

Version No. 105
Estate Agents Act 1980
No. 9428 of 1980

Version incorporating amendments as at 1 August 2010

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1 Short title and commencement	1
2 <i>Repealed</i>	1
PART I—INTRODUCTION	1
3 <i>Repealed</i>	1
4 Definitions	2
5 Act not to apply to Government Departments etc.	17
PART IIA—THE ESTATE AGENTS COUNCIL	21
6 Estate Agents Council	21
6A Objectives of the Council	23
6B Functions and powers of the Council	24
6C Meetings of the Council	26
PART IIB—ADMINISTRATION	28
7 Function of Authority	28
7A–7H <i>Repealed</i>	28
8 Powers of Authority to enter into agreements	28
8A <i>Repealed</i>	28
9 Functions of Director	28
10 Powers of Director to enter into agreements	29
10A Director may approve registered education and training organisations	29
10B Courses of education for approved auditors	30
10C Notice may be disallowed	30
10D Further publication of notices	31
11 Delegation by Director	31
11A Delegation by Secretary	32

<i>Section</i>	<i>Page</i>
PART III—LICENCES	33
12 Estate agents to be licensed	33
12A–12C <i>Repealed</i>	34
13 Agents' representatives	34
13A Estate agents to be responsible for the acts of their representatives	35
13B Auctioneers of real estate	35
14 Eligibility to obtain licence	37
15 Licensing of corporations	40
16 Eligibility for employment as an agent's representative	43
16A <i>Repealed</i>	46
16B Offence to aid unqualified person to be an agent's representative	46
16C Transitional provision concerning former sub-agents	47
17 Application for estate agent's licence	48
18 <i>Repealed</i>	50
19 Certain documents to be lodged by particular corporations	51
19A Consent to disclosure of information	53
20 Application to be referred to Director and Chief Commissioner	54
20A Provision of information for the purposes of this Act	54
21 Grant and effect of licence	55
21A Conditions of licence	58
21B Endorsement of licence	58
22 Automatic cancellation of licence on bankruptcy etc.	58
22A Delay of effect of certain convictions	60
23 Annual licence fee and statement	61
24 Extension of time	62
24A Failure to comply with section 23	62
24B If details given in application or annual statement change	62
24C No application for 2 years after refusal	63
24D Lost licence	63
25 Inquiries into estate agents	63
26, 27 <i>Repealed</i>	65
28 Inquiries into agents' representatives	65
28A Determination of Tribunal on inquiry	66
29 Cancellation of licences in other cases	67
29A Suspended and cancelled licences must be returned	69
29B Duties of agents and officers in effective control	69
29C Offence to procure contravention of section 29B	70
30 Management of estate agency office	70
30AA, 30AB <i>Repealed</i>	73
30A Absence of estate agent or branch manager	73
31 Effect of disqualification	74
31A Person involved in Fund claim may regain licence etc. in exceptional circumstances	74

<i>Section</i>	<i>Page</i>
31B Bankrupt person may be allowed limited right to hold licence etc.	76
31C Person with criminal record may be allowed limited right to hold licence etc.	77
31CA Corporation may be allowed to hold licence despite disqualifying factors	78
31D Authority may impose conditions	81
31E Disability etc. of licensed estate agent	82
32 Application for review	83
33 The Register	83
34, 34A <i>Repealed</i>	87
35 Registered office and address	87
36 Name of estate agency business	89
37 <i>Repealed</i>	89
 PART IV—AGENTS AND AGENTS' REPRESENTATIVES	 90
38 Unlicensed person pretending to be licensed as agent	90
39 As to displaying notice on places of business	90
40 Letterhead	91
41 Production of licence by agent	92
42 Advertising	92
43 Franchising agreements	94
44 Persons not to be employed by agents	95
45 Continuing professional development	96
45A Requirement may be disallowed	97
45B Further publication of requirement	98
46 Employees statements	98
47 Authorization of agents' representatives	99
47A Seller must be given estimated selling price	99
47B False representation to seller or prospective seller	100
47C False representation to prospective buyer	100
47D Director may require information concerning estimates	101
48 Notice of commission sharing must be given	102
48A Agent must not retain any rebate	103
48B Rebates must be factored into costs of expenses	103
48C Treatment of non-monetary rebates	104
48D Repeated breaches within 12 months	105
48E Right of recovery of rebates	105
49 <i>Repealed</i>	105
49A Offence not to give certain information about commission	105
50 Commission	108
51 Statement concerning finance only to be given if finance promised	110
52 Statement to be given on sale of small business	117
53 Copy of contract etc. to be delivered to person signing	119
53A Exemption concerning the Legal Profession Act 2004	120

<i>Section</i>	<i>Page</i>
54 Default time limit on sole agency agreements	120
55 Restriction on agent purchasing property	121
56 Certain commissions illegal	126
56A Power of Director to investigate disputes	126
56B Powers of Tribunal in relation to disputes	127
PART V—BUILDERS AND SUBDIVIDERS OF LAND	128
57 Representation etc. by builders and subdividers of land	128
PART VI—ACCOUNTS, AUDIT AND MONITORING OF ESTATE AGENCY BUSINESS	130
Division 1—Accounts and Audit	130
58 Definitions	130
58A Agents licensed interstate	132
59 Trust money	132
59A Unidentified trust money	136
60 Secretary's power to enter into arrangements with financial institutions	137
60A <i>Repealed</i>	138
61 Appointment of authorised institutions to handle trust accounts	138
62 Liability of principal for certain acts etc. of agents' representatives	139
63 Duty to keep accounts of trust money received etc.	139
63A Director's supervisory role in audits	142
64 Annual audit of trust accounts	143
64A Audit ordered by Director	147
64B Audit where estate agent's business ceased during financial year	148
65 Variation of date of audit	149
66 Qualified auditors	150
67 Non-disclosure by auditors	153
68 Right of persons beneficially interested to obtain information	154
69 Agents having no accounts to audit	154
Division 2—Monitoring of estate agency business	155
70 Definitions	155
70A Production of identity card	156
70B Accounts and other documents available for inspection and audit	156
70C Estate agent to produce documents and answer questions	157
70D Third parties to produce documents and answer questions relating to estate agent's business	157
70E Ministers, police and public authorities to produce information to inspectors	158

