

South Australia

## **Land Agents Variation Regulations 2008**

under the *Land Agents Act 1994*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Land Agents Variation Regulations 2008*.

#### **2—Commencement**

These regulations come into operation on the day on which the *Statutes Amendment (Real Estate Industry Reform) Act 2007* comes into operation.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

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## **Part 2—Variation of *Land Agents Regulations 1995***

### **4—Variation of regulation 4—Interpretation**

Regulation 4(2)—delete subregulation (2)

### **5—Substitution of regulation 5**

Regulation 5—delete the regulation and substitute:

#### **5—Entitlement to be registered as sales representative subject to conditions relating to training and supervision**

For the purposes of section 8B(4) of the Act, a sales representative will not be taken to be properly supervised unless the supervision is provided by a person who is a registered agent or registered sales representative (other than a sales representative registered under section 8B of the Act) and has carried on or managed the business of an agent, or been a sales representative (other than a sales representative registered under section 8B of the Act) for an agent, for at least 2 years or a total of at least 2 years.

### **6—Variation of regulation 6—Annual fee and return**

- (1) Regulation 6(1)(a)—delete "registered agent" wherever occurring and substitute in each case:  
registered person
- (2) Regulation 6(1)(a)(i)—delete "agent" and substitute:  
person
- (3) Regulation 6(1)(b)—delete "agent" wherever occurring and substitute in each case:  
person
- (4) Regulation 6(1)(b)(ii)—delete "agent's" and substitute:  
person's

### **7—Variation of regulation 7—Notification of change in circumstances**

- (1) Regulation 7—after subregulation (1) insert:
  - (1a) If there is a change in the residential address of a registered sales representative, the sales representative must, within 14 days after that change, give written notice to the Commissioner of the new address.  
Maximum penalty: \$2 500.  
Expiation fee: \$160.

- (2) Regulation 7—after subregulation (2) insert:
- (2a) A registered sales representative must, within 14 days after ceasing to be or becoming a sales representative for an agent, give written notice to the Commissioner of that fact and the name and business address of the agent.
- Maximum penalty: \$2 500.
- Expiation fee: \$160.

### **8—Variation of regulation 8—Return or replacement of certificate of registration and card**

- (1) Regulation 8(1)—delete "registration of a person as an agent" and substitute:  
a person's registration
- (2) Regulation 8(1)—after "certificate of registration" insert:  
and any registration card
- (3) Regulation 8(2)—delete "certificate of registration as an agent" and substitute:  
registration certificate or card
- (4) Regulation 8(2)—delete "return the certificate of registration" and substitute:  
return the certificate or card
- (5) Regulation 8(3)—delete "agent a certificate of registration" and substitute:  
person a registration certificate or card
- (6) Regulation 8(3)—delete "current certificate of registration" and substitute:  
current registration certificate or card
- (7) Regulation 8(3)(a) and (b)—delete "current certificate" wherever occurring and substitute in each case:  
current certificate or card
- (8) Regulation 8(4)—delete "agent a replacement certificate of registration" and substitute:  
person a replacement registration certificate or card
- (9) Regulation 8(4)—delete "the agent" and substitute:  
the person
- (10) Regulation 8(4)—delete "certificate of registration to" and substitute:  
registration certificate or card to

## **9—Insertion of regulation 8A**

After regulation 8 insert:

### **8A—Each of agent's places of business to be properly managed and supervised**

For the purposes of section 11 of the Act, a place of business of an agent will be properly managed and supervised by a natural person nominated to the Commissioner if—

- (a) the person is a registered sales representative; and
- (b) the person has been nominated in a form approved by the Commissioner; and
- (c) the Commissioner has approved the person as a person qualified to be nominated to manage and supervise a place of business of an agent.

## **10—Substitution of regulation 9**

Regulation 9—delete the regulation and substitute:

### **9—Regulations relating to proper management and supervision**

- (1) For the purposes of section 11A of the Act, a registered agent will not be taken to properly manage and supervise a business or place of business referred to in that section unless—
  - (a) the agent makes written procedures readily available to all employees who handle trust money instructing those employees in the proper handling of such money; and
  - (b) the agent, in respect of each place of business managed and supervised by a person other than a registered agent ensures that—
    - (i) a registered agent who is a natural person is responsible for managing the trust accounts; and
    - (ii) the person nominated to manage and supervise the place of business and all other persons employed at the place of business are instructed as to their obligations under the Act, these regulations and any other relevant laws; and
    - (iii) procedures are in place to enable the agent to ascertain whether the person nominated to manage and supervise the place of business is managing and supervising the place of business properly and with due care and diligence (including inspection by a registered agent who is a natural person, at least once per month, of the place of business and of previously uninspected prescribed business documents of the agent held at the place of business).

