

AUCTIONEERS, STOCK AND STATION AND REAL ESTATE AGENTS (AMENDMENT) ACT.

Act No. 18, 1946.

George VI.
No. 18, 1946. An Act to amend the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1944, in certain respects; and for purposes connected therewith. [Assented to, 1st April, 1946.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short
title,
citation
and com-
mencement.

I. (1) This Act may be cited as the "Auctioneers, Stock and Station and Real Estate Agents (Amendment) Act, 1946."

(2) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1944, is in this Act referred to as the Principal Act.

(3)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

31

(3) The Auctioneers, Stock and Station and Real Estate Agents Act, 1941, as amended by subsequent Acts and by this Act, may be cited as the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1946. No. 18, 1946.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Principal Act is amended—

- (a) by inserting in subsection one of section three next after the definition of "Individual" the following new definition:—

"Land used for agricultural or pastoral purposes" means any parcel of land greater in area than five acres which is used or apparently intended to be used for gain or profit for grazing of live stock, dairying, poultry farming, viticulture, orcharding, bee-keeping, horticulture, the growing of crops of any kind, vegetable growing or any other purpose declared by the Governor by proclamation published in the Gazette to be an agricultural or pastoral purpose.

- (b) by inserting in the same subsection next after the definition of "Live stock" the following new definition:—

"Principal place of business" means in relation to a corporation which carries on business at more than one place the place of business specified in the application made by such corporation for a license on its own behalf to be its principal place of business.

3. The Principal Act is further amended—

- (a) by inserting in subsection one of section fourteen next after the word "expenses" the words "and such fees for attendance at meetings of the council, in the case of the chairman not exceeding

Amendment of
Part I of Act
No. 28, 1941.
Sec. 3.
(Definitions.)

Amendment of
Part II of Act
No. 28, 1941.
Sec. 14 (1).
(Fees and
expenses.)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

exceeding five guineas for each meeting attended by him nor in the case of a member two guineas for each meeting attended by such member."

Sec. 17 (1).
(Registrar
or other
officer or
employee.)

- (b) by inserting in subsection one of section seventeen next after the word "registrar" the words "and such other officers and employees as may be necessary for the administration of this Act."

Amendment of
Part III of Act
No. 28, 1941.

Sec. 20 (1).
(No person
or partner
in a firm to
act without
a license.)

4. The Principal Act is further amended—

- (a) by omitting subsection one of section twenty and by inserting in lieu thereof the following subsection:—

(1) No person 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 an auctioneer unless he is the holder of an auctioneer's license:

Provided that in the case of a partnership advertising, notifying or stating that it acts as or carries on or is willing to act as or carry on the business of an auctioneer it shall be a sufficient compliance with the provisions of this subsection if one member of such partnership is the holder of an auctioneer's license.

Sec 21.
(Each
separate
place
of business
to be in
charge of
licensee.)

- (b) by inserting at the end of section twenty-one the following new subsection:—

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

Sec. 22.
(Licenses.)

- (c) (i) by inserting in subsection one of section twenty-two next after the word "following" the word "classes";

- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

(3) (a) A license shall be in the form prescribed.

(b)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

33

(b) A license taken out by a person No. 18, 1948.
(other than a corporation) shall set forth
the name and place of abode of the person
taking out the same and the address of the
place of business in respect of which it is
taken out.

(c) (i) A license taken out by a
corporation on its own behalf shall set
forth the name of the corporation and the
address of its sole or principal place of
business.

(ii) A license taken out by a cor-
poration in respect of an employee shall set
forth the name and place of abode of such
employee and the name of the corporation
and the address of its sole or principal place
of business and where the case so requires
the address of the place of business at
which such employee is to be in charge.

(d) (i) by omitting subsection three of section Sec. 23.
twenty-three and by inserting in lieu thereof (Pro-
the following subsection:— cedure.)

(3) (a) Where the applicant resides in
New South Wales the application shall be
lodged with the clerk of the court of the
petty sessions district within which the place
of business of the applicant in respect of
which the application is made is situated or
proposed to be situated.

(b) Where under this subsection
there is more than one court with which an
application may be lodged such application
shall be lodged with the clerk of the court
within such district nearest to the place
where the place of business to which such
application relates is situated or proposed
to be situated.