<i>Section</i>	<i>Page</i>
70F Certain other specified persons or bodies to produce information	159
70G Powers on production of documents	160
70H Order requiring supply of information and answers to questions	161
70I Entry or search with consent	162
70J Entry without consent or warrant	164
70K Search warrants	165
70L Announcement before entry	166
70M Details of warrant to be given to occupier	167
70N Seizure of things not mentioned in the warrant	167
70O Embargo notice	168
70P Copies of seized documents	169
70Q Retention and return of seized documents or things	169
70R Magistrates' Court may extend 3 month period	169
70S Requirement to assist inspector during entry	170
70T Refusal or failure to comply with requirement	170
70U Protection against self-incrimination	171
70V Offence to give false or misleading information	171
70W Application of provisions relating to inspections	171
70WA Powers of court if requirement to produce information not complied with	172
70X Service of documents	172
70Y Confidentiality	173
PART VII—VICTORIAN PROPERTY FUND	174
71 Definitions	174
72 Victorian Property Fund	175
73 Moneys constituting Fund	175
74 <i>Repealed</i>	177
75 Payments out of Fund	177
76 Application of excess money in Fund	180
77, 78 <i>Repealed</i>	183
79 Application of Fund	184
80 Right to claim in respect of pecuniary loss	185
81 Claims against the Fund	186
82 <i>Repealed</i>	187
83 Power of Secretary to require production of securities	188
84 Subrogation of Secretary to rights etc. of claimant upon payment from Fund	188
85 <i>Repealed</i>	188
86 Provision where Fund insufficient to meet payment out of it	188
87 Secretary may enter into contract of insurance or indemnity for purposes of Act	189
88 Application of insurance moneys	190

<i>Section</i>	<i>Page</i>
89 Freezing of trust accounts of defaulting agents	190
90 Deficiency in trust account	191
91 Wrongful conversion and false accounts	192
PART VIIA—<i>Repealed</i>	194
91A–91Y <i>Repealed</i>	194
PART VIII—MISCELLANEOUS	195
92 Certificate as evidence	195
92A Registrar may waive fees	195
92B Verification of details supplied to the Authority	195
92C Complaints concerning estate agents etc. are privileged	195
93 Furnishing incorrect particulars	196
93A Application of Fair Trading Act 1999	196
94 Offences	197
94A Profit to be forfeited in case of unlicensed trading etc.	198
95 Prosecutions	198
95A Power to serve a notice	199
95B Form of notice	199
95C, 95D <i>Repealed</i>	199
95E Further proceedings concerning infringement notices	200
96 Applications and notices in the case of corporation	200
97 Saving of contracts and civil liability	200
97A Protection for things done under this Act	201
98 Retention of documents	201
98A Offence to destroy documents required by the Act	202
99 Regulations	202
100 <i>Repealed</i>	205
PART IX—TRANSITIONAL	206
101 Rural branch manager's licence	206
SCHEDULE—<i>Repealed</i>	207
ENDNOTES	208
1. General Information	208
2. Table of Amendments	209
3. Explanatory Details	218

Version No. 105
Estate Agents Act 1980
No. 9428 of 1980

Version incorporating amendments as at 1 August 2010

An Act to re-enact with amendments the Law relating to Estate Agents and Sub-agents.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1 Short title and commencement

- (1) This Act may be cited as the **Estate Agents Act 1980**.
- (2) The several provisions of this Act shall come into operation on a day or on the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

* * * * *

S. 2
repealed by
No. 41/1987
s. 103(Sch. 4
item 17.1).

PART I—INTRODUCTION

* * * * *

S. 3
repealed by
No. 10087
s. 4(1)(Sch. 2).

s. 4

S. 4
amended by
No. 72/2001
s. 3(Sch.
item 7.2) (ILA
s. 39B(1)).

S. 4(1) def. of
*accounting
records*
inserted by
No. 10028
s. 4(a),
amended by
No. 86/1994
s. 5(a),
substituted by
No. 44/2001
s. 3(Sch.
item 39.1(a)).

S. 4(1) def. of
*agent's
representative*
inserted by
No. 86/1994
s. 5(b).

4 Definitions

- (1) In this Act unless inconsistent with the context or subject-matter—

accounting records has the same meaning as
financial records has in the Corporations
Act;

agent's representative means any person—

- (a) who is not a licensed estate agent but who—
- (i) is employed by, or who acts for or by arrangement with, a licensed estate agent; or
 - (ii) is a director, member or officer of a corporation that is a licensed estate agent; and
- (b) who performs for that estate agent any of the functions of an estate agent (other than work ordinarily performed by clerks, cashiers or accountants)—

regardless of whether his or her remuneration is by way of salary, wages, commission or otherwise;

approved auditor means a person who—

- (a) is a member of CPA Australia, the National Institute of Accountants or The Institute of Chartered Accountants in Australia; and
- (b) meets the requirements of one of those bodies to practise as a public accountant; and
- (c) has obtained a degree in commerce, accounting, business studies or a similar discipline from an Australian university or from a foreign university approved by the Council; and
- (d) has successfully completed any courses of education required by the Director under section 10B;

S. 4(1) def. of *approved auditor* inserted by No. 41/2003 s. 12(1)(d).

approved industry association means—

- (a) The Real Estate Institute of Victoria Ltd.;
- (b) the Australian Livestock & Property Agents Association Limited ACN 096 142 880;
- (c) any other industry association approved by the Minister by notice published in the Government Gazette;

S. 4(1) def. of *approved industry association* inserted by No. 52/1998 s. 66(a), amended by Nos 41/2003 s. 12(1)(a), 1/2010 s. 4(2).

* * * * *

S. 4(1) def. of *approved names* inserted by No. 10028 s. 4(a), repealed by No. 86/1994 s. 5(c).

S. 4(1) def. of *authorised deposit-taking institution* inserted by No. 11/2001 s. 3(Sch. item 24.1(a)).

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth;

S. 4(1) def. of *authorised investment* inserted by No. 38/1993 s. 5(1), amended by Nos 11/2001 s. 3(Sch. item 24.1(b)(i)-(iv)), 44/2001 s. 3(Sch. item 39.1(b)).

authorised investment means—

- (a) a term deposit, debenture or deposit stock of an authorised deposit-taking institution;
- (b) a document issued by an authorised deposit-taking institution—
 - (i) relating to money which has been deposited with the authorised deposit-taking institution; and
 - (ii) which recognises an obligation to pay a stated amount to bearer or to order with or without interest; and
 - (iii) which (with or without endorsement) confers by delivery the right of the holder to receive that stated amount with or without interest;
- (c) a loan to the Treasurer repayable on demand;
- (d) a stock, bond, debenture or other security of the Commonwealth or of the State or of any public statutory body constituted under a law of the Commonwealth or of the State which is guaranteed by the Commonwealth or the State;
- (e) a deposit with an eligible money market dealer within the meaning of the Corporations Act;

