

REAL ESTATE AGENTS ACT 2006
(ACT NO. 13 OF 2006)

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ACT NO. 13 OF 2006



I assent.

[L.S.]

J. I. ULUITVUDA
President

[8 September, 2006]

AN ACT

TO MAKE PROVISION FOR THE REGULATION
OF REAL ESTATE AGENTS AND FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Real Estate Agents Act 2006, and comes into operation on a day to be appointed by the Minister by notice published in the Gazette.

Interpretation

2.—(1) In this Act, unless the context otherwise requires—

“Board” means the Real Estate Agents Licensing Board established under section 4;

“branch manager” means a person, referred to in section 48(2), who is in effective control of a branch office;

“certificate of approval” means a certificate of approval issued under section 43 (1) or section 51 (1);

“Court” means the High Court;

“effective control”, in relation to a place of business of a real estate agent, means to personally supervise, manage, and control the conduct of the real estate

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agency business at that place, and to work actively and substantially at or from that place;

“land” includes all estates and interests, whether freehold or chattel, in real property and includes—

- (a) any building and any part of a building; and
- (b) in relation to any transaction relating to land that also relates to any goods, chattels, or other property, those goods or chattels or other property;

“licence” means a real estate agent’s licence granted under section 21, and “licensee” and “licensed” shall be construed accordingly;

“officer”, in relation to a licensee company, means every director, manager, or secretary of the company who, on behalf of and in the name of the company, carries on the company’s business as a real estate agent, and includes—

- (a) any person, however designated, who is responsible for the management of the company;
- (b) any person who is responsible for the management of any branch of the company; and
- (c) (in relation to a company that carries on any other business in addition to its business as a real estate agent) the person responsible for the management of the company’s real estate agency business;

“permit” means a permit granted under section 30;

“Register” means the register of real estate agents established and maintained under section 32;

“Registrar” means the Registrar of Real Estate Agents referred to in section 31;

“salesperson” means a person who, being employed or engaged (whether under a contract of service or a contract for services) by a real estate agent, works for the agent in selling or otherwise disposing of land, purchasing or otherwise acquiring land, or leasing or letting land—

- (a) and includes an officer of a licensee company who is not eligible to apply for or obtain a licence in his or her own right;
- (b) but does not include a licensee, or an employee of a licensee, whose work is primarily and predominantly clerical.

Meaning of “real estate agent”

3.—(1) For the purposes of this Act, every person shall be deemed to be a real estate agent who acts, or who holds himself or herself out to the public as ready to act, for reward as an agent in respect of the sale or other disposition of land or the purchase or

other acquisition of land, or in respect of the leasing or letting of land, whether or not that person carries on any other business.

(2) Notwithstanding subsection (1), no person shall be deemed to be a real estate agent for the purposes of this Act by reason only of the fact that—

- (a) being a legal practitioner, the person acts, in the course of business as the legal practitioner, as agent in respect of the sale, purchase or other disposition of land, the acquisition of land or the leasing or letting of land, unless the person is remunerated for so acting by commission in addition to, or instead of, professional charges as a legal practitioner;
- (b) the person sells or offers to sell any land by auction;
- (c) the person enters into a transaction or series of transactions pursuant to a permit granted to the person by the Board under section 30.

(3) Where 2 or more persons carry on business jointly as real estate agents, each of those persons shall be deemed to be a real estate agent.

(4) For the purposes of this section, the collection or receipt of rent money by—

- (a) a real estate agent or any person employed by that real estate agent;
- (b) a director, officer, or employee of a company that is a real estate agent; or
- (c) a company in which a real estate agent holds, directly or indirectly, a majority of the shares or control of the voting power,

shall be deemed to be carrying on business as a real estate agent.

(5) Subsection (4) shall not apply in respect of the collection or receipt of rent money by a person on the person's own behalf.

PART 2—REAL ESTATE AGENTS LICENSING BOARD

Establishment of Real Estate Agents Licensing Board

4.—(1) There is hereby established a Board to be known as the Real Estate Agents Licensing Board.

(2) Subject to subsection (3), the Board shall consist of—

- (a) a Chairperson, appointed by the Minister;
- (b) four other members appointed by the Minister—
 - (i) of whom two only shall be licensed real estate agents; and
 - (ii) of whom one shall be appointed deputy Chairperson by the Minister.

(3) Notwithstanding subsection (2)(b)(i), for the purpose of constituting the first Board under this Act, that paragraph shall be read and construed as if for the words

“licensed real estate agent” there were substituted the words “persons directly involved in the operation or ownership of a real estate business”.

(4) Subject to this section, each member of the Board shall hold office for a term of 3 years, and may from time to time be re-appointed.

(5) A member of the Board may resign his or her office at any time by written notice given to the Minister and such resignation shall be effective on the date of receipt by the Minister of the notice.

(6) A member of the Board may be removed from office at any time by the Minister for inability to perform functions on any medical ground, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(7) If a member of the Board dies, resigns, or is removed from office, the vacancy shall be filled in the same manner as the appointment of the vacating member; and every person so appointed shall hold office for the remainder of the term for which his or her predecessor was appointed.

(8) The powers of the Board shall not be affected by any vacancy in its membership.

Minister may give policy directions

5. The Minister may, after consultation with the Board, give such general or special directions as to the policy to be followed by the Board in the performance of its functions as appear to the Minister to be necessary in the public interest, and the Board shall give effect to any such directions.

Meetings of the Board

6.—(1) Meetings of the Board shall be held at such times and places as the Chairperson may from time to time appoint.

(2) The Chairperson of the Board shall preside at all meetings of the Board, and, in the absence of the Chairperson, the deputy Chairperson shall preside.

(3) At a meeting of the Board—

- (a) four members shall form a quorum;
- (b) each application before a meeting shall be determined by a majority of the members present; and
- (c) the Chairperson or other person presiding shall have a deliberative vote and in case of an equality of votes shall also have a casting vote.

(4) Subject to the provisions of this section, the Board may regulate its procedures in such manner as it thinks fit.

Allowances and expenses of the members of the Board

7. A member of the Board shall be entitled to receive such allowances and expenses as may be determined by the Minister.

Functions and powers of the Board

- 8.—(1) The principal functions of the Board shall be those conferred on it—
- (a) by Part 3 in respect of the licensing of real estate agents and the granting of permits;
 - (b) by Part 5 in respect of the approval of salespersons;
 - (c) by sections 48 to 51 in respect of approval of branch managers; and
 - (d) by Part 9 in respect of discipline.
- (2) The Board shall also have such other functions as are conferred on it by this or any other Act.
- (3) The Board shall have all the powers necessary to carry out its functions.

Chairperson may exercise certain functions of the Board

- 9.—(1) Notwithstanding anything in any of the foregoing provisions of this Part, the Chairperson of the Board may, on behalf of the Board—
- (a) issue a permit to an applicant under section 30; and
 - (b) make an order for the interim suspension of a licence pursuant to section 69.
- (2) Every decision of the Chairperson in relation to any matter under this section shall, for all purposes, be deemed to be the decision of the Board.

Seal

- 10.—(1) The Board shall have a seal, which shall be judicially noticed in all Courts and for all purposes.
- (2) The seal shall be in the custody of the Registrar, and shall not be used except as authorised by the Board.

Registrar may exercise certain functions of the Board

- 11.—(1) Notwithstanding anything in any of the foregoing provisions of this Part, except where a person entitled so to do has objected to an application within the time allowed, the Board may, from time to time, authorise the Registrar to exercise, on behalf of the Board, the Board's functions in respect of any of the applications specified in subsection (2).
- (2) The applications referred to in subsection (1) are—
- (a) an application, pursuant to section 23, for the approval of a name under which a licensee may conduct business;
 - (b) an application, pursuant to section 25, for approval to carry on business at a place not specified in the applicant's licence;
 - (c) an application, pursuant to section 27, for renewal of a licence;
 - (d) an application, pursuant to section 41, for approval of a salesperson;
 - (e) an application, pursuant to section 45, for the renewal of a certificate of approval of a salesperson;

- (f) an application, pursuant to section 49, for approval of a branch manager; and
- (g) an application, pursuant to section 45 (as applied by section 51(6)), for the renewal of a certificate of approval of a branch manager.

(3) Every decision of the Registrar in relation to any matter under this section shall, for all purposes, be deemed to be the decision of the Board.

