

Bill No. 21 of 1947.

A BILL TO PROVIDE FOR THE LICENSING OF REAL
ESTATE AGENTS AND REAL ESTATE SALESMEN

NOTE.

This Act repeals two Acts, namely, *The Real Estate Agents' Licensing Act*, Chapter 318, Revised Statutes of Alberta, 1942, and *The Real Estate Commission Act*, Chapter 319, Revised Statutes of Alberta, 1942. The last mentioned Act is incorporated in the new Bill together with many of the provisions of the former Act and a number of new provisions. Only important changes will be referred to in this note.

An important change made by the Bill is that its provisions extend to the sale of a business, including stock in trade, etc., though no real estate may be involved in the transaction. The definition of "real estate" in section 2 (h) effects this.

Section 4 (2) provides that if a salesman terminates his employment with a licensed agent the salesman's license is automatically suspended until reinstated by the Superintendent.

Section 6 (2) requires three months' residence in the Province before making application for a license; the period was formerly one month.

Section 6 (3) authorizes the Superintendent to suspend or cancel a license if in his opinion it is in the public interest.

Section 6 (4) enables the Superintendent when considering applications for licenses or the suspension, reinstatement, etc., of licenses, to refer the matter to an Advisory Board consisting of the Superintendent or his appointee and two licensed agents.

Section 6 (6) provides that no person whose license has been cancelled shall be entitled to a new license for a year.

Section 7 requires every application for a license to be accompanied by a bond in an amount to be prescribed by the regulations.

Section 8 requires an applicant to state in the application an address for service in Alberta.

Section 11 provides exemptions from the operation of the Act. The principal change is the omission of a person acting under a written power of attorney from the owner.

Sections 12, 13 and 14 contain provisions for the enforcement of the bond.

Sections 15 to 18 give the Superintendent and other officials wide powers of investigation into complaints against agents or salesmen and for such purpose power to examine their books and documents and to require their production.

Section 18 gives the person investigating authority to take evidence under oath, to procure attendance of witnesses, etc.

Section 19 (2) provides that no person can be licensed as an agent unless he has been a salesman for a year with an exception in favour of a person who, in the opinion of the Superintendent after investigation, is fully qualified at the time of his application.

Section 29 prescribes the books, records and bank accounts which must be kept by an agent.

Section 22 contains the provisions now contained in *The Real Estate Commission Act* proposed to be repealed by this Bill.

Section 23 prohibits an agent or salesman from making certain representations to induce a person to purchase property.

Section 24 requires an agent carrying on business alone to use his own name only, with an exception in favour of a surviving or remaining partner.

Section 26 requires disclosure of names of persons having at least a ten per cent interest in a corporation or partnership.

Sections 27 and 28 prohibit payment of commissions to unlicensed persons.

Section 29 prohibits an agent or salesman from purchasing property listed with him without full disclosure to the owner of the property.

Section 30 prohibits a salesman from acting for any agent but his employer as shown on the records of the Superintendent.

Section 31 prohibits an agent or salesman from inducing breach of contract in order to procure a sale.

Section 32 requires commissions to be on an agreed amount or percentage basis and prohibits an agreement whereby the agent will be entitled to retain all the sale price over and above the listing price.

Section 33 (2) prohibits an exclusive listing unless an expiry date is provided therein.

Sections 34 to 39 deal with procedure and offences and penalties, and section 40 authorizes the making of regulations by the Lieutenant Governor in Council.

This Act is to come into force on June 30, 1947.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 21 of 1947.

An Act to provide for the Licensing of Real Estate Agents and Real Estate Salesmen.

(Assented to , 1947).

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE.

1. This Act may be cited as "*The Real Estate Agents' Licensing Act.*"

INTERPRETATION.

