

TASMANIA.

THE ESTATE AGENTS ACT, 1926.

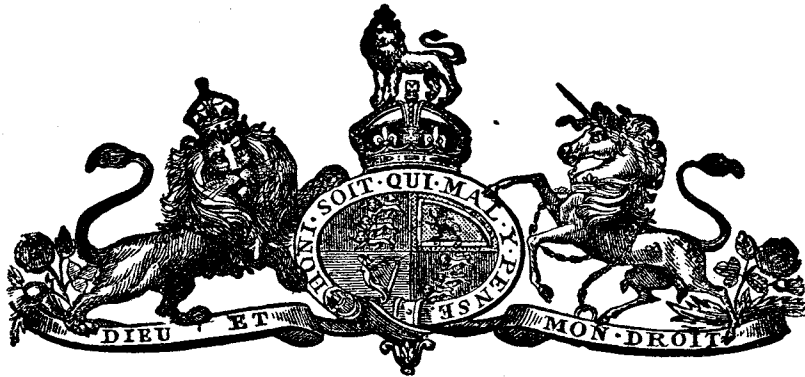
ANALYSIS.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Short title and commencement. 2. Interpretation. 3. Saving of certain officers, &c. 4. Exemptions from licence. 5. No person to act as a real estate agent without a licence.
Penalty. 6. Partnerships. 7. Maximum scales of commission. 8. Application for licence
Power to grant licence.
Term and effect of licence.
Fidelity bond may enure so as to apply to renewals of licence. 9. Renewals and transfers of licences.
Procedure on renewals and transfers.
Determination of police magistrate to be subject to review. 10. List of applications to be posted in and outside court house. 11. Objections to application. 12. Costs. 13. Duplicate licence. 14. Clerk of petty sessions to forward particulars of licences to Treasurer.
Duties of Treasurer. | <ol style="list-style-type: none"> Cancelled licences to be sent to Treasurer. Notice to be given of alteration of place of business. 15. Register of licences, &c.
Supplementary lists.
Published copies and lists to be read together.
Evidence. 16. Unlicensed estate agent not to recover fee. 17. Disqualification of estate agents in certain events.
Copy of order to be sent to Treasurer.
Notice of disqualification to be published. 18. Cancellation of licences.
Costs. 19. Civil remedies not affected by this Act. 20. Inspection of fidelity bond.
Power to sue on bond. 21. Fees. 22. Appropriation of fees. 23. Penalty for offences. 24. Procedure for offences. 25. Regulations. |
|---|--|

1s.]



T A S M A N I A .



1 9 2 6 .

ANNO SEPTIMO DECIMO

GEORGII V. REGIS.

No. 47.



AN ACT to provide for the Licensing of Estate Agents, and for other purposes. [21 December, 1926.]

A.D. 1926.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as “The Estate Agents Act, 1926,” and shall come into operation on a day to be proclaimed.

Short title and commencement.

2 In this Act, unless the context otherwise requires—

“Estate Agent” means any person (whether or not such person carries on any other business) who 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 to the public as ready to undertake any of the following functions, namely—

Interpretation. Cf. No. 3216 of 1922 (Vic.), s. 2.

- i. Selling, buying, exchanging, letting, or taking on lease, or otherwise dealing with or disposing of or collecting the rents of : or

Estate Agents.

A.D. 1926.

- ii. Negotiating for the sale, purchase, exchange, letting or taking on lease of, or for any other dealing with, or disposition of—

land of any tenure or buildings, or any estate or interest, in such land or buildings, or any business or the goodwill thereof, on behalf of any other person, or for, or in consideration of, any payment or other remuneration (whether monetary or otherwise):

“Licence” means a valid and unexpired licence granted under this Act:

4 Geo. V. No. 37.

“Licensed Auctioneer” means a person who is the owner of a licence under the Auction Act, 1913:

“Licensee” means the holder of a licence under this Act:

“Register” means the register required under this Act to be kept in the Treasury:

“The Clerk of Petty Sessions” means the clerk of the court of petty sessions nearest to the place where the estate agent carries on, or proposes to carry on, business:

“The Police Magistrate” means a police magistrate adjudicating in that part of Tasmania, where the estate agent carries on, or proposes to carry on, business.

Saving of certain officers, &c.
Cf. No. 3216 of 1922 (Vic), s. 2.

