

South Australia

Land Agents (Registration of Property Managers and Other Matters) Amendment Act 2017

An Act to amend the *Land Agents Act 1994*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Land Agents (Registration of Property Managers and Other Matters) Amendment Act 2017*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Land Agents Act 1994*

4—Amendment of long title

Long title—after "sales representatives" insert:
and property managers

5—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *mortgage financing* insert:

property manager means a person who, for or on behalf of an agent—

- (a) grants leases, tenancy agreements or licence agreements in relation to land (whether or not that land is to be used for residential purposes or for the purposes of a business); or
- (b) induces or attempts to induce, or makes representations or negotiates with a view to inducing, a person to enter into such leases or agreements; or
- (c) ensures compliance with the terms and conditions of such leases or agreements; or
- (d) performs a function of a kind prescribed by regulation for the purposes of this paragraph,

whether or not the agent is the owner of the land, but does not include a person who performs a function of a kind excluded by regulation from the ambit of this definition;

- (2) Section 3—after the definition of *registered agent* insert:

registered property manager includes—

- (a) a person registered as a property manager; or

- (b) a person registered as a sales representative and additionally registered as a property manager;
- (3) Section 3, definition of *sales representative*—delete "only because—" and substitute:
who performs a function of a kind excluded by regulation from the ambit of this definition;
- (4) Section 3, definition of *sales representative*, (d) and (e)—delete paragraphs (d) and (e)

6—Amendment of section 6A—Sales representatives to be registered

Section 6A(1), penalty provision—delete "\$5 000" and substitute:

\$20 000

7—Insertion of section 6AB

After section 6A insert:

6AB—Property managers to be registered

- (1) A person must not act as a property manager for an agent unless the person—
 - (a) is registered as an agent under this Act; or
 - (b) is registered as a sales representative under this Act, is additionally registered as a property manager and is acting as an employee engaged by the agent under a contract of service; or
 - (c) is registered as a property manager under this Act and is acting as an employee engaged by the agent under a contract of service.

Maximum penalty: \$20 000.

- (2) For the purposes of subsection (1), a person acts as a property manager for an agent if the person—
 - (a) is or remains in the service of the agent as a property manager; or
 - (b) holds himself or herself out as a property manager for the agent; or
 - (c) performs any of the functions of a property manager on behalf of the agent.
- (3) An agent must not engage another person to perform any of the functions of a property manager in the course of the agent's business unless the other person—
 - (a) is registered as an agent under this Act; or
 - (b) is registered as a sales representative under this Act, is additionally registered as a property manager and is engaged by the agent as an employee under a contract of service; or

- (c) is registered as a property manager under this Act and is engaged by the agent as an employee under a contract of service.

Maximum penalty: \$20 000.

8—Amendment of section 8B—Entitlement to be registered as sales representative subject to conditions relating to training and supervision

Section 8B(3), penalty provision—delete "\$5 000" and substitute:

\$10 000

9—Insertion of sections 8BA and 8BB

After section 8B insert:

8BA—Entitlement to be registered as property manager

A natural person is entitled to be registered as a property manager if—

- (a) the person is registered as an agent under this Act; or
- (b) the person—
 - (i) is registered as a sales representative under this Act; and
 - (ii) has—
 - (A) the qualifications required by regulation; or
 - (B) subject to the regulations, the qualifications that the Commissioner considers appropriate; or
- (c) the person—
 - (i) has—
 - (A) the qualifications required by regulation; or
 - (B) subject to the regulations, the qualifications that the Commissioner considers appropriate; and
 - (ii) has not—
 - (A) been convicted of an indictable offence of dishonesty; or
 - (B) during the period of 10 years preceding the application for registration, been convicted of a summary offence of dishonesty; and
 - (iii) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and

- (iv) is a fit and proper person to be registered as a property manager.

8BB—Entitlement to be registered as property manager subject to conditions relating to training and supervision

- (1) Despite section 8BA, a natural person who does not have the qualifications required by that section, but would otherwise be entitled to be registered as a property manager, is entitled to be registered as a property manager if—
- (a) the registration is made subject to conditions considered appropriate by the Commissioner relating to training to be undertaken by the person for the purpose of qualifying for unconditional registration as a property manager; and
 - (b) the Commissioner does not consider that such registration should be refused because of previous failure by the applicant to comply with a condition referred to in paragraph (a).
- (2) The Commissioner may, on application by the person and payment of the prescribed fee, or on the Commissioner's own initiative, by written notice, vary or revoke conditions of a person's registration under this section.
- (3) An agent who employs as a property manager a person registered under this section must ensure that the person is properly supervised in that employment.
Maximum penalty: \$10 000.
- (4) Without limiting the effect of subsection (3), the regulations may provide that a property manager will not be taken to be properly supervised for the purposes of that subsection unless certain practices specified in the regulations are followed.
- (5) The Commissioner may, by written notice, cancel the registration of a person registered under this section if the Commissioner is satisfied that the person has, without reasonable excuse, failed to comply with a condition of the registration.

10—Substitution of section 11B

Section 11B—delete the section and substitute:

11B—Registration card to be carried or displayed

A natural person who is registered under this Act must, at all times when performing functions as an agent, sales representative or property manager, carry the registration card issued to the person by the Commissioner and produce it forthwith if requested to do so by—

- (a) an authorised officer; or

- (b) a person with whom the person has dealings as an agent, sales representative or property manager.

Maximum penalty: \$1 250.

Expiation fee: \$160.

