

1990 BILL 16

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

**REAL ESTATE AGENTS' LICENSING
AMENDMENT ACT, 1990**

MR. NELSON

First Reading
Second Reading
Committee of the Whole
Third Reading
Royal Assent

Bill 16
Mr. Nelson

BILL 16

1990

REAL ESTATE AGENTS' LICENSING AMENDMENT ACT, 1990

(Assented to , 1990)

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 is amended

(a) by adding the following after subsection (1)(a.1):

(a.2) "branch office" means, subject to the regulations, any commercial space that is used as an office for the purpose of trading in real estate and is in a location other than the principal place of business of the agent who operates it;

(b) by adding the following after subsection (1)(d):

(d.01) "Foundation" means the Alberta Real Estate Foundation established under section 15.5;

(c) by repealing subsection (1)(f);

(d) by adding the following after subsection (1)(g):

(g.1) "money that he receives in trust", "money that he holds in trust" and other similar references to trust money received or held by an agent, designated representative or salesman means money that

(i) is paid to the agent, designated representative or salesman by a party to a trade in real estate, and

Explanatory Notes

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

2 Section 1 presently reads in part:

1(1) In this Act,

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

(k) "property user's licence" means a licence permitting the residential use of furnished real property under which

(i) the licensee may have residential use of that property or any substituted property for 2 or more periods of continuous use,

(ii) at least one period of continuous use following the first period of continuous use commences in a year subsequent to the year in which the first period of continuous use commences, and

(iii) the licensee is required to pay, during or prior to the year in which any period of continuous use commences, a consideration for the residential use of that property or any substituted property for any period of continuous use commencing in any subsequent year;

(ii) is paid on the express or implied agreement or condition that it will be used for a specific purpose or returned to the party in accordance with the agreement or condition;

(e) by repealing subsection (1)(k) and substituting the following:

(k) “property user’s licence” means a licence permitting the use of real property for residential purposes in circumstances under which

(i) the licensee may have use of that property or any substituted property for 2 or more periods of continuous use,

(ii) at least one period of continuous use following the first period of continuous use commences in a year subsequent to the year in which the first period of continuous use commences, and

(iii) the licensee is required to pay, during or prior to the year in which any period of continuous use commences, a consideration for the use of that property or any substituted property for any period of continuous use commencing in any subsequent year;

(f) in subsection (1)(o) by striking out “or” at the end of subclause (ii) and by repealing subclause (iii) and substituting the following:

(iii) assisting or offering to assist a person to dispose of, acquire or enter into a transaction in real estate referred to in subclause (i), other than through a listing, in circumstances in which that person pays a fee or other consideration for that assistance,

(iv) collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real estate, money payable as

(A) rent for the use of the real estate, or

(B) contributions for the control, management or administration of the real estate,

or

(v) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any activity referred to in subclauses (i) to (iv),

(o) "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) an offer or attempt to list real estate for a disposition or transaction referred to in subclause (i), or

(iii) an act, advertisement, conduct or negotiation directly or indirectly in furtherance of such a disposition, acquisition, transaction, offer or attempt,

and the verb "trade" has a corresponding meaning.

(2) For the purposes of this Act, a property user's licence is deemed to be located where the furnished real property in respect of which the licence is granted is located.

(g) by adding the following after subsection (1):

(1.1) The provision of information alone does not constitute assisting or offering to assist for the purposes of subsection (1)(o)(iii).

(h) in subsection (2) by striking out “furnished”.

3 Section 2(1) is amended by striking out “or” at the end of clause (c.1), adding “or” at the end of clause (d) and adding the following after clause (d):

(e) a person exempted by the regulations.

4 Section 5 is amended by renumbering it as section 5(1) and by adding the following after subsection (1):

(2) An agent who trades in real estate from a branch office must hold a separate licence in respect of each branch office from which he trades.

5 Section 6 is amended

(a) by adding the following after subsection (2):

3 Section 2(1) presently reads:

2(1) This Act, except sections 38 to 49, does not apply to

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

(b) a bank or a trust or insurance company trading in real estate owned or administered by the company,

(c) a person

(i) who acquires real estate or any interest in real estate,

(ii) who disposes of real estate owned by him or in which he has a substantial interest, or

(iii) who is an official or employee of a person engaged in so acquiring or disposing of real estate,

(c.1) a person trading in real estate that consists only of mineral rights to the extent that the person is engaged in that activity, or

(d) a member in good standing of the Law Society of Alberta when the trade is made in the course of and as part of a solicitor's practice.