- (f) a bill of exchange which—
- (i) at the time of acquisition has a maturity date of no more than 200 days; and
 - (ii) if purchased for value confers on the holder in due course a right of recourse against an authorised deposit-taking institution as the acceptor or indorser of the bill for an amount equal to the face value of the bill;
- (g) an investment approved, or included in a class of investments approved, for the time being by the Treasurer as an authorised investment, or class of authorised investments, for the purposes of this Act (whether or not of a kind similar to a kind of investment referred to in a preceding paragraph);

Authority means the Business Licensing Authority established under the **Business Licensing Authority Act 1998**;

S. 4(1) def. of ***Authority*** inserted by No. 86/1994 s. 5(d), substituted by No. 52/1998 s. 66(b).

* * * * *

S. 4(1) def. of ***bank*** inserted by No. 38/1993 s. 5(1), repealed by No. 11/2001 s. 3(Sch. item 24.1(c)).

* * * * *

S. 4(1) def. of ***Board*** repealed by No. 86/1994 s. 5(c).

s. 4

S. 4(1) def. of
books
inserted by
No. 10028
s. 4(b),
amended by
Nos 86/1994
s. 5(e),
44/2001
s. 3(Sch.
item 39.1(c)).

books has the same meaning as in the
Corporations Act;

S. 4(1) def. of
*branch
manager*
amended by
No. 86/1994
s. 5(f).

branch manager means a person permitted by
section 30 to manage a branch office;

S. 4(1) def. of
branch office
substituted by
No. 10028
s. 4(c).

branch office means an office in which the
business of a licensed estate agent is
conducted other than a principal office;

S. 4(1) def. of
business
amended by
No. 10028
s. 4(d).

business means any hotel business, boarding-
house business, storekeeper's business,
manufacturing business, professional
business, service business or any trading
business whatsoever, and includes any share
or interest in or concerning any stock
goodwill or other property or assets included
in any transaction relating to a business;

business day means any day other than a Saturday
or a Sunday or a day appointed by or under
the **Bank Holidays Act 1958** as a holiday
for the whole day or for specified hours
thereof in all banks or in banks within the
locality concerned;

Estate Agents Act 1980
No. 9428 of 1980
Part I—Introduction

s. 4

* * * * *

S. 4(1) def. of *Chief Executive Officer* inserted by No. 9925 s. 2(a), repealed by No. 86/1994 s. 5(c).

commission includes fees charges reward or other remuneration whether monetary or otherwise;

Council means the Estate Agents Council established by section 6;

S. 4(1) def. of *Council* inserted by No. 86/1994 s. 5(g).

CPA Australia means CPA Australia A.C.N. 008 392 452;

S. 4(1) def. of *CPA Australia* inserted by No. 41/2003 s. 12(1)(d).

* * * * *

S. 4(1) def. of *declared corporation* amended by No. 9/2002 s. 3(Sch. item 6.1(a)), repealed by No. 1/2010 s. 4(4)(a).

Director means the Director within the meaning of the **Fair Trading Act 1999**;

S. 4(1) def. of *Director* inserted by No. 86/1994 s. 5(h), substituted by Nos 52/1998 s. 66(c), 17/1999 s. 32.

s. 4

S. 4(1) def. of *domestic partner* inserted by No. 72/2001 s. 3(Sch. item 7.1), substituted by No. 12/2008 s. 73(Sch. 1 item 21.1).

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

S. 4(1) def. of *employ* amended by No. 86/1994 s. 5(i).

employ (in relation to the employment of any person as an agent's representative) includes not only directly employ but also by any arrangement or any means whatsoever engage induce or permit any person to act as an agent's representative, and the derivatives of *employ* have a corresponding interpretation;

S. 4(1) def. of *employer's copy* repealed by No. 86/1994 s. 5(c).

* * * * *

estate agent or **agent** means any person (whether or not he carries on any other business) who exercises or carries on or advertises or notifies or states that he exercises or carries on or that he is willing to exercise or carry on or in any way holds himself out to the public as ready to undertake the business of—

S. 4(1) def. of *estate agent* or *agent* amended by Nos 10028 s. 4(e), 41/2003 s. 12(1)(b)(i)(ii).

- (a) selling buying exchanging letting or taking on lease of or otherwise dealing with or disposing of;
- (b) negotiating for the sale purchase exchange letting or taking on lease of or any other dealing with or disposition of;
- (c) collecting rents for—

* * * * *

any real estate or business on behalf of any other person;

estate agent's licence means a valid and unexpired estate agent's licence under this Act;

externally-administered body corporate has the same meaning as in the Corporations Act;

S. 4(1) def. of *externally-administered corporation* inserted by No. 86/1994 s. 5(j), substituted as *externally-administered body corporate* by No. 101/1998 s. 37(1)(a), amended by No. 44/2001 s. 3(Sch. item 39.1(c)).

s. 4

S. 4(1) def. of
Fund
inserted by
No. 8/2003
s. 44(a),
amended by
No. 17/2004
s. 3(b).

Fund means the Victorian Property Fund
established under this Act;

S. 4(1) def. of
*insolvent
under
administration*
inserted by
No. 86/1994
s. 5(j),
substituted by
No. 101/1998
s. 37(1)(b),
repealed by
No. 4/2008
s. 32(Sch.
item 9).

* * * * *

S. 4(1) def. of
inspector
inserted by
No. 103/2004
s. 35.

inspector means an inspector appointed under the
Fair Trading Act 1999;

letting includes every form of leasing or letting of
or granting a licence to use real estate and
the function or business of ***letting*** includes
the collection or receipt of rents by an agent
on behalf of his principal whether the agent
has or has not let the real estate in question;

S. 4(1) def. of
licence
amended by
No. 86/1994
s. 5(k).

licence means estate agent's licence;

S. 4(1) def. of
*licensed
auctioneer*
repealed by
No. 86/1994
s. 5(l).

* * * * *

licensed estate agent means the holder of an
estate agent's licence;

Estate Agents Act 1980
No. 9428 of 1980
Part I—Introduction

s. 4

* * * * *

S. 4(1) def. of *licensed sub-agent* repealed by No. 86/1994 s. 5(l).

outgoings means any moneys spent by an estate agent on his principal's behalf for which the estate agent is at common law entitled to be reimbursed;