(4) The Board may at any time revoke in whole or in part any authorisation granted to the Registrar pursuant to subsection (1).

Representation of parties

12.—(1) Subject to any provision to the contrary in this Act, every person making an application to the Board shall be entitled to appear and be heard by the Board in respect of the application.

(2) Where any person is entitled under this Act to appear and be heard in relation to proceedings before the Board, that person may appear in person or by his or her counsel or agent, and shall have the right to produce evidence and to cross-examine witnesses.

Evidence before Board

13.—(1) The Board may receive in evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with the matter before it, whether or not the same would otherwise be admissible in a court of law.

(2) The Board may, if it thinks fit in respect of any application before it, examine, on oath or otherwise, the applicant or any other party to the application, or require any person to verify by statutory declaration any statement made by him or her with respect to the application.

(3) For the purposes of this Act the Chairperson, or the deputy Chairperson if presiding, may administer an oath or affirmation to any person.

Board must give reasons for adverse decision

14. Where any application made to the Board under this Act is refused, the Board shall, upon request in writing by the applicant, within a period of one month from the date of receipt of the request, give a written statement of the reasons for its refusal to the applicant.

PART 3—LICENSING OF REAL ESTATE AGENTS

Licensing of real estate agents

15.—(1) Subject to section 30, no person shall carry on the business of a real estate agent unless the person is the holder of a licence issued in accordance with this Part.

(2) Every person who, not being the holder of a licence—

- (a) describes himself or herself in writing as, or holds himself or herself out to be, a real estate agent; or

(b) carries on business as a real estate agent,

commits an offence and, in addition to any fine that may be imposed, is liable to forfeit to the State all money received by him or her by way of commission, profit or remuneration for any services or work performed by him or her as an unlicensed real estate agent.

(3) In any proceedings for an offence under this section a certificate, signed by the Registrar, to the effect that the defendant or any other named person was not at the time of the alleged offence the holder of a licence shall, in the absence of proof to the contrary, be sufficient evidence of that fact.

Eligibility for licences

16.—(1) Subject to this Part, every person who—

- (a) has attained the age of 21 years and has passed any examinations for the time being prescribed by regulations made by the Minister and has been approved by the Board for the purposes of this section;
- (b) is a company; or
- (c) was, at any time within 5 years immediately preceding the date of commencement of this Act—
 - (i) engaged in the real estate business; or
 - (ii) a director or officer of a company that was engaged in the real estate business,

shall be eligible to hold a licence under this Act.

(2) Notwithstanding subsection (1), no person shall be eligible to apply for or obtain or hold a licence under this Act if—

- (a) the person is a bankrupt and has not obtained an order of discharge, or, if the person has obtained an order of discharge, it is suspended for a term not yet expired or is subject to conditions not yet fulfilled;
- (b) the person holds a practising certificate as a legal practitioner; or
- (c) the person has not, during the preceding 5 years, had at least 3 years' practical experience working full time, primarily or predominantly in real estate agency work.

(3) No company is eligible to apply for or obtain a licence under this Act if such of the officers of the company (if it is granted a licence) as the Board may designate upon application made to it in that behalf are not eligible under this section to apply for or obtain a licence in their own right.

Application for licence

17.—(1) Every person who desires to obtain a licence under this Act shall make application to the Board in the prescribed form.

(2) Every application shall—

- (a) state the place or places of business of the applicant, including every branch office;
- (b) where the applicant has or proposes to have 2 or more places of business, specify which of those places of business is to be the principal place of business; and
- (c) specify the person who is to be in effective control of each branch office (if any).

Public notice of application to be given

18.—(1) Every applicant for a licence shall cause a notice of the application in the prescribed form to be published in the Gazette on at least two occasions and at an interval of not more than 14 days.

(2) A person may, within 1 month after the date of the publication of the first notice referred to in subsection (1), give to the Board written notice of his or her desire to object to the issue of a licence to the applicant.

(3) No objections shall be made under subsection (2) except on one or more of the following grounds—

- (a) that by the virtue of the provisions of section 16 the applicant is not eligible to apply for or obtain a licence;
- (b) where the applicant is a person other than a company, that the applicant is not, by reason of his or her personal character or financial position, a proper person to be the holder of a licence;
- (c) where the applicant is a company, that it is not, by reason of its financial position, or of the nature of any other business carried on or to be carried on by it, a proper person to be the holder of a licence;
- (d) where the applicant is a company, that any person who will be an officer of the company if the licence is granted is not, by reason of his or her personal character or financial position, a proper person to be an officer or a licensee company.

(4) Every notice of objection filed under subsection (2) shall state, with brief particulars, each ground on which the objection is made.

(5) The Registrar shall send a copy of each notice of objection to the applicant.

Hearing and disposal of applications

19.—(1) As soon as practicable after the receipt of an application for a licence, the Board shall appoint a convenient time and place for considering the application, and shall give at least 14 days notice thereof in writing to the applicant and to any person who has given notice of objection to the issue of a licence to the applicant.

(2) The applicant and any person objecting to the issue of a licence to the applicant shall be entitled to be present and to be heard.

(3) Notwithstanding subsection (1), in any case where no objection to an application for a licence is made within the prescribed period and the applicant advises the Board in writing that the applicant does not wish to be heard in support of the application, the Board may, if it thinks fit, decide to consider the application without any hearing under this section.

(4) If the Board decides to proceed in accordance with subsection (3) and it appears that the application is unlikely to be successful, the Board shall advise the applicant accordingly, and subsection (1) shall, with necessary modifications, have effect.

Board not to hear or consider an application until satisfied of certain matters

20.—(1) The Board shall not hear or consider an application for a licence under this Act until it is satisfied that the applicant has—

- (a) published a notice of the application in the *Gazette* in accordance with section 18(1); and
- (b) where the applicant is not a company, passed any examination for the time being prescribed by regulations made by the Minister.

(2) Notwithstanding subsection (1), no application for a licence shall be considered until after—

- (a) the expiration of one month from the date of first publication of the notice required by section 18(1); and
- (b) the payment of the prescribed fee.

Board may grant licence

21.—(1) If, after hearing and considering an application for a licence and all objections (if any) to its issue, the Board is satisfied—

- (a) that the applicant is, under section 16, eligible to hold and is not disqualified from holding a licence; and
- (b) that, having regard to the applicant's character, financial position, the interests of the public, and where appropriate, the matters specified in section 22, the applicant is a fit and proper person to carry on the business of a real estate agent,

the Board shall grant the licence, which shall be issued to the applicant in the prescribed form on payment of the prescribed fee.

(2) If the Board is not satisfied in respect of the matters specified in paragraphs (a) and (b) of subsection (1), the Board shall not issue a licence to the applicant unless it is ordered to do so by the Minister under section 80(2).

Evidence required by Board

22. At any hearing or consideration of an application for a licence the Board shall require evidence of the following matters—

- (a) in any case where the applicant proposes to carry on business as a real estate agent in partnership with any other person, that each partner holds a licence granted under this Act or has applied for a licence under this Act;
- (b) in any case where the applicant is a company, the financial position of the company, and the eligibility of such of the officers of the company, as the Board thinks fit, to hold a licence under this Act;
- (c) in any case where the applicant has, since the applicant was last issued with a licence under this Act, been suspended from carrying on the business of a real estate agent, that the period of suspension has expired, and that all costs, and expenses which the applicant may have been ordered to pay have been paid; and
- (d) in any case where the applicant proposes to carry on business from any branch office that the person under whose control each such branch office will be, is entitled to hold a certificate of approval as a branch manager, and that the person will, in fact, be in effective control of that branch office.

Licence to be held in licensee's name unless Board otherwise approves

23.—(1) No licensee shall carry on business as a real estate agent under any name that is not—

- (a) in the case of an individual, his or her own name; or
- (b) where the licensee is in partnership with any other person, the name of the firm or of one of the partners.

(2) An applicant for a licence, or a licensee, may at any time apply in writing to the Board to approve a name for the purpose of subsection (1).

(3) The applicant shall, forthwith after making application to the Board, publish a notice of the application in the prescribed form in the *Gazette*.

(4) The application shall not be heard or considered by the Board until the expiration of 14 days after the date of publication of the notice in the *Gazette*.