4 Section 5 presently reads:

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

5 Section 6 presently reads:

6(1) A partnership or corporation

(a) may apply for and obtain a licence as an agent in the name of the partnership or corporation, and

(2.1) An agent who operates a branch office shall designate an individual to act as his representative with respect to that office.

(2.2) An individual designated by an agent as his representative under subsection (2.1) shall meet the qualifications of an agent required under this Act.

(b) by repealing subsection (3) and substituting the following:

(3) No individual designated under subsection (1) or (2.1) shall

(a) be licensed as an agent,

(b) be employed as a salesman of another agent,

(c) act as a designated representative for more than one agent at the same time, or

(d) act as a designated representative with respect to more than one branch office at the same time.

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

(4) A designated representative

(a) must be actively engaged in the management of the real estate business of the agent who designated him, and

(b) is, together with the agent, responsible for ensuring that the agent's real estate business is carried on in accordance with this Act and the regulations.

(5) If a designated representative dies or ceases to be a designated representative in respect of a particular real estate operation, the agent may, with the consent of the Superintendent, designate another person as the designated representative in respect of that real estate operation, notwithstanding that that person does not meet the qualifications of a designated representative.

(6) A designation under subsection (5) shall be for a term fixed by the Superintendent, not to exceed 12 months.

6 *Section 7 is amended*

(a) in subsection (2)(b.1) by adding "designated representative and" before "salesman";

(b) shall designate one individual who shall act as its or their representative.

(2) An individual designated by a partnership or corporation as its representative pursuant to subsection (1)(b) shall be

(a) in the case of a partnership, a partner, an officer appointed by the partnership or a manager designated by the partnership, or

(b) in the case of a corporation, a member of the board of directors of the corporation, an officer of the corporation or a manager designated by the corporation,

and shall meet the qualifications of an agent required under this Act.

(3) No individual designated under subsection (1) shall act as the representative of more than one partnership or corporation.

6 Section 7 presently reads in part:

7(1) When a person wishes to be licensed as an agent under this Act he shall apply to the Superintendent for a licence.

(b) by adding the following after subsection (2):

(2.1) The Superintendent may refuse to issue a licence on the same grounds on which he may cancel or suspend a licence under section 8.

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

(3.1) If a person who holds an agent's licence ceases to be an agent in respect of a particular real estate operation, the Superintendent may grant to another person employed in that real estate operation a temporary licence for a term fixed by the Superintendent, not to exceed 12 months.

7 Section 7.1(1)(a) is amended by striking out "and" at the end of subclause (i) and by adding the following after subclause (i):

(i.1) under section 6(5) respecting the designation of designated representatives, and

8 Section 8 is amended

(a) in subsection (1)

(i) in clauses (a), (e.1), (e.2), (f) and (j) by striking out "a salesman" and substituting "a designated representative or salesman";

(ii) in clause (c) by adding "or a designated representative or salesman of that agent" after "agent";

(iii) in clause (d) by adding "under section 15.1" after "Fund" and by striking out "a salesman" and substituting "a designated representative or salesman";

(iv) by adding the following after clause (f):

(f.1) when that agent or a designated representative or salesman of that agent contravenes the terms of an undertaking entered into under section 52.1,

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

(a) on an application being made under subsection (1),

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

(b.1) on being satisfied that the applicant has paid all levies under section 14 with respect to himself and every salesman employed by him, and

(c) on being satisfied that the applicant meets the requirements of this Act and the regulations.

7 Section 7.1(1)(a) presently reads:

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

(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,

8 Section 8(1) presently reads in part:

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

(a) when that agent or a salesman of that agent contravenes this Act or the regulations,

(c) when that agent has misappropriated funds that he holds in trust,

(d) when a payment has been made out of the Fund with respect to that agent or a salesman of that agent,

(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

(v) in clause (i) by adding “designated representative and” before “salesman”;

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

(4) When the Superintendent cancels or suspends the licence of an agent he may by order prohibit any designated representative or salesman of that agent who committed the act or omission that resulted in the cancellation or suspension or who directed, authorized, assented to, acquiesced in or participated in the act or omission from trading in real estate, subject to any terms and conditions prescribed in the order.

(5) A designated representative or salesman against whom an order is made under subsection (4) may appeal the order as if it were a cancellation of a licence, and sections 9 and 10, with necessary modifications, apply to that appeal accordingly.

(6) The Superintendent may remove or reduce a period of suspension or issue a licence to a person whose licence has been cancelled, subject to any terms and conditions the Superintendent considers appropriate.

9 Section 8.1 is amended by striking out “to licensed persons, salesmen and the public generally”.

10 Section 11(1)(d) is amended by adding “designated representative and” before “salesmen”.

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,

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

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

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

9 Section 8.1 presently reads:

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.

