

1987 BILL 8

Second Session, 21st Legislature, 36 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 8

**REAL ESTATE AGENTS' LICENSING
AMENDMENT ACT, 1987**

THE MINISTER OF CONSUMER AND
CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 8

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REAL ESTATE AGENTS' LICENSING AMENDMENT ACT, 1987

(Assented to _____, 1987)

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

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

2 *Section 1(1) is amended*

(a) *in clause (e) by adding "and, if classes of licence are established by regulations under section 56(a.1), means a licence under this Act of the relevant class prescribed by those regulations" after "under this Act";*

(b) *in clause (f) by striking out "by the Superintendent";*

(c) *in clause (j) by adding "or otherwise provided for" after "means prescribed";*

(d) *in clause (l) by striking out "or" at the end of subclause (iii), by adding ", or" at the end of subclause (iv), and by adding the following after subclause (iv):*

(v) a portable dwelling, other than a holiday trailer or recreational vehicle wholly or mainly used for recreational purposes, that

(A) is designed for use and is used as a residence,

(B) is mounted on or otherwise attached to its own chassis and running gear,

(C) is capable of being transported on its own chassis and running gear by towing or other means, and

(D) is situated on a site that is used or intended to be used, or that has been represented by the owner of the site as being intended to be used, for residential purposes;

3 *The following is added after section 7:*

7.1(1) The Superintendent may, by notice in writing to the Association,

(a) delegate to the Association all or any of his rights, obligations and functions

Explanatory Notes

1 This Bill will amend chapter R-5 of the Revised Statutes of Alberta 1980.

2 Section 1(1) presently reads in part:

1(1) In this Act,

(e) "licence" means licence under this Act;

(f) "licensed person" means a person who is the holder of a licence issued by the Superintendent under this Act and includes a representative designated under section 6;

(j) "prescribed" means prescribed by this Act or the regulations;

(l) "real estate" means

(i) any real property,

(ii) any leasehold property,

(iii) any business, whether with or without premises, and the fixtures, stock-in-trade, goods or chattels in connection with the operation of the business, or

(iv) any property user's licence;

3 Delegation of licensing powers to Association and right to make representations to Superintendent.

- (i) under sections 7, 11 and 13 and under the regulations respecting licensing and the experience, training, education and examination of agents and salesmen, and
 - (ii) relating to the maintaining of records containing information supplied under those provisions,
 - (b) impose such conditions on the Association's exercise of the delegated rights, obligations and functions as he considers appropriate, and
 - (c) amend or revoke any such notice.
- (2) Notwithstanding section 7, where the Superintendent has delegated all or substantially all of his powers under that section, an application for a licence may be made to the Association, which shall, if the delegated powers are not sufficient to enable it to consider the application, transmit the application to the Superintendent.
- (3) The Association shall serve on the applicant its decision in writing containing, in the event of a refusal of the licence, reasons for the refusal.
- (4) The Lieutenant Governor in Council may make regulations respecting
- (a) the collection of fees by the Association on the Government's behalf and their remission to the Provincial Treasurer, and
 - (b) the retention by the Association of a portion of the fees collected by it for its services under this section,
- but the Association, in respect of the fees so collected, is subject to the *Financial Administration Act* as if it were a Provincial corporation under that Act.
- (5) A person shall not, without the written consent of the Superintendent, disclose any information that he has obtained in the course of exercising delegated authority under this section.
- 7.2(1)** A person who has been refused a licence by the Association under section 7.1 may, within 30 days after being notified in writing of the refusal, make representations to the Superintendent with respect to the refusal.
- (2) The Superintendent is not required to afford the applicant the opportunity to make oral representations or to be represented by counsel if he affords the applicant adequate opportunity to make written representations.
- (3) The Superintendent shall, as soon as is reasonably practicable after receiving the representations, review them.
- (4) The Superintendent may conduct such enquiries, additional to those made by the Association, as he considers appropriate for the purposes of his review, and may treat the application as an original application made to him under section 7.
- (5) The Superintendent shall serve on the applicant his decision in writing containing, in the event of his refusing the licence, reasons for the refusal.

4 *Section 8 is amended*

(a) *in subsection (1),*

(i) *by adding the following after clause (e):*

(e.1) when that agent or a salesman of that agent does, assists another person in doing, or counsels, authorizes or procures another person to do, any of the following:

(i) makes, publishes, advertises or distributes any misrepresentation respecting a trade,

(ii) makes, publishes, advertises or distributes any representation, or otherwise does anything or omits to do anything, that has the effect, or might reasonably be expected to have the effect, of influencing or inducing a trade through deception or dishonesty,

(iii) offers real estate for sale or lease without the consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent,

(iv) places a sign offering real estate for sale or lease without the consent of the owner or his authorized agent,

(v) fails to remove a sign offering real estate for sale or lease within 10 days after the expiration of the listing,

(vi) files or continues a caveat in a Land Titles Office without reasonable cause, or

(vii) falsifies a contract or other document involved in any trade,

(e.2) when that agent or a salesman of that agent is convicted of an offence against the *Criminal Code* (Canada) that is of a kind that is related to the qualifications, functions or duties of an agent, and the time for making an appeal has expired without the appeal's having been made or the appeal has been finally disposed of by the courts,

(ii) *in clause (f) by adding "or a salesman of that agent" after "agent";*

(iii) *by striking out "or" at the end of clause (h), by adding "or" at the end of clause (i) and by adding the following after clause (i):*

(j) on the occurrence of such other conduct by an agent or a salesman relating to a trade as is prescribed in the regulations.

