons  
who apply for  
registration  
after the  
prescribed date.

**34.** A person who applies, after the prescribed date, for registration as a business agent has the required qualifications for registration as a business agent if—

- (a) he has attained the age of twenty-one years;
- (b) he is of good fame and character;
- (c) he holds the educational qualifications required by the regulations to be held by an applicant for registration as a business agent; and
- (d) he has been employed by a person, partnership, firm or company carrying on business, either within or outside the Territory, as a business agent for a period of, or for periods that aggregate, not less than three years.

Provisions  
applicable  
in relation to  
periods of  
employment.

**35.—(1.)** Where an applicant for registration as a business agent—

- (a) is an employee of a person, partnership, firm or company carrying on, within the Territory, business as a business agent; and
- (b) before becoming such an employee carried on, within or outside the Territory, business as a business agent on his own account or as a member of a partnership or firm for a period,

the applicant shall, for the purposes of this Division, be deemed to have been, during the period referred to in paragraph (b) of this sub-section, employed by a person, partnership, firm or company carrying on business as a business agent.

**(2.)** Where—

- (a) the period for which an applicant for registration as a business agent has been, or is to be deemed to have been, employed by a person, partnership, firm or company carrying on business as a business agent is a period that is less than three years; and
- (b) the applicant has been employed by a person, partnership, firm or company carrying on, within or outside the Territory, business as a real estate agent or a stock and station agent, for a period which, when added to the period for which he was employed as a business agent exceeds three years,

the Board may, in its discretion, regard that person as being a person who has been employed by a person, partnership, firm or company carrying on business as a business agent for a period of, or for periods that aggregate, not less than three years.

**(3.)** In this Division, a reference to a person, partnership, firm or company carrying on business as a business agent outside the Territory shall be read as a reference to a person, partnership, firm or company who is, under the law of the State where the business is carried on, licensed to carry on that business.

**(4.)** In this Division, a reference to a person, partnership, firm or company carrying on business as a business agent within the Territory shall, on or after the date of commencement of this Ordinance, be read

as a reference to a person carrying on business as a licensed business agent, to a partnership or firm one of the members of which is a licensed business agent or to a company which is a licensed business agent, as the case requires.

*Division 5.—Applications for Registration and Objections to Applications.*

**36. An application for registration as an agent—**

Applications  
for registration.

- (a) shall be in writing in accordance with a form made available by the Board for the purpose;
- (b) shall be lodged with the Registrar not earlier than seven days after, and not later than fourteen days after, the applicant has—
  - (i) caused to be published in a daily newspaper published and circulating in the Territory notice of the fact that he intends to apply for registration as a real estate agent, as a stock and station agent or as a business agent and stating his full name and residential address; and
  - (ii) served on the Commissioner of Police notice of the fact that he intends to apply for registration as an agent and setting out his full name, the date and place of his birth, his present residential address and any other addresses at which he has resided during the three years immediately preceding the date on which the notice is given to the Commissioner of Police;
- (c) shall be accompanied by a copy of each of the notices referred to in the last preceding paragraph and a statement setting out the date on which those notices were published and served;
- (d) shall be accompanied by evidence of the applicant's age;
- (e) shall be accompanied by a written statement setting out such particulars as are necessary to show that the applicant has the required qualifications for registration; and
- (f) shall be accompanied by certificates by two persons certifying with respect to the fame and character of the applicant.

**37.—(1.)** The Commissioner of Police may, within twenty-one days after the date on which the notice referred to in sub-paragraph (ii) of paragraph (b) of section 36 of this Ordinance is served on him, object, by notice in writing lodged with the Registrar, to the application for registration on the ground that the applicant is not of good fame and character.

Objections  
to registration.

**(2.)** Any other person may, within fourteen days after the publication of the notice referred to in sub-paragraph (i) of paragraph (b) of section 36 of this Ordinance, object, by notice in writing lodged with the Registrar, to the grant of the application for registration on the ground that the applicant is not of good fame and character.

(3.) The Registrar may, within fourteen days after an application for registration is lodged with him, object by notice in writing under his hand to the grant of the application for registration on the ground that—

- (a) the applicant does not have the required qualifications for registration as an agent;
- (b) the applicant is a person who, by section 23 of this Ordinance, is ineligible to apply for registration as an agent; or
- (c) in the case of an application by a person who, on the day immediately before the commencement of this Ordinance, carried on business in the Territory as an agent on his own account or as a member of a partnership or firm, the applicant had, in the period of three years immediately before the commencement of this Ordinance, or in the period commencing on the date on which he so commenced to carry on business and ending on that commencement, whichever is the less, failed—
  - (i) to perform his duties to his principals;
  - (ii) to carry out the instructions of his principals; or
  - (iii) to exercise due skill, care and diligence in carrying out his duties on behalf of his principals.

(4.) A notice of objection under this section shall be filed by the Registrar and a copy of the notice shall be served on the applicant for registration.

*Division 6.—Determination by the Board of Applications.*

Grant or refusal  
of registration.

38.—(1.) The Board shall, subject to section 23 of this Ordinance, consider each application for registration as an agent and—

- (a) shall grant the application and authorize the issue of a certificate of registration to the applicant; or
- (b) may, subject to this section, refuse the application.

(2.) The Board may, whether or not an objection to the grant of an application for registration has been lodged, require an applicant, to attend in person before the Board and may require him to furnish to the Board, either in writing or orally, such further information as the Board requires to be furnished.

(3.) Except as provided in the next succeeding sub-section, the Board shall not refuse an application for registration as an agent unless—

- (a) the applicant for registration refuses or fails to attend before the Board or to furnish the further information required by the Board in pursuance of the last preceding sub-section;
- (b) the applicant for registration fails to establish that he has the required qualifications for registration; or
- (c) the application does not comply with the requirements of section 36 of this Ordinance.



(4.) Where the Board finds that, in the case of an objection made by the Registrar on the ground specified in paragraph (c) of subsection (3.) of section 37 of this Ordinance, the ground has been established, the Board may grant or refuse the application for registration as an agent.

**39.** Where an objection is lodged under section 37 of this Ordinance or the Board considers that there may be grounds for refusing an application for registration as an agent, the Board shall hold an inquiry into the matter.

Inquiry to be held by the Board before refusing registration.

**40.** Where the Board refuses to grant an application for registration as an agent, the Board shall—

Grounds for refusing application to be notified to the applicant.

- (a) record the reasons for its decision;
- (b) serve on the applicant, within seven days, after so deciding, notice of its decision; and
- (c) if the applicant so requests, supply him with a copy of those reasons.

**41.** Where the Board grants an application for registration as an agent or the Supreme Court orders, on the hearing of an appeal under Part XII. of this Ordinance, that an application for registration as an agent be granted, the Registrar shall, on payment by the applicant of the prescribed fee, issue a certificate of registration as an agent to the applicant.

Issue of certificates of registration.

#### PART V.—LICENCES TO CARRY ON BUSINESS AS AGENTS.

##### *Division 1.—Eligibility for Grant of Licence as Real Estate Agent.*

**42.** A person, other than a company, is eligible for the grant of a licence to carry on business as a real estate agent if—

Eligibility for the grant of licences to individuals

- (a) he is a registered real estate agent or has applied for registration as a real estate agent; and
- (b) by reason of his experience as a real estate agent before the commencement of this Ordinance or of his experience as a registered real estate agent after that commencement, or both, he is competent to carry on business on his own account as a licensed real estate agent.

**43.** A company is eligible for the grant of a licence to carry on business as a real estate agent if—

Eligibility for the grant of licences to companies.

- (a) the company is, by its Memorandum of Association, authorized to carry on business as a real estate agent;
- (b) at least one of the directors of the company is a registered real estate agent or has applied for registration as a real estate agent and his experience has been such that he is competent to carry on business on his own account as a licensed real estate agent; and
- (c) each of the other directors of the company is a person of good fame and character.

*Division 2.—Eligibility for Grant of Licence as Stock and Station Agent.*

Eligibility  
for the grant  
of licences to  
individuals.

**44.** A person, other than a company, is eligible for the grant of a licence to carry on business as a stock and station agent if—

- (a) he is a registered stock and station agent or has applied for registration as a stock and station agent; and
- (b) his experience as a stock and station agent before the commencement of this Ordinance or his experience as a registered stock and station agent after that commencement, or both, has been such that he is competent to carry on business on his own account as a licensed stock and station agent.

Eligibility  
for the grant  
of licences to  
companies.

**45.** A company is eligible for the grant of a licence to carry on business as a stock and station agent if—

- (a) the company is, by its Memorandum of Association, authorized to carry on business as a stock and station agent;
- (b) at least one of the directors of the company is a registered stock and station agent or has applied for registration as a stock and station agent and his experience has been such that he is competent to carry on business on his own account as a licensed stock and station agent; and
- (c) each of the other directors of the company is a person of good fame and character.