10 Section 11(1)(d) presently reads:

11(1) When a person applies for an agent's licence he shall provide the Superintendent with

11 Section 12(a) is repealed and the following is substituted:

(a) on a designated representative or salesman by leaving the document or notice at or sending it by registered or certified mail to the address of the licensed agent by whom the designated representative or salesman is employed, and

12 Section 13 is amended

(a) by adding the following after subsection (1)(a):

(a.1) the address of a new branch office operated by him or a change in the address of a branch office operated by him;

(b) by repealing subsection (1)(g) and substituting the following:

(g) the designation of a representative under section 6 or any change in his designated representative;

(c) by adding the following after subsection (1)(g):

(h) any amalgamation to which it has been a party if that agent is a corporation.

(d) in subsection (2) by adding "at a location to which the licence relates" after "real estate agent".

13 Section 14 is amended

(a) by adding the following after subsection (1):

(1.1) Notwithstanding subsection (1), the Association may, with the prior approval of the Superintendent, use any or all of the money in the Fund that is in excess of the amount prescribed in the regulations

(a) to establish and administer an insurance or indemnity plan for licensed agents, designated representatives and salesmen in respect of errors and omissions committed by them in the course of their acting as licensed agents, designated representatives or salesmen, and

(b) for any other purpose authorized in the regulations.

(d) proof, satisfactory to the Superintendent, of having paid all levies under section 14 with respect to himself and every salesman employed by him,

11 Section 12(a) presently reads:

12 Service of a document or other notice under this Act may be effected

(a) on a salesman by leaving the document or notice at or sending it by registered or certified mail to the address of the licensed agent by whom the salesman is employed, and

12 Section 13 presently reads in part:

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

(g) a change of the designated representative if that agent is a partnership or corporation.

(2) A licensed agent who ceases to carry on the business of real estate agent shall immediately notify the Superintendent and

(a) return his licence with the notification, and

(b) within 30 days of ceasing to carry on business provide an auditors' report, satisfactory to the Superintendent, on the status of the real estate trust account.

13 Section 14 presently reads in part:

14(1) The Association shall create a fund to be known as the "Real Estate Assurance Fund" for the purpose of paying, in whole or in part, any judgment obtained against a licensed agent or a designated representative or salesman of a licensed agent based on a finding of fraud or breach of trust in respect of a trade in real estate.

(2) Subject to the regulations, the Association may from time to time collect money by the levy of assessments

(a) on every applicant for a licence as an agent,

(b) on every agent licensed under this Act, and

(c) on every salesman employed by an agent licensed under this Act,

(b) in subsection (2)

(i) in clause (c) by adding “designated representative and” before “salesman”;

(ii) by adding “, designated representatives” after “agents”;

(c) by adding the following after subsection (4):

(4.1) The Association shall create separate trust accounts for money to which subsection (1) applies and for money to which subsection (1.1) applies.

(d) by repealing subsection (6) and substituting the following:

(6) If the income from the investment of the money in the Fund is insufficient to pay the administrative costs associated with the Fund, the Association may

(a) from time to time collect money to pay those costs by the levy of assessments on all or any of the persons referred to in subsection (2),

(b) use money referred to in subsection (1.1) to pay those costs, or

(c) use money from a combination of sources referred to in clauses (a) and (b) to pay those costs.

14 The following is added after section 15:

15.01(1) When a person commences an action referred to in section 14(1) that may result in a claim against the Fund, he shall forthwith give notice of the commencement of the action to the Association personally or by registered mail.

(2) Where the Association is served with a notice under subsection (1) or where the Association otherwise learns of the commencement of such an action, it shall, on application to the Court, be added as a party in the action and thereafter may on behalf of and in the name of the defendant take any action that the defendant could have taken in respect of the action.

(3) The Association may disclose in any pleading by which it is taking steps under this section that it is appearing on behalf of and in the name of the defendant pursuant to this section.

(4) All acts of the Association under subsection (2) are deemed to be the acts of the defendant and the Association may not be

whether or not those applicants, agents or salesmen are members of the Association.

(4) The Association is deemed to hold in trust all money credited to the Fund and shall immediately deposit that money, or cause it to be deposited, in a trust account in a bank, treasury branch, trust company or credit union in Alberta, separate and apart from any other money of the Association.

(6) If the income from the investment of the money in the Fund is insufficient to pay the administrative costs associated with the Fund, the Association may from time to time collect money to pay those administrative costs by the levy of assessments on all or any of the persons referred to in subsection (2).