(b) *in subsection (2) by adding " , or on such other date in each year as may be prescribed by regulations made by the Minister," after "September 30";*

(c) *in subsection (3) by striking out "until the Superintendent notifies the licensed agent that he will not be issued a new licence" and substituting " , where the licence is refused, until the time for*

4 Section 8 presently reads in part:

8(1) The Superintendent may cancel or suspend a licence of an agent

(e) when it is in the public interest to do so,

(f) when that agent induces or attempts to induce a party to a contract concerning a trade in real estate to breach that contract,

(h) when that agent fails to make his records available for inspection, or

(i) when that agent fails to pay all levies under section 14 with respect to himself and every salesman employed by him.

(2) A licence expires on September 30 following the date on which it is issued unless the licence has previously expired, has been previously cancelled or is a temporary licence.

(3) When a licensed agent

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

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

the existing licence remains in force, notwithstanding subsection (2), until the new licence is issued or until the Superintendent notifies the licensed agent that he will not be issued a new licence.

making representations under section 7.2 or for making an appeal under section 9 expires without the representations' or appeal's having been made or until the applicant's claim is disposed of by the Court under section 9(7)".

5 *The following is added after section 8:*

8.1 The Superintendent may publish to licensed persons, salesmen and the public generally information relative to the refusal, cancellation and suspension of licences and prosecutions and disciplinary actions taken under this Act, and any such publication has qualified privilege.

6 *Section 15.3 is amended by adding the following after subsection (3):*

(4) On the winding-up of the Fund, the Fund belongs to and shall be distributed, according to the shares prescribed by regulations made by the Minister, among those persons who are licensed as agents and those who are salesmen registered with the Fund under section 15.4(4) at the time that the Superintendent issues his winding-up order.

7 *The following is added after section 15.3:*

15.4(1) The Association shall make by-laws respecting

- (a) the procedures and methods for administering the Fund, and
- (b) any other matters respecting the operation of the Fund that the Superintendent, by written notice to the Association, directs,

and shall provide to the Superintendent a copy of the by-laws, and of any amendments made to them, within 7 days after making them.

(2) The by-laws and any amendments made to them have no validity until the Superintendent notifies the Association in writing that he has approved them.

(3) The Association shall not transact any business in relation to the Fund unless there are by-laws in force under this section.

(4) The Association shall maintain a register showing the names of

- (a) each agent who is a contributor to the Fund,
- (b) the designated representative of each agent referred to in clause (a), and
- (c) each salesman who is a contributor to the Fund.

(5) The Association may, with the prior approval of the Superintendent, use all or any of the money in the Fund that is in excess of the amount prescribed in the regulations for all or any of the purposes so prescribed.

5 Qualified privilege for publications.

6 Section 15.3 presently reads:

15.3(1) If the amount of the Fund at any time falls below the amount prescribed in the regulations, the Association shall immediately advise the Superintendent.

(2) If the amount of the Fund is less than the amount prescribed in the regulations or the Superintendent considers it in the public interest to do so, he may order that the Fund be wound up in accordance with the regulations.

(3) When the Superintendent makes an order under subsection (2), every licensed agent and every applicant for an agent's licence shall provide the Superintendent with a bond in accordance with the regulations before he or any salesman employed by him trades in real estate.

7 By-laws respecting Fund.

8 *Section 23 is amended*

(a) *in subsection (3) by striking out “All” and substituting “Subject to subsection (3.1), all”;*

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

(3.1) Where an agent

(a) maintains business premises in the City of Lloydminster,

(b) maintains an account designated as a trust account in a bank, trust company, treasury branch or credit union situated in the City of Lloydminster, and

(c) otherwise complies with subsection (2),

subsection (3) does not apply to deposits to the extent that they are made and kept in the account referred to in clause (b).

(c) *by repealing subsection (5) and substituting the following:*

(5) An agent shall account to the Superintendent in accordance with the regulations.

9 *Section 32(c) is amended by striking out “licensed” and substituting “qualified under the regulations”.*

10 *The following is added after section 38(2):*

(2.1) Where the trade consists only of an advertisement placed or made from outside Alberta, the person conducting the trade need not do so through an agent or salesman and, in that case, subsection (1) does not apply.