2. In this Act, unless the context otherwise requires,—

- (a) "Agent" means a real estate agent and includes any person who, for another or others, for compensation, gain or reward, or hope or promise thereof, either alone or through one or more officials or salesmen, trades in real estate, and every person who holds himself out as such;
- (b) "Business" means an undertaking carried on for the purpose of gain or profit and includes an interest in any such undertaking, and without limiting the generality of the foregoing, includes a boarding house, hotel, store, tourist camp and tourist home;
- (c) "License" means license under this Act;
- (d) "Minister" means the Provincial Secretary or any member of the Executive Council to whom, from time to time may be transferred either for a limited period or otherwise, the powers and duties which are by this Act assigned to the Minister;
- (e) "Official" includes president, vice-president, secretary, treasurer, managing director, general manager, department manager, branch office manager and every person acting in a similar capacity whether so designated or not;
- (f) "Person" includes any partnership, association or corporation;
- (g) "Prescribed" means prescribed by this Act or the regulations;
- (h) "Real estate" includes real property, leasehold and business whether with or without premises, fixtures, stock-in-trade, goods or chattels in connection with the operation of the business;

- (i) "Regulations" means regulations made under this Act;
- (j) "Salesman" means a real estate salesman and includes any person employed, appointed or authorized by a real estate agent to trade in real estate;
- (k) "Superintendent" means the Superintendent of Insurance or the Deputy Superintendent of Insurance appointed under the provisions of *The Alberta Insurance Act*;
- (l) "Trade" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb "trade" shall have a corresponding meaning.

LICENSE.

3.—(1) No person shall,—

- (a) trade in real estate unless he is licensed as an agent or as a salesman of a licensed agent;
- (b) act as an official of or on behalf of a partnership or corporation in connection with any trade in real estate by the partnership or corporation, unless he or the partnership or corporation is licensed as an agent; or
- (c) act as a salesman of or on behalf of any partnership or corporation in connection with any trade in real estate by the partnership or corporation unless he is licensed as a salesman of the partnership or corporation and the partnership or corporation is licensed as an agent.

(2) Any change in the membership of a partnership shall be deemed to create a new partnership and to extinguish any existing license.

4.—(1) A salesman may only be licensed where he is the salesman of a licensed agent.

(2) The termination of the employment of a salesman with a licensed agent shall operate as a suspension of the license of such salesman until, upon receipt of application from such salesman, the Superintendent reinstates the license.

5.—(1) No person who is not the holder of a subsisting license under this Act shall either act or hold himself out as an agent or salesman in the Province.

(2) A firm, partnership or corporation may apply for and obtain a license in the name of the firm, partnership or

corporation and shall designate one individual who shall act as its or their representative, and the license if granted shall, when issued, be in the name of the firm, partnership or corporation and shall designate thereon the name of the individual who is authorized to act as an agent on its or their behalf.

(3) Any associate, partner or employee of an agent, and any officer, member or employee of a firm, partnership or corporation licensed as an agent may apply for and obtain a license authorizing the holder thereof to act as a salesman, and every application for a license of a salesman shall have attached thereto in form approved by the Superintendent a recommendation of the applicant, made by or on behalf of a licensed agent, along with a declaration that the applicant, if granted a license, is to act as a salesman employed by and representing the agent making the declaration, or on whose behalf the declaration is made, and the license shall have inscribed thereon the name of the agent as principal of the licensee.

6.—(1) Upon receipt of an application for a license and upon payment of the prescribed fee, the Superintendent may, if he is satisfied the applicant is suitable to be licensed and the proposed licensee is not for any reason objectionable, issue to the applicant a license authorizing the holder during the term thereof to carry on the business of an agent or act as a salesman within the Province, but if the Superintendent, after due investigation made by him or his representative is, for any reason, of the opinion that the applicant should not be granted a license, he may in his absolute discretion refuse a license to the applicant.

(2) No license shall be issued under this Act to any person, other than a corporation, who has not had his usual place of abode in the Province for at least three months before the date of his application for a license or to any corporation which does not at the time of the application for a license maintain a permanent office in the Province.

(3) The Superintendent may suspend or cancel any license where in his opinion such action is in the public interest.