14 Association's rights in respect of actions.

named as a defendant in the action and no judgment may be given against the Association.

(5) The defendant is deemed to have consented to and agreed with any steps or action taken by the Association pursuant to this section and performed by the solicitor acting on instructions from the Association.

(6) Nothing in this section and no action or steps taken under this section may be construed to the effect that a solicitor acting on the instructions of the Association is actually acting on behalf of the defendant.

15 Section 15.1(3) is repealed and the following is substituted:

(3) When a payment is made from the Fund under this section the Association has a cause of action for the recovery of the amount paid

(a) from the agent, where the judgment is against the agent alone, or

(b) jointly and severally from the agent and the designated representative or salesman, as the case may be, where the judgment is against

(i) the agent and the designated representative or salesman, as the case may be, or

(ii) the designated representative or the salesman, or both of them.

16 Section 15.3(4) is amended by adding “designated representatives or” before “salesmen”.

17 Section 15.4 is amended

(a) in subsection (4)(b) by striking out “the” and substituting “each”;

(b) by repealing subsection (5).

15 Section 15.1(3) presently reads:

(3) When any payment has been made from the Fund, the Association is subrogated to the rights, remedies and securities to which the person receiving the payment was entitled as against the defaulting agent, designated representative or salesman or against the defaulting agent's, designated representative's or salesman's trustee, assign, estate or personal representative and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Association.

16 Section 15.3(4) presently reads:

(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.

17 Section 15.4 presently reads in part:

(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

18 The following is added after section 15.4:

Alberta Real Estate Foundation

15.5(1) There is hereby created a corporation with the name “Alberta Real Estate Foundation”.

(2) The Foundation shall be administered by a board of governors appointed in accordance with the regulations.

15.6(1) The purposes of the Foundation are

(a) to promote and undertake

(i) the education of related professionals and the public in respect of the real estate industry,

(ii) law reform and research in respect of the real estate industry, and

(iii) other projects and activities to advance and improve the real estate industry,

and

(b) on the written direction of the Minister, to undertake projects and activities in respect of the real estate industry that are designated by the Minister as being in the public interest.

(2) Not more than a prescribed percentage of the Foundation’s annual net revenue, as defined in the regulations, may be used to undertake projects and activities under subsection (1)(b).

15.7(1) In addition to its other powers as a corporation, the Foundation may

(a) make grants or loans to any person or organization for a purpose consistent with the purposes of the Foundation;

(b) publish, produce or distribute books, pamphlets, films or other productions that relate to any matter pertaining to the purposes of the Foundation;

(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.

18 Establishment and operation of the Alberta Real Estate Foundation.

(c) acquire real or personal property;

(d) hold, manage and dispose of its real and personal property;

(e) enter into a contract with any person in relation to any matter pertaining to the purposes of the Foundation;

(f) borrow money from any person or enter into overdraft or line of credit arrangements with a bank, treasury branch, credit union or trust company for the purpose of meeting its obligations as they come due, and give security for the loan, overdraft or line of credit;

(g) draw, make, accept, endorse, execute or issue promissory notes, bills of exchange or other negotiable instruments.

(2) The Foundation may, as a condition of making a grant or loan,

(a) require the recipient of the grant or loan to enter into an agreement with respect to any matter relating to the grant or loan, and

(b) prescribe conditions to which the grant or loan is subject.

15.8(1) Notwithstanding anything in the *Trust Companies Act*, the Foundation shall not be considered to be a trust company for the purposes of that Act.

(2) The sections of the *Companies Act* referred to in section 4 of that Act do not apply to the Foundation.

15.9(1) The Foundation may make by-laws

(a) respecting the conduct of the business and affairs of the Foundation;

(b) respecting the calling of meetings of the board of governors and the conduct of business at those meetings;

(c) designating the offices of the Foundation;

(d) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of officers and employees of the Foundation;

(e) delegating to the officers of the Foundation or any committee of it any powers of the Foundation required to

manage the business and affairs of the Foundation, except the power to make by-laws;

(f) respecting the establishment of annual and other budgets of the Foundation and the amendment of those budgets;

(g) respecting the establishment, membership, duties and functions of special, standing and other committees;

(h) respecting the making of grants or loans by the Foundation for purposes consistent with its purposes.

(2) The *Regulations Act* does not apply to a by-law of the Foundation.

15.91(1) The Foundation shall establish a fund for the purposes of the Foundation referred to in section 15.6.

(2) The Foundation shall open an account for the fund in a bank, trust company, credit union or treasury branch, to be called the "real estate foundation account".