3 This Act shall not apply to or in respect of—

- i. Any responsible Minister of the Crown: or
- ii. Any Government department: or
- iii. Any public statutory authority specified by the Governor by proclamation: or
- iv. Any officer or employee of the Crown, or of any such Minister, department, or authority, in the exercise of his functions as such officer or employee: or
- v. Any executor, administrator, trustee, liquidator, assignee of a bankrupt or insolvent, receiver, or committee of a lunatic, in the exercise or performance of his powers or duties as such: or
- vi. Any practitioner, as defined in Section Two of the Legal Practitioners Act, 1896, in respect of whom an annual certificate under Section Twenty-six of that Act is in force: or
- vii. Any company, as defined in Section Eight of the Companies Act, 1920, which is authorised by Parliament to act as executor, administrator, and trustee of the wills and estates of deceased persons.

60 Vict. No. 43.

11 Geo.V. No. 66.

Exemptions from licence.
Cf. *ibid.*, s. 3 (2).

4 Nothing in this Act shall be construed as requiring—

- i. Any licensed auctioneer: or
- ii. Any person in the service of a licensed auctioneer, or of a licensed estate agent, for the purposes of such service—

to take out or hold a licence under this Act.

Estate Agents.

5—(1) Subject to this Act, from and after the expiration of three months after the commencement thereof, no person unless he is the holder of a licence, shall exercise or carry on, or advertise, notify, or state, that he exercises or carries on, or is willing to exercise or carry on the business of, or shall act as, an estate agent, or shall in any way hold himself out to the public as ready to undertake, for payment or other remuneration, any of the functions of an estate agent as defined in this Act.

A.D. 1926.

No person to act as a real estate agent without a licence Cf. *ibid.*, s. 4.

Penalty : Not less than Five Pounds, nor more than One hundred Pounds.

(2) In all proceedings against any person for a contravention of this section, it shall, in the absence of proof to the contrary, be presumed that the defendant is not the holder of a licence.

6 Where two or more persons carry on the business of estate agents in partnership it shall not be necessary for each of such persons to take out a separate licence, but one licence may be issued to such persons in their partnership name.

Partnerships.

7—(1) Except in pursuance of an agreement in writing signed by the party to be charged and attested, no person shall charge, demand, or receive from any owner, lessor, or vendor in respect of any sale, letting, or transaction, effected or carried out on behalf of such owner, lessor, or vendor, commission at a higher or greater amount than that prescribed in respect of the class of transaction in question in the scales of commission set forth in the schedule to this Act.

Maximum scales of commission.

Penalty : Twenty-five Pounds.

(2) Any person who has paid or been debited in account with any charge made in contravention of this section may recover from the person making such charge, in any court of competent jurisdiction the amount by which such charge exceeds the sum lawfully chargeable under this Act.

8—(1) Every person who desires to obtain a licence shall lodge with the clerk of petty sessions an application in the prescribed form.

Application for licence. Cf. *ibid.*, s. 6.

(2) Such application shall—

- i. State the place or places of business of the applicant :
- ii. Contain such other particulars as are prescribed :
- iii. Be delivered to the clerk of petty sessions at least fourteen days before the day mentioned in the application as the day on which the application will be made : and
- iv. Be accompanied by a fidelity bond to the Treasurer in the prescribed form in the sum of Two hundred and fifty Pounds from some insurance company or other surety.

(3) The police magistrate shall consider the application and any objection thereto, and may, if he is satisfied that the applicant is a fit person to be the holder of a licence, and if he also approves of the fidelity bond, grant and cause to be issued to the applicant a licence in the prescribed form.

Power to grant licence.

Estate Agents.

A.D. 1926:

Term and effect
of licence.Fidelity bond
may enure so as
to apply to
renewals of
licence.
Cf. No. 56 of
1921 (N.Z.), s. 8.Renewals and
transfers of
licences.Cf. No. 3216 of
1922 (Vic.), s. 7.Procedure on
renewals and
transfers.Determination of
police magistrate
to be subject to
review.
10 Geo. V. No. 55.

(4) Every licence—

- i. Shall take effect from a day to be therein stated :
- ii. Shall expire on the thirty-first day of December next following : and
- iii. Shall, subject to this Act, authorise the licensee to carry on the business of, and act as, an estate agent in all parts of Tasmania during the currency of the licence.

(5) A fidelity bond given under this Act may, if so provided therein, enure not only during the term of the licence in respect of which it is originally given, but during the term of any licence to the same person, issued in renewal of a licence under this Act as hereinafter provided.