(5) The Board shall not approve a name under subsection (2) if it considers that the name so nearly resembles the name of any other person, firm, or company carrying on business as a real estate agent in or outside Fiji as to be likely to deceive, or that the name is that of any person, firm, or company—

- (a) whose licence has been surrendered under section 29; or
- (b) whose application for a licence has at any time been refused, and who or which has not subsequently obtained such a licence; or
- (c) who or which is not eligible to hold a licence.

(6) Notwithstanding any of the foregoing provisions of this section, no licensee shall carry on business of a real estate agent under more than one name or description.

(7) Every licensee who contravenes subsection (1) or subsection (6) commits an offence.

Effect of licence

24. A licence shall authorise the licensee to carry on the business of a real estate agent in any part of Fiji at any place of business that is from time to time endorsed on the licence.

Carrying on business at place not specified in licence

25.—(1) No licensee shall carry on business as such at any branch office not specified in his or her licence unless he or she has first obtained the approval of the Board.

(2) For the purposes of subsection (1), a licensee may at any time apply to the Board, in a manner prescribed by regulations, for approval, and in the application shall—

- (a) give the address of the proposed branch office; and
- (b) give the name of the person who is to be the branch manager.

(3) The Board shall not give an approval under this section unless it is satisfied that the person under whose control the branch office will be is entitled to hold a certificate of approval as a branch manager, and that that person will be in effective control of that branch office.

(4) The Board may, if it is satisfied that a branch manager is not in effective control of a branch office, cancel the approval granted under this section.

(5) Where the Board gives its approval to any application under this section, the licence of the applicant shall be endorsed accordingly upon payment of the prescribed fee (if any) and the Registrar shall make an appropriate note in the Register.

(6) Every person who knowingly acts in contravention of subsection (1) commits an offence.

Duration of licence

26. Subject to subsection (2), a licence shall, unless it is sooner cancelled or suspended in accordance with the provisions of this Act, remain in force for a period which—

- (a) shall not be less than one year; and
- (b) shall not exceed five years,

commencing on the date of issue of the licence, and may, upon payment of the prescribed fee, from time to time, be renewed for a further period which shall be equivalent to the period in respect of which the licence was originally granted.

Renewal of licence

27.—(1) An application for the renewal of a licence shall be made in the prescribed form to the Board not later than two months preceding the date of expiry of the licence.

(2) Any person may, not later than two months preceding the date of expiry of a real estate agent's licence, give to the Registrar notice of that person's desire to object to the renewal of the licence on any one or more of the following grounds—

- (a) a ground specified in section 18(3) in relation to objections to the issue of a licence to any person;
- (b) that the applicant has not, either personally or through a branch manager as required by section 48, been in effective control of his or her business as a real estate agent at his or her registered office and each of his or her branch offices;
- (c) that the applicant has permitted a person, other than a person lawfully carrying on the business of a real estate agent, to act as his or her agent in the conduct of his or her business;
- (d) that the applicant has not shown that each branch office from which he or she carries on business was under effective control of a branch manager as required by section 48; or
- (e) having regard to the character or fitness of any salesperson or branch manager employed or intended to be employed by the applicant, it is not in the public interest that the licence be renewed,

and subsections (4) and (5) of section 18, with any necessary modifications, shall have effect as if the notice of objection under this section were a notice of objection to the issue of a licence.

(3) In any case where no notice of objection is given under subsection (2), the Board may either—

- (a) grant the application without further inquiry; or
- (b) call and hear the applicant on any matter affecting the application.

(4) After calling and hearing the applicant under subsection (3)(b), the Board may grant the application.

(5) Where a notice of objection is given within the time allowed, the application shall be heard and determined by the Board and sections 20, 21 and 22, with any necessary modifications, shall have effect as if the application were an application for the issue of a licence.

(6) Where an objection is made on the ground set out in subsection (2) (d) and is allowed by the Board, the Board may nevertheless grant a renewal of the licence, but all references to the branch office in respect of which the objection was made shall be deleted from the licence and from the Register.

(7) Notwithstanding that the application for renewal is not filed by the date of the expiry of the licence, the Board may hear and determine the application for renewal of the licence, but in such a case the applicant shall pay such late application fee as may be prescribed.

(8) Where an application for renewal of a licence is granted, the licence shall be endorsed accordingly on payment of the prescribed fee.

(9) Where an application for the renewal of a licence has been made but not determined before the date on which the licence would otherwise expire, the licence shall, notwithstanding section 26, continue in force until the application is determined.

Special provisions in respect of partnerships and companies

28.—(1) No person shall, after the issue to him or her of a licence, enter into partnership with any person in respect of his or her business as a real estate agent without the prior approval of the Board; and the Board shall refuse to grant its approval unless it is satisfied that the proposed partner holds a licence as a real estate agent.

(2) Where a company is the licensee, a person who was not, at the date of the issue of the licence an officer of the company, shall not act in such capacity in respect of that company without the prior approval of the Board upon an application made in that behalf; and the Board shall refuse to grant its approval unless it is satisfied that—

- (a) that person is eligible to apply for or obtain a licence;
- (b) that person does not hold an office in respect of which the Board has required the holder under section 16(3) to be eligible to apply for or obtain a licence; or
- (c) if that person is not eligible to apply for or obtain a licence, the real estate agency business of the company is disproportionately small in relation to any other business of the company.

(3) A person who knowingly acts in contravention of subsection (1) or subsection (2) commits an offence.

Voluntary surrender of licence

29.—(1) A licensee may at any time surrender his or her licence by forwarding a written notice to that effect, together with the licence, to the Registrar.

(2) The Registrar shall endorse on the notice and the Register the date on which he or she receives the notice, and the licence shall, as from that date, cease to have effect.

(3) Where the licensee forwards to the Registrar a notice under subsection (1), the Registrar shall forthwith forward a copy of it to the auditor of the licensee's trust accounts, together with written notice of the date from which the licence ceased to have effect.

(4) The surrender of a licence under this section shall not affect the licensee's liability—

- (a) to pay any fee or other money payable or to be payable in accordance with this Act on or before the date on which the licence would, but for its surrender, expire;
- (b) to perform any obligation required to be performed by him or her by or under this Act on or before that date; or
- (c) for any act done or default made before the date on which the licence ceased to have effect.

Permits

30.—(1) Notwithstanding section 15, the Board may, on the application of any person (not being a licensee), upon such terms and conditions and for such period as the Board thinks fit, issue a permit in writing to that person, after payment of the prescribed fee (if any), enabling him or her to enter into any specified transaction or series of transactions which, but for the provisions of this section, may constitute an offence under section 15.

(2) If, after the issue of a permit under this section, the Board is satisfied that the holder of the permit has not complied with all the conditions of the permit, the Board may, by notice in writing to the holder, revoke the permit.

(3) A permit issued by the Board under subsection (1) may, on application by the holder and on payment of any prescribed fee, be extended for such further period as the Board thinks fit.

(4) Every permit, revocation of permit or extension of permit shall be published in the *Gazette* in the prescribed form.

PART 4—REGISTRAR OF REAL ESTATE AGENTS, ETC.

Registrar of real estate agents, etc

31.—(1) There shall be a Registrar of Real Estates Agents and such other officers and staff as the Board, with the approval of the Minister, considers necessary for carrying out the functions of the Board.

(2) The persons referred to in subsection (1) shall be public officers.

Establishment of register of real estate agents, etc.

32.—(1) For the purpose of this Act the Registrar shall establish and maintain a register of real estate agents.

(2) The Register shall be open to inspection by the public during ordinary office hours on payment of the prescribed fee.

(3) On payment of the prescribed fee, the Registrar shall send to any person requesting the same, in writing, a copy of any specified entry in the Register.

(4) The Registrar shall, not later than the 30th day of June in each year, publish in the *Gazette* a notice of all real estate agents, branch managers and salespersons, who hold valid licences or valid certificates of approval, as the case may be.

Issue, etc., of licences and certificates of approval to be recorded in Register

33.—(1) Whenever a licence or certificate of approval is issued, renewed, or cancelled under this Act, or a licensee or the holder of a certificate of approval is suspended, the Registrar shall make an appropriate entry in the Register, showing—

- (a) in the case of the issue of a licence, the name and address of the licensee, the qualification by virtue of which the licensee is eligible to hold a licence

under this Act, the address of the licensee's registered office and of any approved branch office, and the name of the branch manager of such branch office, and the date on which the licence was granted;

- (b) in the case of the issue of a certificate of approval, the name and address of the holder and his or her employer, and the date on which the certificate of approval was granted;
- (c) in the case of the renewal of a licence or certificate of approval, the date on which the renewal was granted; and
- (d) in the case of the cancellation of a licence or certificate of approval or the suspension of a licensee or holder of a certificate of approval, the date and the grounds on which the cancellation or suspension was made.