(3) The following shall be paid into the fund:

(a) money paid to the Foundation by a bank, trust company, credit union or treasury branch under section 15.92;

(b) interest from investment of the money in the fund;

(c) money paid to the Foundation under section 23(6);

(d) money received by the Foundation by way of gift.

(4) The Foundation may pay out of the fund the reasonable costs of the administration of the fund and of carrying out the purposes of the Foundation.

(5) Any money that is not immediately required for the purposes of the Foundation may be invested in the name of the Foundation in any manner in which trustees are authorized to invest trust funds, if the investments are in all other respects reasonable and proper.

15.92(1) An agent who maintains a trust account referred to in section 23 and is credited with interest on money in the account by the bank, trust company, credit union or treasury branch in which the account is maintained holds the interest in trust for the Foundation.

(2) An agent referred to in subsection (1) shall, in accordance with the regulations, instruct the bank, trust company, credit union or treasury branch to pay the interest credited to the account to the Foundation.

(3) A bank, trust company, credit union or treasury branch that receives an instruction under subsection (2) shall pay the interest to the Foundation in accordance with the regulations.

(4) This section does not apply to

(a) money deposited in a separate account for a client, or

(b) a security deposit as defined in the *Landlord and Tenant Act*.

15.93 The accounts of the Foundation shall be audited annually by a person appointed by the Foundation who is authorized to engage in exclusive accounting practice on a fee for service basis under the *Chartered Accountants Act*, the *Certified General Accountants Act* or the *Certified Management Accountants Act*.

15.94 Within 90 days after each fiscal year end the Foundation shall submit to the Minister a report summarizing its transactions and affairs during the preceding fiscal year and containing an audited financial statement.

15.95 In the event of the winding-up of the Foundation, the property of the Foundation shall be used

(a) firstly, in the payment of any costs incurred in the winding-up of the Foundation,

(b) secondly, in the discharge of all liabilities of the Foundation, and

(c) thirdly, to give effect, as far as possible, to any outstanding applicable trust conditions,

and the balance, if any, shall be disposed of in accordance with the regulations.

19 Section 17 is amended

(a) in subsection (1)(b) by adding “, designated representative” after “agent”;

(b) by repealing subsection (4).

19 Section 17 presently reads in part:

17(1) The Superintendent or a person authorized by him may at reasonable times demand the production of and inspect

(a) all or any of the books mentioned in section 16, and

(b) all or any documents relating to a trade in real estate effected by any agent or salesman.

20 *Section 18 is amended by adding “or his designated representative or salesman” after “the agent”.*

21 *Section 23 is repealed and the following is substituted:*

23(1) An agent shall keep proper books and accounts of his trades in real estate, and enter in his books and accounts in respect of each trade

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

(2) An agent shall

(a) keep a trust ledger in which he shall maintain a separate record for each person on whose behalf he is acting of all

- (i) money that he receives in trust,
- (ii) money that he holds in trust,
- (iii) interest earned on money that he holds in trust, and
- (iv) disbursements he makes from money he receives or holds in trust,

in respect of a trade in real estate for that person,

(4) When an investigation is being carried on under section 16, the Superintendent or the person making the investigation may seize and take possession of documents, books, papers, correspondence, communications or records of the person the business affairs of whom are being investigated.

20 Section 18 presently reads:

18 When a licensed agent is being investigated under section 16 and the Superintendent is of the opinion that the agent may have misappropriated funds which that agent holds in trust, the Superintendent may by order suspend the licence of that agent.

21 Section 23 presently reads:

23(1) An agent shall keep proper books and accounts of his trades in real estate, and enter in his books and accounts in respect of each trade

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

(2) An agent shall

(a) keep a trust ledger in which he shall maintain a separate record for each person on whose behalf he is acting of all

- (i) money that he receives in trust,*
- (ii) money that he holds in trust, and*
- (iii) disbursements he makes from money he receives or holds in trust,*

in respect of a trade in real estate for that person,

(b) forthwith deposit all money he receives in trust in respect of a trade in real estate into an account

- (i) maintained in a bank, trust company, credit union or treasury branch, and*

(b) deposit money that he receives in trust in respect of a trade in real estate, within 2 banking days after he receives the money or within any longer period agreed to in writing by the parties to the trade, in an interest-bearing account that is

(i) maintained in a bank, trust company, credit union or treasury branch, and

(ii) kept in the name of the agent and designated as a trust account,

(c) keep money he receives or holds in trust in respect of a trade in real estate separate from money that belongs to the agent, and

(d) disburse money he receives or holds in trust in respect of a trade in real estate only in accordance with the regulations and with the terms of the trust governing the use of that money.

