

1977 Bill PR 1

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Third Session, 18th Legislature, 26 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL PR 1**

**AN ACT TO INCORPORATE  
THE ALBERTA REAL ESTATE SOCIETY**

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MR. GHITTER

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First Reading .....

Second Reading .....

Third Reading .....

Bill PR 1  
Mr. Ghitter

## BILL Pr. 1

1977

### AN ACT TO INCORPORATE THE ALBERTA REAL ESTATE SOCIETY

(Assented to \_\_\_\_\_, 1977)

WHEREAS the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the petition:

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

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| Short title | <b>1.</b> This Act may be cited as " <i>The Alberta Real Estate Society Act</i> ".  |
| Definitions | <b>2.</b> In this Act <ul style="list-style-type: none"><li>(a) "agency" means a business engaged in real estate transactions and employing an agent in that regard;</li><li>(b) "agent" means a person licensed as a real estate agent pursuant to <i>The Real Estate Agents' Licensing Act</i>;</li><li>(c) "assured loss" means a pecuniary loss in respect of which a judgment has been obtained against an agent or salesman which<ul style="list-style-type: none"><li>(i) is based on a finding of fraud or breach of trust in respect of a trade in real estate,</li><li>(ii) has become final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed, and</li><li>(iii) is not satisfied within 30 days of the date that it becomes final, and</li><li>(iv) is suffered by any person other than the spouse, child, parent, brother, or sister of the agent or salesman.</li></ul></li><li>(d) "Assurance Fund" means a fund for compensation of persons aggrieved by the wrongful act of any agent, established pursuant to this Act;</li><li>(e) "Council" means the council governing the Society;</li><li>(f) "Court" means the Supreme Court of Alberta;</li><li>(g) "Fund" means the Assurance Fund;</li></ul> |

- (h) "licence" means a licence given pursuant to the provisions of *The Real Estate Agents' Licensing Act*;
- (i) "member" means a member of the Society;
- (j) "Minister" means the member of the Executive Council charged for the time being by the Lieutenant Governor in Council with the administration of this Act;
- (k) "Northern Alberta" means that part of the Province previously known as the Judicial District of Northern Alberta;
- (l) "real estate" means
  - (i) real property and leasehold property, and
  - (ii) any business, whether with or without premises, and the fixtures, stock in trade, goods or chattels in connection with the operation of the business;
- (m) "salesman" means a person who is licensed as a salesman pursuant to *The Real Estate Agents' Licensing Act*;
- (n) "Secretary" means the person appointed by the Council to perform the functions of secretary of the Council;
- (o) "Society" means the Alberta Real Estate Society incorporated hereby;
- (p) "Southern Alberta" means that part of the Province previously known as the Judicial District of Southern Alberta;
- (q) "Superintendent" means the Superintendent as defined in *The Real Estate Agents' Licensing Act*;
- (r) "trade" means
  - (i) a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise,
  - (ii) any offer or attempt to list real estate for the purpose of a disposition as referred to in sub-clause (i), or
  - (iii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of a disposition, acquisition, transaction, offer or attempt as referred to in sub-clauses (i) and (ii).

**Incorporation**

**3.** P. J. Toole, R. L. Harris, H. G. Yanosik, G. L. Downey and W. G. Bennett and such other persons are now or may hereafter become, under the provisions of this Act, members of the Society, are hereby incorporated under the name "The Alberta Real Estate Society".

**Membership**

**4.** Every agent or salesman who complies with the requirements of this Act and the regulations and applies for membership of the Society shall be a member thereof.

**Council**

**5. (1)** The Society shall be governed by a Council whose members shall comprise the following:

- (a) one person appointed by the Superintendent;
- (b) one person who is a member of five years' standing of the Law Society of Alberta to be appointed by the elected members of Council;
- (c) one person who is a member of five years' standing of the Institute of Chartered Accountants of Alberta to be appointed by the elected members of Council;
- (d) one member to be elected being a resident of Southern Alberta, and being a person residing and carrying on business outside of the corporate limits of the City of Calgary;
- (e) one member to be elected being a resident of Northern Alberta, and being a person residing and carrying on business outside of the corporate limits of the City of Edmonton;
- (f) one salesman to be elected being a resident of Southern Alberta;
- (g) one salesman to be elected being a resident of Northern Alberta;
- (h) one agent to be elected being a resident of Southern Alberta;
- (i) one agent to be elected being a resident of Northern Alberta;
- (j) four agents to be elected at large.