(ii) by inserting in paragraph (b) of subsection
four of the same section next after the
words "general license" the words " or a
country license";

(iii)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.****No. 18, 1946.**

- (iii) (a) by inserting in subsection five of the same section next after the word "police" where thirdly occurring the word "shall";
- (b) by omitting from the same subsection the words "shall severally" and by inserting in lieu thereof the word "may";
- (iv) by inserting at the end of subsection six of the same section the following new paragraph:—
- (d) The prescribed fees and the prescribed contribution paid under this subsection shall on the refusal or withdrawal of the application in respect of which the same were paid be refunded to the applicant or other person who may appear entitled thereto.
- (v) by omitting subsection seven of the same section and by inserting in lieu thereof the following subsection:—
- (7) If the officer in charge of police or the council objects to the grant of the application a statement setting out the nature of the objection proposed to be made shall be lodged with the clerk of the court. Any such statement may be included in any report furnished pursuant to subsection five of this section.
- (vi) by inserting in paragraph (e) of subsection nine of the same section next after the word "force" the words "or the registrar";
- (vii) by omitting from subsection ten of the same section the words "is of bad or doubtful character" wherever occurring and by inserting in lieu thereof the words "is not of good fame and character nor otherwise a fit and proper person to hold a license";
- (viii)

(viii) by omitting subsection twelve of the same section and by inserting in lieu thereof the following subsection:—

No. 18, 1946.

(12) Notwithstanding anything in the foregoing provisions of this section payment of the prescribed contribution shall not be required in the case of—

(a) an auctioneer who is the holder of a license under the Farm Produce Agents Act, 1926-1932; or

(b) a corporation carrying on the business of an auctioneer in respect of a license taken out on its own behalf or taken out in respect of an employee where such corporation is the holder of a license issued under the Farm Produce Agents Act, 1926-1932;

if in any such case such auctioneer or such corporation or the employee of such corporation sells farm produce (as defined in the Farm Produce Agents Act, 1926-1932) by auction, within a radius of ten miles from the General Post Office, Sydney, but does not in any other way whatsoever exercise the trade or business of an auctioneer or carry on the business of a stock and station agent or a real estate agent.

Nothing contained in this Act shall be construed as exempting any such auctioneer, corporation or employee of a corporation from the obligation to comply with the requirements of the Farm Produce Agents Act, 1926-1932.

(e) by inserting next after section twenty-three the following new section:—

**New sec.
23A.**

23A. (1) Where application for renewal of a license is not made before the expiration of the license the person who held such license may make application for the restoration of such license.

**Restoration
of license
not renewed.
cf. Act No.
42, 1912,
s. 131.**

The

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

The clerk of the court may on payment to him of the like fees and contributions as are payable on the renewal of a license issue to such person a provisional license.

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

(2) An application for restoration of a license under this section shall be heard and determined by the court. The court may, if satisfied that such non-renewal is due to inadvertence or that for any reason it is just and equitable that the license should be restored or the result of such inadvertence should be remedied, order that such license be restored and may authorise the issue of a new license for the balance of the term for which the said license would have been available if duly renewed.

(3) The provisions of section twenty-three (paragraphs (a) and (b) of subsection six and subsection eight excepted) of this Act shall, mutatis mutandis, apply to and in respect of an application for the restoration of a license under this section in all respects as if the same were an application for a license or a renewal of a license.

Sec. 25.
(Fees payable for license.)

- (f) (i) by omitting paragraph (g) of subsection one of section twenty-five;
- (ii) by omitting from subsection two of the same section the word and symbols “(f) and (g)” and by inserting in lieu thereof the word and symbols “and (f)”;
- (iii)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

37

- (iii) by omitting from subsection three of the same section the words "a fee of one pound" and by inserting in lieu thereof the words "such fee not exceeding one pound as may be prescribed";
- (iv) by inserting in paragraph (b) of subsection four of the same section next after the word "expenses" the words "and fees";
- (v) by inserting at the end of paragraph (c) of the same subsection the words "and any other officer or employee appointed under section seventeen of this Act";
- (g) (i) by inserting in paragraph (a) of subsection four of section twenty-six next after the word "resident" where secondly occurring the words "or to a corporation in respect of such resident";
- (ii) by inserting in paragraph (b) of the same subsection next after the words "being a" the words "country license or a";
- (h) (i) by inserting in section twenty-seven next after the word "licenses" where secondly occurring the words "or country licenses";
- (ii) by inserting in the same section next after the words "general license" wherever occurring the words "or a country license";
- (i) by inserting at the end of section twenty-eight the words "nor shall a corporation be entitled to obtain an auctioneer's license or a renewal thereof under this Act in respect of a person who is not a resident of New South Wales";
- (j) by omitting from subsection one of section twenty-nine the word "council" and by inserting in lieu thereof the word "registrar";
- (k) (i) by omitting subsection one of section thirty and by inserting in lieu thereof the following subsection:—
- (1) The clerk of petty sessions shall within seven days after the issue of a license

No. 18, 1946.