*Division 3.—Eligibility for Grant of Licence as Business Agent.*

Eligibility  
for the grant  
of licences to  
individuals.

**46.** A person, other than a company, is eligible for the grant of a licence to carry on business as a business agent if—

- (a) he is a registered business agent or has applied for registration as a business agent; and
- (b) his experience as a business agent before the commencement of this Ordinance or his experience as a registered business agent after that commencement, or both, has been such that he is competent to carry on business on his own account as a licensed business agent.

Eligibility  
for the grant  
of licences to  
companies.

**47.** A company is eligible for the grant of a licence to carry on business as a business agent if—

- (a) the company is, by its Memorandum of Association, authorized to carry on business as a business agent;
- (b) at least one of the directors of the company is a registered business agent or has applied for registration as a business agent and his experience has been such that he is competent to carry on business on his own behalf as a licensed business agent; and
- (c) each of the other directors of the company is a person of good fame and character.

*Division 4.—Applications, Objections and Determination of Applications for Licences.*

**48.—(1.)** An application for the grant of a licence to carry on business as an agent by a person other than a company—

Applications for licences by individuals.

- (a) shall be in writing and signed by the applicant;
- (b) shall be lodged with the Registrar;
- (c) shall be accompanied by a written statement setting out the experience of the applicant as an agent or as an employee of an agent;
- (d) shall be accompanied by a written statement specifying the place or places at which he proposes to carry on business in the Territory and, if more than one place is so specified, which of those places is to be the principal place at which he proposes to carry on business in the Territory;
- (e) shall be accompanied by—
  - (i) a certificate signed by the Secretary to the Department of the Interior or by an officer authorized by the Secretary to give certificates under this section, that, in the opinion of the Secretary or the authorized officer, the carrying on of the business of a licensed agent at the place or each of the places specified in the certificate is not prohibited by the provisions of the lease of the land at which that place or each of those places are situated or by any other law regulating the places at which businesses may be carried on; or
  - (ii) a copy of an order of the Supreme Court declaring that the carrying on of the business of a licensed agent at the place or each of the places specified in the order is not so prohibited; and
- (f) shall be accompanied by a written statement by him that he is not a bankrupt, is not for the time being taking the benefit of any law for the relief of bankrupt or insolvent debtors, or is not a person whose remuneration is, for the time being, assigned for the benefit of his creditors.

**(2.)** An application under the last preceding sub-section lodged by a person who, not being a registered agent, has lodged an application for registration as an agent shall only be regarded as an application for the grant of a licence if the Board grants the application made by the person for registration as an agent.

**49.—(1.)** An application by a company for the grant of a licence to carry on business as an agent—

Applications for licences by companies.

- (a) shall be in writing and signed on behalf of the company by a director of the company;
- (b) shall be accompanied by a certified copy of the due incorporation of the company;

- (c) shall be accompanied by a statement setting out the names and present residential addresses of the directors of the company;
- (d) shall be accompanied by a written statement setting out the experience, as an agent or as an employee of an agent, of the director of a company who is a registered agent or has applied for registration as an agent or, if there are two or more directors of the company who are so registered or have applied for registration, a written statement setting out the experience, as an agent or an employee of an agent, of each of those directors.
- (e) shall be lodged with the Registrar not earlier than seven days after, and not later than fourteen days, after the company has—
  - (i) caused to be published in a daily newspaper published and circulated in the Territory notice of the fact that it intends to apply for a licence; and
  - (ii) served on the Commissioner of Police notice of the fact that it intends to apply for a licence and setting out the full name, the date and place of birth and present residential address of each director of the company and any other residential address at which each director of the company has resided during the three years immediately preceding the date on which the notice is given to the Commissioner of Police;
- (f) shall be accompanied by a copy of each of the notices referred to in the last preceding paragraph and a statement setting out the date on which those notices were published and served;
- (g) shall be accompanied by certificates, in respect of each of the directors of the company, by two persons certifying with respect to the fame and character of each of the directors;
- (h) shall be accompanied by a written statement specifying the place or places at which it proposes to carry on business in the Territory and, if more than one place is so specified, which of those places is to be the principal place at which it proposes to carry on business in the Territory; and
- (i) shall be accompanied by—
  - (i) a certificate signed by the Secretary to the Department of the Interior or by an officer authorized by the Secretary to give certificates under this section, that, in the opinion of the Secretary or the authorized officer the carrying on of the business of a licensed agent at the place or each of the places specified in the certificate is not prohibited by the provisions of the lease of the land at which that

place or each of those places are situated or by any other law regulating the places at which business may be carried on; or

- (ii) a copy of an order of the Supreme Court declaring that the carrying on of the business of a licensed agent at the place or each of the places specified in the order is not so prohibited.

(2.) An application under the last preceding sub-section may be lodged by a company at a time when not one of the directors of the company is a registered agent, but such an application shall only be regarded as an application for the grant of a licence if the Board grants the application made by one of the directors for registration as an agent.

**50.—**(1.) The Registrar may, within fourteen days after an application for a licence is lodged with him, object by notice in writing under his hand to the grant of the application on the ground that the applicant is a person who, or is a company which, is not eligible to apply for a licence as an agent.

Objections to  
grant of licence

(2.) The Commissioner of Police may, within twenty-one days after the date on which the notice referred to in sub-paragraph (ii) of paragraph (e) of sub-section (1.) of the last preceding section is served on him by a company that has applied for the grant of a licence object by notice in writing lodged with the Registrar to the application by the company on the ground that a director of the company is not of good fame and character.

(3.) Any other person may, within fourteen days after the publication of the notice referred to in sub-paragraph (i) of paragraph (e) of sub-section (1.) of the last preceding section, object by notice in writing lodged with the Registrar to the grant of a licence to the company on the ground that a director of the company is not a person of good fame and character.

(4.) A notice of objection under this section shall be filed by the Registrar and a copy of the notice shall be served on the applicant for a licence.

**51.—**(1.) The Board shall consider each application for the grant of a licence to carry on business as an agent and—

Grant or refusal  
of licence.

- (a) shall grant the application and authorize the issue of the licence; or

- (b) may, subject to this Division, refuse the application.

(2.) The Board may, whether or not an objection to the grant of an application for a licence to carry on business as an agent has been lodged, require an applicant, or in the case of an application by a company, all or any of the directors of the company, to attend before the Board and may require the applicant or such a director to furnish to the Board, either orally or in writing, such further information as the Board requires to be furnished.

(3.) The Board shall not refuse an application for the grant of a licence to carry on business as an agent unless—

- (a) the applicant, or in the case of an application by a company, a director of the company, refuses or fails to attend before the Board or to furnish the further information required by the Board in pursuance of the last preceding sub-section;
- (b) the applicant for the grant of a licence fails to establish that he or it is eligible for the grant of the licence;
- (c) the application does not comply with the requirements of section 48 or 49, as the case requires, of this Ordinance; or
- (d) in the case of an application by a person other than a company, the applicant is a bankrupt, is a person who is for the time being taking the benefit of any law for the relief of bankrupt or insolvent debtors or is a person whose remuneration is, for the time being, assigned for the benefit of his creditors.

(4.) Where the Board refuses to grant an application for a grant of a licence to the applicant, the Board shall—

- (a) record the reasons for its decision;
- (b) serve on the applicant, within seven days after so deciding, notice of its decision; and
- (c) if the applicant so requests, supply him with a copy of those reasons.

*Inquiry to be held by the Board before refusing to grant a licence.*

**52.** Where an objection is lodged under section 50 of this Ordinance or the Board considers that there may be grounds for refusing an application for the grant of a licence to carry on business as an agent, the Board shall hold an inquiry into the matter.

*Issue of licences.*

**53.—(1.)** Where the Board grants an application for a licence to carry on business as an agent, or the Supreme Court orders, on the hearing of an appeal under Part XII. of this Ordinance, that an application for a licence to carry on business as an agent be granted, the Registrar shall, on payment by the applicant of the prescribed fee, issue to the applicant a licence to carry on business as an agent at the place or places specified in the licence.

(2.) A licence issued to a company shall specify the name of the director of the company who has, or the names of the directors of the company who have, had the experience referred to in paragraph (b) of section 43, paragraph (b) of section 45, or paragraph (b) of section 47, as the case requires, of this Ordinance.

*Provisions in relation to directors of licensed company.*

**54.—(1.)** Where, in an application by a company for the grant of a licence to carry on business as an agent, the company claims that each of two or more of the directors of the company is competent to

carry on business as a licensed agent, the Registrar may, whether or not an objection has been lodged under section 50 of this Ordinance, object by notice in writing under his hand to the claim by the company that any one of those directors is competent to carry on on his own behalf business as a licensed agent.