S. 4(1) def. of *outgoings* inserted by No. 10028 s. 4(f).

owners corporation has the same meaning as it has in the **Owners Corporations Act 2006**;

S. 4(1) def. of *owners corporation* inserted by No. 69/2006 s. 224(Sch. 3 item 5.1(b)).

Part means Part of this Act;

* * * * *

S. 4(1) def. of *practising public accountant* amended by Nos 9699 s. 23, 86/1994 s. 5(m)(i)(ii), 44/2001 s. 3(Sch. item 39.1(d)), repealed by No. 41/2003 s. 12(1)(c).

principal office means the office recorded on the register under section 33(3)(g) as the principal office of a licensed estate agent;

S. 4(1) def. of *principal office* amended by No. 1/2010 s. 4(3).

private corporation means a corporation whose shares are not listed for quotation on any prescribed financial market (as defined in section 9 of the Corporations Act);

S. 4(1) def. of *private corporation* amended by No. 9/2002 s. 3(Sch. item 6.1(b)).

s. 4

prescribed means prescribed by this Act or the regulations or rules;

S. 4(1) def. of *professional conduct rules* inserted by No. 86/1994 s. 5(n).

professional conduct rules means the regulations made, or deemed to have been made, under section 99(gg);

S. 4(1) def. of *publish* inserted by No. 41/2003 s. 12(1)(d).

publish means publish by any means, including by publication on the Internet;

real estate includes—

- (i) any estate or interest in land or buildings;
- (ii) any share or shares in any company limited by shares entitling the holder thereof to the exclusive right to occupy a specified building or part of a building; and
- (iii) any goods chattels or other property or assets included in any transaction relating to real estate;

S. 4(1) def. of *rebate* inserted by No. 41/2003 s. 7.

rebate includes any discount, commission or other benefit;

S. 4(1) def. of *record* amended by No. 86/1994 s. 5(o), repealed by No. 52/1998 s. 66(d).

* * * * *

S. 4(1) def. of *register* inserted by No. 52/1998 s. 66(d).

register means the register kept under section 33;

Estate Agents Act 1980
No. 9428 of 1980
Part I—Introduction

s. 4

* * * * *

S. 4(1) def. of *registered address* repealed by No. 86/1994 s. 5(p).

registered education and training organisation has the same meaning as in the **Education and Training Reform Act 2006**;

S. 4(1) def. of *registered education and training organisation* inserted by No. 41/2003 s. 12(1)(d), substituted by No. 24/2006 s. 6.1.2(Sch. 7 item 17).

registered office means the office recorded in the register as the registered office of a licensed estate agent;

S. 4(1) def. of *registered office* amended by No. 8/2003 s. 44(b).

Registrar means the Registrar of the Authority appointed under the **Business Licensing Authority Act 1998**;

S. 4(1) def. of *Registrar* inserted by No. 86/1994 s. 5(q), substituted by No. 52/1998 s. 66(e).

regulations means regulations under this Act;

residence right has the same meaning as in the **Retirement Villages Act 1986**;

S. 4(1) def. of *residence right* inserted by No. 17/2004 s. 3(a).

s. 4

S. 4(1) def. of *residential property* amended by No. 53/1988 s. 45(Sch. 3 item 13) (as amended by No. 47/1989 s. 23(2)).

residential property means a dwelling-house together with any yard garden outhouses and appurtenances belonging thereto or usually enjoyed therewith and includes a flat and also any allotment or lot suitable as a site for a single dwelling-house or for a building consisting of not more than two separate dwelling-houses;

S. 4(1) def. of *retirement village* inserted by No. 17/2004 s. 3(a).

retirement village has the same meaning as in the **Retirement Villages Act 1986**;

S. 4(1) def. of *rules* repealed by No. 86/1994 s. 5(p).

* * * * *

S. 4(1) def. of *secretary* repealed by No. 9925 s. 2(b), new def. of *Secretary* inserted by No. 52/1998 s. 66(f), amended by No. 108/2004 s. 117(1) (Sch. 3 item 71.1).

Secretary means the person for the time being holding the office of Secretary to the Department of Justice under the **Public Administration Act 2004**;

S. 4(1) def. of *sell* inserted by No. 86/1994 s. 5(r).

sell includes to sell by auction;

S. 4(1) def. of *small business* amended by No. 86/1994 s. 5(s).

small business means business the goodwill plant equipment and fittings of which are sold or offered for sale or authorized to be sold at a total price not exceeding \$200 000 (or such other amount not exceeding \$500 000 that may be prescribed);

spouse of a person means a person to whom the person is married;

S. 4(1) def. of *spouse* inserted by No. 72/2001 s. 3(Sch. item 7.1).

* * * * *

S. 4(1) def. of *stock and station agent* repealed by No. 1/2010 s. 4(4)(b).

* * * * *

S. 4(1) defs of *sub-agent, sub-agent's licence* repealed by No. 86/1994 s. 5(t).

* * * * *

S. 4(1) def. of *subdivision body corporate* inserted by No. 17/2004 s. 3(a), repealed by No. 69/2006 s. 224(Sch. 3 item 5.1(a)).

travel agent means a person solely engaged in the business of making travel arrangements or arranging holiday accommodation;

S. 4(1) def. of *travel agent* inserted by No. 10028 s. 4(g).

Treasurer means the Treasurer of Victoria;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 4(1) def. of *Tribunal* inserted by No. 10155 s. 69(1)(a), substituted by Nos 86/1994 s. 5(u), 52/1998 s. 66(g).

s. 4

S. 4(1) def. of
*working
director*
inserted by
No. 86/1994
s. 5(u).

working director means, in relation to a corporation that carries on business as an estate agent, a director of that corporation who is engaged in the estate agency business of that corporation.

S. 4(2)
inserted by
No. 72/2001
s. 3(Sch.
item 7.2),
substituted by
No. 12/2008
s. 73(Sch. 1
item 21.2).

- (2) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered relationship* has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

S. 4(3)
inserted by
No. 41/2003
s. 12(2).

- (3) A reference in this Act to—
- (a) "he or she", "she or he", "him or her" or "her or him" is to be read as including a reference to "it", if the context permits;
 - (b) "his or her" or "her or his" is to be read as including a reference to "its", if the context permits.

S. 4(4)
inserted by
No. 41/2003
s. 12(2).

- (4) A reference in this Act to "people" includes a reference to bodies corporate and politic, unless the contrary intention appears.