Sec. 26.
(Power to grant auctioneers' licenses to persons resident in reciprocating States.)

Sec. 27.
(Grant of auctioneers' licenses to persons resident in the Australian Capital Territory.)

Sec. 28.
(Applicant for auctioneer's license to be resident in New South Wales or reciprocating State.)

Sec. 29.
(Cancellation of license.)

Sec. 30.
(Register to be kept by registrar.)

OR

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

or the renewal of a license or the restoration thereof, or the refusal of an application, or the variation or cancellation of a license under this Act notify the registrar of such issue, renewal, restoration, refusal, variation or cancellation;

(ii) by inserting in subsection two of the same section next after the word "renewals" the word "restorations";

(iii) by inserting in the same subsection next after the words "of licenses" the words "and refusals of applications";

Sec. 31.
(Appeal.)

(1) (i) by omitting subsection one of section thirty-one and by inserting in lieu thereof the following subsection:—

(1) Where the court—

(a) refuses any application made under section twenty-three, section 23A, or section twenty-four or makes an order under section twenty-nine of this Act; or

(b) grants an application under section twenty-three, section 23A, or section twenty-four of this Act to the granting of which the officer in charge of police or the council has objected; or

(c) dismisses a complaint made under section twenty-nine of this Act;

the person making the application, or the licensee, as the case may be, where paragraph (a) of this subsection applies, or the officer in charge of police or the council where paragraph (b) of this subsection applies, or the complainant where paragraph (c) of this subsection applies, may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application, making

making such order, granting such applica- No. 18, 1946.
tion, or dismissing such complaint is
situated.

- (ii) by omitting from subsection four of the same section the word "council" where lastly occurring and by inserting in lieu thereof the word "registrar";
- (iii) by inserting at the end of the same section the following new subsection:—

(5) Any appeal under this section in any case to which paragraph (b) or paragraph (c) of subsection one of this section applies shall not be made unless the Minister approves.

- (m) (i) by omitting subsection two of section thirty- Sec. 34.
four; (Registered
office and
address.)
- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

(3) The address specified in the application as the address at which the applicant proposes to carry on business or in the case of a corporation carrying on business at more than one place the address specified in the application as its principal place of business shall, upon the grant, renewal, restoration or variation of the license, be deemed for the purposes of this Act to be the registered office of the licensee:

Provided that where—

- (a) a corporation takes out a license in respect of an employee the place of business of the corporation of which such employee is in charge;
or
- (b) an auctioneer's license is taken out by a corporation in respect of an employee not in charge of a place of business of such corporation the registered office of the corporation,
shall

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

shall be deemed for the purposes of this Act to be the registered office of such employee.

Sec. 35.
(Publication
of name
of licensee.)

- (n) (i) by inserting at the end of subsection one of section thirty-five the words “and conforming to the type and size of type prescribed”;
- (ii) by omitting from paragraph (b) of subsection three of the same section the words “after the expiration of three months after the commencement of this Act”;
- (iii) by omitting from the same paragraph the words “granted under the Auctioneers’ Licensing Act, 1898-1934, or under this Act”;

Sec. 36.
(Payment
into bank.)

- (o) by inserting in subsection one of section thirty-six after the word “separate” the words “and retained therein”;

Sec. 38.
(Records to
be kept.)

- (p) by omitting subsections one and two of section thirty-eight and by inserting in lieu thereof the following subsections:—

(1) Every licensee shall in a legible manner make a written record containing full particulars of all transactions by or with him as licensee and shall keep such written record at his registered office.

(2) The written record shall, for a period of three years after the date on which it was made, be preserved—

- (a) where such licensee continues to hold a license under this Act or where upon ceasing to hold a license under this Act or ceasing to have as his registered office the place where such written record was kept, such licensee does not authorise some other person to have the possession, custody or control of such written record—by the licensee; or

(b)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

41

- (b) where any person obtains the possession, custody or control of such written record either by transfer of the business of such licensee or otherwise—by such person. **No. 18, 1946.**
- (q) by inserting next after section thirty-eight the following new sections:— **New ss. 38A and 38B.**

38A. (1) Every licensee shall within seven days after service of a requisition in that behalf in the prescribed form furnish to the council in the manner prescribed a statement in writing setting forth full particulars as to— **Furnishing of particulars of trust account or transactions.**

- (a) the name of the trust account on which such licensee operates in accordance with the provisions of section thirty-six of this Act, the name of the bank on which such account is current, the balance of the moneys standing to the credit of such account as at a date specified in such requisition, and particulars of all cheques drawn on such account as at such date and not presented and duly paid;
- (b) any moneys paid by any person to such licensee or received by such licensee for or on behalf of any person in connection with his business as a licensee, and if not still held by such licensee the manner and time of disbursement thereof; or
- (c) any transaction by or with such licensee as a licensee.