(2.) A company may—

- (a) after an application has been made by it for a licence to carry on business as an agent; or
- (b) after the grant of a licence to a company to carry on business as an agent,

apply to the Board for an order that the name of a director of the company who is competent to carry on business on his own account as a licensed agent be added to the name of the director who is or the names of directors of the company who are stated in the application or licence to be so competent or be substituted for the name of a director who is stated in the application or licence to be so competent.

(3.) An application under this section shall be lodged with the Registrar.

(4.) The Registrar may, within fourteen days after the application is lodged with him, object by notice in writing under his hand to the application on the ground that the director is not competent to carry on business on his own account as a licensed agent.

(5.) A notice of objection under this section shall be filed by the Registrar and a copy of the notice shall be served on the company.

(6.) The Board shall not refuse an application for an order under this section unless it is satisfied, after holding an inquiry into the matter, that the ground of objection has been established.

(7.) Where an order is made under this section in relation to a company to which a licence has been granted, the Registrar shall, on the surrender to him of the licence previously issued to the company, issue a new licence to the company specifying the name of the director, for the time being, of the company who has, or the names of the directors, for the time being, of the company who have, had the experience referred to in paragraph (b) of section 43, paragraph (b) of section 45, or paragraph (b) of section 47, as the case requires, of this Ordinance.

## PART VI.—TRUST MONEYS, TRUST ACCOUNTS AND AGENTS' RECORDS.

### *Division 1.—Trust Moneys.*

**55.** All moneys received by a licensed agent in his capacity as agent and in the course of the business that he is licensed to carry on and all moneys received by a licensed agent as a stakeholder shall, for all purposes, be deemed to be held in trust by the agent for the principal on whose behalf the moneys are received.

Moneys  
received by  
agent to be  
held in trust.

*Division 2.—Trust Accounts.*

Opening of  
trust accounts.

**56.—**(1.) A licensed agent shall open, and shall maintain, an account at a bank in the Territory under a title that includes—

- (a) the name of the agent or, if he carries on the business under a registered business name, the name under which he carries on business; and
- (b) the words “Trust Account”.

(2.) The last preceding sub-section does not prevent a licensed agent from opening and maintaining two or more trust accounts at a bank or banks under titles that include the matters referred to in paragraphs (a) and (b) of that sub-section.

(3.) A licensed agent shall, within forty-eight hours after the licence is granted to him and within forty-eight hours after he opens an account in pursuance of the last preceding sub-section, notify the Registrar of the name and address of the bank at which the trust account is maintained and the title of the account.

Payments of  
moneys into  
and from  
trust account.

**57.—**(1.) A licensed agent shall, before the close of business on the next day on which banks are open for business after the day on which the licensed agent receives any trust moneys, pay those moneys into a trust account maintained by him.

(2.) A licensed agent shall not pay money out of a trust account maintained by him except by means of a cheque made payable to a specified person, being a cheque that is crossed and marked “not negotiable”.

(3.) A licensed agent shall not withdraw any money from a trust account maintained by him except for the purposes of payment to, or disbursement according to the directions of, the person for whom or on whose behalf money was received.

Protection of  
trust moneys.

**58.—**(1.) Subject to this section, moneys standing to the credit of a trust account maintained by a licensed agent are not available for the payment of debts of the licensed agent and, subject to the next succeeding sub-section, are not liable to be attached or taken in execution for the purposes of satisfying a judgment against the agent.

(2.) Nothing in the last preceding sub-section prevents trust moneys to the extent that the licensed agent holds those trust moneys in trust for the person for whom or on whose behalf the moneys were received from being available for the discharge of the liability of the licensed agent to that person.

Provisions  
applicable  
to banks.

**59.—**(1.) A bank at which a trust account is maintained is not under any obligation to control or supervise transactions in relation to the trust account or to see to the application by the agent of money drawn out of the account.

(2.) Nothing in the last preceding sub-section authorizes a bank to pay money out of a trust account except by the means referred to in sub-section (2.) of section 57 of this Ordinance.



(3.) The bank at which an agent maintains a trust account in accordance with this Part shall not, in respect of any liability of the agent to the bank, have or obtain any recourse or right, whether by way of settlement, counter-claim, charge or otherwise against money standing to the credit of the trust account.

(4.) Nothing in this section relieves a bank from any liability or obligation to which it is subject apart from this Ordinance.

*Division 3.—Agents' Records.*

**60.—(1.)** A licensed agent shall keep such accounting and other records as disclose particulars of all trust moneys received from day to day by him on behalf of each principal for whom he acts and all payments made by him from day to day out of the trust moneys so received by him on behalf of each principal for whom he acts.

Accounting records.

(2.) A licensed agent shall—

(a) keep the accounts—

- (i) at the place at which he carries on business;
- (ii) if he carries on business at more than one place of business, at the place of business specified in the licence as his principal place of business; or
- (iii) with the approval of the Board, at another place in the Territory;

(b) cause those records to be kept in such a manner that they can be conveniently and properly audited; and

(c) preserve those records for the period of six years that commences on the thirtieth day of September next following the last entry in those records.

(3.) It shall be a sufficient compliance with sub-section (1.) of this section if a licensed agent, within seven days after the day on which any trust moneys are received or paid by him, enters in the records referred to in this section the particulars that he is required to make in relation to those moneys.

**61.—(1.)** A licensed agent shall give to a person from whom he receives trust money a receipt for the money specifying briefly the subject-matter or purpose in respect of which the money was received.

Receipts for trust moneys.

(2.) A licensed agent shall keep a legible carbon duplicate of a receipt given in accordance with the last preceding sub-section.

(3.) A receipt relating to trust money shall be taken from a bound book bearing a number or mark identifying the book and containing not less than fifty receipt forms arranged so that a carbon duplicate of each receipt remains in the book.

(4.) A receipt and the carbon duplicate shall bear such a number or mark as will enable the receipt to be identified by reference to that number or mark and so that the receipt and carbon duplicate bear the same number or mark.

(5.) The last three preceding sub-sections do not apply to, or in relation to, a licensed agent who, in accordance with an authority given by the Board, issues receipts in a manner specified in the authority.

*Division 4.—Audit and Inspection of Trust Accounts.*

**Interpretation.**

**62.** In this Division, “prescribed period” means the period of twelve months ending on the thirtieth day of June in each year or the period of twelve months ending on such other date as the licensed agent specifies, by notice in writing lodged with the Registrar, to be the date in each year for the purposes of this Part.

**Audit of accounts.**

**63.—(1.)** Within three months after the end of each prescribed period, a licensed agent shall cause to be audited his accounting and other records relating to trust moneys received and paid by him during that prescribed period.

**(2.)** An agent shall produce to the auditor at an audit the auditor’s report in respect of the last preceding audit.

**Qualification of auditors.**

**64.** A licensed agent shall not engage as his auditor, or permit the audit of his accounting and other records relating to trust moneys to be made by, a person—

- (a) who is not a registered company auditor within the meaning of the *Companies Ordinance* 1962-1966;
- (b) who is an employee of, is a partner of, or is the spouse of, the licensed agent;
- (c) who is an employee of any other licensed agent;
- (d) who is engaged in keeping and entering those records or has those records in his custody or control;
- (e) who is himself a registered agent; or
- (f) who is an officer or employee of a company that is a licensed agent.

**Agent to furnish documents and information to auditor.**

**65.** A licensed agent shall, when required by an auditor so to do for the purpose of an audit of his accounting and other records relating to trust moneys, produce to the auditor all books, papers, accounts, receipt books, securities and documents in his possession relating in any way to trust moneys received or paid by the agent during the period to which the audit relates and shall furnish to the auditor such information, and answer all questions, relating to those books, papers, accounts, receipt books, securities and documents and in relation to all transactions by the agent in the course of carrying on his business as licensed agent as the auditor requires.

**Auditor’s report.**

**66.—(1.)** As soon as is reasonably practicable after the completion of an audit, the auditor shall prepare a report of the result of the audit and shall deliver the report to the licensed agent and a copy of the report to the Registrar.

(2.) An auditor shall state in his report—

- (a) whether, in his opinion, the licensed agent has kept, in accordance with this Ordinance, the accounting and other records relating to all trust moneys received and paid by him;
- (b) whether those records were ready for his examination within a reasonable time after the auditor required their production;
- (c) whether the agent has complied with the auditor's requirements and so complied within a reasonable time; and
- (d) any matter or thing in relation to those records of which the agent or the Registrar should, in the opinion of the auditor, be informed.

**67.—**(1.) In this section, “quarter”, in relation to a licensed agent, means each period of three months ending on the thirtieth day of September, the thirty-first day of December, the thirty-first day of March and the thirtieth day of June, or, if the prescribed period applicable in relation to the agent ends on a day other than the thirtieth day of June, each successive period of three months in that prescribed period the first of which commences on the day after the commencement of that prescribed period.

Agent's statement relating to trust money.