(2) The Registrar shall also, in respect of any entry, record such other particulars as may be required by this Act or as may from time to time be prescribed.

Correction of Register

34.—(1) If any person has been issued with a licence or certificate of approval under this Act by reason of any false or fraudulent representation or statement, or if any person not entitled to be issued with a licence or certificate of approval under this Act has one so issued, the Board shall cancel that licence or, as the case may require, that certificate, and cause the name of the licensee or holder to be removed from the Register, and the fact of the cancellation and removal shall be notified by the Registrar in the *Gazette*.

(2) If any particulars appearing in the Register in respect of the qualifications of any licensed real estate agent are proved to the satisfaction of the Board to be, or are to the knowledge of the Board, false or erroneous in any respect, the Board shall direct the Registrar to remove those particulars from the Register, and the Registrar shall amend the Register accordingly.

(3) Subsection (2) shall apply notwithstanding that at the time the entry in the Register was made the real estate agent was actually possessed of the qualification particulars of which appear in the Register, or that at that time the entry was otherwise correct.

Registrar to keep copies of permits

35.—(1) The Registrar shall establish and maintain a file containing a copy of every permit issued pursuant to section 30, together with all associated correspondence.

(2) The file shall be open to inspection by the public during ordinary office hours on payment of the prescribed fee (if any).

Wrongfully procuring issue of licence, certificate of approval, etc.

36. Every person who—

- (a) wilfully makes, or causes to be made, any false entry in, or falsification of, the Register; or
- (b) by making or producing or causing to be made or produced any false or fraudulent representation or statement, whether verbally or in writing, procures or attempts to procure for himself or for any other person—

- (i) the issue of a licence, certificate of approval or permit;
- (ii) the renewal of any such licence or certificate of approval or the extension of any such permit; or
- (iii) the employment of an unqualified person,

commits an offence.

Lost licences, certificates and permits

37. Where the Registrar is satisfied that any licence, certificate of approval or permit has been lost the Registrar may, on payment of the prescribed fee (if any), issue the holder a substitute licence, certificate of approval, or permit, as the case may be.

Inspection of real estate agent's books and documents

38.—(1) This section applies in any case where the Board is satisfied, in respect of any real estate agent—

- (a) that he or she, or, where the real estate agent is a company, any officer of the company, has been convicted by a court of competent jurisdiction of theft or other criminal offence in relation to the money or other property of any other person;
- (b) that there is reasonable cause to believe that any money or other property entrusted to the real estate agent has been stolen by him or her, or his or her employee or agent, or, where the real estate agent is a company, by any officer, employee, or agent of the company;
- (c) that he or she is, owing to physical or mental disability, unable properly to administer his or her trust account;
- (d) that he or she has died;
- (e) that he or she has been adjudicated a bankrupt;
- (f) where the real estate agent is a company, that the company is being wound up, whether by the Court or voluntarily or subject to the supervision of the Court;
- (g) that the licence of the real estate agent has been cancelled or that the real estate agent has been suspended; or
- (h) that the real estate agent has ceased to carry on business and has neglected to wind up his or her trust account after reasonable notice has been given to him or her by the Registrar requiring him or her to do so.

(2) In any case to which this section applies, the Board may, if in its opinion it is expedient to do so, direct the Registrar, for the purpose of inspection by the Board, to take possession of any ledger, books of accounts, records, deeds, or other documents belonging to the real estate agent or held in the course of his or her business in his or her possession or under his or her control or, where the real estate agent is a company, in the possession or under the control of any officer, employee, or agent of the company.

(3) Every person having possession or control of any such ledgers, books of account, records, deeds, or other documents who refuses or fails without reasonable excuse, the proof of which shall be upon him, to deliver them or cause them to be delivered to the Registrar forthwith upon demand by the Registrar commits an offence.

Receipt for documents taken into possession

39.—(1) Upon taking possession of any documents under section 38, the Registrar shall forthwith serve upon the real estate agent concerned a notice giving particulars of the document and the date on which it was taken into the Registrar's possession.

(2) If any such document is the property of a firm of real estate agents in which the real estate agent is a partner, a copy of the notice shall be served on each partner in the firm.

(3) Within 14 days after any such notice has been served, the real estate agent, or any of his or her partners, may apply to a Court for an order directing the Registrar to return any document specified in the order to the person from whom it was received, or for such other order as the Court may think fit.

Expenses of Board in investigating affairs of real estate agent

40. The reasonable expenses of the Registrar acting in the exercise of any of the powers conferred by section 38 in respect of any real estate agent may, if any disciplinary proceedings have been brought under this Act against the real estate agent who has accordingly been disciplined, be recovered from that real estate agent.

PART 5—APPROVAL OF SALESPERSONS

Salesperson must have certificate of approval

41. A person who—

- (a) being a licensed real estate agent, engages or employs as a salesperson in his or her business as a real estate agent any person in respect of whom a certificate of approval issued under section 42 is not then in force;
- (b) not being the holder of a certificate of approval then in force, acts as a salesperson on behalf of a licensed real estate agent; or
- (c) acts as a salesperson for more than one licensed real estate agent in any case where the agents are not partners of one another in the business in which that person is engaged or employed as a salesperson,

commits an offence.

Application for approval of salesperson

42.—(1) An application for the approval of a salesperson may be made to the Board at any time by a licensee or an applicant for a licence on behalf of any person who intends to become a salesperson and who has passed the examination (if any) prescribed by the Minister by regulations in respect of salespersons.

(2) An application under this section shall be made in the prescribed form.

Certificate of approval of salesperson

43.—(1) If, after considering an application for a certificate of approval, the Board is satisfied that having regard to the character and general knowledge of the person in respect of whom the application is made and to the interest of the public, the person is a fit and proper person to be employed as a salesperson by a real estate agent, the Board shall, on payment of the prescribed fee, issue to the applicant a certificate of approval in the prescribed form.

(2) If the Board is not so satisfied, it shall appoint a time and place for hearing the application, and shall give at least 14 days' notice of the hearing to the applicant.

(3) In any case to which subsection (2) applies, the person in respect of whom the application is made shall be entitled to appear and be heard as a party to the application.

(4) If, after hearing an application, the Board is satisfied of the matters specified in subsection (1), it shall, on payment of the prescribed fee, issue to the applicant a certificate of approval in the prescribed form.

(5) Where the Board is not satisfied of the matters specified in subsection (1), it shall not issue a certificate of approval to the applicant unless ordered to do so by the Minister or the Court.

Duration of certificate of approval

44. A certificate of approval shall, unless it is sooner cancelled or suspended in accordance with the provisions of this Act, remain in force for a period of one year commencing on the date of the approval, whether or not the salesperson continues to be employed by the person on whose application the approval was given, and may from time to time, upon payment of the prescribed fee, be renewed for a further period of one year.

Renewal of certificate of approval

45.—(1) An application for the renewal of a certificate of approval shall be made to the Board in the prescribed form by the licensee by whom the salesperson is employed not later than two months preceding the date of expiry of the certificate.

(2) Where an application for the renewal of a certificate of approval is granted, the certificate of approval shall be endorsed accordingly on payment of the prescribed fee.

(3) Where an application for the renewal of a certificate of approval has been made but not determined before the date on which the certificate would otherwise expire, the certificate shall continue in force until the application is determined.

Custody of certificates of approval

46.—(1) Every certificate of approval and every renewal thereof shall—

- (a) at all times, be kept in the custody of the real estate agent who employs the salesperson in respect of whom the certificate or renewal was issued; and
- (b) on request by a client, be produced to that client by the real estate agent.

(2) When a salesperson leaves the employ of a real estate agent, the agent shall, within 7 days after the salesperson leaves his or her employment, forward the salesperson's current certificate of approval to the Registrar.

(3) If any such salesperson, in respect of whom a certificate of approval is for the time being in force, commences employment with a real estate agent, the agent shall forthwith request the Registrar to forward to him or her the certificate of approval; and the Registrar shall as soon as practicable after payment of the prescribed fee (if any) forward the certificate accordingly.