(2) Notwithstanding subsection (1) the first Council of the Society shall consist of:

- (a) one person appointed by the Superintendent;
- (b) P. J. Toole, R. L. Harris, H. G. Yanosik, G. L. Downey and W. G. Bennett.

(3) P. J. Toole shall be the first President and W. G. Bennett the first Vice-President of the Society.

(4) The first Council named in subsection (2) shall hold office from the date of commencement of this Act until the 31st day of December following the first election of a Council pursuant to sections 6 to 15.

**Election**

**6.** An election of the elected members of the Council shall be held on the first Monday of November in each year.

**Term of  
office**

**7. (1)** In every odd numbered year there shall be elected two agents at large and the Council members designated in section 5, subsection (1), clauses (d), (g) and (h) and in every even numbered year there shall be elected two agents at large and the Council members designated in section 5, subsection (1), clauses (e), (f) and (i).

(2) Notwithstanding subsection (1) in the first election after the commencement of this Act, all members designated in section 5, subsection (1), clauses (d), (e), (f), (g), (h) and (i) shall be elected, and the term of those members in positions that are open for re-election at the next election, pursuant to subsection (1) and the term of the two members at large elected having the least number of votes or ballots cast in their favour shall end on the 31st day of December next following the second election.

(3) Those members elected at the first election whose term does not end on the 31st day of December next following the second election and all members elected at subsequent elections shall hold office for two years in accordance with section 14 unless such term shall cease or be suspended as hereinafter provided.

**Qualifications  
for  
nomination**

**8.** (1) Only a member of the Society who has been licensed as an agent or salesman for two continuous years prior to the date of the election shall be eligible for nomination for election pursuant to section (5), subsection (1), clauses (d), (e), (f), (g), (h), (i) or (j).

(1) Retiring members of the Council are eligible for nomination.

(3) No person shall be nominated for or elected to the Council who within the five years prior to the date of the election has been convicted of an indictable offence.

**Nominations**

**9.** (1) On or before the 31st day of July of each year the Secretary shall notify all members of the Society in writing of the elected positions open for nomination and advising each member of the requirements for nomination.

(2) Nominations for the Council shall be made in writing to the Secretary.

(3) All nominations must be supported by five members in addition to the nominator and shall be consented to in writing by the person nominated.

(4) Only one member from any agency may be nominated for election to the Council and in the event that more than one nomination from any agency is received by the Secretary, the first valid nomination shall be allowed to stand.

**10.** Nominations must be delivered or postmarked on or before the 31st day of August.

**Elections**

**11.** (1) The Secretary shall prepare a ballot showing the names of all members nominated in alphabetical order indicating the name of the candidate, the agency by whom such candidate is employed, the nature and type of licence he holds and indicating whether or not the candidate is a

proprietor or partner in any agency or a shareholder or officer of any corporate agency holding ten per cent or more of the voting shares in such corporate agency, and naming such agency.

(2) The Secretary shall forward a ballot to each member on or before the 1st day of October, together with a self-addressed return envelope.

(3) In the event that no member is nominated from a category designated in section 5, subsection (1), clauses (d), (e), (f), (g), (h) or (i), Council shall, with the nominees consent in writing, nominate a member or members for election to such category, provided that in no event shall it nominate more than three members for election to any one unfilled category.

(4) Ballots shall be sent to all members at their last address filed with the Superintendent.

(5) (a) Every agent shall be at liberty to vote for those nominees for the Council nominated under section 5, subsection (1), paragraphs (d), (e), (h), (i) and (j) by indicating a clear preference on his ballot.

(b) Any ballot with more than eight names indicated or any spoiled ballot shall be invalid and not counted but no ballot shall be invalid by reason only that there are less than eight persons voted for.