5 Act not to apply to Government Departments etc.

(1) This Act shall not be construed as requiring—

(a) any responsible Minister of the Crown or any Government Department;

S. 5(1)
amended by
No. 10028
s. 5(a).

(b) the Director of Housing the Rural Water Corporation the Public Transport Corporation, Victorian Rail Track within the meaning of section 3 of the **Transport Integration Act 2010**, the Secretary to the Department of Natural Resources and Environment, the Roads Corporation the State Electricity Commission of Victoria Generation Victoria, National Electricity, VPX, the Rural Finance Corporation of Victoria;

S. 5(1)(b)
amended by
Nos 41/1987
s. 103(Sch. 4
item 17.2),
29/1988
s. 57(5),
44/1988
s. 60(1),
94/1990
s. 40(4),
50/1992
s. 10(Sch.
item 3),
130/1993
s. 122(Sch. 4
item 4),
53/1994
s. 34(Sch. 1
item 2),
86/1994
s. 45(a),
110/1994
s. 41(Sch. 1
item 3),
56/1995
s. 68(Sch. 1
item 1),
104/1997 s. 46,
46/1998
s. 7(Sch. 1) (as
amended by
No. 12/1999
s. 3(Sch. 1
item 9)),
6/2010
s. 203(1)
(Sch. 6
item 21).

(c) any municipal council or any local authority within the meaning of the **Public Contracts Act 1958** as in force immediately before the commencement of the **Public Contracts (Repeal) Act 1986**;

S. 5(1)(c)
amended by
Nos 21/1986
s. 4, 12/1989
s. 4 (1)(Sch. 2
item 39.1).

s. 5

S. 5(1)(e)
amended by
Nos 29/1989
s. 23(a),
17/2004
s. 10(1).

(d) any other public statutory authority specified for the purposes of this section by Order of the Governor in Council published in the Government Gazette;

(e) any person in the exercise of his functions as an officer or employee of the Crown or any Government Department, corporation, council or authority referred to in this subsection or as an agent of the Director of Housing—

to hold a licence under or observe those requirements of this Act which relate to the duties of estate agents.

(2) This Act shall not be construed as requiring—

S. 5(2)(a)
amended by
No. 55/1987
s. 57(3)(Sch. 5
item 24).

(a) any executor, administrator, trustee, liquidator, official receiver, trustee or assignee of a bankrupt for the purposes of performing his functions exercising his powers or carrying out his duties as such;

S. 5(2)(b)(c)
repealed by
No. 86/1994
s. 45(b).

* * * * *

S. 5(2)(d)
amended by
Nos 10/168
s. 3, 55/1987
s. 57(3)(Sch. 5
item 25),
45/1994
s. 42(Sch.
item 4.1).

(d) any trustee company within the meaning of the **Trustee Companies Act 1984** or any officer thereof while bona fide engaged as such officer;

S. 5(2)(e)
substituted by
Nos 35/1996
s. 453(Sch. 1
item 28.1),
18/2005
s. 18(Sch. 1
item 39.1).

(e) any Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**) for the purpose only of carrying out the ordinary functions of an Australian legal practitioner;

Estate Agents Act 1980
No. 9428 of 1980
Part I—Introduction

s. 5

(f) any person engaged for the purpose only of auditing accounts under Part VI;

S. 5(2)(f) substituted by No. 41/2003 s. 13.

(g) any person who carries on the business of a travel agent, for the purpose only of carrying out his ordinary functions as a travel agent; or

S. 5(2)(g) substituted by No. 10028 s. 5(b).

(h) any class of persons exempted by the regulations—

to hold a licence under or (except in respect of any provision of this Act which is specifically expressed to apply to any class of persons referred to in this subsection) to observe the requirements of this Act.

* * * * *

S. 5(3) amended by Nos 10028 s. 5(c)(i)(ii), 10168 s. 3, 55/1987 s. 57(3)(Sch. 5 item 26), 45/1994 s. 42(Sch. item 4.2), repealed by No. 86/1994 s. 45(b).

* * * * *

S. 5(4)–(6) amended by No. 10028 s. 5(d)–(f), repealed by No. 86/1994 s. 45(b).

* * * * *

S. 5(7) repealed by No. 86/1994 s. 45(b).

Estate Agents Act 1980
No. 9428 of 1980
Part I—Introduction

s. 5

S. 5(8)
amended by
No. 38/1993
s. 6(a),
repealed by
No. 86/1994
s. 45(b).

* * * * *

S. 5(9)
amended by
No. 86/1994
s. 45(c).

(9) A person who is one of a class of persons exempted under this section or by the regulations from holding an estate agent's licence and who does not hold an estate agent's licence shall not demand, sue for, recover or retain any commission under this Act or the regulations.

S. 5(10)
amended by
No. 86/1994
s. 47(a).

(10) This Act shall not be construed as prohibiting any person (not being an estate agent or an agent's representative) from performing any function exercising any power or carrying out any duty which apart from this Act he would have been entitled to perform exercise or carry out under the express authority or permission of any Act.

PART IIA—THE ESTATE AGENTS COUNCIL

Pt 2
(Heading and
ss 6–11)
amended by
Nos 9500 s. 2,
9925 ss 3, 4,
9945
s. 3(1)(Sch. 1
item 12),
10028 ss 6(a)–
(d), 7, 10155
s. 69(1)(b),
62/1986 s. 4,
29/1989 ss 4,
5, 104/1994
s. 35(Sch. 2
item 1),
substituted as
Pts 2A, 2B
(Headings
and ss 6–8A)
by No.
86/1994 s. 3.

6 Estate Agents Council

S. 6
substituted by
No. 86/1994
s. 3.

- (1) There is established an Estate Agents Council.
- (2) The Council is to consist of 8 members appointed by the Governor in Council of whom—
 - (a) 3 are to be persons from the real estate industry, of whom at least 2 must be appointed from a panel of names of 8 persons who have for the previous 5 years been licensed estate agents practising as such submitted by The Real Estate Institute of Victoria Ltd;
 - (b) 1 must be appointed from a panel of names of 3 persons who have for the previous 5 years been licensed estate agents practising as such submitted by the Australian Livestock & Property Agents Association Limited ACN 096 142 880;

S. 6(2)(b)
amended by
Nos 17/2004
s. 6, 1/2010
s. 5.

Estate Agents Act 1980
No. 9428 of 1980
Part IIA—The Estate Agents Council

s. 6

S. 6(2)(c)
amended by
No. 18/2005
s. 18(Sch. 1
item 39.2).

(c) 1 is to be an Australian lawyer (within the meaning of the **Legal Profession Act 2004**) of not less than 5 years standing;

S. 6(2)(d)
amended by
No. 41/2003
s. 14.

(d) 1 is to be a member of either CPA Australia or The Institute of Chartered Accountants in Australia;

(e) 2 are to be persons who are not estate agents and are not employed in the estate agency industry or in the provision of services to estate agents.