(4) A real estate agent who fails or refuses to comply with subsection (1) or (2) commits an offence.

Voluntary surrender of certificate of approval

47.—(1) A salesperson may at any time surrender his or her certificate of approval by giving written notice to that effect to his or her employer, who shall forthwith send the notice together with the salesperson's certificate of approval to the Registrar.

(2) The Registrar shall endorse on the notice the date on which he or she received the notice, and the certificate shall, as from that date, cease to have effect.

(3) The surrender of a certificate of approval under this section shall not affect the salesperson's liability for any act done or default made before the date on which the certificate ceased to have effect.

PART 6 – SUPERVISION OF BUSINESS

Supervision of business

48.—(1) A licensee or, if the licensee is a company, an officer who is eligible to hold a licence and who is designated by the company for the purpose, shall be in effective control of the principal place of business of a real estate agent.

(2) Every branch office of a real estate agent (as specified in the real estate agent's licence) shall be under the effective control of a person approved by the Board, in accordance with sections 50 to 52, as a branch manager.

(3) A licensee may at any time, by notice in writing given to the Registrar, change the address of his or her principal place of business to that of any of his or her branch offices.

(4) For the purpose of this section, the Board may, on application made in writing in that behalf by the licensee determine which place of business of that licensee is his or her principal place of business.

(5) Every real estate agent who, for any continuous period of more than 4 weeks, allows any person other than one specified in subsection (1) or (as the case may require) subsection (2) to be in effective control of his or her principal place of business or any branch office, commits an offence against this Act.

Application for approval of branch manager

49. An application for the approval of a branch manager may be made to the Board at

any time by a licensee or an applicant for a licence on behalf of any person who intends to become a branch manager.

Criteria for approval as branch manager

50. On an application under section 49, a person may be approved as a branch manager if:

- (a) that person is:
 - (i) eligible under this Act to hold a licence; and
 - (ii) the holder of a certificate of approval to act as a salesperson issued under section 43; or
- (b) that person:
 - (i) has attained the age of 21 years; and
 - (ii) is the holder of a certificate of approval to act as a salesperson issued under section 43; and
 - (iii) has passed any examinations for the time being prescribed for persons intending to become branch managers; and
 - (iv) has had, during the preceding 5 years, at least 3 years' practical experience working full-time or primarily and predominantly in the real estate agency work; or
- (c) that person:
 - (i) has attained the age of 21 years; and
 - (ii) is the holder of a certificate of approval to act as a salesperson issued under section 43; and
 - (iii) is recognised by the Board as having been, at any time within the 5 years immediately preceding the date of the commencement of this Act, the person in effective control of a branch office; and
 - (iv) has had, during the preceding 5 years, at 3 years' practical experience working full-time or primarily or predominantly in real estate agency work.

Powers of Board in respect of application for approval for branch manager

51.—(1) If, after consideration of an application made under section 49, the Board is satisfied—

- (a) that the proposed branch manager is, under the section 50, eligible to hold, and is not disqualified from holding, a certificate of approval as a branch manager; and
- (b) that, having regard to the interests of the public, the proposed branch manager is a fit and proper person to be employed as a branch manager by a real estate agent, the Board shall, on payment of the prescribed fee (if any), issue to the applicant a certificate of approval.

(2) If the Board is not so satisfied, it shall appoint a time and place for hearing the application, and shall give at least 14 days' notice of the hearing to the applicant.

(3) In any case to which subsection (2) applies, the person in respect of whom the application is made shall be entitled to appear and be heard as a party to the application.

(4) If, after hearing an application, the Board is satisfied of the matters specified in paragraphs (a) and (b) of subsection (1), it shall, on payment of the prescribed fee (if any), issue to the applicant a certificate of approval.

(5) Where the Board is not so satisfied it shall not issue a certificate of approval to the applicant unless ordered to do so by the Minister under section 80(2).

(6) Sections 44 to 47 shall apply with any necessary modifications to a certificate of approval as a branch manager granted under this section as they apply to a certificate of approval as a salesperson.

(7) A certificate of approval issued under this section shall authorise the employment or engagement of the person named in it as the branch manager of any branch office.

Licensee to notify Registrar of transfer of branch manager

52. Where a licensee transfers a branch manager from one branch office to another, the licensee shall give notice in writing to the Registrar of the transfer.

PART 7—DUTIES OF REAL ESTATE AGENTS

Licensee to display notice on place of business, etc.

53.—(1) Every licensee shall exhibit and keep exhibited in a prominent place at each of the licensee's places of business, so as to be read easily from outside the place of business, a notice of the licensee's name and of the fact that the licensee is a licensed real estate agent, together with the name or style under which the licensee carries on business as a real estate agent, if the business is not carried on in the licensee's own name.

(2) The information referred to in subsection (1) shall also be clearly shown on all notices, advertisements, and other publications issued by or on behalf of the licensee, on all hoardings and other signs erected on land advertised by the licensee as being for sale or to let or lease, and in all letters, accounts, agreements, and other documents sent out, entered into, or published by or on behalf of the licensee in the course of or in connection with the licensee's business as a real estate agent.

(3) Every licensee who fails to comply with subsection (1) or subsection (2) commits an offence.

Duty of real estate agent with respect to money received in course of business

54.—(1) Subject to the provisions of this section, all money received by a real estate agent in respect of any transaction in his or her capacity as a real estate agent shall, as soon as is reasonably practicable after receipt thereof, be paid to the person lawfully entitled thereto or as that person may in writing direct.

(2) Where a real estate agent is in doubt, on reasonable grounds, as to the person who is lawfully entitled to any such money, he or she shall, in accordance with subsection (3), retain that money in a general or separate trust account until the person lawfully entitled has been ascertained, but shall take all reasonable steps to ascertain as soon as practicable the person so entitled.

(3) Pending the payment of any such money, it shall be paid by the real estate agent into a general or separate trust account at any bank carrying on business in the Fiji Islands under the authority of an Act, and, subject to subsection (5), the money shall not be drawn upon except for the purpose of paying it to the person entitled or as that person may in writing direct.

(4) No money to which this section applies shall be available for payment of the real estate agent's debts, nor shall it be liable to be attached or taken in execution under the order or process of any Court at the instance of any of the real estate agent's creditors.

(5) Nothing in this section shall be construed so as to take away or affect any just lien or claim which the real estate agent may have on or in respect of any money received by the real estate agent, being money to which this section applies.

(6) A licensee who contravenes a provision of this section commits an offence.

Real estate agent to have written contract of agency

55.—(1) No real estate agent shall be entitled to sue for or recover any commission, reward, or other valuable consideration in respect of any service or work performed as such real estate agent, unless—

- (a) the real estate agent was the holder of a licence as a real estate agent under this Act at the time of the performance of the service or work; and
- (b) the real estate agent's appointment to act as agent or perform that service or work is in writing (a contract of agency) signed either before or after the performance of that service or work by the person to be charged with the commission, reward, or consideration or by some person on his or her behalf lawfully authorised to sign the appointment.

(2) For the purposes of subsection (1)(b) the Minister may make regulations prescribing provisions which must be included in every contract of agency.

Purchase or lease by real estate agent voidable

56.—(1) A real estate agent, or a partner or employee of a real estate agent, or an officer of a company that is a real estate agent, shall not, without the consent on the prescribed form of his or her principal, whether directly or indirectly—

- (a) purchase or take on lease or be in any way concerned or interested, legally or beneficially, in the purchase or taking on lease of any land which the real estate agent, partner, employee or officer, as the case may be, is commissioned by the principal to sell or lease; or
- (b) sell or lease any such land to a spouse or child.

(2) A contract made in contravention of this section is voidable at the option of the principal.

(3) No commission shall be payable in respect of any such contract, whether the principal has avoided it or not.

(4) Any commission paid in respect of the contract shall be repayable by the real estate agent to his or her principal and shall be recoverable by the principal as a debt.

(5) Without prejudice to the provisions of subsections (2) to (4), a person who contravenes subsection (1) commits an offence.

Real estate agent to provide valuation

57.—(1) Subject to subsection (2), every real estate agent, partner or employee of a real estate agent, or officer of a company that is a real estate agent shall—

- (a) before seeking the consent of a principal for the purposes of section 56; or
- (b) with the agreement of the principal, within 14 days after obtaining that consent,

supply at his or her own expense to the principal, a valuation of the land in question made by an independent valuer registered under the Valuers Registration Act 1986.