(6) (a) Every salesman shall be at liberty to vote for those nominees for the Council nominated under section 5, subsection (1), paragraphs (d), (e), (f), and (g) by indicating a clear preference on his ballot.

(b) Any ballot with more than four names indicated or any spoiled ballot shall be invalid and not counted but no ballot shall be invalid by reason only that there are less than four persons voted for.

(7) The back of the return envelope shall be signed by the member or the enclosed ballot shall be invalid.

(8) The Secretary shall not accept or count any ballots not delivered to him or addressed to him and postmarked on or before the 31st day of October.

(9) The Secretary shall prepare a list of persons elected on or before the 7th day of November and shall notify all members of the Council, the Superintendent and all persons nominated of the results of balloting, showing the number of ballots cast for each person nominated.

(10) In the event of a tie, the Council shall exercise a collective casting vote, which shall be made at the first

meeting of the Council convened after election in favour of the nominee supported by the largest number of Council members and if there be a tie in the Council as decided by the President.

(11) The Superintendent shall undertake and exercise all duties required of the Secretary until the first election of the Council or in the event of there being no Secretary appointed pursuant to section 21.

**12.** (1) The President may at any time direct the extension or increase of any time limit relating to the election of members or a member to the Council, and such directive may be retroactive in effect.

(2) Anything done at or before or within the time specified in a directive under subsection (1) is as valid as if it had been done at or before or within the time fixed by or under this Act.

Appeal of  
election

**13.** (1) A member may appeal by way of originating notice to the Court the validity of an election of one or more positions in the Council, by filing such notice within 10 days of the results of the election of new members pursuant to section 11, subsection (9).

(2) Where it appears to the Judge that the election was conducted substantially in accordance with the requirements of this Act and that any non-compliance, violation, mistake or irregularity did not materially affect the result of the election, he may adjudge the election valid.

(3) Where the Judge decides that the election is invalid, he shall

- (a) give directions as to the holding of another election, and
- (b) direct that the Council members who held office immediately prior to the election shall continue in office and resume their duties until the first meeting of the Council following the next election.

(4) Where the Judge decides that the election of one or more but not all of the Council is invalid, he shall either

- (a) direct the remaining Council members to appoint another or others in his or their stead to fill the vacancy or vacancies until the next regular election of the Council, or
- (b) give directions as to the holding of another election to fill the vacancies and also the terms for which they shall be elected.

(5) The decision of the Court is final and the Judge may make such order as to cost as he sees fit.

Term of  
office

**14.** The term of office of each member elected shall commence on the first day of January following his election and shall cease the thirty-first day of December of the year his term ends.

Replacement  
of appointees

**15.** (1) Appointed members may be replaced at any time by the persons so appointing them.

(2) In the event that any elected member retires or becomes incapable of holding office by virtue of death or mental or physical infirmity, or should such member cease to be an agent or salesman, then the Council may declare his office vacant and appoint another agent or salesman, as the case may be, to fill such vacancy.

Powers of  
Council

**16.** The Council shall manage and conduct the business and affairs of the Society and exercise the powers of the Society in the name of or on behalf of the Society.

**17.** The Council may by resolution,

- (a) authorize the Society to enter into any contract that the Society has power to enter into;
- (b) appoint committees of the Council and delegate powers of the Council to such committees;
- (c) appoint representatives to appear on behalf of the Society;
- (d) provide for pre-licensing and post-licensing curricula and course material and delegate its powers in this regard to any real estate board or educational institution authorized to conduct courses of a general educational nature within the Province;
- (e) establish and prescribe a pre-licensing examination as a prerequisite for licensing subject to approval of the Superintendent, and in the case of agents or salesmen licensed at the time of commencement of this Act, may require such agents or salesmen within a period not to be less than three years after commencement of this Act to pass such pre-licensing examination.
- (f) establish a procedure for appeals from the marking of pre-licensing examinations established pursuant to clause (e) and to establish a system for re-writing such examinations;
- (g) subsidize the costs of courses to members or applicants for membership;
- (h) levy annual fees to defray the costs of the Council;
- (i) levy annual fees to maintain the cost of an Assurance Fund;