(4) In determining the granting or refusal of an application for a license or renewal of a license of an agent or a salesman, or the suspension or cancellation of any such existing license, or the reinstatement of any suspended or cancelled license, the Superintendent may in any case where he deems it proper, nominate an Advisory Board consisting of three persons, one of whom shall be the Superintendent or other person appointed by him, and two of whom shall be agents licensed under the provisions of this Act, before which Board a hearing may be had and a report made to the Superintendent, and the decision of the Superintendent after receiving and considering such report shall be final and shall not be subject to appeal.

(5) Every license shall expire on the thirtieth day of June of each year, but may be renewed on due application to the Superintendent and payment of the prescribed fee, unless previously cancelled or suspended by the Superintendent.

(6) No person whose license has been cancelled shall be entitled to a new license for one year after the cancellation.

7. Every application for a license shall be made in writing upon the prescribed form to be provided by the Superintendent and shall be accompanied by such fee as may be prescribed and a bond in such amount and form, subject to the provisions of section 12, as may be prescribed.

8. Every applicant for a license or renewal of a license shall state in the application an address for service in Alberta which address shall be at an office operated in the Province by the applicant, and all notices under this Act or the regulations shall be sufficiently served for all purposes if delivered or sent by prepaid mail to the latest address for service so stated.

9. The Superintendent may require at any time, any further information or material to be submitted by any applicant or any licensed person within a specified time limit and may require, if he so desires, verification by affidavit or otherwise of any information or material then or previously submitted.

10.—(1) Every licensed agent shall notify the Superintendent in writing of,—

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

(2) Every licensed salesman shall notify the Superintendent in writing of,—

- (a) any change in his address for service; and
- (b) every commencement and termination of his employment by a licensed agent.

EXEMPTIONS.

11. This Act shall not apply to,—

- (a) any assignee, custodian, liquidator, receiver, trustee or other person acting as directed by the provisions of any Statute or under the order of any court, or to an administrator of an estate or any executor or trustee selling under the terms of any will, marriage settlement or deed of trust;

- (b) any bank or any loan, trust or insurance company trading in real estate owned or administered by such company;
- (c) any member in good standing of the Law Society of Alberta where the trade is made in the course of and as part of the solicitor's practice.

FORFEITURE OF BOND.

12.—(1) Any bond mentioned in section 7 shall be forfeited and the amount thereof shall become due and owing by the person bound thereby as a debt due His Majesty in the right of the Province of Alberta where,—

- (a) an agent, including any member of a partnership, or salesman, in respect of whose conduct the bond has been conditioned, has been convicted of,—
 - (i) an offence under this Act; or
 - (ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under *The Criminal Code (Canada)*;
- (b) a judgment based on a finding of fraud has been given against the agent, including any member of a partnership, or salesman in respect of whose conduct the bond is conditioned;
- (c) proceedings by or in respect of an agent, including any member of a partnership, or salesman, in respect of whose conduct the bond is conditioned, have been taken under *The Bankruptcy Act (Canada)* or by way of winding-up and receiving order under *The Bankruptcy Act (Canada)* or a winding-up order has been made,—

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

(2) For the purposes of every act and omission occurring during the period of licensing, every bond shall continue in force for a period of two years after the license to which it relates lapses or is cancelled.

13. The Lieutenant Governor in Council may direct the Minister to assign any bond forfeited under the provisions of section 12 or to pay over any moneys recovered thereunder to any person or into court in trust for such persons as may become judgment creditors of the person bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person, as the case may be.

14. Where a bond has been forfeited under the provisions of section 12 by reason of a conviction or judgment under paragraphs (a) or (b) thereof and the Superintendent has not within two years of such conviction or judgment having become final, or of the agent or salesman in respect of whom

the bond was furnished ceasing to carry on business as such, received notice in writing of any claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Minister, the Lieutenant Governor in Council may direct the Minister to pay such proceeds or portion thereof to any person who upon forfeiture of the bond made any payments thereunder, after first deducting the amount of any expenses which have been incurred in connection with any investigation or otherwise relating to such agent or salesman.

INVESTIGATION AND ACTION BY SUPERINTENDENT.