(2) Subsection (1) does not apply to an employee of a real estate agent (whether a company or not) that carries on other business in addition to its business as a real estate agent and the employee's work primarily and predominantly relates to that other business.

(3) A person who contravenes subsection (1) commits an offence.

Real estate agent to provide copy of offer or agreement

58.—(1) Every real estate agent shall, forthwith after any person has signed an offer or an agreement or other form of contract to purchase or to take on lease any land through the agency of the real estate agent, give to that person a true copy of the offer or the agreement or other form of contract.

(2) For the purpose of subsection (1) the Minister may make regulations prescribing provisions which must be included in every offer or agreement or other contract to purchase or take on lease any land.

(3) Every real estate agent who fails to comply with subsection (1) commits an offence.

Real estate agent to keep record of transactions

59.—(1) A real estate agent shall, in respect of such matters as may be prescribed by regulations, establish and maintain accurate, complete and up-to-date records of all transactions undertaken by the real estate agent in the course of carrying on the business of a real estate agent.

(2) A real estate agent shall—

- (a) at the time of application for renewal of a licence; or
- (b) upon demand made by the Board,

provide the Board with details, or copies, or both, of the records referred to in subsection (1).

(3) A real estate agent who fails to comply with a provision of this section commits an offence.

PART 8 – RECEIPT OF MONEY AND AUDIT OF ACCOUNTS

Treatment of certain money received by real estate agent

60. For the purposes of sections 54 and 61 to 63 and of any regulations made under this Act relating to the audit of trust accounts of real estate agents—

- (a) any money received by a real estate agent by way of rent from the letting of any land, and any principal or interest received by a real estate agent arising out of any transaction affecting land, shall be deemed to be money received by the real estate agent in the course of business as such real estate agent; or
- (b) any insurance premiums received by a real estate agent on behalf of an insurance company, and any other money received by a real estate agent in the course of any agency business conducted by him or her in conjunction with his or her business as a real estate agent, shall be deemed not to be money received by him or her in his or her capacity as a real estate agent.

Money to be held by real estate agent for 10 days

61.—(1) Except pursuant to an order of a Court of competent jurisdiction or an authority signed by all the parties to a transaction, where a real estate agent receives any money (other than money received by way of rent from the letting of any land) in respect of any transaction, the real estate agent shall not pay that money to any person for a period of 10 days after the date of receipt.

(2) If at any time while a real estate agent holds any money on behalf of any party to a transaction referred to in subsection (1) the real estate agent receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, the real estate agent shall not at any time pay that money to any person except in pursuance of such an order or authority.

(3) Every person who contravenes or fails to comply with subsection (1) or (2) commits an offence.

Real estate agent to furnish account to principal

62.—(1) Forthwith on the demand of the person for whom a real estate agent has acted or if no such demand is made, then within 28 days after receipt by the real estate agent of any money in respect of the sale, lease, or other disposition of land, or in respect of

any other transaction in his or her capacity as a real estate agent, every real estate agent shall render to the person lawfully entitled thereto an account in writing, setting forth particulars of all such money, and as to its application.

(2) It shall be sufficient compliance with the provisions of this section in respect of rent or interest collected by a real estate agent if the real estate agent renders an account to the person lawfully entitled at monthly intervals or at such longer intervals as that person may in writing approve.

(3) Where a real estate agent is in doubt on reasonable grounds as to the person who is lawfully entitled to any such money, the real estate agent shall not be required to render an account under this section until the person lawfully entitled has been ascertained, but the real estate agent shall take all reasonable steps to ascertain as soon as practicable the person so entitled.

(4) If a real estate agent refuses or, for a period of 7 days after demand, neglects or fails to render an account, or, in the absence of the demand, neglects or fails to render an account within a period of 28 days allowed under subsection (1), the real estate agent commits an offence.

(5) Subject to section 61 and section 54(2), where a real estate agent who is required pursuant to section 54(1) to pay any money received to the person lawfully entitled thereto refuses so to do, or for a period of 10 days after demand fails to pay that money to that person or as that person directs, the real estate agent commits an offence.

Rendering false account

63. A person commits an offence if that person renders an account purporting to be an account of any money received by him or her in his or her capacity as a real estate agent, and the person knows or ought reasonably to have known that the account was false in a material particular.

Real estate agents' trust accounts to be audited

64.—(1) Every general or particular trust account of a real estate agent shall be audited at the times and in the manner prescribed by regulations made under this Act.

(2) A real estate agent who fails to appoint an auditor within the time prescribed, or fails to comply with the provisions of any regulations relating to the audit of real estate agents' trust accounts commits an offence.

(3) All information obtained by an auditor in the course of the audit of any trust account under this Act shall be treated as confidential, subject only to such rights of publication as may be prescribed in furtherance of the proper purposes of the audit.

Administration of trust account in certain cases

65.—(1) This section applies in any case where the Board is satisfied that a real estate agent—

- (a) is, owing to physical or mental disability, unable properly to administer a trust account;

- (b) has died;
- (c) has been adjudicated a bankrupt;
- (d) has had his or her licence revoked;
- (e) has been suspended from carrying on the business of a real estate agent;
or
- (f) has ceased to carry on the business of a real estate agent and has neglected to wind up his or her trust account after reasonable notice has been given by the Board requiring such winding up,

and that any money entrusted to that real estate agent is held by a banker in any trust account of the real estate agent.

(2) In any case to which this section applies the Board may, if it is satisfied, after inspection of the real estate agent's books and documents under section 38 or any other provision of this Act, that it is expedient so to do, appoint any one or more persons who, in the opinion of the Board possess appropriate qualification and adequate experience, to administer the trust account for such period as the Board thinks fit.

(3) A copy of every appointment made by the Board under this section shall be served on the banker, and on receipt of such copy the banker shall allow the person or persons appointed to administer the trust on behalf of the Board.

PART 9—DISCIPLINARY POWERS OF BOARD

Grounds on which licence may be cancelled by Board

66. The Registrar or a member of the Board or any other person with the leave of the Board, may at any time apply in the prescribed form to the Board for an order cancelling a real estate agent's licence, and the Board may cancel the licence, on any of the following grounds—

- (a) that a licensee or, in the case of a licensee company, an officer of the company, has been convicted of a crime involving dishonesty;
- (b) that a licensee or, in the case of a licensee company, an officer of the company, has been guilty of misconduct in the course of the business of the real estate agent, and that by reason of that misconduct it is in the interest of the public that the licence be cancelled;
- (c) that a licensee or, in the case of a licensee company, an officer of the company, has been shown to the satisfaction of the Board to be of such a character that it is in the interest of the public that the licence be cancelled;
- (d) that a licensee or, in the case of a licensee company, the chief executive officer of the company, has failed to be in effective control of any place of business in respect of which it is that person's duty to be in effective control or has failed to ensure that any branch manager of a branch office has been in effective control of that branch, and it is in the interest of the public that the licence be cancelled;

- (e) that a licensee or, in the case of a licensee company, an officer of the company, has been adjudicated bankrupt, or has made any assignment for the benefit of his or her creditors, or has made any composition with his or her creditors; or
- (f) that in the case of a licensee company, the company is in receivership or in liquidation;

Board may suspend real estate agent

67.—(1) On any application under section 66, the Board may, if it is satisfied that a ground exists for ordering the cancellation of a real estate agent's licence, instead of ordering the cancellation of that licence, suspend the licensee or where the licensee is a company, the company or any officer of the company, from carrying on the business of a real estate agent for any period not exceeding 3 years as the Board thinks fit.

(2) While an order of suspension continues in force the person to whom the order relates shall not carry on the business of a real estate agent, or assist in the operation of any company that is a licensee.

(3) A person who knowingly acts in contravention of subsection (2) commits an offence.

(4) An order of suspension made under this section may, on application to the Board by the person to whom the order relates, be varied or revoked by the Board at any time.

Board may hold inquiry

68.—(1) Every application made to the Board under section 66 may be investigated by a person appointed for that purpose by the Board, and that person shall report thereon in writing to the Board.

(2) On receipt of the report referred to in subsection (1), the Board shall, unless it is satisfied that there is no reasonable ground for the application, hold an inquiry into the application, and shall give to the real estate agent concerned, and to the applicant, at least 14 days notice in writing of its intention to hold an inquiry, of the time and place of the hearing, and, in the case of the real estate agent, the nature of the application to be inquired into.