- (j) pay an honorarium and expenses of members of the Council and pay an honorarium and expenses to the member of the Law Society and the member of the Institute of Chartered Accountants appointed to the Council;
- (k) conduct a system of spot audits and exercise other accounting control over the trust accounts maintained by the members of the association pursuant to the administration of the Assurance Fund and to cause the cost of such audits to be paid by the Assurance Fund and included in the annual levy;
- (l) enter into insurance contracts to underwrite the Assurance Fund;
- (m) maintain a special fund for the relief of members or their dependents, and to enter into contracts for insurance available to members in that regard;
- (n) authorize the distribution to members of memoranda or publications relating to ethical standards of professional conduct;
- (o) take such action and incur such expenses as the Council considers necessary for the promotion, protection, interests and welfare of the Society;
- (p) acquire, sell, lease, hold, mortgage or hypothecate real and personal property;
- (q) borrow money;
- (r) make rules governing the maintenance of books of account and trust accounts of members provided that such rules shall not abrogate, derogate or detract from any rights or obligations imposed on members by law;
- (s) require any member to pay to the Society the cost of any inspection or audit of his books and accounts where any rule made pursuant to clause (r) has not been complied with;
- (t) call general meetings of all members and to authorize any matter of business which may otherwise be voted on by the Council to be voted on by the membership at large in which instance the results of such vote shall be binding upon the Council.

**Meetings of  
Council**

**18. (1)** Meetings of the Council shall be held at such places and times as the Council may determine.

(2) The President or any three members of the Council may call a special meeting of the Council.

(3) A majority of the Council is a quorum at any meeting of the Council.

(4) 14 days' notice in writing shall be given of any meeting of the Council.

(5) Where it appears for any reason that, in the opinion of the President, it is desirable to take a vote of the Council by mail, telegram or telephone or when in his opinion it is impracticable to hold a special meeting of the Council, a resolution agreed to by three-quarters of the Council present within the Province polled by mail, telegram or telephone is as valid as though the vote were taken at a properly constituted meeting of the Council.

**Council office**      **19.** The Council shall designate an office of the Council where there shall be maintained a roll of all members, and the records and books of account of the Council which shall be available for inspection by members three days in every month during normal business hours.

**Officers**            **20.** The Council shall elect a President and a Vice-President from amongst its elected members at its first meeting.

**President**           **21.** The President, or in his absence, the Vice-President, shall preside at all Council meetings, and may vote on any matter before the Council, but having voted shall not have a second or casting vote.

**Secretary**          **22.** The Council shall appoint a Secretary at its first meeting who shall keep a record of all the meetings of the Council and of all meetings of the membership at large.

**23.** The Secretary may be a full time employee of the Society who shall be paid a salary to be fixed by the Council from time to time, and shall hold office at the pleasure of the Council.

**Deputy**            **24.** In the absence of the President and Vice-President at any meeting, the Council may appoint one of its number to perform the duties of the President for such meeting.

**Meetings**          **25.** (1) Any 50 members of the Society may call an extraordinary meeting of the membership at large by signing a notice of meeting calling a meeting at a designated place and time stating the business to be brought before the meeting.

(2) The notice of an extraordinary meeting shall indicate clearly the names of the persons calling the meeting, the nature of the licence held and in the case of a salesman, the name of the agency by whom the salesman is employed.

(3) The notice of meeting shall be given to the Secretary 30 days before the meeting and the Secretary shall, within seven days, call the meeting at the place and time so designated, provided that the place shall be within the corporate limits of the City of Calgary or the City of Edmonton and be reasonably capable of enabling the transaction of business for a meeting of the membership at large.

(4) Any meeting of the membership at large may annul or vary a decision of the Council by the vote of two-thirds of all members present and voting.

(5) A quorum of an extraordinary meeting shall be 150 members.

**26.** (1) The Council shall call one annual general meeting of the membership at large each year which shall be held within Calgary or Edmonton, at such place therein as the Council may determine.

(2) At each annual general meeting, the President or failing him the Vice-President shall report on the proceedings of the Council since the last general meeting.

