

Queensland



ANNO VICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 30 of 1971

**An Act to Consolidate and Amend The Law Relating to
Auctioneers, Real Estate Agents, Debt Collectors and
Motor Dealers**

[ASSENTED TO 27TH APRIL, 1971]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Auctioneers and Agents Act 1971*.

2. Commencement. (1) Except as provided in subsection (2) of this section, this Act shall commence on a date to be fixed by the Governor in Council by Proclamation published in the Gazette.

(2) Notwithstanding subsection (1) of this section, the Governor in Council may, by the Proclamation under subsection (1) of this section or by a subsequent Proclamation or Proclamations fix a date or dates for the commencement of the several provisions of this Act later than the date fixed by the Proclamation under subsection (1) of this section for the commencement of this Act.

(3) In this Act the expression "the commencement of this Act" means the date fixed by the Governor in Council by Proclamation under subsection (1) of this section for the commencement of this Act.

3. Division of Act. This Act is divided into Parts and Divisions as follows:—

- PART I—PRELIMINARY (SECTIONS 1-5);
- PART II—THE COMMITTEE (SECTIONS 6-13);
- PART III—LICENCES (SECTIONS 14-25).
- PART IV—REGISTRATION OF SALESMEN, ETC. (SECTIONS 26-33);
- PART V—AUCTIONEERS, REAL ESTATE AGENTS, COMMERCIAL AGENTS AND MOTOR DEALERS (SECTIONS 34-81);
 - Division 1—Auctioneers (sections 34-41);*
 - Division 2—Real Estate Agents (sections 42-45);*
 - Division 3—Commercial Agents (sections 46-53);*
 - Division 4—Motor Dealers (sections 54-61);*
 - Division 5—General (sections 62-81);*
- PART VI—ACCOUNTS AND FUNDS (SECTIONS 82-126);
 - Division 1—Trust Accounts (sections 82-92);*
 - Division 2—Auctioneers and Agents Fidelity Guarantee Fund (sections 93-106);*
 - Division 3—Receivers (sections 107-126);*
- PART VII—GENERAL (SECTIONS 127-132).

4. Repeals. The Governor in Council may by a Proclamation or Proclamations under this section fix a date or dates for the repeal of the several provisions of The Auctioneers, Real Estate Agents, Debt Collectors and Motor Dealers Acts 1922 to 1961 (in this Act referred to as “The repealed Acts”) and the provisions to which such a Proclamation relates shall be repealed as specified in the Proclamation.

5. Interpretation. (1) In this Act, unless the context otherwise indicates or requires, the following terms have the meanings respectively assigned to them, that is to say:—

“Auctioneer”—Any person who sells or attempts to sell or offers for sale or resale any property whether the property of the auctioneer or of any other person by way of auction as herein defined; and “sale by auction” or “to sell by auction” implies the sale of any property whether real or personal of any kind or description whatsoever by outcry, knocking down of hammer, or any other mode whereby the highest or any bidder is the purchaser, or whereby there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction;

“Caravan trailer”—Any trailer fitted, equipped, or used principally for camping or as a dwelling or for carrying on any trade or business;

“Commercial agent”—Any person (whether or not he carries on any other business) who, whether as principal or agent, exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on or in any way holds himself out as ready to undertake any of the functions of—

- (a) ascertaining the whereabouts of or repossessing any goods or chattels which are the subject of a hire purchase agreement or a bill of sale; or

- (b) collecting or requesting payment of debts—
on behalf of any person or persons for or in consideration of any payment or other remuneration (whether monetary or otherwise): The term does not include a person who—
 - (c) undertakes any such functions as a representative of Her Majesty; or
 - (d) holds a real estate agent's licence under this Act and undertakes such functions in his capacity as such licensee; or
 - (e) is employed merely as a clerk or servant; or
 - (f) is a registered banking or life assurance company, trustee company, friendly society, or building society;
- “Commercial sub-agent”—Any person in the direct employ of or acting for or by arrangement with a commercial agent who for salary, wages, commission, or other remuneration of any kind whatsoever, exercises or carries on for that commercial agent any of the functions of a commercial agent: The term does not include a person whose duties when employed by a commercial agent consist of no more than clerical or secretarial work or the receipt in the office of the commercial agent of moneys payable to that commercial agent in the course of his business;
- “Committee”—The Auctioneers and Agents Committee constituted under this Act;
- “Court”—A Magistrates Court within the meaning of *The Justices Acts 1886 to 1968* and constituted by a Stipendiary Magistrate sitting alone;
- “Deputy registrar”—The Deputy Registrar of Auctioneers and Agents appointed under this Act: The term includes a person temporarily discharging the duties of the deputy registrar;
- “Employee”—Includes any person employed whether on salary, wages, bonus, commission, fees, allowance, or other remuneration of any kind;
- “Fund”—The Auctioneers and Agents Fidelity Guarantee Fund established under this Act;
- “Individual”—A natural person: The term does not include a body corporate;
- “Land”—Land held in fee simple or for an estate of leasehold: The term includes a unit comprised in a building units plan registered under *The Building Units Titles Act of 1965*;
- “Letting”—Includes every form of leasing or letting of houses, land, estates, or businesses; the business of “letting” includes the collection or receipt of rents by an agent on behalf of his principal, whether such agent has or has not let the house, land, estate, or business in question;
- “Licence”—A licence and any renewal thereof issued or deemed to be issued under this Act and in force at any material time; Any endorsements made under this Act, or under the repealed Acts, on any licence shall be regarded as forming part of that licence;
- “Licensee”—The holder of a licence;

“Minister”—The Honourable the Minister for Justice and Attorney-General, or other Minister of the Crown for the time being charged with the administration of this Act;

“Motor Dealer”—Any person who—

(a) on his own behalf, and either alone or in connexion with any other business, exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on or in any way holds himself out as ready to undertake the business of—

(i) acquiring used motor vehicles for sale;

(ii) acquiring and breaking up used motor vehicles for sale, piecemeal; or selling (including the letting or selling upon a hire-purchase agreement within the meaning of *The Hire-purchase Act of 1959*) used motor vehicles, whether as integral units, or piecemeal;

(b) as an agent for others, and whether on commission or for or in expectation of any fee, gain, or reward and either alone or in connexion with any other business, and either generally or in respect of any one transaction, exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on or in any way holds himself out as ready to undertake the business, of buying or selling (including the letting or selling upon a hire-purchase agreement within the meaning of *The Hire-purchase Act of 1959*) used motor vehicles: The term does not include a person who—

(i) undertakes any such function as a representative of Her Majesty; or

(ii) is employed merely as a clerk or servant; or

(iii) is a registered banking or life assurance company, trustee company, friendly society, or building society;

“Motor salesman”—Any person in the direct employ of or acting for or by arrangement with a motor dealer who for salary, wages, commission, or other remuneration of any kind whatsoever, exercises or carries on for that motor dealer any of the functions of a motor dealer: The term does not include a person whose duties when employed by a motor dealer consist of no more than clerical or secretarial work or the receipt in the office of the motor dealer of moneys payable to that motor dealer in the course of his business;

“Motor vehicle”—Any vehicle propelled or designed for propulsion wholly or partly by gas, motor spirit, oil, electricity, steam, or any other mechanical power, whether such vehicle is or is not for the time being capable of being operated or used in a normal manner: The term includes a motor car, motor cycle, motor omnibus, motor truck, motor utility truck, motor tractor, and a trailer or caravan trailer designed to be attached to or drawn by a motor vehicle: The term does not include a vehicle designed for use on a railway or tramway or a fire engine or fire reel;

“Person”—Includes a body corporate;

“Property”—Includes any right or interest in any property;

“Real estate agent”—Any person who, as an agent for others, and whether on commission or for or in expectation of any

fee, gain, or reward, and either alone or in connexion with any other business, and either generally or in respect of any one transaction, exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on or in any way holds himself out as ready to undertake the business of buying, selling, exchanging, or letting houses, land, or estates, or negotiating for such buying, selling, exchanging, or letting, or buying, selling, exchanging, or letting hotel businesses, residential businesses, boarding house businesses, storekeeping businesses, manufacturing businesses, or businesses of any kind whatsoever, or any interest in any of such businesses, or buying, selling, or exchanging livestock: The term does not include a person who—

- (a) undertakes any such function as a representative of Her Majesty; or
- (b) is employed merely as a clerk or servant; or
- (c) is a registered banking or life assurance company, trustee company, friendly society, or building society;

“Real estate salesman”—Any person in the direct employ of or acting for or by arrangement with a real estate agent who for salary, wages, commission, or other remuneration of any kind whatsoever, exercises or carries on for that real estate agent any of the functions of a real estate agent: The term does not include a person whose duties when employed by a real estate agent consist of no more than clerical or secretarial work or the receipt in the office of the real estate agent of moneys payable to that real estate agent in the course of his business;

“Registrar”—The Registrar of Auctioneers and Agents appointed under this Act: The term includes the Deputy Registrar of Auctioneers and Agents and any other person for the time being exercising the functions of the registrar;

“Sale”—Includes an agreement to sell;

“Secretary”—The secretary to the Committee: The term includes a person temporarily discharging the duties of the secretary;

“Used motor vehicle”—A motor vehicle that has, at any time, been licensed or registered, whether under the law of this State or of any other State or a Territory of the Commonwealth (including any Territory under the trusteeship of the Commonwealth) or any country.

(2) The provisions of this Act relating to auctioneers shall not apply to—

- (a) any person selling by auction any Crown lands or other Crown property under the authority of the Minister for Lands or any other competent authority;
- (b) any other sales of property specially ordered by the Governor in Council;
- (c) any sales ordered by the sheriff by virtue of any writ or process issued out of any court;
- (d) any sales made by or under any rule, order, or judgment of the Supreme Court of Queensland or the District Court of Queensland;

- (e) any sales made by any person acting in obedience to any process issued by any court whatsoever or judge or justice for the recovery of any fine, penalty, or award, or in obedience to any order of such court, judge, or justice;
 - (f) any sales made by or under the authority of the Public Curator;
 - (g) any sales made by or under the authority of the Corporation of the Agricultural Bank pursuant to *The Co-ordination of Rural Advances and Agricultural Bank Acts 1938 to 1965*;
 - (h) any sales of any animals impounded according to law and sold under the laws relating to impounding;
 - (i) any sales of any goods distrained for rent or arrears of rent;
 - (j) any sales made by or pursuant to the authority of any local authority;
 - (k) any person who, under or pursuant to any Act, is for the time being authorised to sell by auction without holding an auctioneer's licence.
- (3) The provisions of this Act relating to real estate agents, commercial agents and motor dealers shall not apply in respect of the collection of debts or rents by any solicitor, or public accountant within the meaning of *The Public Accountants Registration Acts 1946 to 1968*, who has complied with the requirements of *The Trust Accounts Acts 1923 to 1959*, as to the depositing of any sum, securities, or fidelity bond therein prescribed by way of guarantee for the proper application by him of trust moneys coming into his possession.
- (4) This Act does not in any way affect the provisions of section 41 of the *Supreme Court Act of 1867*, or of the *Money Lenders Act 1916-1968*, or of *The Inspection of Machinery Acts 1951 to 1966*.
- (5) For the purposes of this Act a licence which is surrendered shall not be deemed to be cancelled.

PART II—THE COMMITTEE

6. Auctioneers and Agents Committee. (1) For the purposes of this Act there shall be a Committee to be known as the "Auctioneers and Agents Committee".

- (2) The Committee shall consist of six members, as follows:—
- (a) four members, one of whom shall be a barrister or solicitor of not less than five years standing, shall be appointed by the Governor in Council;
 - (b) one member shall be appointed by the Governor in Council from a panel, submitted by the Real Estate Institute of Queensland Inc., of names of three persons each of whom has for the previous five years been—
 - (i) a licensed real estate agent practising as such; or
 - (ii) a director, manager, or governing officer of a corporation licensed and carrying on business as a real estate agent for the previous five years; and
 - (c) the registrar shall, *ex officio*, be a member.
- (3) The Governor in Council shall appoint one of the members to be chairman of the Committee and one to be deputy chairman of the Committee.

(4) Each member, other than the registrar, shall be appointed for such term, not exceeding three years, as is fixed by the Governor in Council in the instrument of his appointment, and if not then disqualified

shall be eligible for re-appointment, and may be removed from office at any time by the Governor in Council, and shall be paid such fees and expenses, if any, as are prescribed.

(5) In the case of the suspension, illness, or absence of a member, or in the case of a vacancy in the office of a member, the Governor in Council may (in the case of a member referred to in paragraph (b) of subsection (2) of this section, from a panel of names of three qualified persons submitted by the Real Estate Institute of Queensland Inc.) appoint a person to act as deputy for such member during such suspension, illness, or absence, or until such vacancy is filled, as the case may be, and such deputy may exercise the powers and perform the duties of such member accordingly.

(6) If the Real Estate Institute of Queensland Inc. fails, within fourteen days after being so requested in writing by the Minister so to do, to submit the appropriate panel of names for the purposes of this section, the Governor in Council may appoint a member or deputy member without the submission of such a panel.

(7) The Governor in Council may appoint a secretary to the Committee and the person appointed may be a member of the Public Service of Queensland in which event he may hold such appointment in addition to any other position he holds in the Public Service of Queensland.

(8) Any member of the Committee may be a member of the Public Service of Queensland and in such event he may hold such appointment in addition to any other position he holds in the Public Service of Queensland.

7. Vacation of office. A member of the Committee shall be deemed to have vacated his office if—

- (a) he becomes bankrupt within the meaning of the law in force for the time being relating to bankruptcy, or compounds with his creditors; or
- (b) he becomes a mentally ill person within the meaning of *The Mental Health Acts 1962 to 1964*; or
- (c) he is absent from three consecutive ordinary meetings of the Committee without leave granted by the Minister; or
- (d) he dies; or
- (e) he resigns his office by writing under his hand lodged with the registrar; or
- (f) he is removed from office by the Governor in Council; or
- (g) being a member appointed under paragraph (b) of subsection (2) of section 6 of this Act, his licence is suspended or cancelled, or he neglects or fails to renew his licence upon its expiry; or
- (h) being a member of the Public Service of Queensland, he resigns or is dismissed from the Public Service of Queensland.

8. Filling of vacancy. Any person appointed to fill a vacancy shall hold office for the residue of the term for which his predecessor was appointed.

9. Meetings. (1) At any meeting of the Committee four members, one of whom is the chairman or the deputy chairman, shall form a quorum.

(2) Subject to there being a quorum, the Committee may meet and transact business notwithstanding any vacancy in its membership.

(3) At any meeting of the Committee the chairman or, in the absence of the chairman, the deputy chairman, shall preside.

(4) The chairman of the meeting shall have a deliberative and (in the case of equality of votes) a casting vote.

(5) The Committee shall meet at such times and places as are fixed by the chairman.

(6) Subject to this Part of this Act, the Committee may regulate its own proceedings.

10. Taking Evidence. For the purpose of enabling the Committee to conduct any investigation or inquiry or other proceeding which it deems necessary for the purposes of this Act, the Committee shall have all the powers, other than those where the chairman is a Judge of the Supreme Court, of a Commission of Inquiry under *The Commissions of Inquiry Acts 1950 to 1954*, and those Acts shall apply accordingly.

11. Powers of Committee. (1) The Committee shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed upon the Committee by or under this Act.

(2) The Committee may advise the Minister on any matter referred to it by the Minister or any matter relating to the administration of this Act.

12. Powers of Committee as to professional misconduct of licensees. (1) The Committee may, of its own motion or pursuant to a complaint or charge made to it by any person, inquire into any alleged professional misconduct by any licensee.

(2) If required in writing by the licensee whose conduct is being inquired into under this section, the Committee shall hold its inquiry in public and shall permit the licensee to appear at the inquiry in person or by his counsel or solicitor.

(3) If on any inquiry the Committee finds that a licensee has been guilty of professional misconduct it may—

- (a) admonish or reprimand the licensee;
- (b) require the licensee to pay the costs of and incidental to the inquiry;
- (c) impose on the licensee a fine not exceeding one hundred dollars.

(4) Any fine imposed or costs required to be paid pursuant to an order of the Committee under this section shall be a debt due to Her Majesty and recoverable in any court of competent jurisdiction, and in any proceedings for such recovery a certificate of the secretary as to the imposition of the fine or order of payment of costs shall be sufficient evidence of the debt.

(5) Any licensee who feels aggrieved by any decision of the Committee under this section may, within one month after notification to him of the Committee's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the conduct in question is alleged to have occurred.

(6) Every such appeal shall be by way of rehearing and the Magistrates Court shall inquire into and determine the appeal and its decision shall be final and without appeal.

(7) If the Committee imposes any penalty pursuant to this section it shall, if required so to do by the licensee penalised, state in writing its reasons for imposing the penalty.

13. Registrar and officers. (1) The Governor in Council may, from time to time, appoint a Registrar of Auctioneers and Agents, a Deputy Registrar of Auctioneers and Agents, and such assistant registrars, inspectors and other officers as may be deemed necessary for the administration of this Act.

(2) On the commencement of this Act the person who, immediately prior to the commencement of this Act, held the office of Registrar under the repealed Acts, shall, without further or other appointment whatsoever, be and be deemed to have been appointed to be the registrar and shall hold office accordingly.

(3) On and after the commencement of this Act, every Clerk of the Court in Queensland excepting the Clerk of the Court, Brisbane, shall, by virtue of his office and without further or other appointment whatsoever, be and be deemed to have been appointed to be an assistant registrar and an inspector.

(4) Any act, matter, or thing directed or authorized to be done or performed by the registrar under the provisions of this Act may be done or performed by the deputy registrar, and every act, matter or thing so done or performed by the deputy registrar shall be valid and effectual as if done or performed by the registrar.

PART III—LICENCES

14. No person to act without a licence. (1) Subject to this Act, no person shall act as, or carry on or advertise, notify, or state that he acts as, or carries on the business of, an auctioneer unless he is the holder of an auctioneer's licence.

(2) Where a partnership advertises, notifies, or states that it acts as or carries on or is willing to act as or carry on the business of an auctioneer, it shall be sufficient compliance with the provisions of subsection (1) of this section if one member of the partnership is the holder of an auctioneer's licence.

(3) Subject to this Act, no person (either by himself or as a member of a partnership)—

- (a) shall act or carry on or advertise, notify, or state that he acts as or carries on or is willing to act as or carry on the business of a real estate agent unless he is the holder of a real estate agent's licence;
- (b) shall act as or carry on or advertise, notify, or state that he acts as or carries on or is willing to act as or carry on the business of a commercial agent unless he is the holder of a commercial agent's licence;
- (c) shall act as or carry on or advertise, notify, or state that he acts as or carries on or is willing to act as or carry on the business of a motor dealer unless he is the holder of a motor dealer's licence.

(4) A corporation (other than an exempt proprietary company within the meaning of *The Companies Acts 1961 to 1964*) shall not act as or carry on or advertise, notify, or state that it acts as or carries on or is willing to act as or carry on the business of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, unless the corporation is registered in this State and has taken out a licence on its own behalf (hereinafter in this Act referred to as a "corporation licence") and, except where the sole business of the corporation is the business of an auctioneer, has also taken out, in respect of the individual in charge at its sole or principal place of business, a licence or licences of such one or more of the classes referred to in section 16 of this Act as may be appropriate.

(5) An exempt proprietary company (within the meaning of *The Companies Acts 1961 to 1964*) shall not act as or carry on or advertise, notify, or state that it acts as or carries on or is willing to act as or carry on the business of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, unless, except where the sole business of the company is the business of an auctioneer, every director of the company is the holder of a licence or licences of such one or more of the classes referred to in section 16 of this Act as may be appropriate; and the company—

- (a) is registered in this State;
- (b) has taken out a corporation licence; and
- (c) except where the sole business of the company is the business of an auctioneer, has also taken out, in respect of the individual (if such individual is not a director of the company) in charge at its sole or principal place of business, a licence or licences of such one or more of the classes referred to in section 16 of this Act as may be appropriate.

(6) Without limiting the generality of subsections (1), (2), (3), (4), or (5) of this section, any person who—

- (a) has any words painted or written, or allows to remain unobliterated any words that have been painted or written, over or about his premises, whether his private residence or his business premises, that are likely to lead to the belief or supposition that he is the holder of a licence of any of the classes of licences referred to in those subsections; or
- (b) places or causes to be placed any placard, board, sign, writing, or thing in the public view, wherever it may be so placed, that is likely to lead to the belief or supposition that he is the holder of any such licence,

shall be deemed to act as the holder of such a licence.

(7) A corporation shall not be entitled to take out or to hold a licence in respect of an employee unless it is the holder of a corporation licence.

(8) A corporation which is the holder of a corporation licence may take out one or more licences of any of the classes referred to in section 16 of this Act in respect of employees nominated by it for the purpose.

15. Each separate place of business to be in charge of licensed manager. (1) No person shall, by virtue merely of his being the holder of a real estate agent's licence, or commercial agent's licence, or motor dealer's licence, keep more than one place for the conduct of his business as a real estate agent, or commercial agent, or motor dealer, as the case may be.