(2.) A licensed agent shall, not later than twenty-one days after the end of each quarter, prepare a statement setting out, as at the close of business on the last day of the quarter—

- (a) the names of persons on behalf of whom the agent held trust moneys;
- (b) the amount shown in the accounts kept by the agent in accordance with this Part as the amount of trust money held by the agent on behalf of each of those persons;
- (c) the amount of trust money held by the agent in the form of cash; and
- (d) the amount standing to the credit of the trust bank account kept by the agent in accordance with this Part.

(3.) For the purpose of the last preceding sub-section, in ascertaining the amount standing to the credit of a trust bank account, cheques drawn on the account but not presented for payment shall be regarded as having been paid.

(4.) A licensed agent shall retain each statement prepared in respect of a quarter until the end of a period of three years after the end of that quarter.

(5.) A licensed agent shall, whenever required so to do by the auditor carrying out an audit of his accounting and other records relating to his trust moneys, produce each of the statements prepared in respect of each quarter in the year in respect of which the audit is being carried out.

Report by  
auditor to  
Registrar.

68. If, in the course of an audit, an auditor considers—

- (a) that the accounting and other records relating to trust moneys have been so kept that he has not been able to audit them properly;
- (b) that there is any loss or deficiency of trust moneys or any failure to pay or account for trust moneys; or
- (c) that there has been any failure to comply with a provision of this Part,

he shall report to the agent accordingly in sufficient detail and shall, within twenty-one days after completing his report, forward a copy of the report to the Registrar.

Inspections.

69.—(1.) The Registrar or an inspector may, at any reasonable time, inspect all books, papers, accounts, receipt books, securities or other documents relating to the trust moneys of a licensed agent or relating to the transactions in respect of which the trust moneys were received, and may, for that purpose, require the licensed agent or any other person in whose custody or control those books, papers, accounts, receipt books, securities or other documents are to produce and to hand over to him those books, papers, accounts, receipt books, securities and other documents.

(2.) A licensed agent shall not refuse or fail to comply with a requirement made under the last preceding sub-section.

(3.) A person other than a licensed agent to whom a requirement under sub-section (1.) of this section is made shall not refuse or fail to comply with that requirement.

Penalty: Four hundred dollars.

(4.) The Registrar or an inspector may make notes, copies or extracts from or copies of any books, papers, contracts or other documents produced to him under this section.

(5.) The Registrar or an inspector may retain, for such period as the Registrar or the Inspector considers necessary, any book, paper, account, contract or other document referred to in sub-section (1.) of this section and may make copies of any such documents.

#### *Division 5.—Other Records to be kept by Licensed Agents.*

Accounting  
records  
relating to  
business  
moneys other  
than trust  
moneys.

70.—(1.) A licensed agent shall keep such accounting and other records as disclose particulars of all moneys (other than trust moneys) received by him in the course of carrying on his business as a licensed agent and all payments made by him out of those moneys.

(2.) The Board may, if it is satisfied that it is necessary to do so for the purposes of ascertaining whether or not a licensed agent has complied with the provisions of this Part, require by notice in writing the licensed agent or any other person in whose custody or control those accounting records are, to produce to the Registrar or a specified inspector the accounting and other records referred to in the last preceding sub-section.

(3.) A licensed agent shall not refuse or fail to comply with a requirement made under the last preceding sub-section.

(4.) A person other than a licensed agent to whom a requirement under sub-section (2.) of this section was made shall not refuse or fail to comply with the requirement.

Penalty: Four hundred dollars.

(5.) The Registrar or an inspector may make notes, copies or extracts from those accounting and other records.

(6.) The Registrar or an inspector may retain, for such period as he considers necessary, any of the accounting or other records referred to in sub-section (1.) of this section.

*Division 6.—Information to be Furnished by Banks.*

71.—(1.) The manager or other principal officer of a bank at which a licensed agent maintains a trust account shall, upon demand in writing signed by the Registrar and delivered personally to the manager or that officer, permit the Registrar or a specified inspector to inspect and make copies of the trust account and the documents or records held by the bank relating to the trust account.

Banks to furnish information when required by the Registrar or the Board.

(2.) Where the Board has reasonable grounds for believing that there is, in a bank account maintained by a licensed agent or by a partnership of which he is a member, whether in his own name, the name of the partnership or any other name, a credit arising from the payment into that account of trust moneys received by the licensed agent or the partnership and dealt with by the licensed agent otherwise than in accordance with the provisions of this Part, the Board may, by notice in writing given to the manager, or other person in charge, of the bank at which the first-mentioned account is maintained—

- (a) require the manager or other person in charge of the bank to permit the Registrar or a specified inspector to inspect and make copies of that first-mentioned account and of the documents and records relating to that account; or
- (b) withdraw the authority of the person or persons authorized to withdraw money from that first-mentioned account.

(3.) Where a notice is given under the last preceding sub-section—

- (a) the manager or other principal person of the bank shall permit the Registrar or the specified inspector to inspect and make copies of the account or of the documents and records relating to the account; or
- (b) no moneys shall be paid out of the account except with the authority of the Board,

as the case requires.

**PART VII.—RULES OF CONDUCT FOR AGENTS.**

72.—(1.) A licensed agent who—

- (a) contravenes or fails to comply with a provision of Part VI. of this Ordinance;

Breaches of rules of conduct by licensed agents.

- (b) contravenes or fails to comply with any other provision of this Ordinance, not being a provision for a contravention of, or for a failure to comply with, which a penalty is imposed;
- (c) without the consent of the principal on whose behalf he acts or has acted, makes use in any manner prejudicial to the interests of the principal of any material or information acquired by the agent in the course of so acting;
- (d) fails to perform his duties to his principal and to carry out the instructions of his principal;
- (e) fails to exercise due skill, care and diligence in carrying out his duties on behalf of his principal;
- (f) having any interest in, or likely to obtain any interest in, any transaction entered into on behalf of the principal, fails to disclose to the principal the exact nature of his interest or of the interest that he is likely to obtain;
- (g) fails to make to his principal a full disclosure of all material facts and circumstances and of everything known to him regarding the matter in respect of which he is authorized to act as agent;
- (h) fails to inform his principal that any price or other consideration that the principal is prepared to accept on the sale of any property may be, if such is, in the opinion of the licensed agent, the case, less than the fair market value of the property;
- (i) without the consent of the principal on whose behalf he acts or has acted, discloses, except when required to do so in pursuance of a law in force in the Territory, information relating to the affairs of the principal obtained by him whilst so acting;
- (j) advertises that he is authorized to sell any property that he is not authorized to sell;
- (k) publishes or causes to be published any advertisement or statement which is false, misleading or likely to deceive any person;
- (l) accepts or demands any fee or payment from any person other than his principal in respect of any service performed or to be performed by him, being a service in respect of which he has received payment, or is entitled to receive payment, from his principal; or
- (m) without the consent in writing of the principal on whose behalf he acts, advertises that he is authorized to sell property at a price higher than or lower than the price that the principal is prepared to accept,

is guilty of a breach of the rules of conduct for agents.

(2.) A licensed agent who attempts to do any act the doing of which would be a breach of the rules of conduct for agents is guilty of a breach of the rules of conduct for agents.

(3.) Where there is a contravention of, or a failure to comply with, a provision of Division 3, Division 4 or Division 5 of Part VI. of this Ordinance by a licensed agent who carries on business as a member of a partnership or firm, each licensed agent who is a member of the partnership or firm shall be deemed to be guilty of the contravention of, or failure to comply with, that provision.

(4.) Where a principal place of business and another place or other places of business are specified in a licence issued to a licensed agent, the licensed agent is guilty of a breach of the rules of conduct for agents unless he employs at that other place or each of those other places of business a registered agent.

(5.) Where—

- (a) a company is a licensed agent acting on behalf of a principal; and
- (b) a director or employee of the company does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were acting on behalf of the principal, make the director or employee guilty of a breach of the rules of conduct for agents,

the company shall be deemed to be guilty of a breach of the rules of conduct for agents.

**73.—(1.)** A registered agent who, being a director of a company that is a licensed agent or being employed by, or being a partner of, a licensed agent, aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or party to a breach, or any attempt to commit a breach, by the licensed agent of the rules of conduct for agents, is guilty of a breach of the rules of conduct for agents.