(3) The inquiry shall be conducted and the decision made by the Chairperson and at least 2 members of the Board, of whom one shall be a member who is not a real estate agent.

(4) If a member of the Board is the applicant under section 66, that member shall not be appointed to investigate the application under subsection (1) and shall not, except as such applicant, take part in the conduct of the inquiry or in the making of the decision.

(5) At the inquiry the real estate agent and the applicant concerned shall be entitled to be present and to be heard.

(6) Every application shall be prosecuted at the inquiry by the applicant or such other person as the applicant with the consent of the Chairperson of the Board, may appoint.

Interim suspension pending determination of application

69.—(1) Where an application has been made to the Board under section 66 or 70(1) and the Board is satisfied that it is necessary or desirable to do so having regard to the interests of the public, and to the possibility of further loss or damage occurring if it does not make an order under this section, the Board may make an order suspending the licensee or salesperson or branch manager in respect of whom the application has been made or, where the licensee is a company, the company or any officer of the company, until the application has been heard and determined.

(2) The Board shall notify the licensee, officer, salesperson or branch manager, in writing of any order of suspension made by it under this section and of its reasons for making the order, and shall, as soon as practicable thereafter, afford the licensee, officer, salesperson or branch manager an opportunity to make representations to the Board for the revocation of the order.

(3) An order of suspension made under this section shall come into force when the licensee, officer, salesperson or branch manager is notified of the order in accordance with subsection (2), and, while it continues in force—

- (a) the licence of the licensee shall cease to have effect and shall not be renewed nor shall a new licence be granted;
- (b) the officer of the company shall (if applicable) cease to be eligible to apply for a licence in his or her own right for the purposes of section 16(3); and
- (c) the certificate of approval of the salesperson or branch manager shall cease to have effect and shall not be renewed nor shall a new certificate be granted.

(4) The Board may at any time, on its own motion or on the application of the licensee, officer, salesperson or branch manager revoke an order of suspension made under this section.

Board may cancel certificate of approval or suspend salesperson, etc.

70.—(1) On application made to the Board in that behalf by the Registrar or a member of the Board or by any other person with the leave of the Board, the Board may cancel the certificate of approval issued in respect of any person or may suspend that person for such period not exceeding 3 years as the Board thinks fit on the ground—

- (a) that since the issue of the certificate of approval the person has been convicted of any crime involving dishonesty; or
- (b) that the person has been, or has been shown to the satisfaction of the Board to be, of such a character that it is, in the opinion of the Board, in the public interest that the certificate of approval be cancelled or that the person be suspended;

(2) The Board shall, as soon as practicable after receiving an application under this section, send a copy of the application to the salesperson or branch manager, and shall not

hear or consider the application until the expiration of 10 days after the date of receipt of the copy by the salesperson or branch manager.

(3) The salesperson or branch manager and the applicant concerned shall be entitled to appear and be heard by the Board in respect of the application.

(4) If a member of the Board is the applicant under subsection (1), the member shall not take part in the decision of the Board.

Evidence of offences

71.—(1) For the purposes of this Part, a certificate containing the substance of the conviction of any person of any crime involving dishonesty and purporting to be signed by the Registrar of the Court by which the offender was convicted, shall, until the contrary is proved, be sufficient evidence of that conviction without proof of the signature or official character of the person appearing to have signed the certificate.

(2) On any application under section 66 or 70 any statement in writing, signed by the Chairperson of the Board and by the real estate agent or officer of a licensee company or salesperson or branch manager concerned, or by their legal practitioner or counsel setting out any facts admitted as having been proved at any inquiry held by the Board under section 68, shall be admissible as evidence of those facts.

Venue

72. The hearing of any application or inquiry by the Board under section 69 shall, unless otherwise agreed between the Board and the real estate agent or officer of the company or salesperson or branch manager concerned, be held in the locality in which the principal place of business of the real estate agent or the company is situated.

Right of real estate agent to be heard

73. Except where the Board makes an order of interim suspension under section 68, the Board shall not exercise any of its powers under this Part without first giving to the real estate agent or officer of the company or salesperson or branch manager concerned a reasonable opportunity to be heard.

Witnesses may be required to attend and give evidence

74.—(1) The Board may, by notice in writing signed by the Chairperson, require any person to attend and give evidence before it at the hearing of an application or inquiry under this Part, and to produce all books and documents in that person's custody or under that person's control relating to the subject-matter of any such application or inquiry.

(2) The Board may require evidence to be given on oath or affirmation, either orally or in writing, and for that purpose the Chairperson of the Board, or other person presiding may administer an oath or affirmation.

(3) A person who, without lawful justification, refuses or fails

- (a) to attend and give evidence when required to do so by the Board;
- (b) to answer truly and fully any question put to him or her by a member of the Board; or

- (c) to produce to the Board any book or document required by the Board to be produced by that person,

commits an offence.

(4) Every witness giving evidence or attending to give evidence at the hearing of an application or inquiry by the Board under this Part shall be entitled to such sum for expenses and loss of time as a witness would be entitled to in criminal proceedings in a Court.

(5) Subject to any order as to costs made by the Board, all sums to which any witness is entitled under subsection (4) shall be paid to the witness, but, if requested by the witness, travelling expenses shall be paid before the time set for the hearing or inquiry.

Rules of Procedure

75. The Board may from time to time make rules in respect of making, hearing and determination of applications and inquiries required to be made, heard or determined by them under this Part.

Jurisdiction of court not limited

76. Except as expressly provided in this Part, nothing in this Part shall be construed to limit the jurisdiction of any court.

PART 10—APPEALS

Appeals to Minister

77.—(1) In every case where the Board—

- (a) refuses, under section 21, to grant an application for a licence; or
- (b) cancels a licence under section 66 or suspends any person under section 69,

the applicant or, as the case may require, the licensee or officer of a licensee company, shall have a right of appeal to the Minister.

(2) In every case where the Board—

- (a) refuses under section 43 or 51 to grant an application for a certificate of approval;
- (b) refuses under section 45 to grant an application for the renewal of a certificate of approval; or
- (c) cancels a certificate of approval or suspends a salesperson or a branch manager,

the applicant, licensee, salesperson or branch manager, as the case may be, shall have a right to appeal to the Minister.

(3) In every case where the Board, under section 30, refuses to grant a permit or to extend a permit, or revokes a permit, the applicant or, as the case may require, the holder, shall have a right of appeal to the Minister.

(4) Every such appeal shall be brought within 28 days after the date on which the appellant was notified of the decision appealed against, or within such further period as the Minister may allow.

Rights of licensee pending disposal of appeal in certain cases

78. Where a decision of the Board is to cancel a licence or refuse an application to renew any licence, that decision shall be of no effect until—

- (a) where notice of an appeal against that decision has been given within the period specified in section 77(4), the appeal is determined; or
- (b) where no notice of an appeal against that decision has been given within that period, that period has expired.

Procedure on appeal

79. Subject to this Part, the procedure in respect of any appeal to the Minister shall be as prescribed by regulations.

Hearing and determination of appeal

80.—(1) For the purposes of an appeal under section 77 the Minister may consider any statement, document, information or other matter that may, in the opinion of the Minister, assist in dealing effectually with the appeal.

(2) In the determination of any appeal under this section, the Minister may confirm, modify or reverse the decision appealed against, or any part of that decision.

PART 11 – MISCELLANEOUS PROVISIONS

Prohibition on charging excessive commission, etc.

81. A real estate agent, an officer of a licensee that is a company, a salesperson or a branch manager, who charges or attempts to charge or accepts, by way of commission or other fee, an amount which exceeds the amount prescribed by regulations in respect of such commission or fee, commits an offence.

General provision relating to offences

82.—(1) Where a person is convicted of an offence under section 23, 25, 28, 41, 46, 48 53, 58, 62, 63 or 74, that person is liable—

- (a) in the case of a natural person—
 - (i) to a fine not exceeding \$5,000 in respect of a first offence; or
 - (ii) to a fine not exceeding \$10,000 in respect of a second or subsequent offence; and
- (b) in the case of a company—
 - (i) to a fine not exceeding \$25,000 in respect of a first offence; or
 - (ii) to a fine not exceeding \$50,000 in respect of a second or subsequent offence.