(2) Where a licensed individual conducts his business as a real estate agent, or commercial agent, or motor dealer, at more than one place of business he shall employ at each such place, other than the place at which he is himself in charge, a person in respect of whom he has taken out a manager's licence of the class appropriate to the class of business so conducted, and that person shall be in charge of that class of the licensee's business at that place.

(3) Where a corporation, being the holder of a corporation licence, conducts its business as a real estate agent, or commercial agent, or motor dealer, at more than one place of business—

(a) it shall, unless a director of the corporation who is the holder of a real estate agent's licence, or commercial agent's licence, or motor dealer's licence, as the case may be, is in charge at its principal place of business, employ at that place a person in respect of whom it has taken out a real estate agent's licence, or commercial agent's licence, or motor dealer's licence, as the case may be, and that director or that person, as the case may be, shall be in charge of that class of the corporation's business at that place; and

(b) it shall, in respect of each other place of business other than its principal place of business, unless a director of the corporation who is the holder of a real estate agent's licence, or commercial agent's licence, or motor dealer's licence, as the case may be, is in charge of that other place of business, employ at that place a person in respect of whom it has taken out a manager's licence of the class appropriate to the class of business conducted at that place, and that director or that person, as the case may be, shall be in charge of that class of the corporation's business at that place.

(4) No person shall, in pursuance of this section, be in charge at more than one place of business.

(5) A manager's licence of whatever class shall not be granted in respect of a person who—

(a) is not resident in Queensland or (in the case of a manager's (real estate agency) licence, within forty miles of the boundary of Queensland);

(b) is not an adult person;

(c) is not a person of good fame and character;

(d) has not complied with such educational qualifications as are prescribed for the class of manager's licence in question, unless he has by the Committee been exempted from such qualifications; or

(e) is not a fit and proper person to hold such a licence.

16. Classes of licences. (1) A licence under this Act (other than a corporation licence) shall be one of the following classes, namely:—

(a) an auctioneer's licence; or

(b) a real estate agent's licence; or

(c) a commercial agent's licence; or

(d) a motor dealer's licence; or

(e) a manager's licence.

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- (2) An auctioneer's licence shall be—
- (a) a general auctioneer's licence; or
 - (b) a provisional auctioneer's licence; or
 - (c) a restricted auctioneer's licence.
- (3) A manager's licence shall be—
- (a) a manager's (real estate agency) licence; or
 - (b) a manager's (commercial agency) licence; or
 - (c) a manager's (motor dealing) licence.
- (4) A licence shall be in the form prescribed, and shall—
- (a) in the case of an auctioneer's licence, set out the name and address of the person taking out the same;
 - (b) in the case of a real estate agent's licence, commercial agent's licence, or motor dealer's licence, taken out by an individual, set out the name and address of the licensee, the address of his principal place of business, and the addresses of each other place of business (if any) of the licensee, in respect of which a manager's licence has been taken out;
 - (c) in the case of a corporation licence, set out the name of the corporation, the address of its registered office in the State, the address of its sole or principal place of business, and the address of each other place of business (if any) of the corporation in respect of which either a director of the corporation who is the holder of a licence is in charge, or a manager's licence has been taken out;
 - (d) in the case of a real estate agent's licence, or commercial agent's licence, or motor dealer's licence taken out by the holder of a corporation licence, set out the name and address of the licensee, the name of the corporation, the address of its registered office in the State, and the address of its sole or principal place of business at which that licensee is in charge;
 - (e) in the case of a manager's licence, set out the name and address of the manager, the address of the place at which the manager is in charge, and, where the business at that place is conducted for or on behalf of an individual licensee, that licensee's name and address, or, where the business at that place is conducted for or on behalf of a corporation, the name of the corporation, and the address of its registered office in the State.
- (5) (a) Subject to this Act, a licence shall expire on the thirty-first day of December next following the date of issue of the licence.
- (b) A licence may be renewed and on each renewal shall be in force until the thirty-first day of December next following the date of renewal of the licence.
- (c) A holder of a licence who desires to surrender his licence may by writing so notify the registrar and shall deliver his licence to the registrar forthwith upon the surrender of the licence.
- (d) The registrar shall, on receipt of a notification of surrender of a licence, endorse on the licence the word "surrendered" and record in the register of licences kept by him under this Act the fact that the licence has been surrendered.

17. Application for licence. (1) Application for a licence or for the renewal of a licence shall be made in the form prescribed and shall—

- (a) contain such particulars as are prescribed;
- (b) specify the class of licence desired by the applicant;
- (c) be lodged with the registrar;
- (d) be accompanied by the prescribed fee and, where applicable, the contribution to the Fund prescribed in respect of the licence in question.

(2) Upon receipt of the application the registrar shall inquire into and report to the Committee upon—

- (a) where the applicant is an individual—the fame and character and qualifications of the applicant for the licence in question;
- (b) where the application is by a corporation for a corporation licence—the fame and character of the directors and the secretary of the corporation and the qualifications of the corporation for the licence in question;
- (c) where the application is by a corporation for a licence in respect of an employee—the fame and character and qualifications for the licence of the employee.

(3) Where an application is made by a licensee for renewal of a licence held by him, the registrar shall, if he is satisfied that the applicant is not precluded by reason of any other provision of this Act from being granted the renewal, so certify to the Committee.

(4) A licensee who is desirous of renewing his licence shall forward to the registrar his application for such renewal not later than the thirtieth day of November of the year in which the licence will expire, if not renewed.

(5) Where an application for renewal of a licence is received by the registrar after the thirtieth day of November in any year, but prior to the date of expiry of the licence, the Committee may, if it considers that there are special reasons why the Committee should so do, consider the application and, in such event, shall issue to the licensee a temporary licence which shall take effect, or be deemed to have taken effect, as the case may require, from the date of expiry of the licence.

(6) Where a temporary licence is issued under subsection (5) of this section the holder thereof shall, for all the purposes of this Act, be deemed to be, and, where the temporary licence is issued after the date of expiry of the licence, to have been as from the date of expiry of the licence, the holder of a licence of the class specified in his application until such time as a renewal of the licence is granted or until his application is refused or until the thirty-first day of December next following the date of expiry of his licence, whichever first occurs.

(7) If a renewal of a licence is granted to a person to whom a temporary licence has been issued under this section, the renewal of the licence shall take effect as from the date from which the temporary licence took effect.

18. Grant of licence. (1) The Committee may, in its discretion, grant or refuse to grant an application for a licence or for the renewal of a licence.

(2) Where the Committee grants an application for a licence or for the renewal of a licence, the registrar shall issue the licence, or the renewal thereof, under his hand.

(3) Subject to subsection (4) of this section, upon the refusal or withdrawal of an application for a licence or for the renewal of a licence, there shall be refunded to the applicant, or to any person who appears to the registrar to be entitled thereto, the prescribed fees and the prescribed contribution to the Fund paid by the applicant upon lodgment of the application.

(4) Notwithstanding the provisions of subsection (3) of this section, upon the refusal or withdrawal of an application for the renewal of a licence made by a person to whom a temporary licence has been issued under section 17 of this Act, there shall be refunded to the applicant, or to any other person who appears to be entitled thereto—

- (a) the prescribed fees paid by the applicant reduced by such amount as bears to those prescribed fees; and
- (b) the prescribed contribution to the Fund reduced by such amount as bears to that prescribed contribution,

the same proportion as the period in months (disregarding any fraction of a month) for which the temporary licence had effect bears to twelve months, but nothing in this subsection requires a refund to be made in any case where the applicant applied for the renewal of licences of two or more classes, and the renewal of one or more licences is granted.

(5) Any person, with the prior approval of the Minister, may object to the grant of a licence or the renewal of a licence, and in such event—

- (a) the registrar shall notify the applicant, and where the application is made in respect of an employee, shall also notify the employee, that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objection proposed to be made;
 - (b) the hearing of the application shall not take place until after the expiration of seven days after the lodging of the notice of objection;
 - (c) the hearing of the application shall be an open hearing and the applicant and, where the application is made on behalf of an employee, the employee, shall be entitled to appear at the hearing either personally or by his counsel or solicitor.
- (6) A licence or a renewal of a licence shall not be granted—
- (a) to a corporation in respect of an employee where the employee is disqualified from holding a licence under this Act, or is not of good fame and character or otherwise a fit and proper person to hold a licence;
 - (b) to an applicant who is disqualified from holding a licence under this Act or who is not of good fame and character or otherwise a fit and proper person to hold a licence;
 - (c) to a corporation, whether a corporation licence, or a licence in respect of an employee, where the Committee is satisfied that the corporation is substantially owned or controlled by a person who is disqualified from holding a licence under this Act, or that any director or secretary of the corporation is not of good fame and character or otherwise a fit and proper person, if he were to apply for a licence, to hold the licence, or that the corporation is not a fit and proper person to hold a corporation licence or a licence in respect of an employee;
 - (d) to or in respect of an individual, unless the individual has complied with such educational qualifications (if any) as are prescribed in respect of the class of licence applied for, or has, by the Committee, been exempted from such qualifications.

(7) Where the Committee refuses to grant an application for a licence or for the renewal of a licence, the applicant may, within one month after notification to him of the Committee's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the applicant proposed to carry on business by virtue of the licence applied for or, in the case of the refusal of the renewal of a licence, where the applicant carried on business under the licence in respect of which the application for renewal was made.

(8) Every such appeal shall be by way of rehearing and the Magistrates Court shall enquire into and determine the appeal and its decision shall be final and without appeal.

19. Restoration of licence. (1) Where an application for renewal of a licence is not made before the date of expiry of the licence, the person who held the licence may apply for the restoration of the licence.

(2) An application for restoration of a licence shall be delivered to the registrar who shall make such enquiry into the application as he shall see fit and report thereon to the Committee.

(3) Upon an application for restoration of a licence being made the like fees and contributions as are payable on the renewal of the licence shall be paid and the Committee may, if it thinks fit, issue to the applicant a temporary licence.

(4) Upon the issue of a temporary licence under this section the applicant shall, for all the purposes of this Act (other than in respect of any proceedings that may have been or may be instituted against him for a contravention of section 14 of this Act) be deemed to be and to have been as from the expiration of the licence in respect of which the application for restoration is made the holder of a licence of the class specified in his application until such time as his licence has been restored to him pursuant to this section, or until his application is refused or withdrawn.

(5) Where an application is made under this section for restoration of a licence the Committee may, if satisfied that the non-renewal is due to inadvertence and that the result of such inadvertence should be remedied, or that for any reason it is just and equitable that the licence should be restored, order that the licence be restored, and may authorize the issue of a new licence for the balance of the term for which the original licence would have been available if duly renewed.

(6) The provisions of section 18 of this Act, shall, so far as they are applicable and with all necessary adaptations and modifications, apply to and in respect of an application for the restoration of a licence under this section in all respects as if the same were an application for a licence or a renewal of a licence.

20. Variation of licence. (1) The Committee may, upon the application of a person who has taken out a licence in respect of an employee, at any time during the currency of that licence vary that licence by substituting the name of some other employee nominated by the applicant for the purpose.

(2) An application under this section, accompanied by the relevant licence, shall be delivered to the registrar who shall make such enquiry as he sees fit and report thereon to the Committee.

(3) The provisions of section 18 of this Act shall, so far as they are applicable and with all necessary adaptations and modifications, apply to and in respect of an application for the variation of a licence under this section in all respects as if the same were an application for a licence or for the renewal of a licence.

21. Fees for licences. (1) The regulations may prescribe the fees that shall be payable in respect of the several matters hereinafter referred to:—

- (a) for an auctioneer's licence—
 - (i) being a general auctioneer's licence;
 - (ii) being a provisional auctioneer's licence;
 - (iii) being a restricted auctioneer's licence;
- (b) for a real estate agent's licence;
- (c) for a commercial agent's licence;
- (d) for a motor dealer's licence;
- (e) for a manager's licence—
 - (i) being a manager's (real estate agency) licence;
 - (ii) being a manager's (commercial agency) licence;
 - (iii) being a manager's (motor dealing) licence;
- (f) for an auctioneer's licence and any one or more of the following licences:—
 - A real estate agent's licence, a commercial agent's licence, or a motor dealer's licence;
- (g) for a corporation licence;
- (h) for the variation of a licence;
- (i) for a duplicate licence; and
- (j) for the renewal of any licence or licences.

(2) The fees referred to in subsection (1) of this section shall accompany the application for a licence in respect of which the fees are payable.

22. Cancellation of licence by Committee. (1) The Committee may, of its own motion or pursuant to any complaint or charge made to it, direct the secretary to summon any licensee to show cause why a licence held by him, either on his own behalf or in respect of an employee, should not be cancelled and why the licensee or employee, or both the licensee and employee, should not be disqualified either permanently or temporarily from holding a licence or, as the case may be, having a licence held in respect of him by another person, on the ground—

- (a) that the licence was improperly obtained contrary to the provisions of this Act; or
- (b) that he is not a fit and proper person to continue any longer to hold a licence, or to have a licence held in respect of him as an employee, or that a corporation is not a fit and proper person any longer to continue to hold a licence either as a corporation licence or in respect of an employee; or

- (c) that any director or the secretary of the corporation is not a fit and proper person to be a director or, as the case may be, the secretary, of a corporation holding a corporation licence or a licence in respect of an employee; or
- (d) that he has been guilty of such conduct as renders him unfit to continue any longer to hold a licence or to have a licence held in respect of him as an employee, or that the affairs of the corporation have been so conducted as to render it unfit to continue any longer to hold a corporation licence or a licence in respect of an employee; or
- (e) that a director or the secretary of the corporation has been guilty of such conduct as renders him unfit to be a director or the secretary, as the case may be, of a corporation holding a corporation licence or a licence in respect of an employee.

(2) Where the licensee named in the summons holds a licence in respect of an employee, a copy of the summons shall be served personally or by post on such employee.

(3) Where the summons alleges a ground referred to in paragraph (c) or paragraph (e) of subsection (1) of this section, a copy of the summons shall be served personally or by post on the director or the secretary referred to in the statement of that ground in the summons.

(4) If at the time and place appointed by the summons issued under this section the licensee or, as the case may be, the employee named therein, does not appear, then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the Committee may proceed to hear and determine the matter in the absence of such licensee or, as the case may be, such employee.

(5) Service of the summons may be proved by the oath of the person who served it or by affidavit or by such other evidence as the Committee deems sufficient.

(6) If required in writing by the licensee or, as the case may be, employee, named in the summons, the Committee shall hear the matter in public and shall permit the licensee or, as the case may be, employee, to appear at the hearing in person or by his counsel or solicitor.

(7) Upon being satisfied of the truth of any of the grounds referred to in subsection (1) of this section, the Committee may order that the licence of such licensee be delivered up to the registrar forthwith and cancelled, and that such licensee or such employee, or both, and, where the Committee orders the cancellation of the licence of a corporation on a ground referred to in paragraph (c) or paragraph (e) of subsection (1) of this section, that any director or the secretary of the corporation, be disqualified either permanently or for such a period as the Committee specifies from holding a licence under this Act, and upon the making of such order such licence shall thereafter be deemed and taken to be cancelled.

(8) In any proceedings under this section the Committee may, whether or not it orders the cancellation of a licence, require the licensee, employee, director, or secretary, or any two or more of such persons, to pay or contribute towards the payment of the costs of and incidental to the proceedings, as the Committee may order.

(9) Any costs required to be paid pursuant to an order of the Committee under this section shall be a debt due to Her Majesty and recoverable in any court of competent jurisdiction, and in any proceeding for such recovery a certificate of the secretary as to the order of payment of costs shall be sufficient evidence of the debt.

(10) Any licensee, employee, director, or secretary who feels aggrieved by any decision of the Committee under this section may, within one month after notification to him of the Committee's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the appellant carried on business by virtue of the licence in question.

(11) Every such appeal shall be by way of rehearing and the Magistrates Court shall enquire into and determine the appeal and its decision shall be final and without appeal.

23. Cancellation of licences generally. (1) If a licensee or a person in respect of whom as an employee a licence is held by another person is convicted of an indictable offence, the licence of the convicted person shall be deemed to be *ipso facto* cancelled.

(2) Notwithstanding any Act or law to the contrary, if a person is summarily convicted of an indictable offence, he shall, for the purposes of subsection (1) of this section, be deemed to have been convicted of an indictable offence.

(3) If any licensee or any person in respect of whom as an employee a licence is held by another person is convicted of an offence against this Act, the court may, if it thinks fit, in addition to any other penalty or punishment, cancel the licence of the convicted person and may further order that he be disqualified either permanently or for such period as the court may order from holding any licence or licences under this Act or, as the case may be, from having any licence held under this Act by any other person in respect of him as an employee.

(4) Where any court is of opinion that any person who has been charged before that court with any offence, or who is a party to any proceeding before that court, is not a fit and proper person to hold a licence under this Act, or to have a licence held under this Act by another person in respect of him as an employee, the court may, in addition to any other order, cancel the licence and may further order that he be disqualified either permanently or for such period as the court may order from holding any licence or licences under this Act or, as the case may be, from having any licence held under this Act by any other person in respect of him as an employee.

(5) Where the court pursuant to subsection (3) of this section cancels a licence or, upon application for such cancellation, refuses to cancel a licence, an appeal shall lie in all respects and in the same manner as if an order of cancellation of a licence were an imposition of a penalty or punishment.

(6) Subject to subsection (7) of this section, where a licence has been cancelled pursuant to section 22 of this Act, or pursuant to this section, a person shall not—

(a) carry on business as such or advertise or in any manner whatsoever hold out that he carries on business as such—

(i) under the name, or a name nearly resembling the name, whereunder a person whose licence has been cancelled was carrying on business as a licensee when his licence was cancelled; or

- (ii) under a name implying or capable of being construed as implying that he is the successor in business, or in any way interested or concerned in continuing the business as a licensee, of a person whose licence has been cancelled; or
- (b) in connexion with his business or the name of his business as such, use any word or words associating himself or his business as a licensee in any way whatsoever with a person or the business of a person whose licence has been cancelled.

(7) The provisions of subsection (6) of this section shall not apply in respect of the carrying on by a licensee of his business as such under his true name without any addition or adaptation whatsoever and in particular without any words of association as specified in subsection (6) of this section.

(8) Where a court, pursuant to this section, cancels a licence, the registrar or clerk of such court shall advise the Registrar of Auctioneers and Agents thereof within seven days of the making of the cancellation.

24. Disqualification of former licensees, etc. (1) In this section "former licensee" means a person who, within a period of twelve months before the date of issue of a summons under this section—

- (a) has been the holder of a licence and has ceased to hold that licence;
- (b) has been a person in respect of whom another person has held a licence and has ceased to be a person in respect of whom that other person holds that licence; or
- (c) has been a director or the secretary of a corporation that, within that period, has held a corporation licence.

(2) The Committee may, of its own motion or pursuant to a complaint or charge made to it by any person, direct the registrar to summon a former licensee to show cause why that former licensee should not be disqualified either permanently or temporarily from holding a licence on the ground—

- (a) in the case of a former licensee who is an individual—
 - (i) that he is not a fit and proper person to hold a licence or to have a licence held in respect of him by another person; or
 - (ii) that he has been guilty of conduct that renders him unfit to hold a licence or to have a licence held in respect of him by another person; or
- (b) in the case of a former licensee that is a corporation—
 - (i) that it is not a fit and proper person to hold a corporation licence or a licence in respect of an employee; or
 - (ii) that its affairs have been so conducted as to render it unfit to hold a corporation licence or a licence in respect of an employee.

(3) If at the time and place appointed by the summons issued under this section the former licensee does not appear, then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the Committee may proceed to hear and determine the matter in the absence of the former licensee.

(4) Service of the summons may be proved by the oath of the person who served it or by affidavit or by such other evidence as the Committee deems sufficient.

(5) If required in writing by the former licensee, the Committee shall hear the matter in public and shall permit the former licensee to appear at the hearing in person or by his counsel or solicitor.

(6) Upon being satisfied of the truth of any of the grounds referred to in subsection (2) of this section, the Committee may order that the former licensee be disqualified, either permanently or for such period as the Committee specifies, from holding a licence under this Act.

(7) In any proceedings under this section the Committee may, whether or not it orders any disqualification, require the former licensee to pay or contribute towards the costs of and incidental to the proceedings, as fixed by the Committee.

(8) Any costs required to be paid pursuant to an order of the Committee under this section shall be a debt due to Her Majesty and recoverable in any court of competent jurisdiction, and in any proceeding for such recovery a certificate of the secretary as to the order for payment of costs shall be sufficient evidence of the debt.

(9) Any former licensee who feels aggrieved by any decision of the Committee under this section may, within one month after notification to him of the Committee's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the former licensee last carried on business or was employed by virtue of the licence in question.

(10) Every such appeal shall be by way of rehearing and the Magistrates Court shall enquire into and determine the appeal and its decision shall be final and without appeal.