*Breaches of rules of conduct by registered agents.*

**(2.)** A registered agent who—

- (a) without the consent of the principal on whose behalf his employer acts or has acted, makes use in any manner prejudicial to the interests of the principal of any material or information acquired by the agent or his employer whilst his employer is so acting;
- (b) fails to exercise due skill, care and diligence in carrying out his duties as an employee of a licensed agent;
- (c) having any interest in or likely to obtain any interest in, any transaction entered into on behalf of the principal on whose behalf his employer acts, fails to disclose to the principal and his employer or partner the exact nature of his interest or of the interest that he is likely to obtain;
- (d) fails to make to his employer a full disclosure of all material facts and circumstances and of everything known to him respecting the matter in respect of which his employer is authorized to act as agent;

- (e) without the consent of the principal on whose behalf his employer acts or has acted, discloses, except when required to do so in pursuance of a law in force in the Territory, information relating to the affairs of the principal obtained by him whilst his employer is so acting;
- (f) advertises that his employer is authorized to sell any property when he is not authorized to sell that property;
- (g) publishes or causes to be published any advertisement or statement which is false, misleading or likely to deceive any person; or
- (h) accepts or demands any fee or payment from any person in respect of any service performed or to be performed by his employer, being a service in respect of which his employer has received payment, or is entitled to receive payment, from the principal for whom his employer acts,

is guilty of a breach of the rules of conduct for agents.

(3.) In the application of the last preceding sub-section to and in relation to a registered agent who is a member of a partnership or firm, the reference to his employer shall be read as a reference to the partnership or firm of which he is a member.

(4.) A registered agent who attempts to do any act the doing of which would be a breach of the rules of conduct for agents is guilty of a breach of the rules of conduct for agents.

#### PART VIII.—PROCEEDINGS FOR BREACHES OF RULES OF CONDUCT FOR AGENTS.

Registrar  
to call upon  
agent who  
appears to have  
committed  
a breach of  
rules of conduct.

74.—(1.) The Registrar may, if it appears to him that there are grounds for believing that a licensed agent or a registered agent is guilty of a breach of the rules of conduct for agents, notify the Chairman of the Board accordingly by delivering to the Chairman a statement setting out particulars of the alleged breach.

(2.) Upon receipt of the statement referred to in the last preceding sub-section, the Chairman shall fix a time at which an inquiry shall be held by the Board into the question whether or not the agent has been guilty of the breach of the rules and shall inform the Registrar accordingly.

(3.) The Registrar shall, by notice in writing given to the licensed agent or registered agent, notify him of the time and the place at which the inquiry by the Board into the allegation is to be held and shall furnish to the agent a copy of the statement furnished by him to the Chairman of the Board.

Inquiry  
by the Board.

75.—(1.) The Board shall, at the time and place so specified, inquire into the allegation and if satisfied that the licensed agent or the registered agent has been guilty of the alleged breach of the rules of conduct for agents—

- (a) reprimand the agent;
- (b) order the agent to pay to the Registrar within such time as is specified in the order a fine not exceeding One hundred dollars; or



**(c) order the Registrar—**

- (i) if the agent is a licensed agent—to revoke his licence or his registration, or both; or
- (ii) if the agent is not a licensed agent—to revoke his registration.

(2.) Where the Board orders a licensed agent or a registered agent to pay a fine under the last preceding sub-section and the fine is not paid within the time specified in the order or within such further time as the Board, on the application of the agent, allows, the Registrar shall revoke the licence issued to the registered agent or revoke the registration of the registered agent, or both, as the case requires.

(3.) Where an appeal is lodged under Part XII. of this Ordinance against an order of the Board imposing a fine under this section, time does not run for the purposes of the last preceding sub-section from the date on which the appeal is instituted until the date on which the decision on the appeal is given.

(4.) Upon the making by the Board of an order referred to in paragraph (c) of sub-section (1.) of this section or upon the Registrar revoking a licence or registration under sub-section (2.) of this section, the licence or registration forthwith ceases to be in force.

**PART IX.—SURRENDER AND REVOCATION OF LICENCES.**

**76.—(1.)** A registered agent or a licensed agent may, by notice in writing delivered to the Registrar, apply to the Board for permission to surrender his registration or licence on and from a date not being a date earlier than one month after the date on which the notice is delivered to the Registrar.

*Surrender  
of licences.*

**(2.)** The Board shall not, except as provided in the next succeeding sub-section, grant permission to the registered agent or licensed agent to surrender his registration or his licence if—

- (a) the Registrar has, before the date of the delivery by a registered agent or licensed agent of a notice under the last preceding sub-section, given, or gives, within the period of one month referred to in that sub-section, notice to the Board under the last preceding Part that he has reason to believe that the registered agent or the licensed agent has been guilty of a breach of the rules of conduct for agents; or
- (b) the Registrar has, before the date of the delivery by a registered agent or licensed agent of a notice under the last preceding sub-section, given, or gives, within the period of one month referred to in that sub-section, notice under the next succeeding section to the registered agent or the licensed agent who has delivered the application referred to in that section calling on the registered agent or licensed agent to show cause why his registration or licence, or both, should not be revoked.

(3.) The Board may grant permission to the registered agent or licensed agent to surrender his registration or licence if—

- (a) the Board finds that the agent is not guilty of the breach of the rules of conduct for agents specified in the notice referred to in paragraph (a) of the last preceding subsection; or
- (b) the Board does not direct that the registration or licence be revoked,

as the case requires.

**Revocation  
of licences.**

**77.—(1.)** The Board may, of its own motion or on an application made by the Registrar, revoke a registration of a registered agent or a licence granted to a licensed agent on any one or more of the following grounds, namely:—

- (a) that the registration or licence was obtained by means of misrepresentation;
- (b) that a false or misleading statement was made in or in connexion with the application for registration or for the grant of the licence;
- (c) that the registered agent or the licensed agent has been charged, either within or outside the Territory, with an offence punishable, in the case of a conviction of a person other than a company, by imprisonment for a period exceeding six months;
- (d) that the registered agent or licensed agent has been convicted of an offence against this Ordinance;
- (e) that a licence under the law of a State providing for the licensing of real estate agents, of stock and station agents, of business agents or of auctioneers issued or granted to the registered agent or licensed agent has been cancelled or revoked or a renewal of such a licence has been refused under that law;
- (f) in the case of a licensed agent being a company, that the company has carried on business as a licensed real estate agent, as a licensed stock and station agent or as a licensed business agent for a period during which—
  - (i) if the name of only one person was specified in the company's licence as a director who had had the experience referred to in paragraph (b) of section 43, paragraph (b) of section 45, or paragraph (b) of section 47, as the case requires, of this Ordinance—that person was not a director of the company; or
  - (ii) if the names of two or more persons were so specified in the licence—both or all of those persons were not directors of the company;
- (g) that the registered agent or the licensed agent has not paid, within the time specified in the regulations, the prescribed annual fee payable by him; and
- (h) that the licensed agent has ceased to carry on business in the Territory as a licensed agent.

(2.) The Board shall, before revoking the registration of a registered agent or a licence granted to a licensed agent, direct the Registrar to give notice to the registered agent or the licensed agent calling upon him to show cause why the registration or licence should not be cancelled on the grounds stated in the notice.

78.—(1.) Where a person becomes a director of a company which holds a licence to carry on business as an agent either in addition to, or in place of, one of the persons, who immediately before he became a director, were directors of the company and—

*Revocation of licence granted to a company where a change occurs in directors of licensed company.*

- (a) a notice that complies with the requirements of the next succeeding sub-section has not been given to the Registrar within twenty-one days after the date on which the person becomes a director of the company; or
- (b) an objection is lodged under sub-section (4.) of this section by the Registrar or the Commissioner of Police,

the Board shall direct the Registrar to give notice to the company calling upon it to show cause why the licence granted to it should not be cancelled.

(2.) A notice complies with the requirements of this sub-section if—

- (a) it specifies the full name, the date of birth and the present residential address of the person appointed as a director and any other address at which that person has resided during the three years immediately preceding the date of the notice; and
- (b) it is accompanied by certificates by two persons certifying with respect to the fame and character of the person appointed as a director of the company.

(3.) The Registrar shall forward a copy of a notice given to him in accordance with the last preceding sub-section to the Commissioner of Police.

(4.) The Registrar or the Commissioner of Police may, within twenty-one days after a notice is given to the Registrar under this section, object by notice in writing to the continuation in force of the licence issued to the company on the ground that the person who has become a director of the company is not a person of good fame and character.

(5.) This section applies whether the person who has become a director of the company became a director of the company before, or becomes a director of the company after, the grant to the company of a licence to carry on business as an agent.

79. The registered agent or licensed agent to whom a notice is given under either of the last two preceding sections may, within twenty-one days after the date on which the notice is served on him, lodge with the Registrar a notice in writing stating that he intends to show cause why his registration or the licence issued to him should not be revoked.

*Agent may give notice that he intends to show cause against revocation.*

Registration or licence to be cancelled if agent does not show cause.

**80.** If the registered agent or licensed agent does not, within a period of twenty-one days after the date on which the notice calling upon him to show cause why his registration or licence should not be revoked or within such further time on application, lodge with the Board a notice in writing that he intends to show cause why the registration or licence should not be revoked, the Board shall, unless it withdraws the notice, revoke the registration or licence.