(3) At least 20 days' notice shall be given of any annual general meeting called by the Council and the Secretary shall, together with such notice calling the meeting, cause to be mailed to each member a financial statement of the Society for the previous fiscal year.

(4) A quorum of the annual general meeting of the membership at large shall be 50 members.

**Members**

**27.** There shall be enrolled in the Society every person who

- (a) meets all examination or pre-licensing course requirements prescribed by the Council pursuant to section 17,
- (b) pays the fees prescribed by the Council for membership and the Assurance Fund levy,
- (c) is licensed as agent or salesman by the Superintendent pursuant to *The Real Estate Agents' Licensing Act*, and
- (d) complies with any other requirements prescribed by regulation.

**Fees**

**28.** The Council shall have authority to levy fees to cover the costs of administration of the Council and the Assurance Fund provided the schedule of such fees shall first be published in the Alberta Gazette, 60 days prior to their effective date.

**29.** (1) The fees prescribed by the Council shall be paid by new members upon application for a license pursuant

to *The Real Estate Agents' Licensing Act*, and within 30 days after such fees fall due as prescribed by the Council for all other members.

(2) In the event of any default in payment of fees, the Secretary shall forthwith notify the Superintendent in writing of such default and upon payment of fees by any member or new member that has been in default the Secretary shall forthwith notify the Superintendent in writing.

Courses

**30.** The Council shall provide, as near as possible, that any educational courses shall be self funding and may charge for such courses a reasonable amount to cover the costs thereof, provided that Council shall be at liberty to subsidize the courses from any surplus fees levied generally on the membership.

Assurance  
Fund

**31.** The Society shall maintain a fund known as the "Assurance Fund" for the reimbursement in whole or in part of persons sustaining pecuniary loss by reason of the theft, misappropriation, conversion, obtaining by fraud, deceit or like wrongful act by a member of the Society of money or other property entrusted to or received by such member acting in the capacity of agent or salesman, in the course of a trade, suffered by a person other than the wife, child, parent, brother or sister of that agent or salesman.

**32.** The Council may make rules respecting the levy of an annual fee for the Assurance Fund as well as an initial fee for any agent and may prescribe fees for agents and salesmen and in the case of agents may prescribe an additional levy for each salesman employed by such agent.

**33.** The Council may borrow from time to time for the purposes of establishing the Assurance Fund and may obtain insurance to protect against depletion of the Assurance Fund.

**34.** The Assurance Fund shall be kept separate and apart from any other funds of the Society and

- (a) shall be invested by the Council from time to time and in so investing the Council shall not be subject to the provisions of *The Trustee Act*, and
- (b) shall be administered by the Council in such manner as they think proper.

Report on  
Fund

**35.** Not later than the 31st day of March in each year, the Council shall cause a report to be prepared as to the Assurance Fund and all dispositions made therefrom and not later than that date shall cause a copy thereof to be delivered to the Superintendent.

Claim on  
Fund

**36.** (1) Where a person has a cause of action against an agent or salesman for theft, misappropriation, conversion,

obtaining by fraud, deceit or like wrongful act, arising out of a trade within the Province of Alberta made during such time as such agent or salesman was licensed pursuant to the provisions of *The Real Estate Agents' Licensing Act*, that person may apply to the Council in the prescribed form for payment out of the Assurance Fund in respect of such loss;

(2) Upon receipt of an application under subsection (1) the Council shall, by registered mail, send notice of the application to the agent or salesman involved.

(3) Subject to restrictions and limitations on payment out as contained hereinafter,

- (a) if a consent to the amount to be paid to the applicant from the Assurance Fund and an agreement, in the form prescribed by the Council to pay that amount back to the Assurance Fund is executed by the agent or salesman, and
- (b) if the applicant executes an assignment to the Assurance Fund of all claims against the persons liable for such theft, misappropriation, conversion, obtaining by fraud, deceit or like wrongful act, in respect of which application is made,

the Council may authorize payment out of the Fund to the applicant of an amount that it considers in all the circumstances to be proper compensation.