25. Register. (1) The registrar shall keep, in such form and manner as may be prescribed, a register of all licences and of all renewals, restorations, variations and cancellations of licences, and of all refusals of applications and of all disqualifications, which register shall be available at the office of the registrar during normal working hours for perusal by any person upon payment of the prescribed fee.

(2) A list of all licences as on the first day of January then last past shall be published by the registrar in the Gazette on or before the thirty-first day of March in each year.

(3) The Gazette containing any list referred to in subsection (2) of this section shall be *prima facie* evidence in all judicial proceedings that licences of the classes specified were in force in respect of the persons specified as at the first day of January of the year in question.

(4) The absence of a person's name from any list referred to in subsection (2) of this section shall, until the contrary is proved, be evidence that he was not licensed on the first day of January of the year in question.

(5) A certificate under the hand of the registrar that any person's name has been added to or deleted from any list referred to in subsection (2) of this section shall, until the contrary is proved, be evidence of the matters set out in the certificate.

PART IV—REGISTRATION OF SALESMEN, ETC.

26. Certain employees to be registered. (1) No person shall act as, or notify that he is available for employment as, a real estate salesman unless he is the holder of a certificate of registration under this Part as a real estate salesman.

(2) No real estate agent shall employ or continue to employ as a real estate salesman any person who is not the holder of a certificate of registration under this Part as a real estate salesman, endorsed in relation to that real estate agent.

(3) No person shall act as, or notify that he is available for employment as, a commercial sub-agent unless he is the holder of a certificate of registration under this Part as a commercial sub-agent.

(4) No commercial agent shall employ or continue to employ as a commercial sub-agent any person who is not the holder of a certificate of registration under this Part as a commercial sub-agent, endorsed in relation to that commercial agent.

(5) No person shall act as, or notify that he is available for employment as, a motor salesman unless he is the holder of a certificate of registration under this Part as a motor salesman.

(6) No motor dealer shall employ or continue to employ as a motor salesman any person who is not the holder of a certificate of registration under this Part as a motor salesman, endorsed in relation to that motor dealer.

(7) No corporation that is the holder of a corporation licence shall employ or continue to employ as a real estate salesman, commercial sub-agent, or motor salesman any person who is not the holder of a certificate of registration under this Part as a real estate salesman, commercial sub-agent, or motor salesman, as the case may be, endorsed in relation to that corporation.

(8) (a) A certificate of registration granted under this Part shall, subject to this Act, expire on the thirty-first day of December next following the date of issue of the certificate.

(b) A registration under this Part may be renewed and on each renewal shall be in force until the thirty-first day of December next following the date of renewal of the registration.

(c) A holder of a certificate of registration under this Part who desires to surrender his registration may by writing so notify the registrar and shall deliver his certificate to the registrar forthwith upon the surrender of the registration.

(d) The registrar shall, on receipt of a notification of surrender of a registration, endorse on the certificate the word "surrendered" and record in the record of registrations kept by him under this Act the fact that the registration has been surrendered.

27. Application for registration. (1) An application for registration as a real estate salesman, commercial sub-agent, or motor salesman, or for the renewal of such a registration, shall be made in the form prescribed and shall—

(a) contain such particulars as are prescribed;

(b) specify the class of registration desired by the applicant;

- (c) be lodged with the registrar;
- (d) be accompanied by—
 - (i) a notification by a real estate agent, commercial agent, or motor dealer that he intends to employ or to continue to employ the applicant as a real estate salesman, commercial sub-agent, or motor salesman, as the case may be;
 - (ii) the prescribed fee.

(2) Upon receipt of the application the registrar shall enquire into and report to the Committee upon the fame and character and qualifications of the applicant.

(3) Where an application is made by a registered real estate salesman, commercial sub-agent, or motor salesman, for renewal of his registration, the registrar shall, if he is satisfied that the applicant is not precluded by reason of any other provision of this Act from being granted the renewal, so certify to the Committee.

(4) A registered real estate salesman, commercial sub-agent, or motor salesman who is desirous of renewing his registration shall forward to the registrar his application for such renewal not later than the thirtieth day of November of the year in which the registration will expire, if not renewed.

28. Grant of registration. (1) The Committee may, in its discretion, grant or refuse to grant an application for registration or for the renewal of registration as a real estate salesman, commercial sub-agent, or motor salesman.

(2) Where the Committee grants an application for registration or for renewal thereof under this section, the registrar shall issue a certificate of registration or renewal thereof under his hand.

(3) Every certificate of registration or renewal of registration shall have endorsed thereon the name and address of the registered office of the licensee who is the employer or prospective employer of the holder of the certificate, and the registrar shall endorse the certificate accordingly.

(4) Upon the refusal or withdrawal of an application for registration or renewal of registration of a real estate salesman, commercial sub-agent, or motor salesman, there shall be refunded to the applicant, or to any person who appears to the registrar to be entitled thereto, the prescribed fees.

(5) Any person, with the prior approval of the Minister, may object to the registration or renewal of registration of a real estate salesman, commercial sub-agent, or motor salesman, and in such event—

- (a) the registrar shall notify the applicant that the grant of the application will be objected to, and shall set out shortly in the notice the nature of the objections proposed to be made;
- (b) the hearing of the application shall not take place until after the expiration of seven days after the lodging of the notice of objection;
- (c) the hearing of the application shall be an open hearing and the applicant and any person who has lodged an objection to the application shall be entitled to appear at the hearing either personally or by his counsel or solicitor.

(6) A certificate of registration or of renewal of registration as a real estate salesman, commercial sub-agent, or motor salesman shall not be granted—

- (a) to a person who is not resident in Queensland;
- (b) to a corporation;
- (c) to a person who is disqualified from holding a licence under this Act;
- (d) to a person who is not of good fame and character or is not otherwise a fit and proper person to be so registered; or
- (e) unless the applicant has complied with such educational qualifications, if any, as are prescribed in respect of the class of registration applied for, or has, by the Committee, been exempted from such qualifications.

(7) Where the Committee refuses to grant an application under section 27 of this Act, the applicant may, within one month after notification to him of the Committee's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the applicant's employer or proposed employer carried on business as a real estate agent, commercial agent, or motor dealer, as the case may be, or, in the case where his employer or proposed employer is the holder of a corporation licence under this Act, where the registered office of the corporation is situate.

(8) Every such appeal shall be by way of rehearing and the Magistrates Court shall enquire into and determine the appeal and its decision shall be final and without appeal.

29. Alteration of employment. (1) Where a person is the holder of a certificate of registration as a real estate salesman, commercial sub-agent, or motor salesman, and his certificate of registration is endorsed with the name and address of the registered office of the licensee who was, at the time of issue or renewal of the certificate, his employer, and the holder of the certificate ceases to be employed by that licensee, then both the holder of the certificate and the licensee whose name and the address of whose registered office are endorsed on the certificate of registration shall, within seven days of the date of cessation of such employment, notify the registrar in writing of that cessation of employment, and the holder of the certificate shall, within that period of time, produce his certificate to the registrar who shall endorse the certificate accordingly.

(2) In any prosecution for an offence against subsection (1) of this section it shall not be a defence for the person complained against, being one of the persons referred to in that subsection, to establish that the required notification was given to the registrar by the other of such persons.

(3) Where a person is the holder of a certificate of registration as a real estate salesman, commercial sub-agent, or motor salesman, and he is employed by a licensee whose name and the address of whose registered office are not endorsed on the certificate of registration, then both the holder of the certificate and the licensee shall, within seven days of the date of commencement of such employment, notify the registrar in writing of that commencement of employment, and the holder of the certificate shall, within that period of time, produce his certificate to the registrar who shall endorse the certificate accordingly.

(4) In any prosecution for an offence against subsection (3) of this section it shall not be a defence for the person complained against, being one of the persons referred to in that subsection, to establish that the required notification was given to the registrar by the other of such persons.

30. Fees. (1) The regulations may prescribe the fees that shall be payable in respect of the several matters hereinafter referred to:—

- (a) for registration as a real estate salesman;
- (b) for registration as a commercial sub-agent;
- (c) for registration as a motor salesman;
- (d) for endorsement of cessation of employment;
- (e) for endorsement of commencement of employment;
- (f) for a duplicate certificate of registration; and
- (g) for the renewal of a certificate of registration.

(2) The fees referred to in subsection (1) of this section shall accompany the application or notification in respect of which the fees are payable.

31. Cancellation of registration by Committee. (1) The Committee may, of its own motion or pursuant to a complaint or charge made to it by any person, direct the secretary to summon a holder of a certificate of registration as a real estate salesman, commercial sub-agent, or motor dealer, to show cause why his registration should not be cancelled and why he should not be disqualified either permanently or temporarily from holding a certificate of registration on the ground—

- (a) that the certificate was improperly obtained contrary to the provisions of this Act; or
- (b) that he is not a fit and proper person to continue any longer to hold such a certificate.

(2) Where the holder of a certificate named in the summons is employed by a licensee, a copy of the summons shall be served personally or by post on such licensee.

(3) If at the time and place named in the summons the holder of the certificate does not appear, then upon proof of the due service of the summons upon him a reasonable time before the time appointed for his appearance, the Committee may proceed to hear and determine the matter in the absence of such holder.

(4) Service of the summons may be proved by the oath of the person who served it or by affidavit or by such other evidence as the Committee deems sufficient.

(5) If required in writing by the holder of the certificate named in the summons, the Committee shall hear the matter in public and shall permit the holder to appear at the hearing in person or by his counsel or solicitor.

(6) Upon being satisfied of the truth of any of the grounds referred to in subsection (1) of this section, the Committee may order that the certificate of registration of such holder be delivered up to the registrar forthwith and cancelled and that such holder be disqualified either permanently or for such period as the Committee specifies from holding any certificate of registration under this Part, and upon the making of such order the certificate shall thereafter be deemed and taken to be cancelled.

(7) In any proceedings under this section the Committee may, whether or not it orders the cancellation of a certificate of registration, require the holder thereof to pay or contribute towards the payment of the costs of and incidental to the proceedings, as the Committee may order.

(8) Any costs required to be paid pursuant to an order of the Committee under this section shall be a debt due to Her Majesty and recoverable in any court of competent jurisdiction, and in any proceedings for such recovery a certificate of the secretary as to the order of payment of costs shall be sufficient evidence of the debt.

(9) Any holder of a certificate of registration who feels aggrieved by any decision of the Committee under this section may, within one month after notification to him of the Committee's decision, appeal therefrom to a Magistrates Court having jurisdiction at the place where the appellant was employed by virtue of the registration in question or, if the appellant had ceased to be so employed prior to the hearing by the Committee, then at the last place where the appellant was, prior to that date, so employed.

(10) Every such appeal shall be by way of rehearing and the Magistrates Court shall enquire into and determine the appeal and its decision shall be final and without appeal.

32. Record of registration. (1) The registrar shall keep, in such form and manner as may be prescribed, a record of the registration of all registered real estate salesmen, commercial sub-agents and motor salesmen, and of all renewals and cancellations of such registrations and of all refusals of applications and of all disqualifications, which record shall be available at the office of the registrar during normal working hours for perusal by any person upon payment of the prescribed fee.

(2) A certificate under the hand of the registrar that any person is or is not registered as a real estate salesman, or commercial sub-agent, or motor salesman, shall, until the contrary is proved, be evidence of the matters set out in the certificate.

33. Restriction on employment of certain other persons. (1) A licensee shall not, except with the approval of the Committee, and subject to such conditions, if any, as the Committee may impose, employ or continue to employ in any way whatsoever in connexion with his business as a licensee any person who, in Queensland or in another State or Territory of the Commonwealth (including any Territory under the trusteeship of the Commonwealth) has, to the knowledge of the licensee, been refused a licence of any kind under, or similar to a licence of any kind under this Act, or who has had such a licence cancelled, or who has been permanently disqualified from holding such a licence, or who has been convicted of an indictable offence or of an offence that, had it occurred in Queensland, would have been an indictable offence, and no such person shall, except with the approval of the Committee under this section, and subject to such conditions, if any, as the Committee may impose, participate or be in any way concerned in the business of a licensee.

(2) On an application by a licensee for an approval of the Committee under this section, the Committee may, in its discretion, grant or refuse to grant such approval and, if it grants such approval, may impose such conditions with respect to such employment, participation, or concern as it sees fit and as are specified in the approval.

(3) A licensee and a person in respect of whom an approval has been granted under this section subject to conditions shall in every respect comply with the conditions imposed by the Committee.

(4) For the purposes of this section—

- (a) a refusal of an application for renewal of a licence shall be deemed to be a refusal of a licence; and
- (b) notwithstanding any Act or law to the contrary, where a person has been summarily convicted of an indictable offence or of an offence that, had it occurred in Queensland, would have been an indictable offence, he shall be deemed to have been convicted of an indictable offence.

(5) An approval of the Committee under this section shall be evidenced by a writing under the hand of the secretary and such a writing shall in all judicial proceedings be sufficient evidence of such approval and of the conditions, if any, specified therein.

PART V—AUCTIONEERS, REAL ESTATE AGENTS, COMMERCIAL AGENTS AND MOTOR DEALERS

Division 1—Auctioneers

34. General auctioneers' licences. (1) Subject to section 41 of this Act, a general auctioneer's licence shall not be granted to an applicant who—

- (a) is not resident in Queensland;
- (b) is not an adult person;
- (c) is not a person of good fame and character;
- (d) has not complied with such educational qualifications as are prescribed, unless he has by the Committee been exempted from such qualifications; or
- (e) is not a fit and proper person to hold such a licence.

(2) Every auctioneer's licence (other than a provisional auctioneer's licence) issued under the repealed Acts and in force immediately prior to the commencement of this Act shall continue and shall for all the purposes of this Act be deemed to be a general auctioneer's licence issued under this Act.

35. Provisional auctioneers' licences. (1) Subject to this Act, a person who desires to obtain practical instruction in the carrying on of the business of an auctioneer may be granted a provisional auctioneer's licence.

(2) A provisional auctioneer's licence—

- (a) shall take effect from the date of its issue;
- (b) notwithstanding the provisions of section 16 of this Act—
 - (i) shall, unless sooner cancelled or surrendered, continue in force for a period of one year from the date it is issued;and

- (ii) may, where the Committee is satisfied that there are special circumstances that justify an extension of the period of the licence, be extended by the Committee for a period not exceeding one year from the date when it would otherwise expire, but no longer;
 - (c) shall, subject to this Act, authorise the holder thereof to act during the currency of the licence and in accordance with the terms and conditions thereof as an auctioneer, under the direct supervision and instruction of a person who is the holder of a general auctioneer's licence, or a restricted auctioneer's licence.
- (3) The holder of a provisional auctioneer's licence shall not receive, hold, or deal with in any manner moneys in respect of any sale conducted by him under the authority of that licence.
- (4) The holder of a general auctioneer's licence, or a restricted auctioneer's licence under whose direct supervision and instruction a holder of a provisional auctioneer's licence is placed shall not permit or allow the holder of the provisional auctioneer's licence to receive, hold, or deal with in any manner whatsoever moneys in respect of any sale conducted by the holder of the provisional auctioneer's licence under the authority of that licence.
- (5) An application for a provisional auctioneer's licence shall, in addition to complying in all respects with the provisions of section 17 of this Act—
- (a) contain particulars of the names and addresses of all holders of a general auctioneer's licence or restricted auctioneer's licence, under whose direct supervision and instruction it is intended that the applicant shall conduct sales by auction, if licensed; and
 - (b) specify an address within the State which the applicant desires to be recorded as his registered address for the purposes of this Act to which all communications and notices may be posted.
- (6) A provisional auctioneer's licence shall not be granted to an applicant who—
- (a) is not resident in Queensland;
 - (b) is not an adult person;
 - (c) is not a person of good fame and character; or
 - (d) is not a fit and proper person to hold such a licence.

36. Restricted auctioneers' licences. (1) Subject to this Act, a person who desires to conduct sales by auction of a particular class or classes only and not to conduct sales by auction generally may be granted a restricted auctioneer's licence.

(2) A restricted auctioneer's licence shall, subject to this Act, authorize the holder thereof to act as an auctioneer only in relation to the class or classes of sales specified in the licence.

(3) An application for a restricted auctioneer's licence shall, in addition to complying in all respects with the provisions of section 17 of this Act, contain particulars of the class or classes of sales in respect of which the application is made.

(4) Subject to section 41 of this Act, a restricted auctioneer's licence shall not be granted to an applicant who—

- (a) is not resident in Queensland;
- (b) is not an adult person;
- (c) is not a person of good fame and character;
- (d) has not complied with such educational qualifications as are prescribed, unless he has by the Committee been exempted from such qualifications; or
- (e) is not a fit and proper person to hold such a licence.

37. Night auctions. (1) Subject to subsection (2) of this section, an auctioneer shall not sell, or offer for sale, or attempt to sell by auction any property at any time during the period between sunset on one day and sunrise on the next succeeding day.

(2) Subsection (1) of this section shall not apply to—

- (a) the sale of goods at a bazaar, fair, or public entertainment where the proceeds from that sale are not for private gain but are to be devoted solely to religious, charitable, or educational purposes; or
- (b) the sale of wool or tobacco leaf from catalogues after daylight inspection of the wool or tobacco leaf, as the case may be; or
- (c) the sale of stud stock in all respects in accordance with an authority granted by the Minister pursuant to subsection 3 of this section.

(3) Upon application in writing the Minister may authorize either generally or in any particular case the sale by auction between sunset on one day and sunrise on the next succeeding day of stud stock, subject to such conditions, if any, as the Minister may determine and as shall be specified in the authority.

38. Bogus advertisements. No person shall wilfully and falsely advertise or in any way wilfully and falsely represent that as an auctioneer he has real or personal property for sale by auction.

39. Sales of livestock. (1) Subject to subsection (2) of this section, where an auctioneer has sold any livestock received by him for sale he shall, before paying over the proceeds of the sale, require from the person who was the owner or possessor of the livestock at the time they were so received a certificate from some reputable person known to the auctioneer that such owner or possessor is a person of good repute and that the person so certifying believes that such owner or possessor became possessed of the livestock honestly.

(2) The provisions of subsection (1) of this section shall not apply in any case where the auctioneer has been personally acquainted with the owner or possessor of the livestock for at least one year and knows him to be a person of good repute and has no reason to believe that the owner or possessor became possessed of the livestock dishonestly.

(3) An auctioneer who complies with subsection (1) of this section or who is, by virtue of subsection (2) of this section exempted from the provisions of the said subsection (1), in respect of any livestock that may, after being sold by the auctioneer, be recovered under the provisions of any Act or law for the time being in force enabling a court to order

and enforce repayment by a vendor of the amount paid to him as purchase money of livestock adjudged to have been stolen or unlawfully obtained, shall, unless the court before whom the case is brought is satisfied that the auctioneer has been negligent in respect of such livestock, be exempt from the operation of such provisions.

(4) An auctioneer who complies with subsection (1) of this section or who is, by virtue of subsection (2) of this section, exempted from the provisions of the said subsection (1) in respect of any livestock sold by him at auction, and who, in any proceedings against him in any court satisfies the court that he acted in good faith and under a reasonable belief that the person on whose behalf and by whose authority he sold the livestock was the true owner thereof, shall not be in any way liable to the owner of the livestock by reason only that such auctioneer took possession of or gave delivery of the livestock.

(5) In this section the term "livestock" means and includes horses, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, ewes, wethers, rams, lambs and swine.

40. Code of Professional Conduct of Auctioneers. (1) The Committee may, from time to time, as a guide to the standard of professional conduct expected of auctioneers compile a Code of Professional Conduct of Auctioneers.

(2) Such a Code shall be submitted to the Governor in Council for approval and, on approval, be published in the Gazette, and the production in evidence of a copy of the Gazette containing a Code of Professional Conduct of Auctioneers shall be sufficient evidence of the compiling of the Code by the Committee, the approval of the Governor in Council thereto, and of the matters contained in the Code.

41. Reciprocity with other States. (1) Where the Governor in Council is satisfied that in any other State of the Commonwealth an Act or law is in force under which any person resident in Queensland and holding an auctioneer's licence may obtain a licence to follow the occupation of an auctioneer in all parts of that other State, the Governor in Council may, by notification published in the Gazette, declare that, on and after a date to be specified in the notification and while the notification remains in force, this Act shall extend and apply to the granting in Queensland of general auctioneer's licences to residents in such other State.

(2) The Governor in Council may, if he thinks fit, revoke any such notification.

(3) In the case of a resident in any State of the Commonwealth with respect to which a notification under this section is in force, a general auctioneer's licence shall be granted to such resident only if he holds a licence to follow the occupation of an auctioneer in all parts of that State.

(4) Subject to the foregoing provisions of this section, and so far as they are applicable, the provisions of Part III of this Act shall apply in all respects to a person granted a general auctioneer's licence under this section.

(5) A declaration of the Governor in Council made under section 15C of the repealed Acts and in force at the date of the commencement of this Act shall be deemed to have been made under this section.