Inquiry by Board where agent shows cause.

**81.—(1.)** If the registered agent or the licensed agent lodges a notice in writing that he or it intends to show cause why his registration or licence should not be revoked, the Board shall hold an inquiry.

(2.) If, at the inquiry, the registered agent or licensed agent does not show to the satisfaction of the Board cause why his registration or licence granted to him or it should not be revoked, the Board may revoke the registration or licence.

(3.) The Board shall record the reasons for its decision, and, if so requested by the registered agent or licensed agent, furnish to him or to it a copy of those reasons.

(4.) The Board may, in revoking a registration or a licence, specify a period that shall lapse before the person formerly registered or the former licensed agent may apply again for registration or a licence and, in that event, that person or the former licensed agent is not eligible to apply again for registration or a licence until the expiration of that period.

(5.) If the Board does not, in revoking registration or a licence, specify a period for the purposes of the last preceding sub-section, the person formerly registered or former licensed agent is not, without the written approval of the Board, again eligible to apply for registration or for a licence.

Inquiry by Board not to proceed until certain proceedings are disposed.

**82.** Where notice has been given to a registered agent calling upon him to show cause why his registration or licence should not be cancelled on the ground referred to in paragraph (c) of sub-section (1.) of section 77 of this Ordinance, and the registered agent or licensed agent has lodged with the Registrar a notice in writing that he intends to show cause why his registration or licence should not be cancelled, the Board shall not proceed with the holding of the inquiry until the proceedings in respect of the offence referred to in the notice have been finally disposed of.

Effect of revocation.

**83.—(1.)** A registration or a licence that is revoked ceases to have effect from and including the day on which it is revoked, and the person who was registered or to whom a licence was granted ceases to be a registered agent or a licensed agent, as the case may be, on and from that day.

(2.) Where registration or a licence is cancelled or revoked, the Registrar shall enter in the appropriate register a note of the revocation of the registration or licence and the period, if any, specified by the Board that is to elapse before registration or a licence may be again applied for.

## PART X.—APPOINTMENT OF RECEIVERS.

**84.—**(1.) Where the Registrar has given notice to an agent calling upon him to show cause why his licence should not be revoked, the Board may appoint a person to be receiver of the trust moneys of the agent. Appointment of receiver.

(2.) The Board may—

- (a) on the written request of an agent based on the ground that the agent has through illness become incapacitated to carry on his business;
- (b) on the death of an agent; or
- (c) if the Board is satisfied that an agent has, through physical or mental illness, become incapable of carrying on business as an agent,

appoint a person to be receiver of the trust moneys of the agent.

**85.—**(1.) Where a receiver of the trust moneys of a licensed agent has been appointed under the last preceding section, the Board may, by instrument in writing, give to the manager of, or other person in charge of the bank at which the licensed agent maintains his trust account, notice of the appointment of the receiver, and may, in the same or a subsequent instrument in writing, withdraw the authority of the licensed agent and of other persons authorized by the licensed agent to sign cheques for the payment of money out of the trust account. Notice to bank.

(2.) Where, in a notice given under the last preceding sub-section, the Board has withdrawn the authority of the licensed agent and of other persons authorized by him to sign cheques for the payment of money out of the trust account—

- (a) the bank shall not, except with the approval of the receiver, pay any money out of the trust account on cheques signed by the licensed agent or other person authorized by him; and
- (b) only the receiver and a person authorized by the receiver by notice in writing delivered to the bank are authorized to sign cheques for the payment of money out of the trust account.

(3.) A copy of an instrument given by the Board under this section shall be served on the licensed agent either personally or by leaving it at the place at which the licensed agent carried on business.

**86.** The receiver appointed under section 84 of this Ordinance may act on behalf of the agent and for that purpose may do all things and may perform all functions that an agent is permitted or required to do or perform by this Ordinance. Powers of receivers.

**87.—**(1.) A receiver appointed under section 84 of this Ordinance shall be paid by the Commonwealth such fees as the Minister determines and is entitled to reimbursement from the Commonwealth of the expenses necessarily incurred by him in carrying out his receivership. Remuneration of receiver.

(2.) An amount of fees paid to a receiver and the amount reimbursed to him by the Commonwealth are recoverable by the Commonwealth from the agent for whom the person is appointed receiver.

## PART XI.—INQUIRIES BY THE AGENTS BOARD.

**Inquiries.**

**88.**—(1.) Where, by this Ordinance, the Board is required to hold an inquiry, the Board shall fix a time and place for the hearing of the inquiry.

(2.) The Board shall cause notice of the matter to be inquired into and of the time and place fixed for the hearing of the inquiry to be given to the Registrar and—

(a) in the case of an inquiry in relation to the registration of an agent or to the grant of a licence to an agent—to the applicant and to a person who has lodged an objection to the registration or the grant; and

(b) in any other case—to the registered agent or licensed agent concerned in the matter of the inquiry.

(3.) The Board may adjourn the hearing of an inquiry from time to time.

(4.) An inquiry shall not be open to the public.

(5.) At an inquiry, the Board may take evidence on oath or affirmation, and for that purpose a member of the Board may administer an oath or affirmation.

(6.) Subject to the regulations, the procedure at an inquiry is within the discretion of the Board.

(7.) At an inquiry in relation to the registration of an agent or for the grant of a licence, the applicant and a person who has lodged an objection to the registration or grant of a licence and, at any other inquiry, the registered agent or licensed agent may be represented by a barrister or solicitor having the right to practise in the Supreme Court or by an agent, who may examine witnesses and address the Board on behalf of the person on whose behalf he appears.

(8.) The Attorney-General may appoint a barrister or a solicitor having the right to practise in the Supreme Court to assist the Board, and the barrister or solicitor so appointed may examine witnesses and address the Board.

(9.) In conducting the inquiry, the Board is not bound by rules of evidence but may inform itself in such manner as it thinks fit.

**Power to  
summon  
witnesses.**

**89.**—(1.) The Chairman or the Deputy Chairman may, by writing under his hand, summon a person to attend an inquiry by the Board at a time and place specified in the summons and then and there to give evidence and produce such books, documents or writings in his custody or control as he is required by the summons to produce.

(2.) A summons under this section may be served—

(a) personally;

(b) by sending it by post to the person at his place of abode or business last-known to the Chairman or the Deputy Chairman; or

(c) by leaving it at that place of abode or business with some person apparently living or employed at that place and apparently not less than sixteen years of age.

**90.**—(1.) Where a witness to be examined at an inquiry before the Board conscientiously objects to taking an oath, he may make affirmation that he conscientiously objects to taking an oath, and that he will state the truth, the whole truth and nothing but the truth, in answering all questions that he may be asked. Affirmation in lieu of oath.

(2.) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

**91.**—(1.) A person served with a summons to attend an inquiry before the Board shall not refuse or fail, without reasonable excuse, to attend at the inquiry before the Board or to produce the books, documents or writings in his custody or control that he is required by the summons to produce. Failure to attend or produce documents.

Penalty: One hundred dollars.

(2.) It is a defence to a prosecution for refusing or failing, without reasonable excuse, to produce a book, document or writing if the defendant proves that the book, document or writing was not relevant to the matter the subject of the inquiry before the Board.

**92.**—(1.) A person appearing as a witness at an inquiry before the Board shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to him by a member of the Board. Refusal to be sworn or give evidence.

Penalty: One hundred dollars.

(2.) A statement or disclosure made before the Board by a witness is not, except in proceedings for giving false testimony at an inquiry before the Board, admissible in evidence against him in civil or criminal proceedings in a court.

**93.**—(1.) Subject to the next succeeding sub-section, a record of the evidence of a witness at an inquiry under this Part shall be made— Record of proceedings at inquiry.

(a) by means of sound-recording apparatus; or

(b) if the Board so directs, by means of shorthand or any similar means.

(2.) Where the Board so directs, the evidence of a witness at an inquiry under this Part shall not be recorded in accordance with the last preceding sub-section, but shall be taken down in writing, and, after being read over to the witness or given to him to read, signed by the witness and the Chairman.

(3.) The Registrar shall have the custody of any record of evidence made in accordance with sub-section (1.) of this section.

(4.) The Registrar shall give such directions as he considers necessary for ensuring that, in any case where a transcript of the record of any evidence made in accordance with sub-section (1.) of this section is or may be required, a transcript is prepared, and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the Registrar.

(5.) Where a transcript of a record is prepared in accordance with the directions of the Registrar given under the last preceding sub-section, the person who prepared the transcript, or under whose supervision the transcript was prepared, shall certify on the transcript, by writing under his hand, that the transcript is a true transcript of a record produced out of the custody of the Registrar.