(4) Where an amount is paid out of the Assurance Fund pursuant to subsection (3), the Council is subrogated to the rights of the person to whom the amount was paid and the Council may maintain an action in the name of that person or in the name of the Council against all or any persons liable for the theft, misappropriation, conversion, obtaining by fraud, deceit or like wrongful act.

(5) The Council may enter into an agreement with a person who executes an agreement pursuant to subsection (3) to accept payment by installments of the amount owing on the undertaking.

(6) Where a person who has commenced payment of the amount owing on the agreement is in default in any payment for a period of 30 days or more, the Secretary shall forthwith notify the Superintendent in writing of such default.

**37. (1)** Where, in an action against a member for misappropriation, conversion, obtaining by fraud, deceit or like wrongful act of money or other property entrusted to or received by a member acting in the capacity of an agent or salesman in the course of a trade, a plaintiff notes a defendant in default, the plaintiff shall have the right to make a claim against the Assurance Fund by forthwith serving upon the Council notice in writing advising it of the facts and the plaintiff in that event shall not take the next step in the action until 30 days after service of the notice.

(2) Where in an action mentioned in subsection (1), a defendant's statement of defence is struck out or a defendant fails to appear in person or by counsel at trial, or a plaintiff receives notice that a defendant's solicitor has ceased to act, the plaintiff may serve upon the Council, notice in writing advising it of the fact and the plaintiff in that event shall not take the next step in the action until 30 days after the service of the notice.

(3) Where a notice is served pursuant to subsection (1) or (2), a copy of the statement of claim and every subsequent pleading in the action shall be served on the Council by the party to the action who issues or files it.

(4) The Council may at any time within the 30 days mentioned in subsections (1) and (2) notify the plaintiff that it intends to make an investigation and the plaintiff shall not take the next step in the action until 30 days after being so notified by the Council.

(5) When a defendant is represented by counsel in an action where it appears that a claim may be made against the Assurance Fund, the Council may upon notice to the plaintiff and defendant apply to be added as a party and thereupon may take any steps it considers proper to protect the interests of the Assurance Fund.

(6) The Council in its discretion may, with the consent of the defendant or the Court, on behalf of and in the name of the defendant, file a defence, examine for discovery, make payment into court, appear by counsel for trial, consent to judgment in whatever amount it considers proper in all the circumstances or take any other action that the defendant could have taken under the Alberta Rules of Court or any other action it considers appropriate.

(7) All acts done by the Council in accordance with subsection (6) shall be deemed to be the acts of the defendant and the Council shall not be named as a defendant in the action and no judgment shall be given against the Council.

(8) Where the Council instructs a solicitor to act for it under this section, all acts done by the solicitor shall be deemed to have been done by the solicitor while acting upon instructions from the defendant.

(9) The service of any document or notice on the Council may be effected by delivery of such document or notice to the office of the Secretary.

Payment  
from Fund

**38.** (1) Where a person recovers in a court in Alberta, a judgment for an assured loss, he may upon the determination of all proceedings, including appeals, apply to the Council in the prescribed form for payment out of the Assurance Fund of the amount of the judgement or the unsatisfied portion thereof.

(2) Where an application is made under subsection (1) the requirements of this section and the regulations have been satisfied, the Council shall, subject to provisions of this Act limiting payment, authorize the payment out of the Assurance Fund for the amount of the judgment or the unsatisfied portion thereof.

(3) The Council may refuse to authorize payment out of the Assurance Fund of any amount in respect of a judgment

- (a) if the Council was not served with notice as required by section 37, subsection (1),
- (b) if a judgment is signed upon the consent or with the agreement of the defendant, but without the consent of the Council,
- (c) if the action in which the judgment was given was not brought against all persons against whom the plaintiff might reasonably be considered as having a cause of action in respect of the damages in question or prosecuted against every such person to judgment or dismissal, or
- (d) if any requirement of this Act or the regulations has not been complied with.

(4) The Council shall not authorize the payment out of the Assurance Fund of any amount in respect of a judgment until the judgment creditor

- (a) assigns the judgement, to the extent of the amount of the payment, to the Council, and
- (b) serves a copy of the assignment on the judgment debtor or obtains the order of a judge dispensing with such service.