(3) Where an agent receives money in trust in respect of a trade in real estate, he shall ensure that the terms of the trust governing the use of the money are in writing and agreed to by the parties.

(4) Subject to subsection (5), all money deposited under subsection (2)(b) shall be kept on deposit in Alberta.

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

(6) Where an agent holds money in trust for more than 2 years after the date on which the person for whom it is held becomes entitled to receive payment of it, and he is unable to locate the person, he shall pay the money to the Foundation.

- (ii) *which is kept in the name of the agent and designated as a trust account,*
- (c) *keep money he receives or holds in trust in respect of a trade in real estate separate from money which belongs to the agent, and*
- (d) *only disburse money he receives or holds in trust in respect of a trade in real estate in accordance with the terms of the trust governing the use of that money.*
- (3) *Subject to subsection (3.1), all money deposited under subsection (2)(b) shall be kept on deposit in Alberta.*
- (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).*
- (4) *Subsection (2) does not apply to a security deposit as defined in the Landlord and Tenant Act.*
- (5) *An agent shall account to the Superintendent in accordance with the regulations.*
- (6) *An agent shall preserve his books and accounts of his trades in real estate and his accounting records*
 - (a) *for a period of 3 years after the books, accounts or records came into existence, or*
 - (b) *for such longer period as the Superintendent directs.*
- (7) *Subsections (1) to (5) do not apply to a trust company registered under the Trust Companies Act.*
- (8) *A trust company licensed under this Act and registered under the Trust Companies Act shall furnish to the Superintendent a certified copy of each financial statement of the company prepared for distribution to its shareholders and the auditor's report on the financial statement, within 5 days after they are first mailed or delivered to its shareholders.*

(7) If at any time a person establishes that he is entitled to any money paid to the Foundation pursuant to subsection (6), the Foundation shall pay the money to that person.

(8) An agent shall keep books and accounts of his trades in real estate and accounting records in accordance with the regulations and shall preserve those books, accounts and records

(a) for a period of 3 years after the books, accounts or records came into existence, or

(b) for any longer period that the Superintendent directs in a particular case for the purposes of an investigation or prosecution under this Act.

(9) Subsections (1), (2), (4) and (5) do not apply to a trust company registered under the *Trust Companies Act*.

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

(11) Any waiver or release by a client on whose behalf the agent is acting of the rights, benefits or protections provided to the client under this section is void.

22 *The following is added after section 25:*

25.1 Where there is an agreement between 2 or more agents providing for the sharing of a commission or remuneration payable in respect of a trade in real estate, only the agent who, by virtue of a written agreement between him and a party to the trade, is entitled to the commission or remuneration may bring an action for recovery of the commission or remuneration against the person who is liable to pay it.

23 *Section 26 is amended by striking out "A licensed person" and substituting "An agent, designated representative".*

22 Recovery of shared commission.

23 Section 26 presently reads:

26 A licensed person or salesman shall not,

(a) subject to section 27, make a representation to a vendor that he or another person on his behalf will pay to the vendor of real estate within a fixed or determinable period of time, a fixed or determinable amount of money, or

24 Section 28 is amended by adding “or designated representative” after “agent”.

25 Section 29 is amended

(a) in subsection (1) by striking out “a licensed person” wherever it occurs and substituting “an agent, designated representative”;

(b) in subsection (2) by adding “designated representative or” before “salesman” wherever it occurs.

26 Section 30 is amended

(a) in subsection (1) by striking out “licensed”;

(b) in subsection (2) by adding “designated representative or” before “salesman”;

(c) in subsection (3) by striking out “licensed person” wherever it occurs and substituting “agent, designated representative” and by striking out “licensed persons” and substituting “agents, designated representatives”.

(b) subject to section 28, make a representation to a person that he or another person will

(i) obtain a mortgage, lease or loan,

(ii) have the term of a mortgage or lease altered, or

(iii) assume or assign a mortgage or an agreement for sale.

24 Section 28 presently reads:

28 An agent may undertake to

(a) obtain a mortgage, lease or loan,

(b) have a term of a mortgage or lease altered, or

(c) assume or assign a mortgage or an agreement for sale,

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

25 Section 29 presently reads:

29(1) When advertising to purchase, sell, exchange, or lease any real estate whatsoever a licensed person or salesman shall clearly indicate

(a) that he is the party advertising, and

(b) that he is a licensed person or salesman, as the case may be.

(2) A reference to the name of a salesman in the advertisement of an agent referred to in subsection (1) shall clearly indicate that the real estate agent is the employer of the salesman.