(6.) Subject to sub-section (13.) of this section, the Registrar shall, upon application made to him by a person and payment by that person of the prescribed fee, furnish to that person a copy of any transcript prepared in accordance with the directions of the Registrar of a record made in accordance with sub-section (1.) of this section of any evidence, or, where evidence was taken down in writing in accordance with sub-section (2.) of this section, a copy of the evidence as so taken down, and may, upon payment of such further fee as is prescribed, certify, by writing under his hand, that the copy is a true copy of the transcript as so taken down.

(7.) Where a record made by means of sound recording apparatus, shorthand or similar means is produced out of the custody of the Registrar and the record purports to be a record made in accordance with sub-section (1.) of this section of the evidence of a witness at an inquiry under this Part, the record is evidence that that person gave that evidence at that inquiry.

(8.) Where—

(a) a sound-recording is produced out of the custody of the Registrar; and

(b) the sound-recording contains a record of comments that purport—

(i) to have been made at the same time as a sound-recording made in accordance with sub-section (1.) of this section of the evidence of a witness at an inquiry under this Part; and

(ii) to have been made for the purpose of identifying the proceedings, voices recorded on the last-mentioned sound-recording or any other matter or thing so recorded,

the first-mentioned sound-recording is evidence of the identity of the proceedings, of the voices or of that other matter or thing, as the case may be.

(9.) Where—

(a) a document purports to be a transcript, or a copy of a transcript, of a record made in accordance with sub-section (1.) of this section of evidence given by a witness at an inquiry under this Part; and

(b) the document bears a certificate that purports to be a certificate given in accordance with sub-section (5.) or (6.) of this section,

the document is evidence that the witness gave the evidence of which the document purports to be a transcript at that inquiry.



(10.) Where a document—

- (a) purports to be the evidence of a witness at an inquiry under this Part as taken down in writing and signed in accordance with sub-section (2.) of this section; or
- (b) purports to be a copy of the evidence of a witness at such an inquiry as so taken down in writing and signed and bears a certificate that purports to be a certificate given in accordance with sub-section (6.) of this section,

the document is evidence that the witness gave the evidence appearing in the document at that inquiry.

(11.) Where a record of any part of the proceedings at an inquiry under this Part, not being a record of the evidence of a witness, has been made by means of sound-recording apparatus or by any other means, the Registrar may, upon application made to him by a person and payment by that person of the prescribed fee, but subject to sub-section (13.) of this section, furnish to that person a copy of a transcript of that record.

(12.) Where a person makes application to the Registrar to furnish to him under this section a copy of any transcript and a copy of the transcript is not available, the Registrar may, before causing a copy of the transcript to be prepared, require the applicant to deposit with the Registrar on account of the fee that will become payable in respect of the furnishing of the copy to the applicant such amount as the Registrar determines, being an amount that does not, in the opinion of the Registrar, exceed the amount of the fee that will become so payable.

(13.) Nothing in sub-section (6.) or (11.) of this section requires the Registrar to furnish a copy of a transcript or of any evidence to a person, not being a person who was represented at the inquiry to which the transcript relates or at which the evidence was given, unless the person applying for the copy satisfies the Registrar or the Chairman that he has good reason for so applying.

**94.—**(1.) An action or proceeding, civil or criminal, does not lie against a member of the Board for or in respect of an act or thing done in good faith by the member in his capacity as a member.

Protection of members of the Board.

(2.) An act or thing shall be deemed to have been done in good faith if the member of the Board by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

**95.—**(1.) A barrister, solicitor or other person appearing before the Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

Protection of barristers, witnesses, etc.

(2.) A witness summoned to attend or appearing before the Board has the same protection as a witness in proceedings in the Supreme Court.

**96.—**(1.) A person who attends for the purpose of giving evidence before the Board is entitled to receive such fees and allowances as the Chairman or, if the Chairman is absent from the meeting of the Board,

Fees and allowances to witnesses.

the Deputy Chairman thinks fit to allow in accordance with the scale of fees and allowances prescribed from time to time, for the purposes of section 27 of the *Public Works Committee Act 1913-1966*, by the Public Works Committee Regulations.

(2.) Fees and allowances payable to a person in accordance with the last preceding sub-section are payable—

- (a) if the person attended before the Board whether on summons or not, by reason of a request by a person other than the Chairman, the Deputy Chairman, the Registrar, the Commissioner of Police or an officer of the Department of the Interior—by the person at whose request the first-mentioned person attended; or
- (b) in any other case—by the Commonwealth.

Board may  
inspect books,  
etc.

97. The Board may inspect books, documents or writings produced at an inquiry before it, and may retain them for such reasonable period as it thinks fit and may make copies of such portions of them as are relevant to a matter before the Board.

#### PART XII.—APPEALS TO THE SUPREME COURT.

Appeals to  
Supreme Court.

98.—(1.) Where the Board—

- (a) has refused an application for registration or for the grant of a licence;
- (b) has found a registered agent or a licensed agent guilty of a breach of the rules of conduct for agents; or
- (c) has revoked the registration of an agent or a licence granted to an agent,

the applicant, the registered agent or licensed agent may, as the case may be, within twenty-one days after the decision was given, appeal to the Supreme Court against the decision of the Board.

(2.) Jurisdiction to hear and determine appeals under this section is vested in the Supreme Court.

(3.) An appeal is in the nature of a re-hearing.

(4.) The Board shall be the respondent upon an appeal.

(5.) The Supreme Court may—

- (a) affirm, set aside or vary the decision of the Board;
- (b) give such judgment as to the Court seems proper; and
- (c) make such other order as justice requires.

(6.) Where the Supreme Court sets aside or varies a decision of the Board, the Court shall set out in its decision the reasons for the decision.

#### PART XIII.—MISCELLANEOUS.

Agent not to  
employ certain  
persons.

99. A licensed agent shall not employ, except with the consent of the Board, in any capacity in the business in respect of which his licence is applicable a person, knowing that the person—

- (a) is a person whose application for registration as an agent under this Ordinance has been refused on the ground that he was not a person of good fame and character;

- (b) is a person whose registration as an agent under this Ordinance has been revoked; or
- (c) is a person whose application for a licence or for registration or for the renewal of a licence or registration under the law of a State providing for the licensing or registration of real estate agents, of stock and station agents, of business agents or of auctioneers has been refused on the ground that the person is not of good fame or character or was not a fit and proper person to be so registered or licensed.

Penalty: Two hundred dollars.

**100. Where—**

- (a) a company is a licensed agent;
- (b) a director of the company is, in addition to being a director of the company, an employee of the company and receives remuneration for his services as such an employee in addition to the remuneration payable to him as a director; and
- (c) that director is not a registered agent,

Director who is an employee of company to be a registered agent.

the company and the director are each guilty of an offence against this Ordinance and on conviction are liable to a penalty not exceeding Four hundred dollars.

**101.—(1.)** A licensed agent shall not share with another person (not being a licensed agent or a partner of the firstmentioned agent) any commission, fee, gain or reward payable to the firstmentioned agent in respect of a transaction in his capacity as agent.

Agent not to share commission.

Penalty: Two hundred dollars.

**(2.)** In the last preceding sub-section, a reference to a licensed agent shall include a reference to a person licensed under the law of a State providing for the licensing of real estate agents, stock and station agents and business agents.

**102.** A licensed agent shall not permit any other person to have possession of his licence with the intent that that other person shall represent himself as the person to whom the licence was granted.

Improper use of licence.

Penalty: Five hundred dollars.

**103.—(1.)** A person other than a licensed real estate agent or a registered real estate agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that he is a licensed real estate agent or a registered real estate agent.

Improper use of title of real estate agent, etc.

Penalty: Two hundred dollars.

**(2.)** Without limiting the effect or application of the last preceding sub-section, a person other than a licensed real estate agent or a registered real estate agent who—

- (a) places, or suffers or permits to be placed, on the building in which his office is situated; or
- (b) places on a document, as a description of his business, the words "real estate agent", "estate agent", "land agent", "property agent" or words that imply that, in the course of his business, he acts

or is prepared to act as agent for principals in connexion with any of the matters referred to in sub-paragraphs (i), (ii) or (iii) of paragraph (a) of sub-section (2.) of section 5 of this Ordinance is guilty of an offence against this section and, on conviction, is liable to a penalty not exceeding Two hundred dollars.

Improper use  
of title of  
stock and  
station agent,  
etc.

**104.**—(1.) A person other than a licensed stock and station agent or a registered stock and station agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that he is a licensed stock and station agent or a registered stock and station agent.

Penalty: Two hundred dollars.

(2.) Without limiting the effect or application of the last preceding sub-section, a person other than a licensed stock and station agent or a registered stock and station agent who—

(a) places, or suffers or permits to be placed, on the building in which his office is situated; or

(b) places on a document, as a description of his business, the words “stock and station agent”, “stock agent” or “station agent” or words that imply that in the course of his business, he acts, or is prepared to act, as agent for principals in connexion with any of the matters referred to sub-paragraphs (i), (ii), (iii), (iv) or (v) of paragraph (b) of sub-section (2.) of section 5 of this Ordinance is guilty of an offence against this section and, on conviction, is liable to a penalty not exceeding Two hundred dollars.