(6) If a fidelity bond is so given as to enure in respect of any such renewal as aforesaid, it shall be lawful for the surety, by notice in writing addressed to the clerk of petty sessions with whom the same was lodged, at any time before the issue of a licence in renewal, to determine his liability under the bond in respect of any act or default that may be done or made after the thirty-first day of December next following the date of such notice, and in any such case the police magistrate shall not issue a licence in renewal until another approved bond has been lodged by the applicant.

9—(1) The police magistrate may, upon application in the prescribed form—

- i. By a licensee—renew the licence from year to year : or
- ii. By a licensee, or the legal personal representative of a deceased licensee, or the trustee or assignee of an insolvent or bankrupt licensee, or (in the case of a company being a licensee) the liquidator of the company, if in liquidation—grant a transfer of the licence to any person approved by the police magistrate in that behalf.

(2) Every such application for a renewal or transfer of a licence shall be lodged, and objections may be received, and the applications and objections (if any) shall be heard and determined, as far as may be, in all respects as if the application were an application for the grant of a licence, but on an application for the renewal of a licence it shall not be necessary to lodge a new fidelity bond if—

- i. The fidelity bond lodged at the time of the granting of the original licence enures in respect of such renewal : and
- ii. No notice to determine his liability thereunder has been given by the surety : and
- iii. A receipt for the premium (if any) payable in respect of the fidelity bond for the period covered by such renewal, is lodged with the application.

(3) A determination of the police magistrate under this section shall be subject to review as if it were an order of justices within the meaning of Section One hundred and forty-six of the Justices' Procedure Act, 1919, and the provisions of that section, excepting Sub-section (3) thereof, shall, so far as the same are applicable, apply to and in respect of such review.

Estate Agents.

10 Forthwith after the receipt by the clerk of petty sessions of any application for a licence or transfer of a licence, the clerk shall cause to be posted a notice thereof, in the prescribed form, in a conspicuous place inside and also outside the building in which the application is to be heard, and shall keep the same posted as aforesaid until the day of such hearing.

A. D. 1926.

—
List of applications to be posted in and outside court house.
Cf. No. 3216 of 1922 (Vic.), s. 9.

11—(1) Any person who objects to the grant, renewal, or transfer of a licence—

Objections to application.
Cf. *ibid.*, s. 10.

i. May lodge with the clerk of petty sessions a notice, in the prescribed form, of his objection, and of the grounds thereof: and

ii. In such case shall cause a copy of the said notice to be served personally, or by post, upon the applicant, at least seven days before the hearing of the application.

(2) If any objection of which due notice has not been lodged, and a copy thereof served upon the applicant as aforesaid, is brought before the police magistrate at the hearing, the police magistrate, if he thinks that the objection is one that should be considered, may adjourn the hearing of the application to such a day as he thinks fit.

12 On the hearing of an application for a licence, or the renewal or transfer of a licence, the police magistrate shall, if any objection to the application has been lodged or brought before him, have jurisdiction to award costs to be paid to or by the objector or the applicant in respect of such objection, and to determine the amount of such costs.

Costs.
Cf. *ibid.*, s. 8.

13 In any case where satisfactory proof is given of the loss or destruction of the original, the police magistrate may, on payment of the prescribed fee, order the issue of a duplicate licence.

Duplicate licence.
Cf. *ibid.*, s. 11.

14—(1) Every clerk of petty sessions shall, at the times and in the manner prescribed, forward to the Treasurer returns in the prescribed form, of grants, renewals, transfers, and cancellations of licences.

Clerk of petty sessions to forward particulars of licences to Treasurer.
Cf. *ibid.*, s. 12.

(2) The Treasurer shall from time to time—

Duties of Treasurer.

i. Cause to be removed from the register the name of every deceased person who was a licensee, and every person whose licence has expired, or has been transferred to any other person, or has been cancelled: and

ii. Cause to be inserted in the register the name of every person to whom a licence has been transferred.

(3) In every case where a licence is cancelled, it shall be transmitted forthwith by the clerk of petty sessions or other proper officer of the court to the Treasurer.

Cancelled licences to be sent to Treasurer.

(4) In the exercise and performance of his powers and functions under this section, the Treasurer shall act on such evidence as in each case appears to him sufficient.

Estate Agents.

A. D. 1926.

Notice to be given of alteration of place of business.

