

Estate Agents (Amendment) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 27 October 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

to make amendments to the *Estate Agents Act* 1980 to provide for the making of arrangements for the payment of interest on estate agents' trust accounts and for other purposes.

Estate Agents (Amendment) Act 1987

The Parliament of Victoria enacts as follows:

Purpose.

- 5 1. The purpose of this Act is to enable the Estate Agents Board to enter into arrangements for the payment of interest on estate agents' trust accounts and for other related matters.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Principal Act.

3. In this Act, the *Estate Agents Act* 1980 is called the Principal Act.

No. 9428.
Reprinted to No.
10168.
Subsequently
amended by Nos.
21/1986, 62/1986
and 41/1987.

10 **Repeal of regulation making power.**

4. In section 10 (1) (b) of the Principal Act, sub-paragraph (ii) is repealed.

New section inserted after section 11A

5. After section 11A of the Principal Act, insert—

Fund management agents.

“11B. (1) The Board may appoint any person to act as its agent for the purposes of the investment of money in a special account established under an arrangement made under section 60 or the Estate Agents’ Guarantee Fund in authorised investments and may terminate that appointment. 5

(2) The Board may pay to a fund management agent the remuneration that is agreed upon between the Board and the agent.”. 10

Insertion of definitions.

6. In section 58 of the Principal Act—

(a) in the definition of “Authorized bill of exchange”, after “acceptor” insert “or indorser”; and

(b) after the definition of “Bank” insert— 15

‘ “Building society” has the same meaning as in the *Building Societies Act 1986.*; and

(c) after the definition of “Estate agent” insert—

‘ “Financial institution” means a bank or building society in respect of which there is in force a declaration under section 4 (5) of the *Trustee Act 1958.*’ 20

Holding of trust money.

7. In section 59 of the Principal Act—

(a) in sub-section (1)—

(i) in paragraph (a), for “into a bank” substitute “into a financial institution (but not into a branch of that financial institution which is within the estate agent’s business premises)”; and 25

(ii) in paragraph (b), for sub-paragraph (ii) substitute—

“(ii) to a special account in accordance with an arrangement made under section 60.”; and 30

(b) in sub-section (3), for “bank” substitute “financial institution”; and

(c) in sub-section (5), for “bank” substitute “financial institution”; and 35

(d) in sub-section (5A), for “bank” substitute “financial institution”; and

(e) in sub-section (6), for “bank” substitute “financial institution”; and

(f) in sub-section (7), for “Bank” substitute “financial institution”; and

New sections substituted for section 60.

8. For section 60 of the Principal Act, substitute—

5 **Board’s power to enter into arrangements with financial institutions.**

‘60. (1) The Board may enter into an arrangement with a financial institution for the keeping of estate agents’ trust accounts.

(2) An arrangement entered into by the Board under sub-section (1) may provide for all or any of the following matters:

10 (a) The payment of interest on the whole or any part of deposits in estate agents’ trust accounts to the Board;

(b) The payment of the whole or any part of deposits in those trust accounts into a special account in the name of the Board to be held by the Board on behalf of estate agents;

15 (c) The management of deposits in a special account;

(d) The manner by which the Board is informed of amounts held in estate agent’s trust accounts;

(e) The auditing of balances in estate agent’s trust accounts;

(f) Any other relevant matter.

20 (3) Any interest and capital profit received by the Board under an arrangement entered into under sub-section (1) must be paid into the Estate Agents’ Guarantee Fund.

(4) An estate agent must not maintain a trust account at a financial institution which is not an authorised financial institution.

25 (5) An estate agent must comply with an arrangement entered into by the Board with an authorised financial institution.

(6) In this section—

30 “Authorised financial institution” means a financial institution which has an arrangement with the Board entered into under sub-section (1) and which has been declared by Order of the Governor in Council published in the *Government Gazette* to be an authorised financial institution for the purposes of this section.’.

Money paid into special accounts.

35 “60A. (1) Money deposited in a special account which has been established under an arrangement made under section 60 and which is required for the proper operation of an estate agent’s trust account is repayable to the estate agent on demand and the Estate Agents’ Guarantee Fund is to guarantee the repayment of money.

(2) The Board may invest money paid into a special account in any authorised investment and may from time to time vary or dispose of the investment.

(3) The Board may invest in any authorised investment in which the security is payable to bearer and if the Board has so invested any security payable to bearer must until sale or maturity of the investment be deposited by the Board with a financial institution for safe custody. 5

(4) The Board is not responsible for any loss connected with a deposit of security by it under sub-section (3) and any sum payable in respect of that deposit and collection must be debited against the Fund. 10

(5) Nothing in this section affects—

(a) a claim or lien that an estate agent has on any trust money deposited in a special account; and

(b) the rights or remedies of any person other than the estate agent.”. 15

Accounts of deposits.

9. In section 61 (1) of the Principal Act, for “received by the Board under section 60” substitute “paid into a special account held by the Board under an arrangement made under section 60”.

Money constituting the Fund. 20

10. In section 73 of the Principal Act—

(a) for paragraph (a) substitute—

“(a) any interest or capital profit received by the Board under an arrangement made under section 60; and

(b) in paragraph (ca), for “60 (4)” substitute “60A (2)”. 25

Change of bank to financial institution.

11. (1) In section 63 (1) (d) of the Principal Act, for “all bank account balances” substitute “all balances of accounts held at authorised financial institutions”.

(2) In section 64 (8) of the Principal Act, for “bank” substitute “authorised financial institution”. 30

(3) In section 70 (10) of the Principal Act, for “a bank” substitute “an authorised financial institution”.

(4) In section 89 (1) of the Principal Act, for “bank” substitute “authorised financial institution”. 35

Change of references.

12 (1) In section 75 (1) of the Principal Act, for “60 (4)” substitute
“60A (2)”.

5 (2) In section 76 of the Principal Act, for “60 (3)” substitute “60A
(1)”.

Transitional provision.

13 (1) Despite the commencement of this Act the Principal Act
applies to an estate agent as if it were not amended by sections 7, 8, 9,
11 and 12 of this Act until—

- 10 (a) the financial institution with which that estate agent holds
money on trust becomes an authorised financial institution;
or
(b) that estate agent pays all the money he or she holds on trust
into an account with an authorised financial institution; or
15 (c) the appointed day—
whichever is the earlier.

(2) Despite the commencement of this Act the Principal Act applies
to the Board with respect to the money held on trust by an estate agent
as if it were not amended by sections 7, 8, 9, 11 and 12 of this Act until
20 paragraph (a), (b) or (c) of sub-section (1) applies to that estate agent.

(3) In this section—

“Appointed day” means the day fixed as the appointed day by
proclamation of the Governor in Council published in the
Government Gazette.

25 “Authorised financial institution” has the same meaning as in
section 60 of the Principal Act as amended by this Act.

“Estate agent” has the same meaning as in Part VI of the
Principal Act.