(3) The Chairperson and the Deputy Chairperson of the Council are to be appointed from among the members of the Council by the Governor in Council on the recommendation of the Minister.

(4) A member of the Council—

(a) is, subject to this Act, entitled to hold office for such term not exceeding 3 years as is specified in the instrument of appointment and is eligible for re-appointment;

(b) is entitled to be paid such remuneration and travelling and other expenses, if any, as is fixed by Order of the Governor in Council;

S. 6(4)(c)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 71.2),
80/2006
s. 26(Sch.
item 36).

(c) is subject to the **Public Administration Act 2004** (other than Part 3 of that Act) in respect of the office of the member.

-
- (5) The Governor in Council may at any time—
- (a) remove a member of the Council from office; and
 - (b) fill any vacancy in the office of a member of the Council.
- (6) The office of a member of the Council becomes vacant—
- (a) at the expiration of the term of office;
 - (b) if the holder of the office dies;
 - (c) if the holder of the office resigns by writing addressed to the Governor in Council;
 - (d) if the holder of the office is removed from office under subsection (5);
 - (e) if the holder of the office is absent without leave of the Council from 4 consecutive meetings of the Council;
 - (f) if the holder of the office becomes an insolvent under administration;
 - (g) if the holder of the office becomes incapable of performing the duties of the office.

6A Objectives of the Council

The objectives of the Council are—

- (a) to promote appropriate standards of conduct and competency for persons in the real estate industry;
- (b) to protect the interests of persons using real estate services;
- (c) to ensure that effective procedures exist for the resolution of disputes between persons specified in paragraphs (a) and (b);

S. 6A
substituted by
No. 86/1994
s. 3.

s. 6B

- (d) to further the objectives specified in paragraphs (a), (b) and (c) as far as practicable in conjunction with relevant real estate industry associations.

S. 6B
substituted by
No. 86/1994
s. 3.

6B Functions and powers of the Council

- (1) The functions of the Council are—
- (a) to monitor the operation of this Act and the regulations;
 - (b) to assess the efficiency and effectiveness of regulation of the real estate industry under this Act and the need for further regulation or alternatives to regulation such as de-regulation or co-regulation;
 - (c) to monitor the provision of services by estate agents and developments in the real estate industry generally;
 - (d) to advise the Minister—
 - (i) in respect of any matter relating to the operation of this Act, including the impact of the deregulation of the charging of commission;
 - (ii) on any matter referred to the Council by the Minister;
 - (iii) in respect of any matter arising under paragraph (a), (b) or (c);
 - (e) to make recommendations to the Minister—
 - (i) on policies relating to the operation of this Act and the regulations;
 - (ii) on policies relating to the real estate industry;
 - (iii) relating to the application of grants under section 76;

-
- (f) to recommend to the Minister proposals for the reform of the Act and of the administration of the Act and of any law relevant to the provision of real estate services;
- (g) to carry out such other functions as are conferred on the Council under this Act or by the Minister by notice published in the Government Gazette.
- (2) The Council may exercise such powers as are necessary to perform its functions and to achieve its objectives including without limiting the generality of this subsection—
- (a) to implement policies relating to the administration of this Act;
- (b) with the approval of the Minister, to give directions to the Director in respect of the implementation of such policies;
- (ba) to give advice to the Authority in respect of the implementation of such policies;
- (c) with the approval of the Minister, to recommend to the Director the making of regulations by the Governor in Council;
- (d) to monitor and evaluate the effectiveness of any procedures set up to deal with disputes between estate agents or between estate agents and persons dealing with estate agents relating to services or the charging of commission;
- (e) to recommend ways of improving such procedures;
- S. 6B(2)(b) substituted by No. 52/1998 s. 67(a).**
- S. 6B(2)(ba) inserted by No. 52/1998 s. 67(a).**
- S. 6B(2)(c) substituted by No. 52/1998 s. 67(a).**

Estate Agents Act 1980
No. 9428 of 1980
Part IIA—The Estate Agents Council

s. 6C

S. 6B(2)(f)
amended by
No. 52/1998
s. 67(b),
repealed by
No. 41/2003
s. 15.

* * * * *

- (g) to exercise such other powers as may be conferred on the Council under this Act.
- (3) The Council must exercise its powers and perform its functions subject to the direction and control of the Minister.
- (4) The Minister may give a direction to the Council on policy matters in writing by—
 - (a) issuing a direction to the Council; or
 - (b) approving a policy submitted by the Council to the Minister for approval.

S. 6C
inserted by
No. 86/1994
s. 3.

6C Meetings of the Council

- (1) Meetings of the Council must be presided over by the Chairperson or if the Chairperson is absent by the Deputy Chairperson of the Council.
- (2) If at the time fixed for the commencement of any meeting of the Council neither the Chairperson nor the Deputy Chairperson is present, the members present must elect one of their number to preside at the meeting.
- (3) If a member is unable for any reason to attend a meeting of the Council the Minister may nominate a person to attend instead of that member.
- (4) A majority of members of the Council for the time being in office constitute a quorum.
- (5) Subject to the presence of a quorum the Council may act notwithstanding any vacancy in its membership.

Estate Agents Act 1980
No. 9428 of 1980
Part IIA—The Estate Agents Council

s. 6C

-
- (6) The decision upon any matter by the majority of the members of the Council present at any meeting is the decision of the Council.
 - (7) Subject to this Act, the Council may regulate its own procedure.
-

Pt 2B
(Heading and
ss 7–8A)
amended by
Nos 86/1994
s. 3, 46/1998
s. 7(Sch. 1),
substituted as
Pt 2B
(Heading and
ss 7–11A) by
No. 52/1998
s. 68.

S. 7
substituted by
No. 52/1998
s. 68.

S. 8
substituted by
No. 52/1998
s. 68.

New s. 9
inserted by
No. 52/1998
s. 68.

PART IIB—ADMINISTRATION

7 Function of Authority

The Authority is responsible for administering the licensing provisions of this Act.

8 Powers of Authority to enter into agreements

- (1) The Authority, with the approval of the Minister and after consultation with the Council, may enter into agreements with approved industry associations.
- (2) An agreement under subsection (1)—
 - (a) may contain such terms and conditions as are determined by the Authority; and
 - (b) may provide for the performance by an approved industry association of a function of the Authority or a function of the Registrar.