(5) The situation of the place of business of the licensee shall be stated in the licence, and, if any alteration is made in such situation, the licensee shall, within fourteen days thereafter, give written notice thereof to the clerk of petty sessions, and at the same time produce his licence to such clerk, who shall endorse thereon a memorandum of such alteration, and notify the Treasurer thereof, and the Treasurer shall cause an entry of such alteration to be made in the register.

Register of licences, &c.
Cf. *ibid.*, s. 13.

15 A register, in the prescribed form, of licences and of renewals, transfers, or cancellations thereof, shall be kept in the Treasury, and the Treasurer shall, in the month of February next following the commencement of this Act, cause a copy of the register to be published in the "Gazette," and shall, in the month of February in every subsequent year, cause a copy of the register corrected to the thirty-first day of December then last past to be published in the "Gazette."

Supplementary lists.

(2) As early as practicable in each month the Treasurer shall cause to be published in the "Gazette" a supplementary list showing all alterations, additions, and revisions made in the register during the preceding month.

Published copies and lists to be read together.

(3) Every supplementary list so published shall be deemed to be part of the last published copy of the register, and such last published copy shall be read and construed as subject to every such list.

Evidence.

(4) Any copy of the register, or of any such supplementary list, published as aforesaid, shall be *prima facie* evidence of the facts therein stated, and the absence of the name of any person from such published copy shall be *prima facie* evidence that such person is not, or was not, licensed under this Act (as the case may be).

(5) A certificate that any person is not, or was, or was not, licensed under this Act shall, if signed by the Under-Treasurer or Accountant of the Treasury Department, be *prima facie* evidence of the facts therein stated.

Unlicensed estate agent not to recover fee.
Cf. *ibid.*, s. 15.

16 No person who is required to hold a licence under this Act shall be entitled to recover in any court any commission, fee, gain, or reward for any service done or performed by him as an estate agent, unless—

i. He was, at the time of doing or performing such service, the holder of a licence; and

ii. He produces to the court his licence, or, in the event of his licence being lost or destroyed, a duplicate thereof, or unless he satisfies the court that, at the time of doing or performing the service, he was the holder of a licence; and

iii. His engagement or appointment to do or perform the service was in writing, signed by the person to be charged with such commission, fee, gain, or reward, or by some person on behalf of such first mentioned person and thereto authorised in writing.

Estate Agents.

17—(1) If an estate agent is convicted in any court of any crime as defined by the Criminal Code Act, 1924, or if, in any proceeding before a court to which an estate agent is a party, the court, judge, police magistrate, or justice is satisfied that such estate agent has been guilty of fraud, and that he ought to be disqualified from carrying on the business of an estate agent, such court, judge, police magistrate, or justice may order—

- i. That such estate agent shall deliver up any licence held by him to the court: and
- ii. That such licence be cancelled: and
- iii. That such estate agent be disqualified, either permanently, or for such period as the court, judge, police magistrate, or justice specifies, from holding a licence.

(2) The clerk, or other proper officer of the court, shall forthwith transmit to the Treasurer a copy of any such order.

(3) Upon the receipt of any such copy the Treasurer shall forthwith cause the fact of such disqualification to be noted in the register, and a notice of such disqualification to be published forthwith in the "Gazette."

A.D. 1926.
—
Disqualification of estate agents in certain events. Cf. *ibid.*, s. 16. 14 Geo. V. No. 69.

Copy of order to be sent to Treasurer.
Notice of disqualification to be published.

18—(1) Any licensee may, on the complaint of any person, be summoned before the police magistrate to show cause why his licence should not be cancelled, and why he should not be disqualified, either permanently, or temporarily, from holding a licence, on the ground—

- i. That he improperly obtained such licence contrary to the provisions of this Act: or
- ii. That he is not a fit and proper person to continue any longer to hold a licence: or
- iii. That he has been guilty of such conduct as an estate agent as renders him unfit to continue any longer to hold a licence.

(2) Upon being satisfied of the existence of any of the grounds aforesaid, the police magistrate may order that such licence be delivered up forthwith and cancelled, and that the licensee be disqualified, either permanently, or for such period as the police magistrate specifies, from holding a licence.

(3) In any proceedings under this section the police magistrate may make such order as to costs as he thinks just.

Cancellation of licences Cf. No. 3216 of 1922 (Vic.), s. 17.

Costs.

19 Nothing in this Act shall affect any civil remedy that any person may have against an estate agent with respect to any transaction with such estate agent.

Civil remedies not affected by this Act. Cf. *ibid.*, s. 21.