11—Insertion of Part 2AA

After Part 2 insert:

Part 2AA—Suspension or variation of registration in urgent circumstances

11BA—Commissioner may suspend or impose conditions on registration in urgent circumstances

- (1) If the Commissioner is of the opinion that—
 - (a) there are reasonable grounds to believe that a registered agent, registered sales representative, registered auctioneer or registered property manager has engaged or is engaging in conduct that constitutes grounds for disciplinary action under Part 4; and
 - (b) it is likely that the agent, sales representative, auctioneer or property manager will continue to engage in that conduct; and
 - (c) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the conduct unless action is taken under this section,the Commissioner may, by notice served on the agent, sales representative, auctioneer or property manager—
 - (d) suspend the registration, with immediate effect—
 - (i) for a specified period (not exceeding 6 months); or
 - (ii) until the completion (including withdrawal) of specified legal proceedings; or
 - (iii) until the fulfilment of other specified conditions; or
 - (e) impose specified conditions on the registration, with immediate effect.
- (2) If the Commissioner is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a registration under this section have so altered that the imposition of the conditions is no longer necessary, the Commissioner must, by further notice specifying the date of termination, terminate the imposition of the conditions.

- (3) If, during the suspension of a registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner must, by further notice specifying the date of termination, terminate the suspension without delay and restore the registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- (4) A person whose registration is suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to suspend the registration or to impose the conditions.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month after the making of the decision appealed against.
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the appellant receives the written statement of those reasons.
- (8) The Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

12—Amendment of section 11C—Commissioner may cancel, suspend or impose conditions on registration

Section 11C(1)—delete "or registered auctioneer" and substitute:

, registered property manager or registered auctioneer

13—Amendment of section 12—Interpretation of Part 3

Section 12(1), definition of *trust account*—delete the definition and substitute:

trust account, in relation to an agent, means an account in which trust money is required to be deposited by the agent;

14—Amendment of section 13—Receiving and dealing with trust money

Section 13(1) to (3)—delete subsections (1) to (3) (inclusive) and substitute:

- (1) An agent, sales representative, property manager or any other person who receives trust money in relation to an agent must, as soon as practicable after receiving the trust money, deposit the money into an account (in the name of the agent) approved by the Commissioner at an ADI.

Maximum penalty: \$20 000.

- (2) An agent, sales representative, property manager or any other person who is entitled to deposit trust money into, withdraw trust money from, or deal with trust money in, an agent's trust account must not—
- (a) pay money other than trust money into the trust account; or
 - (b) withdraw, or permit another person to withdraw, money from the trust account except as permitted by, and in accordance with, this Part.

Maximum penalty: \$20 000.

- (3) A person—
- (a) who receives trust money under subsection (1); or
 - (b) who is entitled to withdraw or deal with trust money under subsection (2),

must not cause a defalcation, misappropriation or misapplication of the trust money.

Maximum penalty:

- (a) in the case of a natural person—\$100 000 or 5 years imprisonment or both;
- (b) in the case of a body corporate—\$250 000.

15—Amendment of section 14—Withdrawal of money from trust account

- (1) Section 14—delete "An agent may withdraw money from a trust account" and substitute:

Subject to this Part, money may only be withdrawn from a trust account for the following purposes:

- (2) Section 14—delete "; or" wherever occurring and substitute in each case:

;

16—Amendment of section 29—Indemnity fund

- (1) Section 29(4)(a)—delete "or sales representatives" second occurring and substitute:

, sales representatives or property managers

- (2) Section 29(4)(ab)—delete "or sales representatives" and substitute:

, sales representatives or property managers

- (3) Section 29(4)(f)(i)—after "sales representatives" insert:

, property managers

- (4) Section 29(4)(f)(ii)—delete subparagraph (ii) and substitute:

- (ii) reviewing the operation of this Act; or
- (iii) reviewing the operation of the *Land and Business (Sale and Conveyancing) Act 1994* insofar as it relates to agents or sales representatives;

17—Amendment of section 42—Interpretation of Part 4

Section 42—after the definition of *director* insert:

property manager has the meaning assigned to the term by section 3 and includes—

- (a) a former property manager; and
- (b) a registered property manager, whether or not in employment as such, and a former registered property manager;

18—Amendment of section 43—Cause for disciplinary action against agents, sales representatives or property managers

- (1) Section 43(1)—delete "or sales representative" and substitute:
 , sales representative or property manager
- (2) Section 43(1)(e)—delete "or sales representative" and substitute:
 , sales representative or property manager

19—Amendment of section 47—Disciplinary action

Section 47(5)—delete subsection (5) and substitute:

- (5) In this section—
 prescribed offence means—
 - (a) an offence against section 13(3); or
 - (b) an offence against section 24A(2), section 24G(1), (2) or (3) or section 36 of the *Land and Business (Sale and Conveyancing) Act 1994*.

20—Amendment of section 49—Delegations

Section 49(1)(c)—delete "or sales representatives" and substitute:
 , sales representatives or property managers

21—Amendment of section 50—Agreement with professional organisation

Section 50(1)—delete "or sales representatives" and substitute:
 , sales representatives or property managers

22—Amendment of section 61—Prosecutions

Section 61(1)(b)—delete paragraph (b) and substitute:

- (b) in any other case—within 5 years of the date on which the offence is alleged to have been committed, whether the offence is alleged to have been committed before or after the commencement of this paragraph.

23—Amendment of section 62—Evidence

Section 62(a)—delete "or auctioneer" and substitute:
 , property manager or auctioneer

24—Amendment of section 65—Regulations

Section 65—after subsection (5) insert:

- (6) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the *Land Agents (Registration of Property Managers and Other Matters) Amendment Act 2017*.
- (7) A provision of a regulation made under subsection (6) may, if the regulation so provides, take effect from the commencement of this subsection or from a later day.
- (8) To the extent to which a provision takes effect under subsection (7) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.