(2) Where a person is convicted of an offence under section 15, 36, 38, 54, 56, 57, 59, 61, 64, 67 or 81, that person is liable—

(a) in the case of a natural person—

- (i) to a fine not exceeding \$10,000 in respect of a first offence; and
- (ii) to a fine not exceeding \$20,000 in respect of a second or subsequent offence; and

(b) in the case of a company—

- (i) to a fine not exceeding \$50,000 in respect of a first offence; and
- (ii) to a fine not exceeding \$100,000 in respect of a second or subsequent offence.

(3) Where—

- (a) a natural person is convicted of an offence under this Act; and
- (b) the court by which the person is convicted is satisfied that the offence was committed with the intent to defraud another person,

the court may, instead of, or in addition to, any penalty which it may impose under subsection (1) or (2), sentence the person to imprisonment for a term not exceeding 3 years.

(4) Where—

- (a) a person is convicted of an offence under this Act; and
- (b) the court by which the person is convicted is satisfied that the commission of that offence caused another person pecuniary loss,

the court may, on application by that other person, order the convicted person to pay to that other person such amount as the court considers appropriate to compensate that other person for the pecuniary loss.

(5) Where an offence under this Act committed by a company is proved to have been committed with the consent of, or the connivance of, or to be attributable to any default on the part of a director, manager, secretary or other similar officer of the company, or any person purporting to act in any such capacity, he or she, as well as the company shall be guilty of the offence and shall be liable to be proceeded against accordingly.

Civil remedies not affected

83. Nothing in this Act shall affect any civil remedy that any person may have against a real estate agent or salesperson or branch manager in respect of any matter.

Service of notices and documents

84.—(1) Any notice or other document that under this Act may be or is required to be given to or served on any applicant for a licence, certificate of approval, or permit, may be given or served by delivering it to the applicant personally, or by leaving it or sending

it by post in a registered letter addressed to the applicant at the applicant's residential address or registered office specified in the applicant's application, or at any address for service specified in such application.

(2) Any notice or other document that under this Act may be or is required to be given to or served on a holder of a licence, certificate of approval, or permit, may be served by delivering it to the holder personally, or by leaving it or sending it by post in a registered letter addressed to the holder—

- (a) at the holder's usual or last known place of residence in the Fiji Islands;
- (b) in the case of a licensee, at the holder's registered office;
- (c) in the case of an officer of a licensee company, at the registered office of the company;
- (d) in the case of a salesperson, at the place of business at which the salesperson is employed; or
- (e) in the case of a branch manager, at the branch office.

(3) Any notice or other document that under this Act may be or is required to be given to or served on the Board shall be given or served by delivering it to the Registrar personally, or by leaving it or sending it by post in a registered letter addressed to the Registrar or to the Board at the office of the Board.

(4) Where any notice or other document is sent by post in the manner prescribed by any of the foregoing provisions of this section, it shall be deemed to have been given to or served on the addressee at the time when the letter would have been delivered in the ordinary course of the post, and, in proving service of the notice, it shall be sufficient to prove that it was duly put into the Post Office as a registered letter.

Immunity of witnesses, counsel and Board

85.—(1) Witnesses and counsel shall have the same privileges and immunities in relation to complaints heard by the Board under this Part as they would have if the complaints were proceedings in a Court of law.

(2) Neither the Board nor any member of the Board shall be liable in respect of anything done or omitted to be done at or for the purpose of the hearing of any complaint under this Act, unless it is proved to the satisfaction of the Court before which any proceedings are taken that the defendant has acted in bad faith.

Board may award costs

86. After hearing any complaint under this Act the Board may make such order as to costs as it thinks fit, including—

- (a) an order that costs be awarded to the licensee or officer of the company or salesperson or branch manager against whom the complaint was made and that the costs be paid by the Registrar;

- (b) order that the licensee or officer of the company or salesperson or branch manager concerned pay to the Registrar such sum as the Board thinks fit in respect of the costs and expenses of and incidental to the to the inquiry or any preliminary investigation conducted by the Registrar.

Recovery of costs and expenses

87. Any sum ordered by the Board to be paid by way of costs or expenses shall be a debt due by the person ordered to pay it to the person to whom it is ordered to be paid, and shall be recoverable accordingly.

Registrar to keep account of moneys received

88. The Registrar shall keep a correct account of all such sums of money as shall be received by him or her pursuant to the provisions of this Act, and shall pay the same into the Consolidated Fund at such times and in such manner as the Minister of Finance may direct.

Reports of the Board

89.—(1) The Board shall, within 6 months after the end of each financial year forward to the Minister a report on the operations of the Board during that financial year.

(2) The report referred to in subsection (1) shall specify any directions given by the Minister to the Board during that year.

(3) The Minister shall, as soon as practicable after receipt of the report, cause copies of it to be laid before both Houses of Parliament.

Minister may require returns, etc.

90. Without prejudice to the generality of section 89, the Board shall forward to the Minister such returns, statistics or other information as the Minister may from time to time, by notice in writing, require.

Regulations

91.—(1) The Minister may from time to time, after consultation with the Board, make regulations for giving effect to the purposes of this Act, and, without prejudice to the generality of the foregoing, may make regulations:

- (a) prescribing forms to be used for the purposes of this Act, and the matters to be specified in such forms;
- (b) prescribing fee payable under this Act in respect of any application made under this Act, and providing for a refund of the fee or a specified part of it if an application is refused or is withdrawn;
- (c) prescribing forms of advertisements and other notices under this Act;
- (d) providing for an audit from time to time of the trust accounts of all real estate agents, and the manner in which and the persons or class of persons by whom that audit shall be conducted, and for a report of the result of the audit;
- (e) requiring real estate agents to give notice of the appointment of an auditor;

- (f) requiring the production to the auditor of books, papers, and accounts, subject to such conditions as may be prescribed;
- (g) prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record;
- (h) generally to ensure that all trust accounts shall be duly kept and audited;
- (i) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act;
- (j) prescribing the maximum commission rate and other fees that a real estate agent, officer of licensee that is a company or salesperson or branch manager may charge for his or her services in the business of real estate agent;
- (k) prescribing examinations for salesperson;
- (l) prescribing the manner in which application may be made for the approval of a branch office; and
- (m) prescribing procedures in respect of appeals to the Minister.

(2) Any regulations under this section prescribing the fee payable on the issue or renewal of a licence shall prescribe uniform fee in respect of both, but may prescribe—

- (a) additional fee in respect of every branch office of the licensee; or
- (b) a reduced fee in respect of licences issued after a specified date.

Savings and transitional

92.—(1) Where, on the coming into operation of this Act, a person is carrying on the business of a real estate agent, that person may, in accordance with provisions of this Act, apply to the Board for a licence.

(2) On receipt of an application from a person referred to in subsection (1), the Registrar shall, upon payment of the prescribed fee (if any), issue to the person a provisional licence which shall be deemed to be effective from the date of the coming into operation of this Act until the application is finally determined by the Board.

(3) If at the expiration of the period allowed for objections to the issue of a licence to the applicant under section 18, the Board has received no notice of objection, and the Board is satisfied—

- (a) that the applicant is, under the provisions of section 16, eligible to hold and is not disqualified from holding a licence; and
- (b) that, having regard to the applicant's character, financial position, the interests of the public, and where appropriate, the matters specified in section 22, the applicant is a fit and proper person to carry on the business of a real estate agent,

the Board shall grant a licence to the applicant upon payment of the prescribed fee without further consideration of the application.

(4) If the Board does receive notice of objection within the time allowed under section 18, the application shall be heard and determined in accordance with the provisions of this Act.

(5) When considering any application under subsection (1) or subsection (7), the Board may dispense with the 3 year requirement mentioned in section 16(2)(c) and section 50.

(6) At the commencement of this Act, a person who is employed or engaged as a salesperson or a branch manager continues as if the person were given a certificate of approval under this Act, subject to subsection (7).

(7) A person authorised under subsection (6) shall apply to the Board for an approval within 6 months from the commencement of this Act, otherwise the authorisation given by virtue of subsection (6) shall cease to have effect.

(8) If an application for a real estate agent's licence or for an approval for a salesperson or branch manager is made and no examination has been prescribed under this Act, the Board may instead take into account any relevant academic qualifications or the experience of the applicant in real estate as the necessary requirement for the examination.

Passed by the House of Representatives on 8th August 2006.

Passed by the Senate on 31st August 2006.