(2) In this regulation—

*prescribed business documents* of an agent means documents or copies of documents relating to the sale or purchase of land or a business in respect of which the agent has been authorised to act and includes—

- (a) sales agency agreements; and
- (b) auction records; and
- (c) trust account records.

### **9AA—Interpretation of Part 3**

For the purposes of paragraph (b) of the definition of *auditor* in section 12 of the Act, a person meets the prescribed requirements if the person—

- (a) holds a degree in commerce, accounting, business studies or a related field from an Australian university or from another university approved by the Commissioner; and
- (b) is a member of—
  - (i) The Institute of Chartered Accountants in Australia; or
  - (ii) the Australian Society of Certified Practising Accountants; and
- (c) meets the requirements of a body referred to in paragraph (b) to practise as a public accountant; and
- (d) has been continuously engaged for at least 3 years in practice as a public accountant in this State (whether or not as an employee of a public accountant).

### **11—Insertion of regulation 20A**

After regulation 20 insert:

#### **20A—Establishment and determination of claims**

- (1) For the purposes of section 32(2)(a) of the Act, written notice of the claim (citing a unique reference number by which the claim may be identified) must be given to the claimant and agent or former agent informing them of the Commissioner's receipt of the claim and including—
  - (a) in the case of a notice given to the agent or former agent—details of the claimant's name and any other contact details made available by the claimant for that purpose;
  - (b) in all cases, an explanation of—
    - (i) the parties' rights to make submissions as to the claim under section 32(2)(b) of the Act; and

- (ii) the parties' rights of appeal under section 35 of the Act against a determination of the claim by the Commissioner.
- (2) For the purposes of section 32(5) of the Act, the Commissioner must—
  - (a) within 6 months after a claim is made, provide the claimant with a report as to the progress of the claim; and
  - (b) provide the claimant with subsequent progress reports, each within 6 months after the previous such report, until such time as the claim is determined.

## **12—Insertion of regulation 21**

After regulation 20 insert:

### **21—Temporary exemption from registration requirements— sales representatives and auctioneers**

- (1) A person is exempt from the application of section 6A(1) of the Act if the person—
  - (a) —
    - (i) has the qualifications determined by the Commissioner for the purposes of this subregulation; or
    - (ii) is participating in an on-the-job training component of a course determined by the Commissioner for the purposes of this subregulation; and
  - (b) has not—
    - (i) been convicted of an indictable offence of dishonesty; or
    - (ii) during the period of 10 years preceding acting as a sales representative, been convicted of a summary offence of dishonesty; and
  - (c) 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.
- (2) An agent is exempt from the application of section 6A(3) of the Act if the person engaged by the agent is a sales representative who qualifies for an exemption under subregulation (1).
- (3) A person is exempt from the application of section 6B(1) of the Act if the person—
  - (a) is registered under the Act as an agent; or
  - (b) is a sales representative who qualifies for an exemption under subregulation (1).

- (4) An agent is exempt from the application of section 6B(2) of the Act if the person engaged by the agent—
- (a) is registered under the Act as an agent; or
  - (b) is a sales representative who qualifies for an exemption under subregulation (1).
- (5) This regulation will expire on 21 January 2009.

### **13—Substitution of Schedule 1**

Schedule 1—delete the Schedule and substitute:

#### **Schedule 1—Fees**

1	Application fee for registration (section 7 of Act)—	
	(a) as an agent	\$220.00
	(b) as an agent and auctioneer	\$220.00
	(c) as a sales representative	\$220.00
	(d) as a sales representative and auctioneer	\$220.00
	(e) as an auctioneer	\$92.00
2	Registration fee (payable on grant of registration under Part 2 of Act)—	
	(a) for an agent who is a natural person	\$270.00
	(b) for an agent that is a body corporate	\$405.00
	(c) for a sales representative	\$173.00
	If the period between the grant of the registration and the next date for payment of a fee under section 9 of the Act is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the additional fee by applying the proportion that the length of that period bears to 12 months.	
3	Application for variation or revocation of condition of registration (section 8B of Act)	\$92.00
4	Annual fee (section 9 of Act)—	
	(a) for an agent who is a natural person	\$270.00
	(b) for an agent that is a body corporate	\$405.00
	(c) for a sales representative	\$173.00
	If the period between a date for payment of a fee under section 9 of the Act and the next date for payment of the fee under that section (as nominated by the Commissioner) is less than or more than 12 months, a pro rata adjustment is to be made to the amount of the fee by applying the proportion that the length of that period bears to 12 months.	
5	Default penalty (section 9(3) of the Act)	\$134.00
6	Civil penalty for default (section 22(4) of the Act)	\$280.00
7	Fee for replacement of certificate of registration	\$20.70

## **14—Revocation of Schedule 2**

Schedule 2—delete the Schedule

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### **Made by the Governor**

with the advice and consent of the Executive Council  
on 3 July 2008

No 208 of 2008

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