(2) No licensee shall be required to furnish to the council any particulars with regard to any of the matters mentioned in subsection one of this section which relate to any transaction by or with such licensee more than three years before the service of such requisition.

(3)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

(3) A licensee shall within fourteen days of demand in writing in the manner prescribed made by a person directly concerned in any transaction by or with such licensee in connection with his business as a licensee, render in the manner prescribed to the person making such demand an itemised account of such transaction.

(4) No person shall under subsection three of this section be entitled to demand an itemised account of any transaction which took place more than six months before the making of such demand.

(5) Any licensee who neglects or fails without reasonable cause, proof whereof shall lie on such licensee, to furnish a statement in writing in accordance with subsection one of this section or an itemised account as required by subsection three of this section or knowingly furnishes false or incorrect information in any such statement or account shall be guilty of an offence against this Act.

Inspection
of records.

38B. (1) All books of account or other written records relating to the trust account on which any licensee operates in accordance with the provisions of section thirty-six of this Act, or kept as prescribed, and the written record required to be made and kept in accordance with the provisions of section thirty-eight of this Act, shall at all reasonable times be open to inspection by the registrar or other officer of the council duly authorised in writing in that behalf by the council either generally or in any particular case.

(2) The registrar or other officer of the council duly authorised in writing in that behalf and in the case of such authorised officer upon production of his written authority, may require any licensee or in the absence of such licensee any servant or agent of such licensee for the time being having the apparent control or charge

charge of the office or place of business of such No. 18, 1946.
licensee—

- (a) to produce for inspection —
- (i) all books, papers, accounts or other documents relating to the trust account of such licensee; or
 - (ii) all written records made and kept by the licensee in accordance with the provisions of section thirty-eight of this Act; or
 - (iii) all contracts, agreements or other documents relating to any transaction by or with such licensee in connection with his business as a licensee, in the possession, custody or control of such licensee;
- (b) to furnish all authorities and orders to bankers as may be reasonably required of him.

(3) The registrar or officer authorised as aforesaid may make notes, copies or extracts of or from any such books, papers, accounts, written records, contracts, agreements or other documents referred to in subsection two of this section.

(4) The registrar or officer authorised as aforesaid shall make a report to the council as to the result of any inspection made under this section.

(5) The provisions of subsections one, two, three and four of this section shall apply, mutatis mutandis, to and in respect of any written record preserved in accordance with the provisions of subsection two of section thirty-eight of this Act by a person who has ceased to hold a license under this Act or by any person (other than the licensee who made such written record) who has the possession, custody or control of such written record as required by that subsection.

(6)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

(6) Any person who—

- (a) wilfully delays or obstructs the registrar or officer authorised as aforesaid in the exercise of his powers, authorities, duties and functions under this section; or
- (b) on demand refuses or fails to produce any books, papers, accounts, written records, contracts, agreements or other documents required for inspection under this section in his possession, custody, or control; or
- (c) on demand refuses or fails to furnish any authorities and orders as may reasonably be required of him under this section,

shall be guilty of an offence against this Act.

**New sec.
42A.**

- (r) by inserting next after section forty-two the following new section:—

**Review of
commis-
sions, fees,
etc.**

42A. (1) No action or suit shall be commenced by any licensee for the recovery of—

- (a) any remuneration by way of commission, fee, gain or reward for services done or performed by such licensee in his capacity as such; or
- (b) any sum as reimbursement for expenses or charges incurred in connection with services done or performed by such licensee in his capacity as such;

until the expiration of two months after a statement of claim in writing setting out the amount claimed and containing details of the services done or performed by such licensee in respect of which such commission, fee, gain, reward, expenses or charges are claimed has been served personally or by post on the person to be charged with the same.

(2) Notwithstanding anything contained in subsection one of this section proceedings may be taken under the Arrest on Mesne Process Act, 1902, at any time notwithstanding that the

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

45

the statement of claim may not have been served No. 18, 1946.
or that the period of two months has not
elapsed.