(5) Where the judgment creditor is an infant the assignment may be made by the Public Trustee on the infant's behalf.

(6) Upon filing a copy of the assignment of a judgment certified by the Council to be true copy, with the clerk of the court in which the judgment was obtained, the Council shall, to the extent of the amount of the assignment, be deemed to be the judgment creditor.

(7) Where execution is issued in the name of the judgment creditor and a copy of the assignment of judgment, certified as prescribed in subsection (6) is filed with the Sheriff having the writ of execution, the Council shall, to the extent of the amount of the assignment, be deemed to be the execution creditor.

**39.** No court shall make an order authorizing the service of any document upon the Council or any member thereof in substitution for service upon a defendant.

Objection to  
payment

**40.** (1) Where an application is made under section 38, subsection (1), the Council may give written notice to the applicant of any objection to payment out of the Assurance Fund of the judgement or any part of the judgement.

(2) Where the Council gives notice pursuant to subsection (1), the applicant may, within three months of the time the applicant or his solicitor of record is notified, apply by notice of motion to a judge of the court in which the judgement was obtained for a finding or determination in respect of any matter in connection with the application for payment out of the Assurance Fund.

(3) Upon hearing the application the judge may make whatever order he considers just in the circumstances, including an order setting aside the judgment.

(4) When the judgment is set aside the plaintiff shall serve a copy of the statement of claim upon the Council who may thereupon dispute the liability of the defendant to the plaintiff as provided in section 37.

**41.** Upon compliance with the requirements of this Act, and upon service of final judgment on the Council, the Council shall forthwith pay out of the Assurance Fund the amount of such judgment and costs or unsatisfied portion thereof and as restricted or limited by the following sections.

Limit of  
liability

**42.** (1) Where all claims arising singly or over a period of time out of any misappropriation, wrongful conversion, obtaining by fraud, deceit or like wrongful act by any one agent or salesman have been jointly or severally satisfied in the aggregate from the Assurance Fund or any other source to the extent of \$100,000 exclusive of costs, no further payment may be made of the Assurance Fund with respect to claims arising out of that incident or incidents.

(2) No payment to any one individual claimant shall exceed \$15,000 plus costs awarded and authorized to be paid pursuant to the provisions hereafter.

(3) No payment may be made out of the Assurance Fund of

- (i) any amount for interest in respect of judgment, or
- (ii) any general damages for loss of income or otherwise with reference to inability to have funds available or otherwise with reference to inability to have funds available or with reference to any damages awarded as a result of increased cost of real estate.

(4) Where in any one incident two or more persons have claims arising out of such incident and the total of their damages exceeds the limit fixed by subsection (1), the amount to be paid to each person shall bear as nearly as possible to the total amount payable as the damages of that person bears to the total amount of the damages.



(5) From the amount payable to a person as calculated in accordance with subsections (1) to (4) there shall be deducted

- (a) any amount the applicant has recovered or can recover from the debtor, and
- (b) any amount that the applicant can recover or has recovered by reason of any existing policy of risk insurance.

**43.** Where application is made for payment out of the Assurance Fund no payment shall be made

- (a) in respect of any amount paid or payable by an insurer by reason of the existence of a contract of insurance covering the risk involving the loss for which recovery is sought,
- (b) to indemnify any person with respect to any amount which he is entitled to recover from another person by way of indemnity or contribution, or
- (c) in respect of loss other than the actual pecuniary value of the money or assets lost or diminished by the misappropriation, wrongful conversion, obtaining by fraud, deceit or like wrongful act.

**44.** (1) Where payment is to be made to a person who ordinarily resides outside Alberta the payment shall not include any amount that would not be recoverable from the agent or salesman by the law of jurisdiction in which the person resides.

(2) For the purpose of this section residence shall be determined as of the date of the incident giving rise to the claim.