9 Functions of Director

The functions of the Director under this Act are—

- (a) to ensure that estate agents and agent's representatives comply with trust account procedures, professional conduct rules and other requirements of this Act and the regulations;
- (b) to initiate inquiries before the Tribunal;

- (c) to deal with prosecutions, inquiries and complaints under this Act;
- (d) to provide assistance and support to the Council including, at the direction of the Council made with the approval of the Minister under section 6B, to do any act, matter or thing incidental or conducive to the performance by the Council of its functions;
- (e) any other functions conferred on the Director by or under this Act.

10 Powers of Director to enter into agreements

New s. 10
inserted by
No. 52/1998
s. 68.

- (1) The Director, with the approval of the Minister and after consultation with the Council, may enter into agreements with approved industry associations.
- (2) An agreement under subsection (1)—
 - (a) may contain such terms and conditions as are determined by the Director; and
 - (b) may provide for the performance by an approved industry association of a function of the Director (other than a function under section 56A).

10A Director may approve registered education and training organisations

S. 10A
inserted by
No. 41/2003
s. 16.

- (1) For the purposes of section 14 or 16, the Director may, by notice published in the Government Gazette, approve a registered education and training organisation to conduct a prescribed course of instruction or examination.
- (2) The Director may, by notice published in the Government Gazette, revoke an approval made under subsection (1).

s. 10B

- (3) An approval, or a revocation of an approval, takes effect on the date notice of the approval or revocation is published in the Government Gazette, or on any later date specified in the notice.
- (4) In revoking the approval of an organisation, the Director may provide for transitional arrangements to minimise the disruption caused to students as a result of the revocation.

S. 10B
inserted by
No. 41/2003
s. 16.

10B Courses of education for approved auditors

- (1) The Director, by notice published in the Government Gazette, may prescribe courses of education required to be completed by a person wishing—
 - (a) to audit trust accounts under this Act; or
 - (b) to be employed or engaged to assist in the audit of trust accounts under this Act.
- (2) The Director may, by notice published in the Government Gazette, revoke a prescription of a course made under subsection (1).
- (3) A prescription, or a revocation of a prescription, takes effect on the date notice of the prescription or revocation is published in the Government Gazette, or on any later date specified in the notice.
- (4) In revoking the prescription of a course, the Director may provide for transitional arrangements to minimise the disruption caused to students as a result of the revocation.

S. 10C
inserted by
No. 41/2003
s. 16.

10C Notice may be disallowed

- (1) On or before the 6th sitting day after a notice under section 10A or 10B is published in the Government Gazette, the Minister must ensure that a copy of the notice is laid before each House of the Parliament.

-
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the notice but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
 - (3) A notice may be disallowed in whole or in part by either House of Parliament.
 - (4) Part 5 of the **Subordinate Legislation Act 1994** applies to a notice as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to the notice; and
 - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (1).

10D Further publication of notices

S. 10D
inserted by
No. 41/2003
s. 16.

- (1) The Director must publish a notice under section 10A or 10B on an Internet site maintained by the Director or the Authority as soon as is practicable after the notice is published in the Government Gazette.
- (2) A failure to comply with subsection (1) does not affect the validity of a notice.

11 Delegation by Director

New s. 11
inserted by
No. 52/1998
s. 68.

- (1) The Director may, by instrument, delegate to—
 - (a) the Authority; or
 - (b) the Registrar; or
 - (c) any person engaged or appointed under section 7(2) or 15 of the **Business Licensing Authority Act 1998**; or

s. 11A

S. 11(1)(d)
substituted by
No. 35/2000
s. 46,
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 71.3).

(d) any person or class of person employed
under Part 3 of the **Public Administration
Act 2004** in the administration of this Act; or

(e) any approved industry association—
any function or power of the Director under this
Act other than this power of delegation.

(2) The Director must consult with the Council and
obtain the approval of the Minister before
delegating a power or function to an approved
industry association under subsection (1).

New s. 11A
inserted by
No. 52/1998
s. 68.

11A Delegation by Secretary

The Secretary may, by instrument, delegate to the
Director any function or power of the Secretary
under this Act other than this power of delegation.

PART III—LICENCES

12 Estate agents to be licensed

- (1) Subject to this Act an individual shall not either by himself or as a member of a partnership—
- (a) exercise or carry on or advertise notify or state that he exercises or carries on or is willing to exercise or carry on the business of an estate agent; or
 - (b) act as an estate agent; or
 - (c) in any way hold himself out to the public as ready to undertake for payment or other remuneration (whether monetary or otherwise) any of the functions of an estate agent—

S. 12(1)
amended by
No. 86/1994
s. 6(1).

unless he is a licensed estate agent.

Penalty: 500 penalty units or imprisonment for 12 months.

- (2) Subject to this Act a corporation shall not—
- (a) exercise or carry on or advertise notify or state that it exercises or carries on or is willing to exercise or carry on the business of an estate agent; or
 - (b) act as an estate agent; or
 - (c) in any way hold itself out to the public as ready to undertake for payment or other remuneration (whether monetary or otherwise) any of the functions of an estate agent—

S. 12(2)
amended by
No. 86/1994
s. 6(2).

unless it is a licensed estate agent.

Penalty: 1000 penalty units.

s. 13

S. 12(3)
amended by
Nos 38/1993
s. 6(b),
17/2004
s. 10(1).

(3) Where a licensed estate agent does not carry on business as an estate agent otherwise than as an employee of an estate agent—

S. 12(3)(a)
amended by
No. 86/1994
s. 47(b).

(a) sections 44, 47, 51, 59(6) and 62 shall apply to him as if he were an agent's representative for the purposes of this Act; and

S. 12(3)(b)
amended by
No. 86/1994
s. 47(c).

(b) sections 25, 29, 45 and 91 shall apply to him as if he were an estate agent for the purposes of this Act.

Ss 12A–12C
inserted by
No. 41/2003
s. 17,
repealed by
No. 103/2004
s. 36.

* * * * *

13 Agents' representatives

(1) Subject to this Act—

S. 13(1)(a)
repealed by
No. 86/1994
s. 7(1)(a).

* * * * *

S. 13(1)(b)
amended by
No. 86/1994
s. 7(1)(b).

(b) a person shall not be or act as an agent's representative for any person who should be but is not the holder of an estate agent's licence.