(3) Where any sum of money has been paid to or is or has been retained by a licensee out of any moneys received by or paid to such licensee in respect of any transaction by or with him as a licensee such moneys being so paid or so retained as remuneration by way of commission, fee, gain or reward for services done or performed in connection with such transaction or as reimbursement for expenses or charges incurred in connection with such transaction, the person paying such moneys or the person who would be entitled to the moneys so retained by such licensee had such moneys not been so retained, may, if an itemised account of such transaction has not been received by such person, require such licensee to furnish him with an itemised account of such transaction under and in accordance with section 38A of this Act.

(4) The person served with a statement of claim in accordance with subsection one of this section or the person receiving or obtaining an itemised account as provided in subsection three of this section may within two months after service of such statement of claim or receipt or obtaining of such itemised account apply in manner prescribed to the council to review such statement of claim or itemised account.

(5) Where application is made pursuant to subsection four of this section to the council to review a statement of claim or itemised account the council shall proceed to review the same, and notwithstanding the terms or conditions of any agreement or contract entered into by any such licensee or person, may certify what, upon such review, is found to be a reasonable remuneration by way of commission, fee, gain, or reward for the services done or performed by such

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.****No. 18, 1946.**

such licensee in connection with the transaction or reimbursement for expenses or charges incurred in connection with the transaction, to which such statement of claim or itemised account relates.

(6) The council may require such evidence to be furnished or require the production of such documents as it thinks necessary or desirable for the purpose of such review and may fix a time within which such evidence shall be furnished or such documents produced.

(7) The licensee or the person making the application pursuant to subsection four of this section shall be entitled to inspect, and on payment of the prescribed fee, obtain a copy of or make an extract from any evidence furnished or document produced to the council pursuant to subsection six of this section.

(8) If any such licensee or person neglects or fails to furnish any evidence or produce any document required to be furnished or produced within the time so fixed by the council the council may proceed to review the statement of claim or itemised account without such evidence or document.

(9) If any licensee neglects or fails to furnish any such evidence, or without reasonable cause, proof whereof shall lie on such licensee, neglects or fails to produce any document, as required by this section, such licensee shall be guilty of an offence against this Act.

(10) In the review of such statement of claim or itemised account the council may have regard to the following matters—

- (a) the evidence furnished or documents produced to the council pursuant to subsection six of this section;
- (b) custom and usage amongst licensees and the rate of commission or amount of fee, gain or reward, usually paid to or claimed by

by licensees in respect of transactions of No. 18, 1946.
the class to which the transaction, the
subject of such review, belongs;

- (c) amounts claimed to have been expended by such licensee in respect of advertising, inspecting, or transport or other expenses claimed to have been incurred by such licensee in connection with the services done or performed by him; or
- (d) any other matter which to the council appears relevant.

(11) Where an application for review has been made pursuant to subsection four of this section no action or suit for the recovery of any remuneration or reimbursement as aforesaid to which such review relates shall be commenced until a determination in respect of such application has been made by the council and notwithstanding the terms or conditions of any agreement or contract entered into by the parties to the transaction subject to the review no such action or suit shall be brought for the recovery of any sum of money as remuneration or reimbursement as aforesaid in respect of such transaction in excess of that certified by the council on such review to be reasonable.

(12) Upon the issue of a certificate by the council as prescribed, the person who made application under subsection four of this section may, in any case where any sum of money paid to or retained by a licensee as or for remuneration or reimbursement as aforesaid in respect of the transaction referred to in such certificate is in excess of the amount certified by the council on such review to be reasonable, within one month of the receipt of such certificate cause such certificate to be served on the licensee together with a demand in writing for the payment, at an address to be specified therein, of such excess amount.

(13)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

(13) If the licensee fails, within fourteen days after the service of such certificate and such demand in writing, to pay such excess amount, the person who made application under subsection four of this section may notwithstanding the terms or conditions of any agreement or contract entered into in respect of the transaction referred to in such certificate bring proceedings in any court of competent jurisdiction for the recovery of such excess amount as a debt accruing due to him by such licensee as at the date of the issue of such certificate.

Subst.
sec. 43.

(s) by omitting section forty-three and by inserting in lieu thereof the following section:—

Publication
of name
and place
of business
in adver-
tisements.