8 Section 23 presently reads in part:

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

(5) An agent shall submit to the Superintendent before September 30 in each year a report by the agent's auditors in a prescribed form

(a) stating that the agent has kept proper books and accounts of his trades in real estate,

(b) stating that the auditor has examined the balances due to clients in trust as at June 30 in that year, and found them in agreement with the accounting records of the agent,

(c) stating that the money on deposit held in trust for clients has been verified by personal inspection or by certificates obtained from the bank, trust company, credit union or treasury branch with which the deposit account is maintained,

(d) stating the amount due to clients in trust as reflected by the records of the agent, as at June 30 in that year,

(e) stating that the auditor has done a sufficient review of the trust account transactions of the agent for the 12-month period immediately preceding June 30 in that year, to satisfy himself that the trust money held for clients is kept separate and apart from money belonging to the agent, and

(f) stating that after due consideration the auditor has formed an independent opinion as to the position of the trust money held for clients, and to the best of his information the trust money held for clients is maintained in a separate trust account and is not less than the amount of trust money received in respect of which there is an undischarged trust obligation.

9 Section 32 presently reads in part:

32 A licensed agent shall not pay a commission or other fee for services rendered in connection with a trade in real estate except to

(c) an auctioneer licensed under the Public Auctions Act, where the trade is made in the course of and as part of his duties as auctioneer.

10 Section 38 presently reads:

38(1) A person shall not, directly or indirectly, trade in real estate located outside of Alberta unless

(a) that trade takes place through an agent licensed under this Act, and

(b) that person has

(i) repealed 1984 c36 s23,

(ii) filed a prospectus with the Superintendent and been issued a certificate of acceptance under section 45 in respect of that prospectus.

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

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

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

(b) the merits of the prospectus.

11 Section 53(1) is amended by adding “including the Association while acting pursuant to a delegation under section 7.1,” after “by the Superintendent,”.

12 Section 54 is amended

- (a) by adding “or the registration of a salesman in the Fund” after “Act”;*
- (b) by adding “or an officer of the Association” after “Superintendent”.*

13 Section 56 is amended

- (a) by adding the following after clause (a):*
 - (a.1) establishing different classes of licence according to the criteria prescribed in those regulations, and specifying the activities authorized by or under and the rights and obligations attached to each class of licence;*
 - (a.2) specifying qualifications required for the obtaining and holding, and establishing conditions precedent to the obtaining, of each class of licence that are additional to the requirements of section 7;*
- (b) by adding the following after clause (c):*
 - (c.01) respecting the register referred to in section 15.4(4) and the registration of salesmen in the Fund;*
 - (c.02) requiring an agent to provide insurance against his liability for errors and omissions in the carrying on of his agency business;*
- (c) by adding the following after clause (d):*
 - (d.1) prescribing any matter or thing that by this Act may be or is to be prescribed by regulations, other than regulations to be made by the Minister;*

14 Section 57 is repealed and the following is substituted:

- 57** The Minister may make regulations respecting
 - (a) forms and their contents;*
 - (b) the amount and form of bonds to be furnished under this Act;*
 - (c) the form and content of an affidavit required under section 11(1);*

11 Section 53(1) presently reads:

53(1) Without a fiat of the Minister, no action or proceeding shall be brought or taken against the Superintendent or Deputy Superintendent or an inspector or person employed by the Superintendent, for anything done or omitted in the performance or supposed performance of his duties under this Act or another Act that imposes duties on the Superintendent.

12 Section 54 presently reads:

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

13 Section 56 presently reads:

56 For the purpose of carrying out this Act according to its true intent and of supplying any deficiency in it, the Lieutenant Governor in Council may make regulations

(a) prescribing

(i) the fees payable on applications for licences, and

(ii) any other fees in connection with the administration of this Act and the regulations;

(b) prescribing the practice and procedure on an investigation under sections 16 to 22;

(c) respecting the experience, training, education and examination of agents and salesmen;

(c.1) respecting the administration of the Fund and the levy of assessments for the Fund;

(c.2) prescribing the conditions to be met before any claim is paid from the Fund;

(c.3) respecting the limits of liability of the Fund;

(c.4) prescribing the time within which claims against the Fund must be made;

(c.5) prescribing the amount referred to in section 15.3;

(c.6) respecting the winding-up of the Fund under section 15.3;

(c.7) respecting the forfeiture of bonds provided under section 15.3 or 41(e);

(d) prescribing the information to be contained in a prospectus required to be filed under section 38 or 48;

(e) generally for the better carrying out of the provisions of this Act and the more efficient administration of it.

14 Section 57 presently reads:

57 The Minister may make regulations prescribing

(a) forms and their contents;

(b) the amount and form of bonds to be furnished under this Act;

(c) the form and content of an affidavit required under section 11(1).

(d) for the purposes of section 23(5), the times at which and the manner in which an accounting shall be made and the information to be provided;

(e) any matter or thing that by this Act may be or is to be prescribed by regulations to be made by the Minister.

15 This Act shall be deemed to have come into force on April 1, 1987.

15 Coming into force.