20—(1) Any person for whom any licensee is acting, or has acted, may, on payment of a fee of Two Shillings and Sixpence to the clerk of the court of petty sessions, inspect the fidelity bond lodged with him by or on behalf of such licensee as hereinbefore provided, and may take a copy thereof.

Inspection of fidelity bond. Cf. *ibid.*, s. 20.

Estate Agents.

A.D. 1926.

Power to sue on bond.

Fees.
Cf. *ibid.*, s. 24.

(2) Any such person may, subject to the approval in writing of the Treasurer, sue upon such bond for indemnity in respect of any loss covered by the bond, as if he had been the obligee thereof.

21 The following fees shall be payable under this Act:—

- I. For each licence, or renewal of a licence, for a full year—
Two Pounds :
- II. For each licence, the duration of which is for six months or less—One Pound :
- III. For each transfer to another person—One Pound :
- IV. For each duplicate licence, on loss or destruction of the original—Five Shillings.

Appropriation of fees.

22 All fees received under this Act shall be paid into the Consolidated Revenue.

Penalty for offences.
Cf. *ibid.*, s. 23.

23--(1) Every person who contravenes, or fails to comply with, any of the provisions of this Act shall be guilty of an offence against this Act.

(2) Where no penalty is specially provided for any offence against this Act, any person guilty of such offence shall be liable to a penalty of not more than Twenty Pounds.

Procedure for offences.

24 All proceedings for offences against this Act shall be heard and determined, and all penalties and other moneys imposed or made payable by or under this Act, shall be enforced and recovered by or before a police magistrate or any two or more justices, under and in accordance with the Justices' Procedure Act, 1919.

10 Geo. V. No. 55.

Regulations.
Cf. No. 3216 of 1922 (Vic.), s. 25.

25 The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and for prescribing penalties of not more than Twenty Pounds for breaches of the regulations.

Estate Agents.

A.D. 1926.

SCHEDULE.**SCALES OF COMMISSION.***Sales of City and Suburban Properties and Land.*

Section 7

Up to and not exceeding £200	5 per cent.
Exceeding £200 and not exceeding £1000 ...	5 per cent on the first £200, 2½ per cent. on the balance.
Exceeding £1000 and not exceeding £3000 ...	2½ per cent. with a minimum of £30.
Exceeding £3000 and not exceeding £5000	2 per cent. with a minimum of £75.
Exceeding £5000 and not exceeding £10,000...	2 per cent on the first £5000 and 1½ per cent. on the balance.
Exceeding £10,000 and not exceeding £20,000	1½ per cent. with a minimum of £175.
Residue over £20,000	1 per cent.
Subdivisions	5 per cent.

Country Properties.

Up to £500	5 per cent.
On the next £4500	2½ per cent.
On the next £5000	2 per cent.
On the next £10,000	1½ per cent.
On residue over £20,000	1 per cent.

Letting Unfurnished Properties.

A maximum charge of one week's rent for any term up to, but not including, 12 months. For a term of 12 months and up to two years, three per cent. on the annual rental. Where term exceeds two years, four per cent. on the annual rental.

Letting Furnished Properties.

For less than one month, half a week's rent. One month and up to, but not including, 12 months, one week's rent. For a term of 12 months, and up to two years, three per cent. on the annual rental. Exceeding two years, four per cent. on the annual rental. Taking or checking inventory, additional.

Re-letting.

If a property is re-let by the same agent within 12 months after the first letting, no charge shall be made for any such re-letting if that agent collects the rent on commission.

Letting Country Properties.

Five per cent. on the first year's rent.

Rent Collecting.

Five per cent. on actual rent collected. Where the supervision of repairs is undertaken, two and a half per cent. on cost of work supervised; advertising extra. Where a property is taken over empty, a letting fee of one week's rent to be charged for the first letting. When a property is let with the right to purchase to a tenant who afterwards becomes the purchaser, the commission for selling will then become chargeable, less the amount previously paid for letting.

Estate Agents

A.D. 1926.

Collection of Instalments on Terms.

Two and a half per cent. upon moneys received, whether principal or interest.

Negotiation of Loans on Real Estate.

One per cent. on amount of loan arranged.

Selling and Exchanging Property.

The commission in each case shall be not more than the rate above specified, but such commission shall be paid in regard to the consideration given in exchange by each party for whom the agent acts, based upon the value of the respective parcels of real estate or personal estate so exchanged.

Sale of Businesses.

Five per cent. on first £300 and two and a half per cent. above, with a minimum of £5.