43. Any licensee who publishes (whether in a newspaper or otherwise) any advertisement relating to or in connection with his business without specifying therein the following particulars—

- (a) where such licensee is an individual carrying on business in his own name, or a name other than his own name, and is not a member of a partnership, his name and the address of his place of business;
- (b) where such licensee carries on business as a member of a partnership, then either his name or the name of the partnership of which he is a member, or the name under which the partnership is registered or deemed to be registered under any Act for the time being in force relating to the registration of business names, and the address of his or its place of business; or
- (c) where such licensee is a corporation or employee of a corporation, the name of the corporation and the address of its place of business;

shall be guilty of an offence against this Act.

Where a licensee carries on business at more than one place of business any such advertisement may specify the address of any one of such places. (t)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

49

(t) by omitting section forty-nine and by inserting in lieu thereof the following section:—

No. 18, 1946.

Subst.
Sec. 49.

Bidding by
seller or
auctioneer
or persons
on their
behalf.

49. (1) A sale by auction may be notified in the conditions of sale to be subject to the right by the seller or by any person on behalf of the seller or auctioneer to make a bid or a specified number of bids.

(2) It shall not be lawful—

(a) for the seller or any person on behalf of the seller or auctioneer—

(i) to bid at a sale by auction unless the right to bid has been notified in the conditions of sale in accordance with subsection one of this section;

(ii) to make more than one bid or more than the number of bids, as the case may be, notified in the conditions of sale as aforesaid;

(b) for the auctioneer knowingly to take from the seller or any person on behalf of the seller or auctioneer—

(i) any bid unless the right to bid has been notified in the conditions of sale in accordance with subsection one of this section;

(ii) more than one bid or more than the number of bids, as the case may be, notified in the conditions of sale as aforesaid.

(3) Whosoever contravenes the provisions of this section shall be guilty of an offence against this Act.

5. The Principal Act is further amended—

Amendment
of Part IV
of Act No.
28, 1941.

(a) by omitting subsection three of section fifty-four;

Sec. 54.

(Real estate
dealer to
have regis-
tered place
of business.)

(b)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

Sec. 55.

(Record to
be kept.)

- (b) (i) by inserting in subsection three of section fifty-five next after the word "by" where firstly occurring the words "the registrar or other officer of the council authorised in writing by the council either generally or in a particular case or;"
- (ii) by omitting from the same subsection the word "officer" and by inserting in lieu thereof the words "registrar, officer or member of the police force";

Sec. 57.

(Pro-
cedure.)

- (c) (i) by inserting in subsection one of section fifty-seven next after the word "registration" the words "or renewal of registration";
- (ii) (a) by inserting in subsection three of the same section next after the word "police" where thirdly occurring the word "shall";
- (b) by omitting from the same subsection the words "shall severally" and by inserting in lieu thereof the word "may";
- (iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—
- (4) If the officer in charge of police or the council objects to the grant of the application a statement setting out the nature of the objection proposed to be made shall be lodged with the clerk of the court. Any such statement may be included in any report furnished pursuant to subsection three of this section.
- (iv) by omitting subsection five of the same section;
- (v) by inserting in paragraph (e) of subsection seven of the same section next after the word "force" the words "or the registrar";
- (vi) by omitting from subsection eight of the same section the words "of bad or doubtful character" and by inserting in lieu thereof
the

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

51

the words “not of good fame and character
nor otherwise a fit and proper person to
hold a certificate of registration”;

No. 18, 1946.

- (d) by omitting subsection one of section fifty-eight
and by inserting in lieu thereof the following
subsection:—

Sec. 58.

(Register to
be kept by
registrar.)

(1) The clerk of petty sessions shall, within
seven days after the issue, renewal or cancella-
tion of a certificate of registration as a real
estate salesman or after the refusal of an appli-
cation under section fifty-seven of this Act,
notify the registrar of such issue, renewal,
cancellation or refusal.

- (e) by omitting subsection two of section fifty-nine;

Sec. 59.

(Registered
address.)

- (f) by omitting from subsection one of section sixty
the word “council” and by inserting in lieu
thereof the word “registrar”;

Sec. 60.

(Cancellat-
ion of
certificate of
registration.)

- (g) (i) by omitting subsection one of section sixty-
one and by inserting in lieu thereof the
following subsection:—

Sec. 61.

(Appeal.)