15. The Superintendent, Deputy Superintendent, any inspector, or any other person authorized under the hand of the Superintendent, may upon complaint of any person interested, or when he deems it necessary without complaint, investigate and inquire into any such matter as he deems expedient for the due administration of this Act, the circumstances surrounding any transaction or matter or thing done by any agent or salesman whether licensed or not licensed and for the purpose of any such investigation, inquire into and examine the business affairs of the person in respect of whom the investigation is being made, and may examine and inquire into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with such person and into any property, assets or things owned, acquired or alienated in whole or in part by such person or by any person acting on behalf of or as agent for such person, and any such person shall be bound to make prompt and explicit answers to any such inquiries.

16. The Superintendent or any person authorized by him is hereby empowered at all reasonable times to demand the production of and to inspect all or any of the books mentioned in section 15 and all or any documents relating to any trade in real estate effected by any agent or salesman, and any person who has the custody, possession or control of any such books or documents shall produce and permit the inspection of them by the Superintendent or person authorized by him, and shall in case of refusal or neglect, be guilty of an offence against this Act.

17. Where an investigation is being carried on under section 15, the Superintendent or the person making the investigation may seize and take possession of any documents, books, papers, correspondence, communications or records of the person the business affairs of whom are being investigated.

18. In addition to the powers contained in sections 15, 16 and 17, the Superintendent, Deputy Superintendent, in-

spector or other person conducting an investigation under section 15 shall have all the powers which by *The Public Inquiries Act* might be conferred upon him.

19.—(1) No agent shall be licensed unless and until he maintains an office within the Province satisfactory to the Superintendent from which he conducts his real estate business or a portion thereof.

(2) No person shall be licensed as an agent unless he has been employed as a salesman for a period of not less than one year by an agent duly licensed under this Act or unless the Superintendent is satisfied after investigation that such person is fully qualified to be licensed as an agent at the time of his application.

20.—(1) Every agent shall keep proper books and accounts with respect to his trades in real estate, and shall enter therein in the case of each trade,—

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

(2) Every agent shall maintain a trust account for every person from whom trust moneys are received in which shall be entered full details of all trust moneys so received and disbursements therefrom.

(3) Every agent shall maintain an account in a chartered bank, loan or trust company or Province of Alberta treasury branch in which shall be deposited all moneys which come into his hands in trust for other persons in connection with his business, and he shall at all times keep such moneys separate and apart from moneys belonging to himself or to the partnership, in the case of a partnership.

21. No action shall be brought for commission or for remuneration for services in connection with a trade in real estate unless at the time of rendering such services the person bringing the action was licensed as an agent or exempt from license and the court shall stay any such action at any time upon summary application.

RECOVERY OF COMMISSION.

22. No action shall be brought to charge any person either by commission or otherwise, for services rendered in connection with the sale of any land, tenements or heredita-

ments, or any interest therein unless the contract upon which recovery is sought in the action or some note or memorandum thereof is in writing signed by the party to be charged or by his agent thereunto lawfully authorized in writing, or unless the person sought to be charged has as a result of the services of an agent employed by him for the purpose effected a sale or lease of lands, tenements and hereditaments or any interest therein, and has either executed a transfer or lease signed by all other necessary parties and delivered it to the purchaser, or has executed an agreement of sale of lands, tenements and hereditaments or any interest therein, signed by all necessary parties, entitling the purchaser to possession of the lands, tenements and hereditaments or any interest therein, as specified in the agreement and has delivered the agreement to the purchaser.

REGULATION OF TRADING.

23. No agent and no salesman shall make any representation that he or any other person will,—

- (a) re-sell or in any way guarantee or promise to re-sell any real estate offered for sale by him; or
- (b) sell any of the purchaser's real estate; or
- (c) procure a mortgage, extension of a mortgage, lease or extension of a lease, unless at the time of making the representation the person making it delivers to the person to whom the representation is made, a letter or photostatic copy thereof, setting forth the representation in clear language.

24. An agent carrying on business alone and not through an incorporated company shall carry on business in his own name only and shall not use any description, words or device which would indicate that, his business is being carried on by more than one person or by a company;

Provided, however, that a surviving or remaining partner or partners may carry on business in the name of the original partnership, but shall publish on all letterheads and circulars the name or names of such surviving or remaining partner or partners.