Division 2—Real Estate Agents

42. Real estate agents' licences. (1) A real estate agent's licence shall not be granted to an applicant who—

- (a) is not resident in Queensland or within forty miles of the boundary of Queensland;
- (b) is not an adult person;
- (c) is not a person of good fame and character;
- (d) has not complied with such educational qualifications as are prescribed, unless he has by the Committee been exempted from such qualifications; or
- (e) is not a fit and proper person to hold such a licence.

(2) Every real estate agent's licence issued under the repealed Acts and in force immediately prior to the commencement of this Act shall continue and shall, for all the purposes of this Act, be deemed to be a real estate agent's licence issued under this Act.

(3) Paragraph (d) of subsection (1) of this section shall not apply to or with respect to any person who applies for a real estate agent's licence within three months after the commencement of this Act and who satisfies the Committee that he was for one year immediately prior to the commencement of this Act a director, manager, or governing officer of a corporation licensed and carrying on business as a real estate agent immediately prior to the commencement of this Act.

43. Sole agencies and multiple listings. (1) Notwithstanding any other provision of this Act, a real estate agent may accept or undertake an appointment or engagement in writing to act as agent for the sale of any property upon the terms that he is to be paid commission if the property is sold by him or by any other person (including his principal) during a period not exceeding sixty days from the date of the appointment or engagement, where to facilitate the sale of the property he is authorized and obliged forthwith to give particulars thereof to other real estate agents, but the appointment or engagement shall not be extended for any longer period than a further sixty days commencing on the date of the expiry of the original appointment or engagement, and then only with the prior approval in writing of the registrar.

(2) Where an appointment or engagement is accepted or undertaken by a real estate agent in accordance with subsection (1) of this section, and the property in respect of which that appointment or engagement is accepted or undertaken by that real estate agent is sold by any person during the period for which that appointment or undertaking is in force, no person other than that real estate agent shall be entitled to charge or receive any fees, charges, commission, reward, or other remuneration from any party to that sale in respect of that sale.

44. Bogus advertisements. No person shall wilfully and falsely advertise or in any way wilfully and falsely represent that as a real estate agent he has real or personal property for sale.

45. Code of Professional Conduct of Real Estate Agents. (1) The Committee may, from time to time, as a guide to the standard of professional conduct expected of real estate agents and real estate salesmen, compile a Code of Professional Conduct of Real Estate Agents.

(2) Such a Code shall be submitted to the Governor in Council for approval and, on approval, be published in the Gazette, and the production in evidence of a copy of the Gazette containing a Code of Professional Conduct of Real Estate Agents shall be sufficient evidence of the compiling of the Code by the Committee, the approval of the Governor in Council thereto, and of the matters contained in the Code.

Division 3—Commercial Agents

46. Commercial agents' licences. (1) A commercial agent's licence shall not be granted to an applicant who—

- (a) is not resident in Queensland;
- (b) is not an adult person;
- (c) is not a person of good fame and character;
- (d) has not complied with such educational qualifications as are prescribed, unless he has by the Committee been exempted from such qualifications; or
- (e) is not a fit and proper person to hold such a licence.

(2) Every debt collector's licence issued under the repealed Acts and in force immediately prior to the commencement of this Act shall continue and shall for all the purposes of this Act, be deemed to be a commercial agent's licence issued under this Act.

(3) Paragraph (d) of subsection (1) of this section shall not apply to or with respect to any person who applies for a commercial agent's licence within three months after the commencement of this Act and who satisfies the Committee that he was for one year immediately prior to the commencement of this Act a director, manager, or governing officer of a corporation licensed and carrying on business as a debt collector immediately prior to the commencement of this Act.

47. Licence not to confer additional powers. (1) No commercial agent or commercial sub-agent shall, by virtue of being licensed or, as the case may be, registered, have any power or authority which he would not have if this Act had not been passed.

- (2) No commercial agent or commercial sub-agent shall in any way—
- (a) suggest or imply that by virtue of his licence or, as the case may be, registration, he may exercise any power or authority which in fact he could not exercise if this Act had not been passed; or
 - (b) use or attempt to use his licence or, as the case may be, registration, to exercise or as entitling him to exercise any such power or authority.

48. Production of licences, etc. A commercial agent and a commercial sub-agent shall on demand produce his licence or, as the case may be, certificate of registration, for inspection—

- (a) to the registrar, deputy registrar, an assistant registrar, an inspector, or to a member of the Police Force; and
- (b) to any person with whom he has dealings when carrying out his functions as a commercial agent.

49. Unlawful entry. A commercial agent or commercial sub-agent shall not, when exercising or carrying on his functions as such, enter any premises without lawful authority.

50. Misrepresentation. A commercial agent or commercial sub-agent shall not by any false or misleading or deceptive statement, representation or promise, or by any wilful concealment of a material fact induce or attempt to induce any person to enter into any agreement or contract in connexion with the business of the commercial agent as such.

51. Repossession of motor vehicles to be reported. A commercial agent or commercial sub-agent who repossesses or accepts the voluntary surrender of a motor vehicle which is the subject of a hire-purchase agreement or a bill of sale—

- (a) shall forthwith after such repossession or surrender inform an officer of police at a police station near the place where the vehicle was repossessed or surrendered that the vehicle has been repossessed or surrendered, and give to the officer a description of and the registered number of the vehicle; and
- (b) within twenty-four hours after such repossession or surrender deliver or send by post to the officer in charge of police at the police station nearest the commercial agent's or commercial sub-agent's registered office written particulars of the motor vehicle (including particulars of the registered number of the vehicle).

52. Debtors not to be charged expenses of debt collecting. (1) No person who—

- (a) exercises or carries on any of the functions of a commercial agent (whether licensed or not) or commercial sub-agent (whether registered or not); or
- (b) acts for or in collusion with a person referred to in paragraph (a)—

shall be entitled to charge, recover or receive from any debtor of a creditor any sum of money or valuable consideration for or on account of any costs, charges, or expenses (other than stamp duties and any legal costs fixed by or payable under any rules of court or order of a court) or any remuneration or payment whatsoever for or in connexion with the collection of a debt.

(2) The provisions of subsection (1) of this section—

- (a) shall not be construed as affecting or removing any right existing from time to time of an owner or grantee to recover any costs, charges, or expenses in respect of the repossession of goods which are the subject of a hire-purchase agreement or a bill of sale; and
- (b) shall not extend to any sum charged, recovered, or received for or on account of the reasonable costs incurred by such owner or grantee where the owner or grantee forbears at the request of the hirer or the person whose goods are comprised in the bill of sale (whichever is applicable) to take possession of such goods.

(3) No person shall charge, recover, or receive, or attempt to charge, recover, or receive any sum of money or valuable consideration in contravention of subsection (1) of this section.

(4) Where any money or money's worth is directly or indirectly paid, or allowed to, or received by any person in contravention of this section the amount or value thereof in respect of such contravention may, notwithstanding any contract to the contrary, be recovered by the debtor from such person, or if such person is the creditor or a partner, employer, employee, principal, or agent of the creditor, or is in any way acting in collusion with him, may be set off against the amount of the debt (which shall be deemed to be reduced accordingly) or may be recovered by the debtor from such person or from the creditor.

53. Code of Professional Conduct of Commercial Agents. (1) The Committee may, from time to time, as a guide to the standard of professional conduct expected of commercial agents and commercial sub-agents, compile a Code of Professional Conduct of Commercial Agents.

(2) Such a Code shall be submitted to the Governor in Council for approval and, on approval, be published in the Gazette, and the production in evidence of a copy of the Gazette containing a Code of Professional Conduct of Commercial Agents shall be sufficient evidence of the compiling of the Code by the Committee, the approval of the Governor in Council thereto, and of the matters contained in the Code.

Division 4—Motor Dealers

54. Motor dealers' licences. (1) A motor dealer's licence shall not be granted to an applicant who—

- (a) is not resident in Queensland;
- (b) is not an adult person;
- (c) is not a person of good fame and character;
- (d) has not complied with such educational qualifications as are prescribed, unless he has by the Committee been exempted from such qualifications; or
- (e) is not a fit and proper person to hold such a licence.

(2) Every motor dealer's licence issued under the repealed Acts and in force on the date of the commencement of this Act shall continue and shall for all the purposes of this Act be deemed to be a motor dealer's licence issued under this Act.

(3) Paragraph (d) of subsection (1) of this section shall not apply to or with respect to any person who applies for a motor dealer's licence within three months after the commencement of this Act and who satisfies the Committee that he was for one year immediately prior to the commencement of this Act a director, manager, or governing officer of a corporation licensed and carrying on business as a motor dealer immediately prior to the commencement of this Act.

55. Register to be kept by licensees. (1) Every motor dealer shall keep a register, in the prescribed form, at all premises in respect of which he is licensed as a motor dealer, and shall record in the register the prescribed particulars of every transaction entered into in the course of dealing there.

(2) A motor dealer shall produce the register kept pursuant to this section, for inspection, on demand, to the registrar, deputy registrar, an assistant registrar, an inspector or to a member of the Police Force.

(3) No person shall knowingly make a false entry or cause a false entry to be made in any register kept pursuant to this section.

56. Inspection of used motor vehicles. (1) Every motor dealer shall permit the registrar, deputy registrar, an assistant registrar, an inspector or a member of the Police Force, at all reasonable hours to enter upon the premises in respect of which the licence is issued, with such persons as he may require to assist him, and there to examine any used or second-hand motor vehicle or any prescribed spare parts or accessories.

(2) No person shall obstruct or hinder the registrar, deputy registrar, any assistant registrar, or inspector or any member of the Police Force in the exercise of his powers under subsection (1) of this section.

57. Information to be given to purchasers. Every motor dealer who sells (whether by auction or any other mode of sale) a used motor vehicle to any person shall give to the purchaser at the time of sale a notice in writing setting out—

- (a) the make, type and model of the vehicle, and its approximate date of manufacture;
- (b) the engine number and chassis number of the vehicle;
- (c) the name and address of the last previous owner of the vehicle; and
- (d) the name and address of the last previous possessor of the vehicle,

and warranting that the vehicle is free from any charge or encumbrance in favour of any third party, other than any charge or encumbrance specified in the notice.

58. Roadworthiness of used motor vehicles. (1) Every motor dealer who sells (whether by auction or any other mode of sale) a used motor vehicle to any person other than another motor dealer shall give to the purchaser at the time of the sale a certificate in the prescribed form certifying that the vehicle was at that time in all respects roadworthy.

(2) Every motor dealer who permits or suffers any person to drive away from his premises or from any place where it is under his control (including any road or other place where he has caused such vehicle to be placed) a used motor vehicle that is not in all respects roadworthy, shall be guilty of an offence against this Act.

(3) Every motor dealer who acquires a used motor vehicle for the purpose of breaking up the vehicle and sells the vehicle otherwise than for the purpose of having the vehicle broken up shall be guilty of an offence against this Act.

(4) For the purposes of this section and of section 57 of this Act, where a transaction arranged by a motor dealer in respect of a used motor vehicle leads to a hire-purchase agreement in respect of the vehicle under which the purchaser of the vehicle from the motor dealer is the owner the term "purchaser" includes the hirer under the hire-purchase agreement, and in such circumstances the notice and the warranty referred to in section 57 of this Act and the certificate referred to in subsection (1) of this section shall be given by the motor dealer who arranged the transaction and not by the owner under the hire-purchase agreement, and no further such notice, warranty or certificate is required by this Act to be given when the hirer under the hire-purchase agreement acquires title to the vehicle pursuant to the hire-purchase agreement.

59. Bogus advertisements. No person shall wilfully and falsely advertise or in any way wilfully and falsely represent that as a motor dealer he has used or second-hand motor vehicles for sale.

60. Code of Professional Conduct of Motor Dealers. (1) The Committee may, from time to time, as a guide to the standard of professional conduct expected of motor dealers and motor salesmen, compile a Code of Professional Conduct of Motor Dealers.

(2) Such a Code shall be submitted to the Governor in Council for approval and, on approval, be published in the Gazette, and the production in evidence of a copy of the Gazette containing a Code of Professional Conduct of Motor Dealers shall be sufficient evidence of the compiling of the Code by the Committee, the approval of the Governor in Council thereto, and of the matters contained in the Code.

61. Transactions in used motor vehicles to be notified. (1) Every motor dealer acquiring or selling a used or second-hand motor vehicle shall, forthwith after the acquisition or sale—

(a) send to the authority that registered the vehicle, if within Queensland, such particulars of the transaction as may be prescribed; or

(b) where that authority is not within Queensland, deliver the number plates, if any, attached to the vehicle to the nearest registering authority in Queensland.

(2) Upon the expiration or cancellation of the registration of a used or second-hand motor vehicle that is in the possession of a motor dealer, he shall, unless renewing the registration, return any number plates attached to the vehicle to the nearest registering authority in Queensland.

(3) Nothing in this section affects the obligation of a person to apply for the transfer of the registration of a motor vehicle, under the provisions of any other Act.

Division 5—General

62. Restriction on agents purchasing property. (1) It shall not be lawful for—

- (a) any auctioneer, real estate agent, or motor dealer, whether directly or indirectly or by himself or any partner or employee, to purchase or be in any way concerned or beneficially interested in the purchase of any property (other than perishable farm produce) placed in his hands for sale privately or by auction or on commission (as the case may be) by any principal without having previously obtained the consent in writing of such principal to such purchase;
- (b) any employee of an auctioneer, a real estate agent, or a motor dealer, to be in any way concerned or beneficially interested in the purchase of any property placed in his employer's hands for sale by auction or on commission by the owner thereof without having previously obtained the consent in writing of such owner to such purchase;
- (c) any auctioneer, real estate agent, or motor dealer to charge commission to the principal on any property that may be taken over by such auctioneer, real estate agent or motor dealer, or any employee of such auctioneer, or real estate agent, or motor dealer, as a purchaser or for his own use whether or not he has obtained the consent referred to in paragraph (a) or paragraph (b) of this subsection.

(2) Where an offence against subsection (1) of this section has been committed by any of the persons referred to therein, the auctioneer, real estate agent, motor dealer or other person who has received any commission in respect of the dealing the subject of that offence shall, upon conviction, and in addition to any other penalty the court may impose, be ordered by the court to account for and pay over to his principal all profits resulting from the purchase in respect of which the offence was committed.

63. When agent prohibited from having interest in option to purchase land. (1) An auctioneer or real estate agent shall not, in respect of land had by him for sale, obtain or be in any way concerned in obtaining from the seller an option to purchase wherein that auctioneer or real estate agent is beneficially interested.

(2) An auctioneer or a real estate agent shall not as such sell land at any time when, in respect of that land, there is subsisting an option to purchase wherein that auctioneer or real estate agent is beneficially interested.

(3) For the purposes of this section—

- (a) an option to purchase includes any transaction whatsoever granting or purporting to grant a right not immediately exercisable to purchase or to be given an option to purchase;
- (b) the term "sell", in relation to an auctioneer or a real estate agent acting as such, means sell, agree to sell, attempt to sell, have for sale, negotiate for a sale, or be in any way concerned in selling.

64. Beneficial interest. For the purposes of sections 61 and 62 of this Act, a person shall be deemed to be beneficially interested in property or in an option to purchase land if the person on whose behalf the property is purchased or to whom the option has been given is any of the following, that is to say:—

- (a) the auctioneer or real estate agent, or the spouse, or a parent or child, of that auctioneer or real estate agent;
- (b) a corporation (not being a corporation consisting of more than twenty persons), body or association of persons, firm or partnership, carrying on business for profit or gain, whereof that auctioneer or real estate agent, or the spouse, or a parent or child, of the auctioneer or real estate agent is a member;
- (c) in the case of a corporation carrying on the business of a real estate agent—that corporation or any member thereof, or the spouse, or a parent or child, of any member thereof;
- (d) in the case of an auctioneer employed as such by a corporation—that corporation, a member of that corporation employed by it in any business carried on by it, the spouse, or a parent or child, of such a member, or, if that corporation consists of not more than twenty members, any member thereof, or the spouse, or a parent or child of any member thereof;
- (e) in the case of an auctioneer or a real estate agent carrying on business as such as a member of a firm or partnership—any other person who is a member of that firm or partnership, or the spouse, or a parent or child, of such a person;
- (f) any person carrying on for profit or gain a business in the income wherefrom or profits whereof that auctioneer or real estate agent, or the spouse, or a parent or child, of that auctioneer or real estate agent, has directly or indirectly a right to participate;
- (g) an employee of that auctioneer, a real estate salesman or other employee of that real estate agent, or the spouse, or a parent or child, of that employee, real estate salesman or other employee.

65. False representations as to property. (1) No auctioneer, real estate agent, or motor dealer, or employee of an auctioneer, a real estate agent, or a motor dealer, shall make to any purchaser or prospective purchaser or publish or cause to be published any statement or representation that is false or misleading (whether to his knowledge or not) concerning any real or personal property which he, or as the case may be, his employer, has for sale by auction or as a real estate agent or as a motor dealer, as the case may be.

(2) Without limiting the generality of subsection (1) of this section, a statement or representation shall, for the purposes of that subsection, be deemed to be false or misleading if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement or representation indicates that that state of affairs does exist.

(3) A statement shall be deemed to be published within the meaning of this section if it is—

- (a) inserted in any newspaper (including any periodical) or any other publication circulated in Queensland;

(b) publicly exhibited—

- (i) in, on, over, or under any building, vehicle, or place (whether or not a public place and whether on land or water); or
- (ii) in the air in view of persons being or passing in or on any street or public place; or
- (iii) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person; or
- (iv) broadcast by wireless transmission or television.

(4) If a person is charged with an offence against subsection (1) of this section—

- (a) it shall be a sufficient defence if the person charged proves that, in relation to a false statement, or representation he had reasonable grounds for believing and did in fact believe that the statement or representation was true; or that, in relation to a misleading statement or representation, that he had reasonable grounds for believing and did in fact believe that the statement or representation was not misleading;
- (b) it shall not be a defence to prove that the sale to the purchaser was rescinded or that the prospective purchaser did not buy.

(5) Notwithstanding any proceedings against any person for an offence against this section (whether resulting in a conviction or otherwise) such person shall remain liable in all civil proceedings in like manner as if the proceedings for an offence had not been taken.

(6) This section shall be read and construed as in aid of and not in derogation from any other Act or law relating to false or misleading advertisements or other statements.

66. Representations as to availability of finance. (1) An auctioneer who sells by auction, or a real estate agent who as such or as a principal sells any land, whether improved or unimproved, shall give to the purchaser a statement in writing in compliance in every respect with the requirements of this section.

(2) A statement in writing under this section shall—

- (a) clearly identify the land to which the statement relates;
- (b) state the names and addresses respectively of the seller and purchaser;
- (c) state clearly whether or not the auctioneer or real estate agent has (by himself or by any of his employees) made or offered to the purchaser any representation, promise or term with respect to the availability of finance for defraying wholly or in part the purchase price;
- (d) if any such representation, promise, or term has been so made or offered, in addition to stating clearly that fact, state clearly the particulars of that representation, promise or term;
- (e) state the date on which the statement is given; and
- (f) be signed by the auctioneer or real estate agent or by a person thereunto authorised in writing (prior notice whereof, accompanied by a copy of the authority, has been delivered to the registrar) by the auctioneer or real estate agent,

and shall not contain any other written, typewritten, or printed matter whatsoever except the letterhead, if any, of the auctioneer or real estate agent.

(3) A statement in writing under this section shall be given by the auctioneer or real estate agent to the purchaser before the purchaser signs any contract, agreement, or document whatsoever legally binding or intended to bind the purchaser legally in respect of the sale.

(4) If, in respect of the sale of any land, whether improved or unimproved—

(a) by an auctioneer by auction; or

(b) by a real estate agent whether as such or as a principal,

finance for defraying in whole or in part the purchase price, or any amount or instalment of that finance, is not made available to the purchaser in compliance in every respect with any representation, promise, or term made or offered to the purchaser by, or by an employee of that auctioneer or real estate agent, and a person has not acquired from the vendor for valuable consideration an estate, interest, or charge in or over the land, or the purchaser has not received a memorandum of transfer of the land in favour of the purchaser or a nominee of the purchaser that is capable of registration in the ordinary course of business upon lodgment thereof in the office of the Registrar of Titles or, in the case of land held from the Crown for a lesser estate than freehold, in the office of the person charged with the registration of instruments of title to such land, then the purchaser may at his option void the contract entered into by him in respect of that sale by notice in writing given either to the seller or to the auctioneer or real estate agent concerned within three months after the purchaser has knowledge that finance, or an amount or instalment of finance, as aforesaid, is not so available, but a contract shall not be subject to avoidance under this subsection by reason only of non-compliance in any respect with any such representation, promise, or term that is a non-compliance in a matter of form and not of substance and that is not likely prejudicially to affect the purchaser.

(5) Upon the avoidance (whether by the purchaser in pursuance of this section or by the seller for that the purchaser has failed to pay in terms of the contract the purchase price or any amount thereof) of a contract to which subsection (4) of this section applies, the seller and the auctioneer or real estate agent concerned shall be liable at law, jointly and severally, for the repayment to the purchaser of all moneys paid by him under the contract and such moneys shall be recoverable, by action as for a debt, by the purchaser accordingly.