(1) Where the court—

- (a) refuses any application under sec-
tion fifty-seven or makes an order
under section sixty of this Act; or
(b) grants an application under section
fifty-seven of this Act to the grant-
ing of which the officer in charge
of police or the council has
objected; or
(c) dismisses a complaint made under
section sixty of this Act;

the person making the application or the
real estate salesman, as the case may be,
where paragraph (a) of this subsection
applies, or the officer in charge of police or
the council where paragraph (b) of this
subsection applies, or the complainant where
paragraph (c) of this subsection applies,
may

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

may appeal in accordance with the rules of court of the District Court to the District Court exercising jurisdiction in the district within which the court refusing such application, granting such application, making such order, or dismissing such complaint is situated;

- (ii) by omitting from subsection four of the same section the word "council" where lastly occurring and by inserting in lieu thereof the word "registrar";
- (iii) by inserting at the end of the same section the following new subsection:—

(5) Any appeal under this section in any case to which paragraph (b) or paragraph (c) of subsection one of this section applies shall not be made unless the Minister approves.

**Amendment
of Part
VI of Act
No. 28,
1941.
Sec. 71.
(Contribu-
tions to
fund.)**

6. The Principal Act is further amended—

- (a) (i) by inserting at the end of subsection one of section seventy-one the following words:—
"Provided that where a corporation holds more than one auctioneer's license in respect of an employee one contribution only shall be payable under this section in respect of all auctioneer's licenses held by such corporation in respect of such employee;"
 - (ii) by inserting in subsection three of the same section next after the word "contributions" where firstly occurring the words "an amount of not less than nine pounds";
 - (iii) by inserting in the same subsection next after the word "behalf" where firstly occurring the words "an amount of not less than six pounds";
 - (iv) by omitting from the same subsection the words "any license" and by inserting in lieu thereof the words "each class of license";
- (v)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

53

- (v) by omitting from the same subsection the word "nine" and by inserting in lieu thereof the word "three"; No. 18, 1946.
- (vi) by inserting in the same subsection next after the words "such person" where lastly occurring the words "or corporation";
- (vii) by omitting from the same subsection the words "and such corporation shall not be required to pay any further amount by way of contributions under this section in respect of the license held on its own behalf or of the license held in respect of such employee";
- (b) (i) by omitting subsection three of section seventy-two and by inserting in lieu thereof the following subsection:— Sec. 72.
(Levies.)
- (3) If a licensee does not after the prescribed notice pay any levy the registrar shall report to the council that such licensee has not paid the levy, and shall upon direction of the council make due record of 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 license under this Act.
- (ii) by inserting at the end of subsection four of the same section the following words:—
- "Provided that where a corporation has taken out more than one auctioneer's license in respect of an employee such corporation shall be liable to pay the levy imposed under this section in respect only of one such auctioneer's license taken out in respect of such employee."
- (c) (i) by inserting in subsection one of section seventy-four next after the word "licensee" the words— Sec. 74.
(Applica-
tion of
fund.)
- "or by a partner of a licensee or an employee of a licensee in the course of his employment with such licensee or an agent

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 18, 1946.

agent of such licensee or other person having the apparent control or charge for the time being of the office or business of a licensee”;

(ii) by omitting from the same subsection the words “to him or to his employee in the course of his business” and by inserting in lieu thereof the words “to such licensee or to such partner, employee, agent or other person in the course of the business of such licensee”;

(iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—

(4) No person shall be entitled to claim against the fund in respect of any loss through such theft or fraudulent misapplication unless and until there shall have been a conviction of such licensee, partner, employee, agent or other person for such theft or fraudulent misapplication unless the Supreme Court or a judge thereof, or in any case where the amount of money or the value of the property the subject of the claim does not exceed one hundred pounds a court of petty sessions holden before a police or stipendiary magistrate, for reasons which to such court, judge, or magistrate shall be good and sufficient, shall have by an order certified that the person claiming to have suffered loss should be permitted to claim against the fund notwithstanding that such licensee, partner, employee, agent or other person has not been convicted in respect of such theft or fraudulent misapplication.

Sec. 75.
(Claim
against
the fund.)

(d) (i) by inserting in subsection four of section seventy-five after the word “licensee” the words “partner, employee, agent or other person”;

(ii)

- (ii) by inserting at the end of the same section No. 18, 1946.
the following new subsection:—

(6) In respect of any theft or fraudulent misapplication after the commencement of the Auctioneers, Stock and Station and Real Estate Agents (Amendment) Act, 1946, subsections three and four of this section shall be read as though the words “five hundred” were omitted therefrom and the words “two thousand” substituted therefor.