Improper use  
of title of  
business agent,  
etc.

**105.**—(1.) A person other than a licensed business agent or a registered business agent shall not use, in an advertisement or otherwise, words which would reasonably lead to the belief that he is a licensed business agent or a registered business agent.

Penalty: Two hundred dollars.

(2.) Without limiting the effect or application of the last preceding sub-section, a person other than a licensed business agent or a registered business agent who—

(a) places, or suffers or permits to be placed, on the building in which his office is situated; or

(b) places on a document, as a description of his business, the words “business agent” or words that imply that, in the course of his business, he acts, or is prepared to act, as agent for principals in connexion with any of the matters referred to in paragraph (c) of sub-section (2.) of section 5 of this Ordinance is guilty of an offence against this section and, on conviction, is liable to a penalty not exceeding Two hundred dollars.

False or  
misleading  
advertisements.

**106.** A licensed agent shall not, in an advertisement published in connexion with his business as a licensed agent, make a statement or representation that is false, misleading or is intended to deceive.

Penalty: Five hundred dollars.

**107.** A person who, having been a licensed agent, fails to preserve books of account for the period of six years specified in section 60 of this Ordinance, is guilty of an offence against this section and is, on conviction, liable to a penalty not exceeding Two hundred dollars.

Failure to  
keep accounts.

**108.** A person shall not obstruct, threaten or intimidate the Registrar or an inspector in the exercise of a power or function or the discharge of a duty conferred or imposed upon the Registrar or inspector under this Ordinance.

Obstruction,  
etc., of  
Registrar  
or inspector.

Penalty: Two hundred dollars.

**109.** A licensed agent shall, upon demand by the Registrar or an inspector, produce his licence for inspection.

Production of  
licence for  
inspection.

Penalty: Fifty dollars.

**110.** Any person may, on payment of the prescribed fee, inspect a register and may take extracts from the register.

Inspection of  
Register.

**111.** Where an agent is authorized to retain in a trust account money received as a deposit in respect of a transaction in his capacity as agent and the money is to be withheld or not repaid, the agent shall, within a period of fourteen days from the completion of the transaction, inform in writing all persons involved (including his principal) of the reasons for withholding or not repaying the money.

Withholding  
of deposits.

Penalty: One hundred dollars.

**112.** A licensed agent shall not publish an advertisement relating to or in connexion with his business as an agent unless he specifies in the advertisement that he is a licensed agent and the address of the place at which he carries on business.

Address of  
agent in  
advertisements.

Penalty: One hundred dollars.

**113.—(1.)** A person other than a licensed real estate agent shall not represent, by any means whatsoever, that he is authorized to act as agent in the sale, purchase, exchange, leasing or letting of any land in the Territory.

Misrepresent-  
ation by persons  
not being agents.

Penalty: Two hundred dollars.

**(2.)** It is not an offence against the last preceding sub-section if a licensed stock and station agent represents that he is authorized to act as agent in the sale, purchase, exchange, leasing or letting of land for rural purposes.

**114.** A person other than a licensed business agent shall not represent, by any means whatsoever, that he is authorized to act as agent in the sale or purchase of the goodwill of a business carried on in the Territory.

Misrepresent-  
ation by persons  
not being  
business agents.

Penalty: Two hundred dollars.

**115.** A licensed agent shall exhibit and keep exhibited in a prominent place at the place or each place specified in his licence as a place at which he is authorized to carry on business as a licensed agent and so as to be easily read from outside that place of business, a notice of his name and of the fact that he is licensed as an agent and, if he carries on

Agent to  
display notice  
on registered  
place of  
business.

business in a name other than his own name, the name or style under which he carries on business as an agent.

Penalty: Two hundred dollars.

No action for  
commission  
unless agent  
is the holder  
of a licence.

**116.—(1.)** A person other than a person referred to in section 3 of this Ordinance is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in paragraph (a) of sub-section (2.) of section 5 of this Ordinance unless—

- (a) at the time he was engaged to act as an agent, he was a licensed real estate agent and he was such an agent at the time of acting as agent; or
- (b) he was engaged to act as an agent before the expiration of the period of one month after the commencement of this Ordinance and at the time of acting as agent he was a person to whom Part III. of this Ordinance did not apply by reason of section 121 of this Ordinance.

**(2.)** A person other than a person referred to in section 3 of this Ordinance is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in paragraph (b) of sub-section (2.) of section 5 of this Ordinance unless—

- (a) at the time he was engaged to act as an agent, he was a licensed stock and station agent and he was such an agent at the time of acting as agent; or
- (b) he was engaged to act as an agent before the expiration of the period of one month after the commencement of this Ordinance and at the time of acting as agent he was a person to whom Part III. of this Ordinance did not apply by reason of section 121 of this Ordinance.

**(3.)** A person other than a person referred to in section 3 of this Ordinance is not entitled to bring an action to recover any commission, fee, gain or reward for acting as an agent for a principal in relation to a matter referred to in paragraph (c) of sub-section (2.) of section 5 of this Ordinance unless—

- (a) at the time he was engaged to act as an agent, he was a licensed business agent and he was such an agent at the time of acting as agent; or
- (b) he was engaged to act as an agent before the expiration of the period of one month after the commencement of this Ordinance and at the time of acting as agent he was a person to whom Part III. of this Ordinance did not apply by reason of section 121 of this Ordinance.

Collecting of  
rents, etc.,  
by person not  
a real estate  
agent  
prohibited.

**117.** A person other than a licensed real estate agent or a person employed by a licensed real estate agent who, for fee or reward, collects rents or other moneys payable in respect of the occupation of land in the Territory or payments under a mortgage or a terms contract in respect of land in the Territory is guilty of an offence against this section and, on conviction, is liable to a penalty not exceeding Five hundred dollars.

**118.—(1.)** A document required by this Ordinance to be given to, or served upon, a licensed agent may be given or served by leaving it at a place specified in his licence as the place or the principal place at which he carries on business as a licensed agent.

Service upon  
licensed agents  
and applicants  
for licences.

(2.) A document required by this Ordinance to be given to or served upon an applicant for a licence may be given or served by sending it by post to the applicant at his last-known place of residence.

**119.** A document purporting to be a certificate under the hand of the Chairman, the Deputy Chairman or the Registrar and stating that a person was or was not on a date or dates or during a period mentioned in the document the holder of a real estate agent's licence, a stock and station agent's licence or a business agent's licence is, in all courts and before all persons and bodies authorised to receive evidence, evidence of the matters so stated.

Evidence of  
licensing.

**120.** Where the Registrar or an inspector is empowered by this Ordinance to require a person to do anything, the Registrar or the inspector may make the requirement orally or in writing served upon that person.

Requirement  
by Registrar  
or inspector.

**121.—(1.)** Part III. of this Ordinance does not apply to or in relation to a person who was, on the day immediately before the commencement of this Ordinance, carrying on business as—

Transitional  
provisions.

- (a) a real estate agent;
- (b) a stock and station agent; or
- (c) a business agent,

until the expiration of one month after the commencement of this Ordinance.

(2.) If, within a period of one month after the commencement of this Ordinance, a person referred to in the last preceding sub-section applies for a licence to carry on business as a real estate agent, a licence to carry on business as a stock and station agent or a licence to carry on business as a business agent, as the case requires, Part III. of this Ordinance does not apply to or in relation to that person until the expiration of a period of one month after the Board has determined the application for the licence or, if the Board has refused the application for the grant of the licence and the applicant appeals to the Supreme Court against the decision of the Board within the time specified in sub-section (1.) of section 98 of this Ordinance, until the expiration of a period of one month after the Supreme Court determines the appeal.

(3.) A provision of this Ordinance which is expressed to apply to a licensed agent applies on and after the commencement of this Ordinance to and in relation to a person who, on the day immediately before the commencement of this Ordinance, was carrying on business as a real estate agent, stock and station agent, or business agent, as the case may be, and who within the period of one month after the commencement of this Ordinance applies for a licence to carry on business as a

real estate agent, for a licence to carry on business as a stock and station agent or as a business agent in the period during which, under the last preceding sub-section, Part III. of this Ordinance does not apply to or in relation to him in the same manner as that provision would have applied to him in that period if he had been granted such a licence on the date of commencement of this Ordinance.

**Regulations.**

**122.** The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that by this Ordinance are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular for—

- (a) prescribing the fees to be paid for registration as an agent under this Ordinance and for the grant of licences under this Ordinance;
- (b) prescribing annual fees to be paid by a registered agent and the holder of a licence; and
- (c) prescribing penalties not exceeding a fine of One hundred dollars for offences against the regulations.