26 Section 30 presently reads:

30(1) No licensed person shall trade in real estate as an agent in any name other than that which appears on his licence.

(2) No salesman shall trade in real estate in any name other than that of the agent who employs him.

(3) No licensed person or salesman shall trade in real estate

(a) on behalf of himself or another person until he has disclosed in writing to the parties he is dealing with

27 *Section 32(a) is repealed and the following is substituted:*

(a) a designated representative or salesman employed by him or to not more than one corporation of which that designated representative or salesman, as the case may be, is the majority shareholder and through which that designated representative or salesman trades in real estate,

28 *The following is added after section 35:*

35.1 No agent, designated representative or salesman may accept a commission, fee or other remuneration as compensation or an inducement for his referral to another person of the name of a party to a trade in real estate in which he is involved unless, before the referral is made, he discloses in writing to that party the nature of the referral and the amount of the commission, fee or remuneration.

29 *Section 37 is amended by striking out “a licensed person” and substituting “an agent, designated representative”.*

30 *Section 50(2) is amended by striking out “a salesman” wherever it occurs and substituting “a designated representative or salesman”.*

(i) any interest, direct or indirect, that he or any other licensed person or salesman has in the real estate as vendor or purchaser, and

(ii) that he is licensed under this Act or employed by a licensed agent, as the case may be,

or

(b) on behalf of another licensed person or salesman until he has disclosed in writing to the parties he is dealing with that he and that other person are licensed persons or salesmen, as the case may be.

27 Section 32(a) presently reads:

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

(a) a salesman employed by him,

28 Disclosure of referral fee.

29 Section 37 presently reads:

37 When a licensed person or salesman receives an offer or an acceptance of an offer in writing from a party to a trade in real estate, he shall, as soon as practicable,

(a) provide that party with a true copy of that offer or acceptance, and

(b) deliver a true copy of that offer or acceptance to the other parties to that trade.

30 Section 50(2) presently reads:

(2) In addition to any other fine or penalty imposed, a person who is convicted

(a) of trading in real estate without being a licensed agent or the designated representative or salesman of a licensed agent, contrary to section 3(1), or

31 The following is added after section 52:

52.1(1) Where an agent's licence is liable to be cancelled or suspended by reason of the operation of section 8, the agent may enter into an undertaking with the Superintendent in the form and containing the provisions that the Superintendent considers proper, and, without limitation, the undertaking may contain specific undertakings by the agent

(a) to cease or refrain from engaging in the activity referred to in section 8, and

(b) to redress any party to a trade in real estate who has suffered loss or damage as a result of the activity.

(2) Any time after an agent enters into an undertaking he may request the Superintendent to vary or terminate that undertaking and on considering the request the Superintendent may vary or terminate that undertaking.

(3) When an undertaking is terminated or varied under subsection (2), that termination or variation does not invalidate anything done under that undertaking prior to the termination or variation.

(4) The Superintendent shall maintain a public record of all undertakings entered into under this section.

(5) Nothing in this section prevents the Superintendent from cancelling or suspending a licence under section 8 instead of entering into an undertaking under this section, but where an agent enters into an undertaking the Superintendent may not cancel or suspend his licence for reasons related to the activity that gave rise to the undertaking as long as the agent complies with the terms of the undertaking.

32 Section 56 is repealed and the following is substituted:

56 The Lieutenant Governor in Council may make regulations

(a) for the purposes of section 2(1)(e), exempting a person or a class of persons from the application of this Act, except sections 38 to 49;

(b) of employing a salesman who is not qualified or with respect to whom all assurance fund levies have not been paid, contrary to section 4,

shall return any commission or other remuneration he or a salesman employed by him received from any person on whose behalf he acted while in contravention of those sections.

31 Undertaking to comply.

32 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

- (b) 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;
- (c) respecting the collection and handling of the fees referred to in clause (b) and prescribing penalties for the non-payment or late payment of those fees;
- (d) establishing different classes of licences and specifying the activities authorized by or under and the rights and obligations attached to each class of licence;
- (e) establishing different classes of trades in real estate for the purposes of clause (d);
- (f) specifying qualifications additional to the requirements of section 7 for the obtaining, renewing and holding, and establishing conditions precedent to the obtaining, of each class of licence;
- (g) authorizing the Superintendent to exempt a person or class of persons from the definition of agent, and prescribing the terms and conditions under which the Superintendent may grant such an exemption;
- (h) exempting from all or any of the provisions of this Act or the regulations licensed agents who are limited by the regulations to trading in mobile homes, and making other requirements that are applicable in the place of those provisions;
- (i) respecting the experience, training, education and examination of agents, designated representatives and salesmen;
- (j) respecting the appointment of members of the board of governors of the Foundation, including, without limitation, the number of members, who is to appoint them, the terms of office of members and the filling of vacancies;
- (k) governing the manner in which and the terms and conditions subject to which the Foundation may exercise any of its powers referred to in section 15.7;
- (l) prescribing the fiscal year of the Foundation;
- (m) prescribing the quorum at meetings of the board of governors of the Foundation;