25.—(1) No agent or salesman shall trade in real estate until notified in writing by the Superintendent that he is licensed.

(2) A person who is not licensed shall neither directly nor indirectly hold himself out as being an agent or salesman.

26. Every partnership and corporation licensed as an agent shall publish the names of every person having an interest either directly or indirectly to the extent of not less than ten per centum in the capital of the partnership or cor-

poration, as the case may be, on all letterheads and circulars in which the name of the partnership or corporation appears unless otherwise directed by the Superintendent.

27. No agent shall employ, permit or engage the salesman of another agent or an unlicensed salesman to trade in real estate nor shall an agent pay commission or other remuneration to any such salesman.

28. No licensed agent or salesman shall pay commission or other remuneration to any unlicensed person.

29. No agent or salesman shall purchase for himself either directly or indirectly real estate listed with him for sale, nor shall he acquire any interest therein, either directly or indirectly, until he has clearly disclosed to the listing owner complete details of his negotiations for the sale of the said property to another person.

30 No salesman shall trade in real estate on behalf of any agent other than the agent who, according to the records of the Superintendent, is his employer, and no salesman shall be entitled to or accept any commission or other remuneration for trading in real estate from any person except the agent who is licensed as his employer.

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

32.—(1) No agent or salesman shall request or enter into an arrangement for the payment to him of commission or other remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price thereof, nor shall an agent or salesman be entitled to retain any commission or other remuneration computed upon any such basis.

(2) All commission or other remuneration payable to an agent in respect of the sale of real estate shall be upon an agreed amount or percentage of the sale price and where no agreement as to the amount of commission has been entered into, the rate of commission or other basis or amount of remuneration shall be that generally prevailing in the community where the real estate is situate.

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

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

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

OFFENCES, ETC.

34. Any person violating any of the provisions of this Act or of any regulations made hereunder, or omitting or refusing or neglecting to fulfil, perform, observe, or carry out any duty or obligation created or imposed by this Act or any regulations made hereunder, shall be guilty of an offence and liable upon summary conviction to a penalty of not less than twenty dollars and costs, and not more than five hundred dollars and costs, for every such offence.

35. In any prosecution under this Act, where the accused pleads that at the time of the act or omission complained of he was the holder of a license, the burden of proof shall be on the accused.

36. Every prosecution under this Act shall be commenced within two years from the date upon which the offence is alleged to have been committed.

37.—(1) Without a fiat of the Minister, no action or proceeding shall be brought or taken against the Superintendent or Deputy Superintendent or any inspector or other person employed by him for anything done or omitted in the performance or supposed performance of his duties under this Act or any other Act which imposes duties upon him.

(2) The Superintendent may bring action and institute proceedings in his name of office for the enforcement of any of the provisions of this Act or for the recovery of fees and penalties payable thereunder.

38. A statement as to the licensing or non-licensing of any person under this Act purporting to be certified by the Superintendent without proof of the office or signature of the person certifying, shall be receivable in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

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

REGULATIONS.

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

- (a) prescribing the amount and form of bonds to be furnished under this Act;
- (b) prescribing the fees payable upon applications for license and renewal of license and any other fees in connection with the administration of this Act and the regulations;
- (c) prescribing forms for use under this Act and the regulations;
- (d) prescribing the practice and procedure upon investigation under sections 15, 16, 17 and 18;
- (e) providing for the examination of applicants for license and renewal of license;
- (f) generally for the better carrying out of the provisions of this Act and the more efficient administration thereof.

41. *The Real Estate Agents' Licensing Act*, being chapter 318 of the Revised Statutes of Alberta, 1942, and *The Real Estate Commission Act*, being chapter 319 of the Revised Statutes of Alberta, 1942, are hereby repealed.

42. This Act shall come into force on the thirtieth day of June, 1947.

No. 21

FOURTH SESSION
TENTH LEGISLATURE
11 GEORGE VI
1947

BILL

An Act to provide for the Licensing
of Real Estate Agents and Real
Estate Salesmen.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. HOOKE.

EDMONTON:
A. Shnitka, King's Printer
1947