(6) Judgment recovered against either person liable pursuant to subsection (5) of this section in respect of money repayable under that subsection shall not be a bar to an action against the other person so liable, but if separate actions are brought against those persons the sums recoverable under the judgments given in those actions shall not in the aggregate exceed the amount of money repayable to the purchaser concerned and in the one of those actions in which judgment is secondly given the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action.

(7) Where a representation, promise, or term to which this section applies shall have been given made or offered without the knowledge, connivance, or consent of the seller, the seller may recover from the auctioneer or real estate agent concerned any moneys paid under the contract and not received by the seller which the seller has repaid to the purchaser, and additionally any damage suffered by the seller consequent on the avoidance by the purchaser of the contract.

(8) Any covenant, agreement, or condition expressed or implied in any contract, agreement, or document whatsoever legally binding, or intended legally to bind, the purchaser in respect of the sale to the purchaser of any land, or in a separate document, whereby it is agreed between the seller or the auctioneer or real estate agent concerned of the one part and the purchaser of the other part that any representation, promise, or term made or offered to the purchaser for which the seller or the auctioneer or real estate agent is legally liable by virtue of this section, shall not be legally binding as against that seller and auctioneer or real estate agent, or either of them, shall be absolutely void and of no legal effect whatsoever.

(9) An auctioneer or a real estate agent who—

- (a) being thereunto required by the provisions of subsection (1) of this section fails to give to a purchaser of land a statement in writing in compliance in every respect with the requirements of subsections (2) and (3) of this section; or
- (b) being liable at law in pursuance of the provisions of this section for repayment to a purchaser of land of any moneys paid by that purchaser under the contract entered into by him, fails to make such repayment in full within fourteen days after becoming so liable,

shall be guilty of an offence against this Act and liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, or, if the offender is a corporation, a fine not exceeding five thousand dollars.

(10) Liability to punishment under this section shall be in addition to other liabilities at law imposed by this section, and the fact that an auctioneer or a real estate agent has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against this section shall not bar or prejudice howsoever any proceedings for enforcing against him any such other liability.

(11) Save as prescribed by subsection (4) of this section, this section applies so as not to render illegal or void any contract or to empower any party to void the contract.

(12) In any civil proceedings arising out of or connected with a contract or agreement or document to which this section relates the onus of proving that the statement referred to in subsection (2) of this section was duly given shall lie upon the party so alleging.

(13) In this section—

- (a) a promise that a seller of land will transfer the land to the purchaser conditionally upon his at the same time executing a proper mortgage in favour of the seller to receive payment of all or any part of the moneys payable or that would thereafter but for the execution of the mortgage become payable by the purchaser pursuant to the contract of sale; or
- (b) a promise that the terms of the sale will be or will include a provision that the purchase price or any part thereof shall be or may be paid by instalments,

shall not be taken to be a representation, promise or term as respects the availability of finance for defraying wholly or in part the purchase price.

67. Obligations and rights as to assurance of title to land. (1) Where an auctioneer by auction, or a real estate agent as such, sells any land that—

- (a) if freehold land under *The Real Property Acts 1861 to 1963* is not the whole of the land contained in an existing Deed of Grant or Certificate of Title;
- (b) if freehold land, is a unit comprised in a building units plan registered under *The Building Units Titles Act of 1965*; or
- (c) if held from the Crown for an estate of leasehold, is not the whole of the land contained in the existing lease or other existing instrument assuring title to the estate in that land held from the Crown or is so held subject to conditions or covenants debarring or restricting a holder of that leasehold estate therein as at the time of that sale from disposing of the estate therein held from the Crown,

then, notwithstanding any other provision of this Act, that auctioneer or real estate agent shall retain in the trust account into which he has paid the same pursuant to this Act all moneys received by that licensee in respect of that transaction until—

- (d) in the case of freehold land under *The Real Property Acts 1861 to 1963* there shall have been prepared and be ready for delivery to the purchaser a Certificate of Title in the name of the purchaser in relation to that land;
- (e) in the case of freehold land being a unit comprised in a building units plan registered under *The Building Units Titles Act of 1965* there shall have been issued an architect's certificate of final completion of the building in which that unit is contained or, where that building has not been constructed under the supervision of an architect, there shall have been issued a certificate of a building inspector of Brisbane City Council or of some other Local Authority having power of regulation of building in the place where the building is erected, that that building is substantially completed according to the plans approved in relation thereto;
- (f) in the case of land held from the Crown for an estate of leasehold, the holder of that leasehold estate therein as at the time of the sale is legally competent to assure to the purchaser title to that leasehold estate,

unless the person who paid that money shall be sooner entitled as provided under this section to a refund thereof on which event the auctioneer or real estate agent shall make the refund from the trust account in compliance in every respect with the requirements of this Act in relation to payment by him of moneys from a trust account.

(2) Any person who, in respect of a sale of any land, being land to which subsection (1) of this section applies, receives, other than in the capacity of auctioneer or real estate agent, any money shall—

- (a) forthwith pay that money into an office or branch in Queensland of a bank carrying on business under the authority of an Act of this State or of the Commonwealth to the credit of a general trust account or a separate trust account; and

(b) not withdraw it or any amount of it from that trust account until the provisions of paragraph (a) or, as the case requires, paragraph (b) of subsection (1) of this section shall have been complied with in every respect in respect of the land concerned unless the person who paid that money shall be sooner entitled as provided under this section to a refund thereof, in which event that refund may be made from that trust account.

(3) If in respect of—

- (i) any freehold land under *The Real Property Acts 1861 to 1963* a Certificate of Title in the name of the purchaser in relation to that land shall not have been prepared and be ready for delivery before a purchaser shall have become liable to pay in full the purchase price payable therefor or, in any case to which section 9 of *The Contracts of Sale of Land Act of 1933* would apply, upon payment of an amount of the purchase price equal to thirty-three and one-third per centum thereof, such amount; or
- (ii) in the case of freehold land being a unit comprised in a building units plan registered under *The Building Units Titles Act of 1965* an architect's certificate of final completion of the building in which that building unit is contained or a certificate of a building inspector as referred to in paragraph (b) of subsection (1) of this section shall not have been issued before a purchaser shall have become liable to pay in full the purchase price payable therefor; or
- (iii) any land held from the Crown for an estate of leasehold, the holder from the Crown of that leasehold estate shall not be legally competent to assure to the purchaser title to that leasehold estate when that purchaser shall have become liable to pay in full the purchase price payable therefor,

then at any time before the aforesaid Certificate of Title has been prepared and is ready for delivery or in the case of any such unit, before the said architect's certificate or building inspector's certificate has been issued, or in the case of any such leasehold estate, before the holder thereof has become legally competent as aforesaid, and whether or not payment as aforesaid has been made or tendered, the purchaser may at his option void the contract in respect of the sale and purchase of that land entered into by him by notice in writing given to the seller or, if the sale was effected by an auctioneer or real estate agent, to either that seller or that auctioneer or real estate agent.

(4) Upon the voidance, pursuant to the provisions of subsection (3) of this section, by a purchaser of a contract in respect of the sale and purchase of any land, any auctioneer, real estate agent, or other person whosoever who, in respect of that transaction, shall have received any moneys paid by or on behalf of the purchaser, shall forthwith refund the same to the person by or on whose behalf those moneys were paid, or as he may direct in writing, and all such moneys shall be recoverable, by action as for a debt, by the person by whom or on whose behalf the same were paid.

(5) Any auctioneer, real estate agent, or other person whosoever who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act and liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, or, if the offender is a corporation, a fine not exceeding five thousand dollars.

(6) Liability to punishment under subsection (5) of this section shall be additional to other liabilities at law imposed by this section, and the fact that an auctioneer, real estate agent, or other person whosever has not been prosecuted or, if prosecuted, has or has not been convicted of an offence under this section shall not bar or prejudice howsoever any proceedings for enforcing against him any other such liability.

(7) Any covenant, agreement, or condition expressed or implied in any contract, agreement, or document whatsoever legally binding, or intended legally to bind, the parties, or any of the parties to any transaction in respect of the sale of any land, being land to which this section applies, whereby it is agreed that the provisions of this section shall, in any respect, not apply in respect of that transaction, shall be void and of no legal effect whatsoever.

(8) In and for the purposes of this section the term "sell" means sell, or agree to sell, or give an option for the purchase of land, or any other transaction whatsoever granting or purporting to grant to any person a right not immediately exercisable to purchase or to be given an option for the purchase of land.

(9) Where, pursuant to this section, a purchaser voids a contract entered into by him for the purchase of land comprised in a building unit to which this section applies, after the issue in his name of a Certificate of Title relating to that land, then that purchaser shall, subject to the tender to him of repayment in full as prescribed by subsection (4) of this section, execute such instruments as, being necessary to reassure that title to the seller or his nominee, are presented to him for execution by or on behalf of the seller and deliver up to the seller or his nominee any relevant instrument of title in his possession or under his control, but the purchaser shall not be liable for any costs or expenses in respect of such reassurance of title.

68. Lands not lawfully usable for residential purposes. (1) An auctioneer who sells by auction or a real estate agent who as such or as a principal sells any vacant land within—

- (a) the Area of the City of Brisbane; or
- (b) any Area within the meaning of the *Local Government Act 1936-1970*,

the use whereof for residential purposes is unlawful as at the date of the sale shall give to the purchaser a statement in writing in compliance in every respect with the requirements of this section.

(2) A statement in writing under this section shall—

- (a) clearly identify the land to which the statement relates;
- (b) state the names and addresses respectively of the purchaser and seller;
- (c) state clearly that the use of the land for residential purposes is unlawful;
- (d) inform, by a separate paragraph therein, the purchaser that if he erects on the land a dwelling house or otherwise uses the land for residential purposes contrary to law he will be guilty of an offence, and additionally inform him that Brisbane City Council or, as the case may be, other appropriate Local Authority (naming that Local Authority) is lawfully empowered to demolish any dwelling house or other residential structure erected on the land contrary to law;

- (e) state the date on which the statement is given; and
- (f) be signed by the auctioneer or real estate agent or by a person thereunto authorized in writing (prior notice whereof accompanied by a copy of the authority has been delivered to the registrar) by the auctioneer or real estate agent,

and shall not contain any other written, typewritten, or printed matter whatsoever except the letter head, if any, of the auctioneer or real estate agent giving it.

(3) A statement in writing under this section shall be given by the auctioneer or real estate agent to the purchaser before the purchaser signs any contract, agreement, or document whatsoever legally binding or intended legally to bind the purchaser in respect of the sale.

(4) If in respect of the sale of any land to which this section applies—

(a) by an auctioneer by auction; or

(b) by a real estate agent whether as such or as a principal,

a statement in writing shall not have been given to the purchaser in compliance in every respect with the requirements of this section, then the purchaser may at his option void the contract entered into by him in respect of that sale by notice in writing given either to the seller or to the auctioneer or real estate agent concerned within six months after the purchaser shall have entered into the contract but a contract shall not be subject to avoidance under the provisions of this subsection by reason of any defect, error, or irregularity in the statement in writing given to the purchaser in pursuance of the provisions of this section that is a defect, error, or irregularity in form and not in substance and that is not likely to mislead or otherwise prejudicially affect the purchaser.

(5) Upon the avoidance not later than six months after the purchaser shall have entered thereinto (whether by the purchaser in pursuance of this section or by the seller for that the purchaser has failed to pay in terms of the contract the purchase price or any amount thereof) of a contract to which subsection (4) of this section applies, the seller and the auctioneer or real estate agent concerned shall be liable at law, jointly and severally, for the repayment to the purchaser of all moneys paid by him under the contract and such moneys shall be recoverable, by action as for a debt, by the purchaser accordingly.

(6) Judgment recovered against either person liable pursuant to subsection (5) of this section in respect of money repayable under that subsection shall not be a bar to an action against the other person so liable, but if separate actions are brought against those persons the sums recoverable under the judgments given in those actions shall not in the aggregate exceed the amount of money repayable to the purchaser concerned, and in the one of those actions in which judgment is secondly given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action.

(7) Where pursuant to this section a purchaser voids a contract entered into by him for the purchase of land to which this section applies after the assurance to him of title to the estate in that land purchased by him, then that purchaser shall, subject to the tender to him of repayment in full as prescribed by subsection (5) of this section, execute such instruments as, being necessary to reassure that title to the seller or his nominee, are presented to him for execution by or on behalf of the

seller and deliver up to the seller or his nominee any relevant instrument of title in his possession or under his control, but the purchaser shall not be liable for any costs or expenses in respect of such re-assurance of title.

(8) Any covenant, agreement, or condition expressed or implied in any contract, agreement, or document whatsoever legally binding, or intended legally to bind, the purchaser in respect of the sale to that purchaser of any land to which this section applies, or in a separate document, whereby it is agreed between the seller or the auctioneer or real estate agent concerned of the one part and the purchaser of the other part that this section or any of the provisions hereof shall not apply in respect of that sale, or shall so apply subject to exceptions, limitations, or restrictions, or otherwise affecting or prejudicing the rights and remedies had by the purchaser under this section or any provision hereof, shall be absolutely void and of no legal effect whatsoever.

(9) An auctioneer or a real estate agent who—

- (a) being thereunto required by the provisions of subsection (1) of this section fails to give to a purchaser of land to which this section applies a statement in compliance in every respect with the requirements of subsections (2) and (3) of this section; or
- (b) being liable at law in pursuance of the provisions of this section for repayment to a purchaser of land to which this section applies of any moneys paid by that purchaser under the contract entered into by him, fails to make such repayment in full within fourteen days after becoming so liable,

shall be guilty of an offence against this Act and liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, or, if the offender is a corporation, a fine not exceeding five thousand dollars.

(10) Liability to punishment under this section shall be additional to other liabilities at law imposed by this section, and the fact that an auctioneer or real estate agent has not been prosecuted or, if prosecuted, has or has not been convicted for an offence against this section shall not bar or prejudice howsoever any proceedings for enforcing against him any such liability.

(11) In any civil proceedings arising out of or connected with a contract or agreement or document to which this section relates the onus of proving that the statement referred to in subsection (2) of this section was duly given shall lie upon the party so alleging.

(12) In this section the term “vacant land” means land whereon there are no structural improvements other than fencing.

69. When the Minister may cancel licences. (1) The registrar may by notice in writing call upon any auctioneer or real estate agent to attend before the Committee at the place, upon the day, and at the time specified in the notice, and there and then to satisfy the Committee in respect of any of the following matters, that is to say:—

- (a) that, in respect of a sale of land effected by that auctioneer by auction, or by that real estate agent, whether as such or as a principal, neither he nor any of his employees has made or offered to the purchaser any representation, promise, or term as respects the availability of finance for defraying wholly or in part the purchase price which has not been fulfilled according

in every respect as so made or offered or, alternatively, where the making or offering of such a representation, promise, or term which has not been fulfilled is admitted, that the same was made or offered bona fide and the fulfilment thereof in every respect as made or offered was prevented by circumstances arising after it was made or offered, being circumstances of which the auctioneer or real estate agent neither had knowledge nor could, by the exercise of due care and diligence, have acquired knowledge before effecting the sale in question; or

(b) that, in respect of a sale of land (being land to which section 67 of this Act applies) effected by that auctioneer by auction, or by that real estate agent, whether as such or as a principal, prior to the entry by the purchaser into any contract or agreement in respect of the sale, he informed the purchaser of the provisions of section 67 of this Act, and in particular of the rights of the purchaser under that section, and further that such auctioneer or real estate agent has complied in every respect with the provisions binding upon him of that section; or

(c) that, in respect of a sale of land (being land to which section 67 of this Act applies) effected by that auctioneer by auction, or by that real estate agent, whether as such or as a principal, prior to the entry by the purchaser into any contract or agreement in respect of the sale, he informed the purchaser of the provisions of section 68 of this Act, and in particular of the rights of the purchaser under that section, and further that such auctioneer or real estate agent has complied in every respect with the provisions binding upon him of that section.

(2) The registrar shall not be required or compellable to give to an auctioneer or a real estate agent particulars of a matter specified in subsection (1) of this section in respect whereof the registrar requires that auctioneer or real estate agent to satisfy the Committee as provided in that subsection.

(3) If any auctioneer or real estate agent thereunto required by the registrar under this section—

(a) fails to attend before the Committee at the place, upon the day, and at the time specified by the registrar; or

(b) upon attending before the Committee fails, in respect of the matter of his attendance before the Committee, to satisfy the Committee in every respect as provided by subsection (1) of this section,

the Committee shall certify accordingly to the Minister who thereupon may, in his absolute discretion and without assigning any reason therefor except the aforesaid certificate of the Committee, cancel the licence or licences under this Act of that auctioneer or real estate agent.

(4) The Committee may adjourn from time to time any attendance upon it required by the registrar under this section.

(5) This section shall apply so as not to derogate from any other provision of this Act relating to the cancellation of licences.

(6) This section shall be read and construed as if a reference to an auctioneer or a real estate agent includes a reference to a corporation that is the holder of a corporation licence.

70. Restriction on remedy for commission. (1) No person shall be entitled to sue for or recover or retain any fees, charges, commission, reward, or other remuneration for or in respect of any transaction as an

auctioneer, a real estate agent, a commercial agent, or a motor dealer, unless—

- (a) he is the holder of a licence as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, under this Act;
- (b) being a corporation, it is the holder of a corporation licence under this Act, and has complied with the requirements of this Act relating to the carrying on by a corporation of the business of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be;
- (c) the engagement or appointment to act as auctioneer, real estate agent, commercial agent, or motor dealer in respect of such transaction is in writing signed by the person to be charged with such fees, charges, commission, reward, or remuneration, or his agent or representative; and
- (d) where the same are prescribed under this Act, the fees, charges, commission, reward, or other remuneration are not in excess of the fees, charges, commission, reward, or other remuneration prescribed for or in respect of such transaction.

(2) Paragraph (c) of subsection (1) of this section shall not apply in respect of such transactions or classes of transactions as may be prescribed by the regulations.

(3) Subject to section 43 of this Act, a real estate agent, commercial agent, or motor dealer who has not effected a service or transaction in respect of which he has been engaged or appointed to act as real estate agent, commercial agent, or motor dealer, prior to the withdrawal of his authority or the effecting of the service or transaction by some other person, shall not be entitled to sue for, or recover, or retain, any fees, charges, commission, reward, or other remuneration under or in respect of such engagement or appointment unless he proves—

- (a) (if claiming a sum for expenses actually and properly incurred or a reasonable sum for the service actually and properly rendered by him in endeavouring to effect the service or transaction prior to the withdrawal of his authority or the receipt by him of actual or constructive notice of the service or transaction having been effected by some other person), that he is entitled to such sum under the terms of his engagement or appointment as real estate agent, commercial agent, or motor dealer; or
- (b) (if claiming fees, charges, commission, reward, or other remuneration, not being a sum in respect of any of the matters mentioned in paragraph (a) of this subsection), that he was in a position to effect the service or transaction at a time prior to the withdrawal of his authority or the receipt by him of actual or constructive notice of the service or transaction having been effected by some other person, and that his failure to do so was caused solely by the refusal of the person who engaged or appointed him to act as real estate agent, commercial agent, or motor dealer to allow the service or transaction to be carried out at that time under the terms of that engagement or appointment.

71. Offence to demand excess or improper remuneration. (1) Where the fees, charges, commission, reward, or other remuneration which an auctioneer, a real estate agent, a commercial agent or a motor dealer shall be entitled to receive for or in respect of any service or transaction are prescribed, any auctioneer, real estate agent, commercial agent, or motor dealer who, for or in respect of such service or transaction demands, receives, or retains from any money received by him an amount by way of fees, charges, commission, reward, or other remuneration which is in excess of or not included in the fees, charges, commission, reward, or other remuneration, as the case may be, so prescribed, shall be guilty of an offence against this Act and liable to a fine not exceeding five hundred dollars nor less than fifty dollars, or to imprisonment for a term not exceeding six months or, if the offender is a corporation, a fine not exceeding one thousand dollars nor less than one hundred dollars.

(2) Upon conviction for an offence against this section, the adjudicating court shall order the auctioneer, real estate agent, commercial agent, or motor dealer concerned to refund any excess or improper fees, charges, commission, reward, or remuneration received or retained by him.

(3) Where any amount is alleged to be payable to an auctioneer, a real estate agent, a commercial agent, or a motor dealer for recouping expenditure lawfully incurred by him in connexion with a service or transaction then, in proceedings against him under this section for that he demanded, received, or retained from moneys received by him, that amount contrary to this section the court shall presume that the expenditure in question was not lawfully incurred by him unless he proves that it was lawfully incurred and the amount thereof.