- (e) by omitting from section seventy-six the words Sec. 76.
“being an auctioneer, is or was residing, or (Advertisement relating to defaulting licensee and claims.)
being a stock and station agent or a real estate agent”;

- (f) (i) by omitting from subsection one of section eighty-three the words “the council may” Sec. 83.
and by inserting in lieu thereof the words (Examination of account.)
“the chairman or any two members of the council may”;

- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(2) Every appointment made under this section shall be in writing signed by the registrar and the chairman or the members of the council who made such appointment.

- (iii) by inserting in subsection three of the same section after the word “licensee” where sixthly occurring the words “or any written record made and kept by such licensee pursuant to section thirty-eight of this Act”;
- (iv) by inserting in subsection four of the same section next after the words “report to the council” the words “or in the like circumstance and to the like extent as a member of the council or any of its officers is permitted under subsection one of section 86A of this Act to publish information”;

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

No. 16, 1946.

(v) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—

(5) The provisions of this section shall apply mutatis mutandis to and in respect of any written record preserved in accordance with the provisions of subsection two of section thirty-eight of this Act by a person who has ceased to hold a license under this Act or by any person (other than the licensee who made such written record) who has the possession, custody or control of such written record as required by that subsection.

Amendment
of Part VII
of Act No.
28, 1941.

New secs.
86A and 86B.

Members
or officers
of council
not to
disclose in-
formation.

7. The Principal Act is further amended:—

(a) by inserting next after section eighty-six the following new sections:—

86A. (1) It shall not be lawful for any member of the council or any of its officers or employees to publish any information furnished to the council pursuant to the provisions of section 38A of this Act, or disclosed by an inspection made under the provisions of section 38B of this Act or section fifty-five of this Act, or in an accountant's report made pursuant to section eighty-three of this Act, except—

- (a) to the court before which any proceedings are pending or being taken in connection with any application made for the grant of a license to or the renewal, restoration, variation or cancellation of a license of the person to whom such information is relevant; or
- (b) to the court in which proceedings are being taken for a breach of this Act against the person to whom such information is relevant; or

(c)

**Auctioneers, Stock and Station and Real Estate
Agents (Amendment) Act.**

57

(c) to the court which or the judge or No. 18, 1946.
magistrate who may by order in accord-
ance with subsection four of section
seventy-four of this Act certify that any
person should be permitted to claim
against the Auctioneers, Stock and
Station and Real Estate Agents
Fidelity Guarantee Fund.

(2) The Registrar may with the approval
of the council communicate to any person
directly concerned in any transaction with a
licensee in connection with his business as a
licensee any information furnished to the
council in accordance with the provisions of this
Act, in so far as it relates to any such transac-
tion and directly concerns any such person.

(3) Any person who commits a breach
of any provision of this section shall, in addition
to any other proceedings, penalty or punishment
to which he may be liable, be guilty of an offence
against this Act.

86b. All writs, summonses, notices or other Service of
writs, etc.
documents required or authorised to be served
on or given to a licensee, real estate dealer or
real estate salesman, shall be deemed to be duly
served or given if left at his registered office,
registered place of business or registered
address, as the case may be, with some person
apparently in the employ of such licensee, real
estate dealer or real estate salesman, or
apparently in charge of the office or business
of such licensee, real estate dealer or real
estate salesman, or if sent by registered
post, postage prepaid, addressed to such
licensee, real estate dealer or real estate sales-
man at his registered office registered place of
business or registered address as the case may
be.

(b)

Commonwealth and State Housing Agreement Act.

No. 18, 1938.

New sec.

87A.

Time for
laying
information.

- (b) by inserting next after section eighty-seven the following new section:—

87A. An information for an offence against this Act may be laid at any time within twelve months from the time when the matter of the information arose.

Subst.
sec. 89.

- (c) by omitting section eighty-nine and by inserting in lieu thereof the following new section:—

89. A document purporting to be a certificate under the hand of the registrar and stating that any person is or is not or was or was not on any date or during any period mentioned therein the holder of a license of the class specified therein or the holder of a certificate of registration as a real estate salesman shall in all courts and before all persons and bodies authorised by law to receive evidence be prima facie evidence of the facts alleged.

Document
under hand
of registrar
to be prima
facie
evidence.cf. Act
No. 10,
1934, s.
19.Sec. 91.
(Corpora-
tion.)

- (d) by omitting subsection one of section ninety-one;

Sec. 92.
(Regula-
tions.)

- (e) by inserting at the end of subsection two of section ninety-two the following new paragraph:—

- (f) prescribe the books, accounts and records to be kept by a licensee and the form and mode of keeping the same.