- (i) the fees payable on applications for licences, and*
- (ii) any other fees in connection with the administration of this Act and the regulations;*
- (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) 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.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.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;*
 - (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;*

- (n) providing for the circumstances under which and the manner in which the Foundation may be wound up;
- (o) prescribing the factors the Superintendent must or may take into account in taking action under section 8(1)(e);
- (p) prescribing the practice and procedure in an investigation under sections 16 to 22;
- (q) providing for the regulation of the operation of branch offices;
- (r) respecting the contents of advertisements for a purchase, sale or exchange of real estate and the manner in which advertising may be carried out;
- (s) respecting the provision of information and documents by agents and their designated representatives and salesmen to parties to trades in real estate and respecting the manner in which and the circumstances under which that information and those documents are to be provided;
- (t) requiring, or authorizing the Superintendent to require, agents or their designated representatives or salesmen to file with the Superintendent copies of documents relating to trades in real estate;
- (u) respecting the purposes for which the money in the Fund that is in excess of the amount prescribed under clause (cc) may be used;
- (v) requiring licensed agents, designated representatives and salesmen or any of them to provide insurance through the Association against their liability for errors and omissions in the carrying on of their real estate business, or to participate in an indemnity plan for that purpose;
- (w) authorizing the Association to establish and administer an insurance or indemnity plan within the meaning of section 14(1.1)(a) and respecting all matters necessarily related to the establishment and administration of such a plan;
- (x) respecting the register referred to in section 15.4(4) and the registration of persons in the Fund;
- (y) respecting the administration of the Fund and the levy and collection of assessments for the Fund;
- (z) prescribing the conditions to be met before any claim is paid from the Fund;

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

- (aa) respecting the limits of liability of the Fund;
- (bb) prescribing the time within which claims against the Fund must be made;
- (cc) prescribing the amount referred to in section 14(1.1);
- (dd) respecting the winding-up of the Fund under section 15.3;
- (ee) respecting the forfeiture of bonds provided under section 15.3 or 41(e);
- (ff) providing for the manner of disposition of property of the Foundation for the purposes of section 15.95;
- (gg) prescribing the information to be contained in a prospectus required to be filed under section 38 or 48;
- (hh) prescribing any matter or thing that by this Act may be or is to be prescribed by regulations, other than by regulations to be made by the Minister;
- (ii) generally for the better carrying out of the provisions of this Act and the more efficient administration of it.

33 Section 57 is repealed and the following is substituted:

57 The Minister may make regulations

- (a) requiring the use of standard forms for matters related to trades in real estate and prescribing those forms;
- (b) respecting the amount and form of bonds to be furnished under this Act;
- (c) respecting the form and contents of an affidavit required under section 11(1);
- (d) requiring that specified types of trades in real estate be evidenced by an agreement in writing and requiring that such an agreement contain specified provisions;
- (e) governing, in addition to the requirements of section 23, the types of records, accounts and books of account to be kept, and the accounting principles to be followed, by agents in respect of trades in real estate and the operation of trust and other accounts;
- (f) requiring an agent to account to the Superintendent in respect of his books and accounts under section 23, and

33 Section 57 presently reads:

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);

(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.

respecting the times at which and the manner in which the accounting must be made and the information that must be provided;

(g) respecting the manner in which and the times at which a bank, trust company, credit union or treasury branch must pay interest to the Foundation, for the purposes of section 15.92(3);

(h) defining “annual net revenue” of the Foundation for the purposes of section 15.6(2);

(i) prescribing the percentage of annual net revenue for the purposes of section 15.6(2);

(j) further defining “branch office”;

(k) governing the keeping by the Foundation of books and accounts respecting its operations;

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

34(1) In the following provisions “, designated representative” is added after “agent” wherever it occurs:

section 16(1)(a)(ii);
section 33;
section 35(1);
section 38(2.1);
section 40(1).

(2) In the following provisions “designated representative or” is added before “salesman”:

section 3(1)(a);
section 31(a) and (b);
section 34;
section 54.

35 This Act comes into force on Proclamation.

34 Makes certain provisions applicable to designated representatives.

35 Coming into force.

Explanatory Notes