72. Prohibition of contracting out. Where the fees, charges, commission, reward, or other remuneration which an auctioneer, a real estate agent, a commercial agent, or a motor dealer shall be entitled to receive for or in respect of any service or transaction are prescribed, any covenant, agreement, or condition whereby any person agrees to pay or allow to an auctioneer, a real estate agent, a commercial agent, or a motor dealer any amount by way of fees, charges, commission, reward, or other remuneration which is in excess of or not included in the fees, charges, commission, reward, or other remuneration, as the case may be, so prescribed, or whereby any person agrees to waive or surrender any right or remedy which he may have in respect of any such excess or improper fees, charges, commission, reward, or other remuneration received or retained by an auctioneer, a real estate agent, a commercial agent, or a motor dealer or, in any event, any covenant, agreement, or condition whereby any person agrees to waive or surrender any right or remedy which he may have against an auctioneer, a real estate agent, a commercial agent, or a motor dealer under and in pursuance of this Act shall be absolutely void and of no effect whatsoever.

73. Failure to comply with court order. (1) Any auctioneer, real estate agent, commercial agent, or motor dealer who has been ordered by any court to pay to any person any moneys received by him in respect of a sale or other transaction shall, if he fails to pay to the person concerned the moneys so ordered to be paid within the time specified in the order or, if no time is so specified, then within fourteen days after the making of the order, be guilty of an offence against this Act.

(2) A conviction for an offence against this section shall not prejudice or affect any right or remedy which any person may have against the offending auctioneer, real estate agent, commercial agent, or motor dealer under or in pursuance of any such order as is referred to in subsection (1) of this section.

74. Appointment of substitute licensee. (1) Subject to this section—

- (a) an auctioneer, a real estate agent, a commercial agent, or a motor dealer may, at any time during the currency of his licence, appoint in writing as his substitute a person approved under this section;
- (b) whenever an auctioneer, a real estate agent, a commercial agent, or a motor dealer, employed as such by another person, dies or becomes unable, owing to serious illness or other exceptional cause, to carry on his duties as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, for and on behalf of his employer, the employer may at any time during the currency of the employee's licence, appoint in writing as substitute for that employee a person approved under this section;
- (c) when an auctioneer, a real estate agent, a commercial agent, or a motor dealer (not being employed as such by another person) dies or becomes bankrupt, then
 - (i) his executor or executors; or
 - (ii) where administration of his estate has been granted, his administrator or administrators; or
 - (iii) in case of intestacy and pending a grant of administration of his estate, any person satisfying the registrar that he has a sufficient beneficial interest in the estate; or
 - (iv) in case of bankruptcy, the trustee of his estate or the Official Receiver in Bankruptcy,
 may at any time during the currency of the licence or during the period that, except for the death of the licensee, the licence would have remained current, appoint in writing as substitute for that deceased or bankrupt auctioneer, real estate agent, commercial agent or motor dealer, a person approved under this section.

(2) An appointment of a substitute under subsection (1) of this section shall be lodged with the registrar for approval and the registrar may, if satisfied that the proposed substitute is fully qualified to hold the licence in question and, in the case of an appointment under either paragraph (b) or paragraph (c) of that subsection, that the circumstances justify the appointment, approve of the appointment of the substitute for such period as the registrar may determine but not extending beyond the date when the licence in question would ordinarily expire.

(3) Where the registrar is not satisfied as to the matters referred to in subsection (2) of this section, he may and, if so requested in writing by the person who appointed the substitute, shall, refer the appointment to the Committee which may, in its absolute discretion, approve or refuse to approve the appointment.

(4) Where the appointment of a substitute is approved under this section then, subject to subsection (6) of this section and subject to the licence remaining in force during the period so approved, the substitute

shall, for all the purposes of this Act, be deemed to be the holder of the licence and may act as substitute for the auctioneer, real estate agent, commercial agent, or motor dealer in whose place he has been appointed.

(5) An approval of a substitute under this section may be given subject to such conditions as the registrar or, as the case may be, the Committee, deems fit and as are specified in the notification of approval.

(6) An auctioneer, a real estate agent, a commercial agent, or a motor dealer, in whose place a substitute has been appointed under this section, shall not act as an auctioneer, real estate agent, commercial agent, or motor dealer, as the case may be, until the expiration of the period during which the substitute has been appointed to act as such, unless—

- (a) the registrar or, where the approval was given by the Committee, the Committee, sooner revokes the approval of the substitute; or
- (b) the person who made the appointment has delivered to the registrar a notice in writing that he desires the appointment terminated as from a date to be specified in the notice,

and upon the happening of either such event the substitute shall cease to act as the auctioneer, real estate agent, commercial agent, or motor dealer, as the case may be, and shall cease to be deemed to be the holder of the licence in question.

(7) The registrar or, where the approval was given by the Committee, the Committee may at any time revoke the approval of a substitute upon any one or more of the grounds upon which a licence may be cancelled under this Act, but the provisions of this subsection shall not in any way prejudice or affect any power under this Act to cancel the licence.

(8) In any case where the Committee deems it desirable and appropriate, it may extend the period for which an appointment of a substitute has been approved under this section and for that purpose, if necessary, may grant a renewal of the licence as though it were still held by the person in whose place the substitute has been appointed.

75. Death of licensee. (1) Where an auctioneer, a real estate agent, a commercial agent, or a motor dealer dies, then—

- (a) his executor or executors;
- (b) where administration of his estate has been granted, his administrator or administrators; or
- (c) in case of intestacy and pending a grant of administration of his estate, any person satisfying the registrar that he has a sufficient beneficial interest in the estate,

may, instead of appointing a substitute under section 74 of this Act, and subject to any express testamentary disposition or direction of the licensee to the contrary, surrender the licence by notice in writing to the registrar.

(2) Where the registrar is satisfied that a licence has been properly surrendered in accordance with subsection (1) of this section he shall register the surrender and thereupon the licence shall be terminated as from the date of death of the licensee and the executor, administrator, or other person, as the case may be, shall be entitled, if any fees for the licence have been paid by the deceased licensee out of his own moneys, to receive a refund of a part of such fees proportionate to the unexpired portion of the period thereof.

76. Effect of disqualification on membership of corporation. A person disqualified from holding any licence under this Act shall not, whilst his disqualification continues, be capable of becoming or continuing a director or manager or the secretary of any corporation, or a member of any partnership, carrying on business in the State as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, and no corporation shall obtain or continue to hold a licence in respect of any such person as an employee.

77. Lending licence or certificate of registration. No person who is licensed or registered under this Act shall—

- (a) lend or let out on hire his licence or, as the case may be, certificate of registration, or notify or advertise that there is available, whether for sale or on loan or on hire or on any other basis whatever, any licence or, as the case may be, certificate of registration, to any other person whether licensed or, as the case may be, registered, or not;
- (b) permit or allow any other person to hold himself out as the holder of the licence issued or, as the case may be, certificate of registration issued, to that licensed or registered person.

78. Ceasing to be licensed or registered. Every person ceases to be licensed or registered under this Act on the expiration or cancellation of his licence or, as the case may be, certificate of registration.

79. Failure to deliver up licence or certificate of registration. No person who is the holder of a licence or a certificate of registration under this Act shall, when required under this Act so to do, fail, refuse, or neglect to deliver up to the registrar his licence or, as the case may be, certificate of registration in accordance with that order.

80. Registered office and address. (1) Every licensee, and every person in respect of whom as an employee a licence is held under this Act, shall have a registered office in the State.

(2) The address specified in the application for a licence as the address at which the applicant proposes to carry on business or, in the case of an applicant proposing to carry on business at more than one place in the State, the address specified in the application as the applicant's principal place of business in the State shall, upon the grant, renewal, restoration, or variation of the licence be, for the purposes of this Act, the registered office of the licensee.

(3) Where—

- (a) a licence is taken out in respect of an employee, the place of business of the employer of which that employee is in charge;
or
- (b) an auctioneer's licence is taken out by an employer in respect of an employee not in charge of a place of business of the employer, the registered office of the employer,

shall, for the purposes of this Act, be the registered office of that employee.

(4) Notice of any change in the situation of a registered office shall be lodged by the licensee with the registrar within fourteen days of the date of such change and the registrar shall note such change in the register.

(5) Any licensee who carries on business by virtue of a licence without complying with the requirements of this section shall, in addition to any other penalty to which he may be liable under this Act, be liable to a penalty not exceeding ten dollars for every day during which he so carries on business.

(6) Any notice or other document required to be served on or given to a licensee or to a person in respect of whom as an employee a licence is held under this Act shall be deemed to have been duly served or given if left at his registered office.

81. Publication of name of licensee. (1) Every licensee shall paint or affix, and keep painted or affixed, his name, his description as a licensee, and the number of his licence on the outside of his registered office and, where the business is carried on at any place other than at such registered office, on the outside of each place in which his business as a licensee is carried on, in a conspicuous position, in letters or figures clearly legible and conforming to the type and size of type prescribed.

(2) A licensee who carries on business at more than one place of business shall, in addition to complying with the requirements of subsection (1) of this section, on the outside of each place in which his business as a licensee is carried on, other than his registered office, paint or affix, and keep painted and affixed, the name of the licensed manager at that place, in a conspicuous position, in letters clearly legible and conforming to the type and size of type prescribed.

(3) A licensee that is the holder of a corporation licence shall, in addition to complying with the requirements of subsections (1) and (2) of this section, paint or affix, and keep painted or affixed, the name of the licensed employee in charge of the corporation's registered office on the outside of that registered office and in a conspicuous position, and in letters clearly legible and conforming to the type and size of type prescribed.

(4) Where the business of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, is carried on under a business name (within the meaning of *The Business Names Acts 1962 to 1965*) there shall be painted or affixed, and kept painted or affixed, in addition to that business name, the name of every person carrying on business under that business name, on the outside of each place in which the business is carried on under that business name, and in a conspicuous position, and in letters clearly legible and conforming to the type and size of type prescribed.

(5) No licensee shall publish (whether in a newspaper or otherwise howsoever) any advertisement relating to or in connexion with his business as such without specifying therein the following particulars:—

- (a) where the licensee is an individual carrying on business in his own name and not as a member of a partnership, his name, the address of his registered office, and the number of his licence;
- (b) where the licensee is an individual carrying on business under a business name (within the meaning of *The Business Names Acts 1962 to 1965*) then either his name or the business name, the address of his registered office, and the number of his licence;
- (c) where the licensee carries on business as a member of a partnership then either his name or the name of the partnership or, if the name of the partnership is a business name (within the meaning of *The Business Names Acts 1962 to 1965*), that business name, the address of the registered office of the partnership, and the number of his licence;

- (d) where the licensee is a corporation or an employee of a corporation, the name of the corporation, or if the corporation carries on business under a business name (within the meaning of *The Business Names Acts 1962 to 1965*), that business name, the address of the registered office of the corporation, and the number of its licence.
- (6) Notwithstanding subsection (5) of this section, where a licensee carries on business as such at more than one place of business, any advertisement referred to in that subsection may specify the address of any one of such places.
- (7) No person shall—
- (a) contravene or fail to comply with the provisions of this section; or
 - (b) keep up or exhibit or allow to remain unobliterated at or near to his office, house, or place of business, or exhibit anywhere, any sign, writing, painting, or other mark, implying that such office, house, or place of business is that of a person licensed under this Act, unless he is the holder of the particular licence so implied.

PART VI—ACCOUNTS AND FUNDS

Division 1—Trust Accounts

82. Exemptions. (1) The Governor in Council may, by Order in Council, exempt any licensee, or any class or classes of licensee from compliance with all or any of the provisions of this Division, and may from time to time alter, amend, or revoke any such Order in Council or substitute a fresh Order in Council therefor.

(2) Until such time as the Governor in Council by Order in Council so orders, nothing in this Division shall apply to or with respect to moneys obtained from the sale of wool.

(3) The Governor in Council may, by Order in Council, apply all or any of the provisions of this Division to and with respect to moneys obtained from the sale of wool, and may make such application either generally or in respect of a particular class or particular classes of sale, or in respect of a particular area or particular areas of the State, and may from time to time alter, amend, or revoke any such Order in Council, or substitute a fresh Order in Council therefor.

83. Application of trust moneys. (1) Subject to this section and to section 86 of this Act all moneys received by an auctioneer, a real estate agent, a commercial agent or a motor dealer in respect of any sale or other transaction shall forthwith upon the receipt thereof by him be paid by him into a bank carrying on business under the authority of an Act of this State or of the Commonwealth (hereinafter in this Act referred to as a "bank") to a general trust account (so styled) or separate trust account (so styled), opened and maintained by him, and shall be therein retained until disbursed as hereinafter mentioned.

(2) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall be entitled to draw against a trust account kept pursuant to this section in payment of—

- (a) the expenses, commission, and other charges of or incidental to such sale or other transaction; and
- (b) any moneys owing to the auctioneer, real estate agent, commercial agent, or motor dealer by the person on whose behalf he has acted in such sale or other transaction.

(3) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall not pay—

- (a) to his general trust account any moneys other than moneys received by him in respect of a sale or other transaction as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, or, where he is the holder of more than one licence under this Act, in respect of a sale or other transaction as such a licensee; and
- (b) to a separate trust account any moneys other than moneys received by him in respect of a sale or other transaction as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, or, where he is the holder of more than one licence under this Act, in respect of a sale or other transaction as such a licensee, for which such account was separately established.

(4) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall, within fourteen days of demand in writing made by the person entitled thereto and, in any event, within forty-two days of receipt of money to which a person has become entitled in respect of any sale or other transaction, pay the balance of such money (if any) to the person entitled thereto or as that person may direct in writing.

(5) Where, prior to the making of a payment pursuant to subsection (4) of this section, an auctioneer, a real estate agent, a commercial agent, or a motor dealer, has received notice in writing from any person who was a party to the sale or other transaction in respect of which the moneys were received that the ownership of the moneys is in dispute, he shall not make any payment of any such moneys until such time as—

- (a) all parties to the sale or transaction notify him in writing that the dispute has been resolved and inform him as to the person to whom the moneys are to be paid, whereupon he shall forthwith pay the moneys to that person or as that person may direct in writing; or
- (b) he is advised that legal proceedings have been commenced to determine the ownership of the moneys, whereupon he shall forthwith pay the moneys into the court in which those proceedings have been taken, to abide the decision of the court.

(6) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall not draw against or cause any payment to be made from a trust account opened by him in accordance with this section unless drawing or payment is made by or on his cheque, crossed and marked across its face "not negotiable" and, where the cheque is in respect of a payment referred to in subsection (4) or paragraph (a) of subsection (5) of this section, requiring payment to be made to or to the order of the person referred to in the said subsection (4) or the said paragraph (a), as the case requires, or as such person may direct in writing.

(7) Where a payment referred to in subsection (4) of this section does not exceed ten dollars and an auctioneer—

- (a) has made that payment from his own moneys; and
- (b) has received an acknowledgement of that payment in writing and signed by the person to whom the sum not exceeding ten dollars is payable under or in pursuance of the said subsection (4),

then, and only then, the auctioneer may recoup himself for that payment by drawing on his cheque against the appropriate trust account.

(8) An auctioneer, a real estate agent, a commercial agent, or a motor dealer, shall, before opening any trust account pursuant to this section, notify the registrar in writing of his intention so to do, specifying the bank and the office or branch of the bank in which he proposes to open the account, and the description thereof, and shall produce to the manager or governing officer of the office or branch of the bank concerned evidence that he has complied with the requirements of this subsection.

(9) An auctioneer, a real estate agent, a commercial agent, or a motor dealer shall, upon opening any trust account pursuant to this section, forthwith notify the registrar in writing of the opening of the account and shall from time to time notify the registrar immediately upon any change of name of such account or upon closing such account.

(10) Moneys paid into a trust account pursuant to this section shall not be available for payment of the debt of any other creditor of the auctioneer or, as the case may be, real estate agent, commercial agent, or motor dealer, or be liable to be attached or taken in execution under the order or process of any court whatsoever at the instance of any such creditor.

(11) Notwithstanding anything to the contrary in this Act, the provisions of this Act relating to moneys received by a motor dealer in respect of transactions entered into by him as such, the keeping and audit of accounts in relation to, and the dealing with those moneys do not apply to moneys received in respect of such transactions entered into solely on his own behalf and not as an agent for another person.

84. Account of moneys received and their application. An auctioneer, a real estate agent, a commercial agent, or a motor dealer within fourteen days of demand in writing made by the person on whose behalf the property was sold or other transaction was carried out, and in any event within forty-two days after the completion of the sale by him or the receipt by him of any moneys in respect of any other transaction, shall render to his principal a correct and detailed account in writing of the sale and of all moneys received by him on account of the sale and of the application thereof or, in relation to any other transaction, of all such moneys and of the application thereof.

85. Wrongful conversion and false accounts. An auctioneer, a real estate agent, a commercial agent, or a motor dealer who—

(a) fraudulently converts to his own use any moneys received by him, whether from the purchaser or from the principal of the auctioneer, real estate agent, commercial agent, or motor dealer, as the case may be, or from any person on behalf of such principal, in respect of any sale or other transaction, or of any part thereof, or any proposed or contemplated sale or other transaction, or any expenses to be defrayed by him in respect of any proposed or contemplated sale or other transaction; or

(b) fraudulently renders any account of any such sale or other transaction or of any moneys received by him as mentioned in paragraph (a) of this section, or of the application of any such moneys, knowing the same to be false in any material particular,

shall be guilty of a crime, and shall be liable to imprisonment with hard labour for a period not exceeding five years or, at the discretion of the court, to a fine not exceeding five thousand dollars, or to both such imprisonment and fine.

86. Trust accounts of employers. Wherever a person licensed under this Act as an auctioneer, real estate agent, commercial agent, or motor dealer, is, as such licensee, an employee of another person, the trust accounts referred to in section 83 of this Act shall be opened and maintained by that employer and all moneys received by any auctioneer, real estate agent, commercial agent, or motor dealer, in the employ of that employer, and by any other employee of that employer, in relation to any sale or other transaction conducted or carried out on behalf of that employer shall be paid into the general trust account or special trust account of that employer, and the provisions of sections 83, 84 and 85 of this Act shall be read and construed as if the words "an employer of an auctioneer, a real estate agent, a commercial agent, or a motor dealer" appeared therein in lieu of the words "an auctioneer, a real estate agent, a commercial agent, or a motor dealer" wherever those words appear.

87. Appointment of auditors. (1) Every—

- (a) person who by virtue of section 34, or section 42, or section 46, or section 54 of this Act is deemed to be the holder of a licence as an auctioneer, a real estate agent, a commercial agent, or a motor dealer under this Act shall forward to the registrar, within three months of the date of the commencement of this Act,
- (b) individual who applies for a licence (other than for the renewal of a licence) under this Act on his own behalf and not as an employee of any other person, as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, shall forward to the registrar with his application for such licence,
- (c) corporation that applies for a corporation licence under this Act shall forward to the registrar with its application for such licence,

a notification of the name and address of a person registered as a public accountant under *The Public Accountants Registration Acts 1946 to 1968* (hereinafter referred to as the "auditor") who has been appointed by such licensee or applicant to audit the trust accounts kept or to be kept by that licensee or applicant under this Act.

(2) A notification of appointment of an auditor referred to in subsection (1) of this section shall be endorsed by the public accountant named therein with a statement that he has accepted that appointment or, in the case of an application for a licence, that he will accept that appointment if the application is granted.

(3) Whenever an appointment of an auditor pursuant to this section is terminated the licensee concerned shall forthwith advise the registrar as to that termination and shall, within one month of the date of that termination, advise the registrar of the name and address of another auditor appointed by him for the purposes of this Act.

88. Remote localities. Notwithstanding the provisions of section 87 of this Act the Minister may, in any case where owing to the remoteness of the locality or for other good cause he deems it desirable so to do, approve of the appointment as an auditor of any person he deems competent and in such event the term "auditor", for the purposes of this Act, shall be read and construed as including such a person.

89. Audit of trust accounts. (1) Every licensee required under this Act to open and maintain a trust account shall, within two months after the thirtieth day of September in each and every year, or within such abridged or extended time after the thirtieth day of September in any year as the Minister may, generally or in any particular case or cases, direct by notification in the Gazette, of which every licensee shall be deemed to have notice—

- (a) cause his trust account or trust accounts for the whole or, as the case may be, any part of the period of twelve months next immediately preceding the said thirtieth day of September during which he has been a licensee to be audited by his auditor; and
- (b) obtain from his auditor a report of the result of that audit; and
- (c) where the licensee has been a licensee for the full period of twelve months immediately preceding that thirtieth day of September, obtain from his auditor a statement that the auditor has, in addition to his audit as referred to in paragraph (a) of this subsection, made two unscheduled examinations of the trust account or trust accounts during that period, together with a statement of the result of those examinations; or
- (d) where the licensee has been a licensee for more than six months of that period but not for the full period, obtain from his auditor a statement that the auditor has, in addition to his audit as referred to in paragraph (a) of this subsection, made one unscheduled examination of the trust account or trust accounts during that period, together with a statement of the result of that examination; and
- (e) send such report and statement to the registrar.

(2) Where an auditor—

- (a) is unable to certify that a trust account or trust accounts have been properly kept and are in order and correct; or
- (b) upon an unscheduled examination of a trust account or trust accounts is of the opinion that there is some irregularity in relation to the account or accounts that ought to be brought to the notice of the registrar,

he shall advise the registrar accordingly.