**45.** (1) No money shall be paid out of the Assurance Fund under or in respect of an order or judgment until there is filed with the Council the bill or bills of costs on a solicitor and client basis of the solicitor acting or who acted for the applicant in the application or action that resulted in the order or judgment, either taxed by the clerk of the court or having endorsed thereon or annexed thereto

- (a) a signed certificate of the solicitor, certifying that he has explained to the applicant his right to have the bill taxed by the clerk of the court, and
- (b) a signed acknowledgment of the applicant, acknowledging that his right to have the bill taxed by the clerk of the court has been explained to him and is understood by him.

(2) No amount shall be charged or received either directly or indirectly for legal services in connection with any appli-

cation or action referred to in subsection (1), other than the amounts set out in a bill of costs taxed by the clerk of the court or certified and acknowledged as provided in subsection (1).

**46.** (1) Where a payment is made out of the Assurance Fund in respect of a judgment, the Council shall authorize payment out of the Assurance Fund of the costs of the plaintiff in the action not exceeding

- (a) the actual disbursements, and
- (b) the costs on a party and party basis calculated under the column of Schedule C of the Alberta Rules of Court that is applicable to the amount of the judgment, notwithstanding that the court may have awarded costs in any multiple of or in any way greater than the costs specified in that column.

(2) Where

- (a) an insurer has an interest in the judgment obtained in an action maintained in part by the insurer, and
- (b) the amount payable out of the Assurance Fund in respect of that judgment is reduced by reason of that interest,

the amount paid out of the Assurance Fund for the costs in that action shall not be more than the amount of the costs that would have been payable if the insurer's interest had not been included in the action.

Incidents  
before  
commencement

**47.** No application may be made for payment out of the Assurance Fund provided for by this Act, where a claim may be made against a bonding company or insurer covering a defendant agent or salesman pursuant to the provisions of *The Real Estate Agents' Licensing Act* or if the incident giving rise to the claim occurred or arose prior to the commencement of this Act.

Agents trust  
accounts

**48.** (1) The Society on the authority of the Council or the President may make an application to the Court, and if it is shown to the satisfaction of the Judge that the trust account of an agent is in jeopardy or all or part thereof has been misappropriated, the judge may order the seizure and removal of any or all of the trust or general bank accounts of the agent and direct that the bank accounts of the agent be placed in the hands of the Secretary or other person named in the order to act in that behalf.

(2) The Council shall cause such accounts to be examined by a chartered accountant as soon as it is reasonably possible and shall cause the report of the chartered accountant to be filed in the Court and sent to the Superintendent within 30 days of the order.

(3) The Council may then return the accounts and property to the agent or salesman, or deal with them as the Court may direct on further application, of which notice shall be given to the agent or salesman.

**49.** In the event of the death, suspension or incapacity of any agent, the Society may on the authority of the Council or the President make application to the Court for an order appointing an administrator of the trust accounts of such agent to manage and wind up the business of the agent and any such order shall be forthwith served upon the agent or his legal representative.

Forms

**50.** The Council may prescribe forms to be used under this Act and rules for the conduct of business at general meetings.

Regulations

**51.** The Lieutenant Governor in Council may make regulations

- (a) prescribing the evidence that shall be required to establish a claim against the Assurance Fund and the amount thereof;
- (b) prescribing that an applicant must seek other remedies for redress other than the Assurance Fund or in lieu of payment out of the Assurance Fund;
- (c) prescribing rules for enrollment in the Society;
- (d) authorizing the Council to waive any requirements of this Act when approving payment out of the Assurance Fund;
- (e) specifying duties to be undertaken by the Council or its officers in addition to those provided herein;
- (f) providing for arbitration of questions pertaining to the right of a salesman or agent to claim commission and the division of any forfeited deposit between vendor and agent;
- (g) providing for rules as to when commission shall be deemed to be earned and transferable from trust;
- (h) providing for accounting requirements and procedures for retaining trust accounts;
- (i) providing for appeal procedures for the suspension or certification of default of payment of fees of any agency or salesman by the Society, the Council or the Secretary, or any finding of the Society, the Council or the Secretary which may place in jeopardy the standing of the agent or salesman in the Society.

Coming into  
force

**52.** This Act shall come into force on a date to be fixed by Proclamation.