(3) Where an auditor is of opinion that, to enable him to determine whether a trust account has been properly kept and is in order and correct, it is necessary or desirable that he should be permitted to examine any other account or accounts of the licensee he may request the licensee to produce for his examination such other account or accounts and, in the event of the refusal by the licensee of the auditor's request, the auditor shall forthwith advise the registrar accordingly.

(4) When a licensee required under this Act to open and maintain a trust account ceases for any reason to be a licensee under this Act, or ceases to carry on business or act as such, he shall, within two months thereafter—

- (i) cause his trust account or trust accounts for the whole of the period from the date up to which his trust account or trust accounts were last audited pursuant to subsection (1) of this section to the date of his so ceasing or, where no such audit has been performed, for the whole of the period from the date

on which he commenced to act or carry on business as a licensee to the date of his so ceasing, to be audited by his auditor;

- (ii) obtain from his auditor a report of the result of that audit; and
- (iii) send such report to the registrar.

90. Inspection, audit, etc., by registrar or inspector. (1) The registrar, or an inspector, or any person appointed in that behalf by the Minister, may at any time and from time to time require a licensee required under this Act to open and maintain a trust account—

- (a) to produce for his inspection, or examination, or audit, or inspection and examination and audit—
 - (i) all trust accounts and all documents and writings (including all authorities and orders to banks) relating to the trust accounts as he may specify;
 - (ii) all books, accounts and records required by this Act to be kept by the licensee and which the licensee is not exempted by the registrar from keeping, or such books, accounts and records as aforesaid as he may specify;
 - (iii) all contracts, agreements and other documents whatsoever relating to any transaction by or with such licensee in connexion with the licensee's business as a licensee in the possession, custody, or control of the licensee, or such contracts, agreements, or other documents as aforesaid as he may specify; and
- (b) to answer any questions or supply any information with respect to any book, account, document, writing, record, contract, or agreement referred to in this subsection, or any entry therein.

(2) The registrar, an inspector, or the person so appointed by the Minister, may at any time and from time to time require any person who has the possession, custody, or control of any book, account, document, writing, record, contract, or agreement relating to any transaction by or with any licensee in connexion with that licensee's business as a licensee to produce for his inspection, or examination, or audit, or inspection and examination and audit, that book, account, document, writing, record, contract, or agreement, and to answer any questions or supply any information with respect thereto or with respect to any entry therein.

(3) The registrar or an inspector or the person so appointed by the Minister may inspect, or examine, or audit, or inspect and examine and audit, all books, accounts, documents, writings, records, contracts and agreements referred to in subsection (2) of this section, and may take such notes or copies of or extracts from any such book, account, document, writing, record, contract, or agreement, or of any entries therein, as he may deem necessary.

(4) Where the registrar, or an inspector, or the person so appointed by the Minister, deems it necessary to do so for the purpose of obtaining evidence for production in possible subsequent proceedings against any licensee for an offence committed against this Act or any other Act, he may impound or retain any book, account, document, writing, record, contract, or agreement inspected by him in pursuance of subsection (3) of this section but the person entitled thereto shall, in lieu thereof, be

entitled within a reasonable time to a copy certified as correct by the person impounding or retaining it, and such certified copy shall be received in all courts as evidence of and as of equal validity to the original.

(5) Any book, account, document, writing, record, contract, or agreement impounded or retained under subsection (4) of this section may be detained for such period as the person who impounded the same thinks fit and, where any proceedings are commenced for the purpose of which such book, account, document, writing, record, contract, or agreement was impounded or retained, shall be detained until the final determination of those proceedings including any appeal in the matter of those proceedings.

(6) A person shall not—

- (a) obstruct, threaten, or intimidate the registrar, an inspector, or any other person in the exercise of his powers or authorities or functions or in the discharge of his duties under this section or attempt so to do; or
- (b) when required under this section to produce for inspection, or examination, or audit, or inspection and examination and audit any book, account, document, writing, record, contract, or agreement referred to in this section, fail to produce such book, account, document, writing, record, contract, or agreement in accordance with such requirement; or
- (c) when required under this section to answer any question or supply any information with respect to any book, account, document, writing, record, contract, or agreement referred to in this section, or with respect to any entry in any such book, account, document, writing, record, contract, or agreement, give an answer or supply information which is false or misleading, or, knowing or being in a position to know the answer or information required, fail to answer that question or supply that information; or
- (d) retake or attempt to retake any book, account, document, writing, record, contract, or agreement impounded or retained under the authority of this section.

(7) A person guilty of an offence against this section shall be liable to a penalty of not more than five hundred dollars and not less than twenty dollars or to imprisonment for not more than six months, or to both such fine and imprisonment, and, on a second or subsequent offence, to a penalty of not more than one thousand dollars and not less than fifty dollars or to imprisonment for twelve months, or to both such fine and imprisonment.

(8) Any requirement under this section may be made verbally, or by writing addressed to the person to or on whom it is made and delivered to him personally or sent by registered post addressed to him at his registered office or place of business or employment in which case it shall be deemed to have been made at the time when it would be delivered in the ordinary course of post.

(9) For the purposes of this section the term “trust account” includes any account of or with respect to any moneys received by a person in respect of any transaction by him as a licensee; and the term “licensee” includes any person whose licence has expired or has been cancelled or surrendered.

(10) No person shall be required under this section to answer any question or give any information tending to incriminate himself.

91. Duties of bank managers. (1) It shall be the duty of the manager or other principal officer of a bank with which a licensee has deposited any moneys whether in his own account or in any general trust account or separate trust account—

- (a) to disclose each and every such account to the registrar, or an inspector, or any person appointed by the Minister in any particular case, upon demand in writing delivered to him personally by any one of those persons, and to permit the registrar or inspector or person appointed by the Minister, as the case may be, to inspect and make and take away with him a copy of or extract from each and every such account and of or from any book, account, document, or writing relating to any such account; and
- (b) to inform the registrar forthwith whenever either a general trust account or a separate trust account of the licensee is overdrawn.

(2) For the purposes of this section the term “licensee” includes any person whose licence has expired or has been cancelled or surrendered, or in respect of whom a substitute licensee has been appointed under this Act.

92. Entries in licensee’s books deemed made by him. Every entry in any book kept or belonging to any licensee or found in his premises shall be deemed, until the contrary is shown, to have been made by or with the authority of the licensee.

Division 2—Auctioneers and Agents Fidelity Guarantee Fund

93. The Auctioneers and Agents Fidelity Guarantee Fund. (1) There shall be established and kept in the Treasury a Fund to be called the “Auctioneers and Agents Fidelity Guarantee Fund” (in this Act referred to as “the Fund”).

- (2) The Fund shall consist of—
 - (a) all sums paid by way of contribution or levy by licensees in accordance with this Act;
 - (b) the interest from time to time accruing from the investment of the Fund; and
 - (c) any other moneys that may lawfully be paid into the Fund.
- (3) There shall from time to time be paid out of the Fund—
 - (a) all legal expenses in connexion with claims made against the Fund or the Committee in respect of the Fund or otherwise incurred in relation to the Fund;
 - (b) the amount of all claims including costs, established against the Fund;
 - (c) all refunds of contributions made to licensees or their personal representatives pursuant to this Act; and
 - (d) any other moneys payable out of the Fund in accordance with any of the provisions of this Act.

94. Contributions to Fund. (1) A contribution to the Fund of the amount prescribed shall, subject to this section, be made to the Registrar annually in advance by every licensee who is required to open and maintain a trust account under this Act.

(2) Where a person—

- (a) has taken out a licence or licences under this Act as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, in respect of any employee or employees of that person, a separate contribution shall be payable by the employer in respect of each such employee;
- (b) has taken out a licence or licences under this Act of any of the following classes, that is to say, a manager's (real estate agency) licence, a manager's (commercial agency) licence, or a manager's (motor dealing) licence, in respect of any employee or employees of that person, a separate contribution of such amount (if any) as is prescribed shall be payable by the employer in respect of each such employee;
- (c) is, at the time when his contribution under this section is due and payable, employing one or more real estate salesmen, commercial sub-agents, or motor salesmen, a separate contribution of such amount (if any) as is prescribed shall be payable by the employer in respect of each such employee,

and such separate contribution or contributions shall be in addition to the contribution prescribed in respect of any license held by that person on his own behalf.

(3) Such contributions shall be in addition to any fees prescribed.

95. Additional levies. (1) If at any time the Fund is, in the opinion of the Committee, not sufficient to satisfy the liabilities of the Committee in relation thereto, the Committee may, with the approval of the Minister, impose on every licensee liable to contribute to the Fund, a levy of such amount as the Committee thinks fit but not exceeding five dollars in any one year in respect of any one licence taken out by a licensee.

(2) The amount of the levy shall become payable on a date and in a manner to be fixed by the Committee and notified in the Gazette of which every licensee shall be deemed to have notice, and the Committee may, in any special case, allow time for the payment of any levy or any part thereof.

(3) If a licensee does not, after the publication of the notification as aforesaid, pay any levy in accordance with the notification, the registrar shall so report to the Committee and, upon the direction of the Committee, shall record the fact in the register, and so long as the levy remains unpaid the licensee shall be deemed not to be the holder of a licence under this Act.

(4) For the purposes of this section a person who has taken out a licence or licences in respect of an employee or employees shall be deemed to be a separate licensee in respect of each such employee.

96. Licensee's trust accounts, etc. (1) In this section unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say:—

“Commencing date”—The date fixed by the Governor in Council by notification published in the Gazette as the commencing date for the purposes of this section;

“Deposit with”—Includes “pay to” or “transfer to”;

“Quarter day”—The last day of the months of March, June, September and December;

- “ Licensee ”—Every licensee required under this Act to open and maintain a trust account;
- “ Trust account ”—A general trust account or separate trust account referred to in section 82 of this Act;
- “ Year ”—The first year and each period of twelve months thereafter.

(2) Notwithstanding any other provision of this Act or any provision of *The Trust Accounts Acts 1923 to 1959*, every licensee shall, out of the moneys in his trust account—

- (a) not later than twenty days after the commencing date deposit with the registrar a sum which is not less than two-thirds of the amount which was the lowest balance in excess of nil in his trust account on any day during the three months ending on and including the day immediately preceding the commencing date (herein referred to as “ the initial period ”) or, where he maintains more than one trust account, a sum which is not less than two-thirds of the lowest aggregate in excess of nil on any day during the initial period of the balances in his trust accounts, excluding any accounts that were maintained for the exclusive benefit of a specific person or specific persons;
 - (b) thereafter during the first period of three months ending on a quarter day keep deposited with the registrar a sum which is not at any time less than the amount prescribed by paragraph (a) of this subsection; and
 - (c) during each and every period of three months ending on a quarter day following the first such period keep deposited with the registrar such a sum as may be prescribed or, if not prescribed, a sum which is not less than two-thirds of the aggregate of—
 - (i) the amount standing upon deposit by the licensee with the registrar in accordance with the provisions of this subsection on the day of the lowest balance in excess of nil concerned; and
 - (ii) the amount that was the lowest balance in excess of nil in his trust account on any day during the last preceding period of three months ending on a quarter day or, where he maintains more than one trust account, the lowest aggregate in excess of nil on any day during the last preceding period of three months ending on a quarter day of the balances in his trust accounts, excluding any accounts that were maintained for the exclusive benefit of a specific person or specific persons.
- (3) (a) The Committee, for such reasons as it considers sufficient and subject to such conditions, if any, as it thinks fit, may at any time cause to be repaid all or any part of the moneys deposited by a licensee pursuant to this section to—
- (i) the licensee; or
 - (ii) at any time when, in relation to the moneys in the trust account or trust accounts in question, another person is trustee, such trustee.
- (b) All moneys repaid under this subsection by the Committee to a licensee or trustee shall be paid by him into a trust account and may be dealt with as if such moneys had not been withdrawn from a trust account of the licensee.

(4) Pending repayment under subsection (3) of this section, moneys deposited by a licensee with the registrar pursuant to this section shall be placed in a Fund to be established and kept in the Treasury and to be called the Auctioneers and Agents Trust Account Deposit Fund, and moneys in that Fund may, on the recommendation of the Committee, be invested by the Treasurer of Queensland as he may see fit.

(5) If a repayment from the Auctioneers and Agents Trust Account Deposit Fund, caused to be made pursuant to subsection (3) of this section, at any time necessitates the realisation, at a lesser amount than the amount invested, of any investment made from that Fund, an amount equal to the deficiency so resulting shall be paid out of the Fund.

(6) Amounts of interest accruing at any time and from time to time in respect of moneys invested from the Auctioneers and Agents Trust Account Deposit Fund shall be paid to the Fund.

(7) The registrar shall keep and maintain accounts of all moneys deposited with him by licensees pursuant to this section separate from all other accounts and those accounts shall be kept and maintained in such a manner as to disclose the true position in regard thereto and to enable the accounts to be conveniently and properly audited by the Auditor-General who is hereby authorised and required to audit such accounts at least once in each half year.

(8) If at any time during the relevant year the lowest balance in the trust account or trust accounts of a licensee together with the amount (if any) then deposited with the registrar by the licensee amounts to less than three thousand dollars the obligations imposed on the licensee by subsection (2) of this section shall not apply so long as that condition continues.

(9) No action at law or in equity shall lie against any licensee for or on account of any matter or thing whatsoever done by him or it for the purpose of complying with the provisions of this section.

(10) Nothing in this section contained or implied shall affect in any way the rights and remedies of the several claimants as against the licensee or *inter se* in the event of any stealing, fraudulent misappropriation, failure to account, or other act committed in respect of trust moneys.

97. Interest on moneys in the Fund. Interest on the moneys in the Fund shall from time to time be paid by the Treasurer of Queensland into the Fund at the short term deposit bank interest rate as approved for the time being by the Reserve Bank of Australia.

98. Application of Fund. (1) Subject to the provisions of this Act, the Fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the stealing or fraudulent misappropriation or misapplication by a licensee or by his partner or by any employee of the licensee in the course of his employment with such licensee or an agent of such licensee or any other person having the apparent charge or control for the time being of the office or business of such licensee of any money or other valuable property entrusted to such licensee or partner, employee, agent or other person in the course of the business of such licensee as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be.

(2) For the purposes of subsection (1) of this section and of any other provision of this Part, a reference to a person having the apparent charge or control for the time being of the office or business of a licensee includes a reference to a person appointed under this Act as a substitute for a licensee or deceased or bankrupt licensee.

(3) No person shall have any claim against the Fund in respect of any stealing or fraudulent misappropriation or misapplication committed before the commencement of this Act.

(4) In respect of any stealing or fraudulent misappropriation or misapplication, in respect of which any claim against the Fund arose, no person shall have a claim against the Fund unless notice of such stealing or fraudulent misappropriation or misapplication is given in writing to the registrar as soon as reasonably practicable after the claimant has become aware of the stealing or fraudulent misappropriation or misapplication but in any event within a period of six months after having become so aware or within a period of two years after the date of the commission of such stealing, misappropriation, or misapplication, whichever is the shorter period.

99. Claims against the Fund. (1) Subject to section 98 of this Act, the Committee may receive and settle any claim against the Fund at any time after the commission of the stealing or fraudulent misappropriation or misapplication in respect of which the claim arose but no person shall be entitled, without the leave of the Committee, to commence any action in relation to the Fund unless the Committee shall have disallowed his claim.

(2) No person shall be entitled to recover from the Fund by action as aforesaid an amount greater than the balance of the loss suffered by him after deducting from the total amount of such loss the amount or value of all moneys or other benefits received or recovered or which in the opinion of the Committee might, but for his neglect or default, have been received or recovered by him from any source other than the Fund in reduction of such loss.

(3) The Governor in Council may from time to time by notification in the Gazette fix the maximum amount which any person shall be entitled to recover from the Fund and, where such an amount is so fixed, no person shall be entitled to recover from the Fund any amount in excess of the amount so fixed.

(4) The Governor in Council may from time to time by notification in the Gazette fix the aggregate amount which may be applied in the reimbursement of all persons who suffer loss through stealing or fraudulent misappropriation or misapplication by the same licensee, partner, employee, agent, or other person, and where such an amount is so fixed, there shall not be paid out of the Fund in relation to the stealing, or misappropriation or misapplication, any amount in excess of the amount so fixed.

(5) No amount shall be paid or be payable out of the Fund as interest on the amount of any judgment obtained or of any claim allowed against the Fund.

100. Advertisement relating to defaulting licensee and claims. (1) Whenever there is in force a notification of the Governor in Council under subsection (4) of section 99 of this Act, the Committee shall cause to be published a notice, in or to the effect of the prescribed form, in a newspaper published and circulating in the district in which the defaulting licensee is or was carrying on business and also in a daily newspaper published and circulating in Brisbane, and such notice shall fix a date being not earlier than three months after the publication, or the first such publication, as the case may be, within which claims must be made.

(2) Notwithstanding the provisions of subsection (4) of section 98 of this Act, any claim not made in writing on or before the date fixed in the notice published as aforesaid shall be barred unless the Committee, in its absolute discretion, otherwise determines.

101. Distribution from Fund. The Committee shall make such enquiry into claims against the Fund as it may think fit and, subject to the provisions of subsections (2), (3) and (4) of section 99 of this Act, may—

(a) where a notice has been published pursuant to section 100 of this Act, at any time after the date fixed by that notice;

(b) in all other cases, at any time,

make payment out of the Fund of such amounts to such claimants as the Committee may determine.

102. Proceedings against the Committee. (1) Any proceedings brought against the Committee in relation to any claim against the Fund shall be by action at law as for a debt due by the Committee and shall be brought in a court of competent jurisdiction.

(2) In any action referred to in subsection (1) of this section all defences which would have been available to the licensee in relation to whom any claim arose shall be available to the Committee and in any such action all questions of costs shall be in the discretion of the court.

(3) No proceedings shall be brought against the Committee in relation to any claim against the Fund after the expiration of six months after the date the registrar has notified the claimant that the Committee has disallowed the claim, or such longer period as the court, on sufficient cause being shown may, on such terms as it thinks fit, permit.

103. Subrogation. On payment out of the Fund of moneys in settlement in whole or in part of any claim under this Act, the Committee shall be subrogated, to the extent of such payment, to all the rights and remedies of the claimant against the licensee in relation to whom the claim arose, or any other person, and any moneys recovered by the Committee shall be paid into the Fund.

104. Committee may require production of documents. The Committee may at any time and from time to time require production and delivery up of securities and documents necessary to support any claim made or for the purpose of exercising its rights against any defaulting licensee and may in default of delivery up of any securities or documents reject any claim.

105. Insufficiency of Fund. No moneys or other property belonging to the Committee, other than the Fund, shall be available for the satisfaction of any judgment obtained against the Committee in relation to the Fund, or for the payment of any claim determined by the Committee, and where the amount to the credit of the Fund is insufficient to pay the whole amount of all claims determined in any financial year, any such claim so far as it remains unpaid shall be charged against future receipts of the Fund and shall be paid out of the Fund when money is available therein.

106. Freezing of trust accounts and ultimate disposal of trust moneys of defaulting licensees. (1) Wherever it appears to the registrar that a licensee, or his partner, or any employee of a licensee in the course of his employment with such licensee or an agent of such licensee or any other person having the apparent charge or control for the time being of the office or business of such licensee has or may have stolen or fraudulently misappropriated or misapplied any trust moneys, the registrar may forthwith advise in writing the licensee and the manager or principal officer of any office or branch of any bank where the licensee has a trust account that no money shall thenceforth be drawn from such trust account without the registrar's approval, and where any claim has been made against the Fund in relation to any person as aforesaid, the registrar may further direct that all or any money to the credit of such account shall be paid to the registrar and by him be paid into the Fund, and such manager or principal officer shall give effect to all such directions and this section shall be a sufficient authority and indemnity therefor.

(2) For the purposes of this section—

(a) the term "trust moneys" includes—

- (i) any moneys that were, or ought, under this Act, to have been, deposited in a trust account required to be opened and maintained by a licensee; and
- (ii) any instrument for the payment of any such money where the instrument may be paid into a bank, and any security for such money the title to which is transferable by delivery.

(b) the term "licensee" includes any person who has been a licensee and, where applicable, the personal representative of a deceased licensee and the trustee of a bankrupt licensee or the Official Receiver in Bankruptcy.

Division 3—Receivers

107. Interpretation. In this Division, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them, that is to say:—

"Defalcation"—Any stealing, embezzlement, omitting to account, fraudulent misappropriation or misapplication, or other act punishable by imprisonment, of or in relation to money or other property.

"Licensee"—Any person who is or has been a licensee and includes, where the context so admits or requires, the personal representative of a deceased licensee;

"Money"—Includes any instrument for the payment of money in any case where the instrument may be paid into a bank, and any security for money the title to which is transferable by delivery;

"Property", in relation to a licensee—

- (a) money or other property which was in the course of or in connexion with the business of the licensee or of the business of any partnership of licensees of which the licensee is or has been a partner, entrusted to or received on behalf of any other person by the licensee or partnership or by any of his or their employees or agents or by any licensee with whom the licensee or partnership shares remuneration and which has not been paid or delivered by the licensee or partnership to the person entitled thereto or as that person has directed or otherwise according to law;

- (b) money or other property which would, were it not for the appointment of a receiver as provided in this Division, be receivable on behalf of any other person by the licensee or partnership after the appointment of that receiver;
- (c) money received by the receiver during a receivership under this Division being interest, dividends, or other income arising from any property held by the receiver under this Division; and
- (d) ledgers, books of account, vouchers, records, deeds, files and other documents and writings of any description.

108. Appointment of receiver in certain cases. Where the Committee is of opinion—

- (a) that any defalcation has been or may have been committed in relation to any trust account of any licensee; or
- (b) that through—
 - (i) the mental or physical infirmity of a licensee;
 - (ii) the death or bankruptcy or the sequestration or assignment for the benefit of creditors of the estate of a licensee;
 - (iii) the abandonment of a licensee's business;
 - (iv) a licensee having been disqualified from holding a licence; or
 - (v) the licence of a licensee having been cancelled or a licensee's application for a renewal of a licence having been refused, or the licensee having been deemed not to be the holder of a licence,

any person is unable to obtain payment or delivery of money or other property held for or on behalf of that person by the licensee or partnership of licensees of which the licensee is or was a partner,

the Committee may appoint a receiver of all or any property which is held by the licensee or partnership of licensees of which the licensee is or was a partner or by some other person on his behalf or is recoverable by the licensee or partnership, or, where the licensee is dead, which by reason of his death is or may be recoverable by his personal representative.

109. Application for appointment of receiver. (1) An application under this Division for the appointment of a receiver shall be made in writing to the secretary who shall, unless the Committee otherwise directs, summon the licensee to appear before the Committee on a date to be fixed and stated in the summons.

(2) Unless in the interests of justice the Committee deems it desirable, no person shall be permitted to be present at the hearing of the application except—

- (a) the Committee and its officers;
- (b) the applicant, respondent, and their respective legal representatives;
- (c) the members of a partnership of licensees of which the respondent is or was a partner; and
- (d) any person whilst being examined as a witness.

(3) The Committee may on the application of any party, or as it thinks fit, make an order forbidding the publication of any report or

account of the evidence or other proceedings on the hearing of the application and any person who contravenes any such order shall be guilty of an offence against this Act.

(4) A copy of the order of the Committee appointing a receiver shall, as soon as practicable, be served on the licensee and on any other person to whom the Committee directs that notice of the appointment should be given.

110. Receiver may require delivery of property to him. (1) The receiver may require any person to give to the receiver such information concerning any property of which he has been appointed receiver as may reasonably be required.

(2) No person so required to give information shall, without lawful justification or excuse (the proof whereof shall lie on him) refuse or fail so to do or shall otherwise hinder, obstruct, or delay the receiver in the performance of his duties or the exercise of his powers under this Division.

111. Receiver may forbid withdrawal of moneys from bank. (1) Where the receiver has reasonable grounds for believing that there is in any bank account money received for or on behalf of the licensee or of the partnership of licensees of which the licensee is or was a partner, he may serve on the bank concerned a notice in writing with a copy of the order of the Committee attached thereto forbidding, except by him or on his authority, any withdrawal of moneys from or any dealing (including in any case the completion of any uncompleted dealing commenced before the service of the notice) with that account, whether the account is in the name of the licensee or the name of a partnership of licensees of which the licensee is or was a partner or, where the licensee is dead, an account which is in that name, or partnership name, or which was formerly in that name or partnership name and is now in the name of his personal representative.

(2) Without prejudice to any other mode of service, service of any notice pursuant to this section may be effected by leaving the notice and copy of the order attached thereto with the manager, accountant, or such other person as appears to be at the time of service in charge of the office or branch of the bank at which there is an account to which subsection (1) of this section refers.

(3) The bank on which the notice is served shall not permit any withdrawal from or dealing with any account to which the notice relates except by or on the authority of the receiver.

(4) The receiver may withdraw all the moneys in any such account or from time to time withdraw any of those moneys and pay them into a special account or special accounts in his own name and may operate on or otherwise deal with the special account or special accounts in accordance with law.

112. Receiver may take possession of property. (1) The receiver may take or enter into possession of any property of which he has been appointed receiver, but all ledgers, books of account, vouchers, records, deeds, files and other documents and writings (other than those relating to property referred to in paragraph (a) or (b) of the definition of "property" in section 107 of this Act or to any former business of the licensee) shall, as soon as reasonable, be returned to the licensee.

(2) If the licensee or any other person, on being required by the receiver to transfer or deliver to the receiver or to permit the receiver to take possession of any such property in his possession or at his disposition or under his control, does not comply with the requirement, or if it appears to the receiver that any such person on being thus required has not fully complied with the requirements, the receiver may apply to the Supreme Court for an order of transfer or delivery of the property to him, whereupon that court may make that order.

(3) If it appears to the receiver that an order made by the Supreme Court under subsection (2) of this section is not complied with, he may apply to the Supreme Court for an order authorizing any member of the Police Force, or the receiver or some other person and any member of the Police Force, to enter any premises or other place specified in the order and to search for any property of which the receiver is entitled to take possession under this section and to seize any such property and remove it to such place as the receiver thinks fit, and on such application the court may make such order and such further order in the matter as to the court seems fit.

(4) Failure to comply with any order made by the Supreme Court under subsection (2) of this section shall be punishable as a contempt of that Court.

113. Improperly withdrawing money or destroying or concealing property. No person shall at any time with intent to defeat the purposes of this Division and whether before or after a receiver has been appointed—

- (a) withdraw money from or make any payment out of any account; or
- (b) destroy or conceal or remove from one place to another place or deliver into the possession or place under the control of any other person any property of which a receiver has been or is likely to be appointed.

114. Power of receivers to deal with property. (1) The receiver may deal with any property which he has taken, or entered into possession of under this Division in any manner in which the licensee or the partnership of licensees of which the licensee is or was a partner might lawfully have dealt with the property and shall as soon as is reasonably possible and to the extent to which ownership can be established deliver the property to the persons lawfully entitled thereto.

(2) Without restricting or in any way derogating from the powers of the receiver under subsection (1) of this section, the receiver may—

- (a) prove, grant, claim and draw a dividend in respect of any debt due to the licensee in connexion with any property of which the receiver has been appointed receiver;
- (b) give receipts for any money received by him, which shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; and
- (c) employ a legal representative or other agent to give advice or take any proceedings or otherwise act for the receiver in relation to any property of which he has been appointed receiver.

115. Property claimed by licensee. (1) The receiver may give notice to the licensee or any other person that, if the licensee or other person has any claim to any property, he shall within the time specified in the

notice (being not less than thirty days from the giving of the notice) submit to the receiver full particulars of the property claimed and the grounds of the claim.

(2) If such a notice has been given, the receiver may disregard any claim made by the licensee or other person otherwise than in accordance with the terms of the notice.

(3) The licensee shall not be entitled to any payment in respect of or otherwise to enforce any such claim and shall not be entitled except as against a licensee to a lien upon any document or writing held by the receiver unless and until the proper claims of all other claimants are fully satisfied and the expenses of the receivership as defined in section 119 of this Act have been paid.

116. Liens for costs on property held by receiver. (1) If the licensee or the partnership of licensees of which the licensee is or was a partner claims a lien for costs on any document, writing, or other property held by the receiver, the receiver may by notice in writing require him or them to give to the receiver within a time specified in the notice (being not less than thirty days from the giving of the notice) particulars of all documents, writings and other property on which he claims or they claim a lien together with a detailed itemised account relating to the amount in respect of which each lien is claimed.

(2) If the licensee or partnership fails to comply with any such requirement in respect of any lien claimed by him or them the receiver may in dealing with the document, writing, or other property disregard the lien.

(3) The receiver may, on receipt of any such itemised account, apply to the Committee for a review of the amount in respect of which any lien is claimed and the Committee may review the account and certify what, upon review, is found to be a reasonable remuneration by way of fee, charge, commission, reward, or other remuneration for the services done or performed by the licensee or partnership, and such certificate shall be conclusive evidence of the matters certified to therein.

(4) If the licensee or partnership so requests in writing, the receiver shall give to the licensee or partnership or any other person on his or their behalf such access to all relevant books and documents as is reasonably necessary to enable the preparation of the itemised account and in such event the time specified in the notice under subsection (1) of this section shall not commence until that access has been given.

117. Application for termination of appointment of receiver. (1) The receiver or the licensee or the partnership of licensees of which the licensee is or was a partner may at any time apply to the Committee for an order that the appointment of a receiver be terminated, whereupon the Committee may make such an order and may if it thinks fit, appoint another person to be the receiver in his place.

(2) If a receiver's appointment is terminated by an order of the Committee and another person is appointed to be the receiver in his place, the former receiver shall, as soon as he reasonably may and subject to any directions of the Committee, transfer or deliver to the receiver appointed in his place all property and any documents, writings and other property which he holds by virtue of his appointment as receiver.

(3) If a receiver's appointment is terminated by an order of the Committee and no other person is within fourteen days of the termination appointed to be receiver in his place, he may, and upon demand in writing by the licensee or the partnership of licensees of which the licensee is or was a partner shall, as soon as he reasonably may, and subject to any directions given by the Committee and subject, unless the Committee shall otherwise determine, to the payment by the licensee or partnership to the Committee of the expenses of the receivership, as defined in section 120 of this Act, transfer or deliver to the licensee or partnership all property which he then holds by virtue of his appointment as receiver.

118. Property not dealt with by receiver. (1) All moneys and other property which come into the possession of the receiver in the course of the receivership and which the receiver has not dealt with in accordance with this Division, other than this section, shall be paid or delivered by the receiver to the Committee on and to the extent of a request by the Committee for the payment or delivery, but where no such request is made, the moneys and other property shall be paid or delivered to the licensee or to the partnership of licensees of which the licensee is or was a partner, as the case may require.

(2) Where property is delivered to the Committee pursuant to subsection (1) of this section, the Committee shall deal with the property in such manner as it sees fit and, where the property is sold, the proceeds of the sale shall, for the purposes of subsection (3) of this section, be deemed to be moneys paid by the receiver to the Committee in accordance with subsection (3) of this section.

(3) All moneys paid by the receiver to the Committee in accordance with subsection (1) of this section shall be paid to the Fund to be applied first in the reimbursement to it of any claims paid out of the Fund in respect of the licensee or the partnership of licensees of which the licensee is or was a partner, secondly in the satisfaction of or partial satisfaction of claims against the licensee or partnership of licensees of which the licensee is or was a partner to the extent to which they or any of them have not otherwise been fully satisfied, and thirdly in payment of the expenses of the receivership, as defined in section 120 of this Act.

(4) If after the moneys have been so applied there remains a surplus of moneys paid by the receiver to the Committee, the surplus shall be paid to the licensee or to the partnership of licensees of which the licensee is or was a partner, as the case may require.

119. Receiver may invest moneys in his hands. (1) The receiver may invest any moneys in his hands in the course of his receivership in any manner in which trustees are for the time being authorised by law to invest funds.

(2) Any income accruing from the investment of any such moneys and any profit from the sale of any such investment shall be added to and form part of the property of which he has been appointed receiver.

120. Remuneration of receiver and expenses of receivership. (1) All moneys payable to the receiver as remuneration for his services, all costs of legal proceedings and other expenses incurred by him in the course of his receivership, and any reimbursement made pursuant to section 121 of this Act (all of which are hereafter in this section referred to as "the expenses of the receivership") shall, to the extent that they have not otherwise been paid to the receiver under this Act, be paid to him by the Committee out of the Fund.

(2) Any amount paid out of the Fund for the expenses of the receivership shall be recoverable by the Committee from the licensee as a debt owing by him to the Committee in any court of competent jurisdiction.

(3) In default of agreement between the Committee and the receiver as to the amount to be paid to the receiver as his remuneration the Minister may, on application by the Committee or the receiver, determine the amount to be so paid.

121. Claim or charge against receiver may be paid from the Fund. If any claim or charge is made by any person against the receiver for any act or omission by the receiver or his servants or agents done or made by him or them in good faith and in the execution or purported execution of the powers conferred or duties imposed on him by or under this Division, the Committee may reimburse the receiver out of the Fund for all or any costs, charges, expenses, or damages which he may have incurred in relation to the claim or charge.

122. Re-opening of agreement as to receiver's remuneration. The Minister, on application by the licensee or by any partnership of licensees of which the licensee is or was a partner, may re-open any agreement between the Committee and the receiver as to the amount to be paid to the receiver as his remuneration, and may determine the amount to be so paid.

123. Court may review receiver's expenses. (1) Where proceedings are taken by the Committee under subsection (2) of section 120 of this Act for the recovery of any amount paid out of the Fund for the expenses of the receivership therein referred to and there is evidence that satisfies the court that the amounts charged for those expenses are excessive, the court may take an account between the Committee and the receiver and relieve the licensee from payment of any sum in excess of the sum adjudged by the court to be fairly payable in respect of those expenses and, if any excess has been paid or allowed in account by the Committee, the court may order the receiver to repay it.

(2) The court shall have, and may, on the application of the licensee or of any partnership of licensees of which the licensee is or was a partner, exercise the like power as may be exercised under subsection (1) of this section where proceedings are taken for the recovery of any amount paid out of the Fund for the expenses of the receivership pursuant to section 120 of this Act, and any court that could have entertained an action under subsection (2) of section 120 of this Act shall have power to entertain any application under this subsection, notwithstanding that the expenses of the receivership have not been paid to the receiver.

(3) No proceedings to obtain any relief under this section shall be taken after three months from the time when the expenses of the receivership have been paid, but the legal personal representative of a deceased licensee may take any such proceedings at any time within six months thereafter.

124. Receiver not deemed to be personal representative. Where a licensee dies, a receiver in the execution of his functions under this Division shall not be deemed or taken to be a personal representative of the licensee.

125. Property held by receiver to be free from execution or attachment. Property held by a receiver under the provisions of this Division shall not be levied upon or taken or attached under any judgment.

126. Returns by receiver. Subject to any directions given by the Committee, every receiver shall at such times as the Committee determines furnish to the Committee a report of his receivership containing such information as the Committee requires, and upon the conclusion of his receivership shall forthwith lodge with the Committee, in addition to his final report, all documents and writings in his possession or under his control relating to his receivership, and subject to any order of the Committee for their destruction or otherwise, such documents and writings shall be kept in the custody of the Committee.

PART VII—GENERAL

127. Proof that a person is or is not licensed. In all proceedings against any person for having acted or carried on business or for having advertised or notified that he acts or carries on business as an auctioneer, a real estate agent, a commercial agent, or a motor dealer, as the case may be, without a licence, such person shall, unless he produces his licence or brings other satisfactory proof of his having been duly licensed at the time when the offence was alleged to have been committed, be deemed to have been unlicensed.

128. Civil remedies not affected. Nothing in this Act shall affect any civil remedy that any person may have against an auctioneer, a real estate agent, a commercial agent, or a motor dealer in respect of any matter.

129. Offences by corporations. Where any offence against any of the provisions of this Act relating to auctioneers, real estate agents, commercial agents, or motor dealers is committed by a corporation, then, in addition to any penalty to which the corporation is liable for such offence, the chairman of directors or manager or other governing officer by whatever name called, of such corporation shall be liable to the penalty provided by this Act in respect of the commission of that offence by an individual unless he proves that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence.

130. Offences generally. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act and shall be liable, if no specific penalty is prescribed for that offence, to a penalty not exceeding five hundred dollars or imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) All offences against this Act may be prosecuted, and all fees and contributions to the Fund due and payable under this Act may be recovered, in a summary way, under *The Justices Acts 1886 to 1968* upon the complaint of the registrar or of any person authorised by the Minister.

(3) Proceedings for an offence against this Act may be instituted at any time within twelve months after the commission of the offence, or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later.

(4) All penalties and fees other than contributions to the Fund recovered under this Act shall be paid to Consolidated Revenue, but where it is proved to the satisfaction of the adjudicating Court that any person has sustained loss or damage by reason of the act or default of the defendant which constitutes the offence and that loss or damage has not been compensated for by payment out of the Fund, the court may award to that person such part of the penalty imposed as it thinks fit by way of compensation for such loss or damage.

(5) All contributions to the Fund recovered under this Act shall be paid to the Fund.

(6) All licence and registration fees shall be paid to Consolidated Revenue.

131. Regulations. (1) The Governor in Council may, from time to time, make such regulations, not inconsistent with this Act, prescribing all matters and things which are necessary or convenient for carrying out or giving effect to this Act, and without limiting the generality of the foregoing provisions of this subsection, in particular, for all or any of the following purposes:—

- (i) regulating the appointment of members of the Committee, and the proceedings of the Committee, and prescribing the fees and allowances which may be paid to members of the Committee in relation to the exercise of their powers and duties under this Act, and including fees for attendance at meetings of the Committee and reasonable travelling expenses;
- (ii) regulating the duties of the registrar, deputy registrar, secretary, assistant registrars, inspectors and other officers;
- (iii) regulating the conduct of proceedings in connexion with charges against licensees heard by the Board under section 22 of this Act;
- (iv) prescribing the procedure to be followed on applications to the Committee;
- (v) regulating the form and contents of applications for licences and certificates of registration under this Act, and the procedure to be followed in respect of such applications;
- (vi) prescribing the educational qualifications required by applicants for licences or for certificates or registration under this Act;
- (vii) regulating the transfer of licences;
- (viii) regulating the form and manner of registration of licences, certificates of registration, renewals, cancellations, restorations, or any other matters requiring registration under this Act;
- (ix) prescribing the form and manner of keeping the register and the record of registrations;
- (x) prescribing the fees to be charged by applicants for licences or certificates of registration and the renewal, or replacement, or transfer thereof;
- (xi) prescribing the fees, charges, commission, reward, or other remuneration that auctioneers, real estate agents, commercial agents, or motor dealers shall be entitled to receive for or in respect of the services or transactions carried out by them, and the maximum amount thereof; which fees, charges, commission, reward, or other remuneration may be uniform for or in respect of all parts of the State or for or in respect of all services or transactions of an auctioneer, a real estate agent, a commercial agent, or a motor dealer, or may vary

- for or in respect of different parts of the State or for or in respect of different services or transactions or classes of services or transactions;
- (xii) prescribing the amount of contributions to be made to the Fund by licensees;
 - (xiii) prescribing the books, accounts, and records to be kept by licensees, and the form and manner of keeping same, and the exemption by the registrar from keeping any prescribed book, account, or record of any licensee who in the opinion of the registrar keeps books, accounts, or records, as the case may be, sufficient for the purposes of this Act, and the revocation by the registrar of any such exemption;
 - (xiv) with respect to all or any of the following matters—
 - (a) providing for the audit of trust accounts and, if necessary, business and other accounts of licensees or specified classes of licensees, and for the furnishing of a report of the result of any auditor's examination or audit;
 - (b) requiring the production to an auditor by the licensee, his servants and agents, or by the manager of any bank of books, papers, and accounts relating to the business of a licensee, subject to prescribed conditions;
 - (c) prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record;
 - (d) providing that an auditor shall be subject to an obligation not to divulge, otherwise than as prescribed, any matter of which he shall be informed in the course of an audit;
 - (e) prescribing a scale of fees to be paid for an audit;
 - (f) prescribing that in the absence of any agreement in writing to the contrary audit fees shall be paid by the licensee;
 - (xv) fees for inspection of the register and record of registrations and for the making and supply of any copy thereof or extract therefrom;
 - (xvi) the furnishing by licensees of returns setting forth particulars of transactions carried out by them, including copies of all sale notes in respect of the sale of real property during any period and the inspection of such returns by any person duly authorised by the Minister;
 - (xvii) imposing penalties not exceeding two hundred and fifty dollars for breaches of the regulations, and in addition for the cancellation of a licence in respect of the second and subsequent offence against this Act;
 - (xviii) all such observances as are not specifically provided for in this Act, and which the Governor in Council considers it desirable that auctioneers, real estate agents, commercial agents or motor dealers should comply with in exercising or carrying out their business;
 - (xix) prescribing all matters and things required or permitted by this Act to be prescribed.

(2) Regulations may be made under this Act at any time after the passing thereof.

(3) The power to make regulations under this Act with respect to any matter or thing shall include power to make regulations prohibiting that matter or thing either generally or to meet particular cases.

132. Publication of Proclamations, etc. (1) Every Proclamation, Order in Council and regulation made under this Act shall—

- (i) be published in the Gazette;
- (ii) upon its publication in the Gazette be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (iii) take effect from such publication unless, in the case of any Order in Council or regulation, a later date is specified in that or in any other Order in Council or regulation for its commencement when in such event it shall take effect from that later date; and
- (iv) be laid before the Legislative Assembly within fourteen sitting days after such publication if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such Proclamation, Order in Council or regulation has been laid before it disallowing such Proclamation, Order in Council or regulation, or part thereof, that Proclamation, Order in Council or regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Proclamation, Order in Council or regulation.