S. 13(2)
amended by
Nos 86/1994
s. 7(c)(i)(ii),
41/2003 s. 18.

(2) Nothing in this Act shall be construed as requiring any agent's representative, so far as he performs for any licensed estate agent any of the functions of an estate agent (other than managing the day to day operation of an estate agency office) and is duly authorized to do so by that agent, to hold an estate agent's licence under this Act.

13A Estate agents to be responsible for the acts of their representatives

S. 13A
inserted by
No. 86/1994
s. 8.

If an estate agent employs an agent's representative, the estate agent is responsible, in tort and in contract, for any thing done or not done by the agent's representative—

- (a) within the scope of the agent's representative's authority; or
- (b) for the benefit, or for the purported or intended benefit, of the estate agent or the estate agent's business.

13B Auctioneers of real estate

S. 13B
inserted by
No. 86/1994
s. 8.

- (1) A person must not conduct, or attempt to conduct, an auction for the sale of any real estate or business unless the person is a licensed estate agent or is employed as an agent's representative.
- (2) Subsection (1) does not apply—

(a) to the following—

- (i) any person who sells by auction any Crown land or other Crown property under the authority of the Minister administering the **Crown Land (Reserves) Act 1978** or the Minister administering the **Planning and Environment Act 1987** or any other competent authority; or
- (ii) any sale of property specially ordered by the Governor in Council; or
- (iii) any sale ordered by the sheriff by virtue of any writ or process issued out of any court; or

S. 13B(2)(a)
substituted by
No. 84/2001
s. 4.

s. 13B

-
- (iv) any sale made by any person acting in obedience to any process issued by any court for the recovery of any fine, penalty, or award or to any other order of a court; or
 - (v) any sale made by or under any rule, order or decree of the Supreme Court; or
 - (vi) any sale made by or under the authority of any municipal council; or
- (b) to a person who auctions or attempts to auction any real estate or business—
- (i) that is wholly or partially owned by the person; or
 - (ii) gratuitously at the request of a person who wholly or partially owns the real estate or business; or
- (c) to a person who—
- (i) held an auctioneer's licence under the **Auction Sales Act 1958** during the 12 months immediately before section 8 of the **Estate Agents (Amendment) Act 1994** came into operation; and
 - (ii) holds an accredited auctioneer's certificate issued by the Authority stating that the Authority is satisfied that he or she is competent to conduct an auction for the sale of any real estate or business.

S. 13B(3)
repealed by
No. 52/1998
s. 69.

* * * * *

14 Eligibility to obtain licence

(1) A person (other than a corporation) shall not be eligible to be granted an estate agent's licence unless he is not less than eighteen years of age and—

S. 14(1) amended by Nos 10028 s. 8(a), 29/1989 s. 6(1)(a).

(a) he has—

(i) passed any courses of instruction or examinations prescribed by the regulations; and

S. 14(1)(a)(i) amended by Nos 86/1994 s. 9(a), 52/1998 s. 70(1).

* * * * *

S. 14(1)(a)(ii) amended by No. 29/1989 s. 6(1)(b), repealed by No. 86/1994 s. 9(b).

(iii) during the 3 years immediately before applying for the licence been engaged in—

S. 14(1)(a)(iii) substituted by No. 29/1989 s. 6(1)(c), amended by No. 86/1994 s. 9(c)(d).

(A) full-time employment as an agent's representative for not less than one year or for periods amounting in the aggregate to one year; or

(B) part-time employment as an agent's representative for not less than the equivalent of one year of full-time employment or for periods amounting in the aggregate to the equivalent of one year of full-time employment; or

(b) he has within the period of five years immediately preceding his application held an estate agent's licence; or

S. 14(1)(b) amended by No. 86/1994 s. 9(e).

Estate Agents Act 1980
No. 9428 of 1980
Part III—Licences

s. 14

S. 14(1)(c)
inserted by
No. 86/1994
s. 9(e),
substituted by
No. 41/2003
s. 19.

(c) she or he has met any other requirements
establishing competency set out in the
regulations.

S. 14(2)
amended by
Nos 29/1989
s. 6(1)(d),
86/1994
ss 9(d)(f),
47(d),
repealed by
No. 1/2010
s. 6.

* * * * *

S. 14(3)
amended by
No. 10028
s. 8(b)(i)–(iii),
substituted by
No. 29/1989
s. 6(1)(e),
amended by
No. 86/1994
s. 47(d).

- (3) Despite subsection (1), a person is eligible to be granted an estate agent's licence if he or she satisfies the Authority that he or she—
- (a) has been licensed or otherwise authorised under the laws of another place or country to carry on a business in that place or country for which an estate agent's licence would be required in Victoria; and
 - (b) has an adequate knowledge of Victorian estate agency law, practice and procedure, including accounting.

S. 14(4)
amended by
Nos 10028
s. 8(c),
29/1989
s. 6(1)(f),
86/1994
s. 47(d).

- (4) A person shall not be treated as having an adequate knowledge of Victorian estate agency law, practice and procedure, including accounting by reason only of the fact that, with the approval of the Authority pursuant to section 30(4), he has managed a branch office.

(5) A person—

- | | |
|--|---|
| | S. 14(5)
amended by
Nos 10028
s. 8(h),
86/1994 s. 9(i). |
| (a) who is for the time being disqualified under this Act or any corresponding previous enactment from holding an estate agent's licence; or | S. 14(5)(a)
amended by
No. 10028
s. 8(d). |
| (b) who is a director or officer of a corporation which is for the time being disqualified under this Act or any corresponding enactment from holding an estate agent's licence or who was a director or officer of that corporation at the date the corporation was so disqualified; or | S. 14(5)(b)
amended by
No. 10028
s. 8(e). |
| (c) in relation to whom any claim has been allowed against the Fund under Part VII or against a corresponding fund established under any corresponding previous enactment; or | S. 14(5)(c)
amended by
Nos 10028
s. 8(f)(i)(ii),
19/1989
s. 16(Sch.
item 20.1),
86/1994
s. 9(g),
17/2004
s. 7(2). |
| (d) who is an insolvent under administration or an externally-administered body corporate; or | S. 14(5)(d)
amended by
No. 10028
s. 8(g),
substituted by
No. 86/1994
s. 9(h),
amended by
No. 101/1998
s. 37(2). |
| (da) who is a represented person within the meaning of the Guardianship and Administration Act 1986 ; or | S. 14(5)(da)
inserted by
No. 52/1998
s. 70(2). |
| (e) who has, within the last 10 years in Australia or elsewhere, been convicted or had found proven against him or her any offence involving fraud, dishonesty, drug trafficking | S. 14(5)(e)
inserted by
No. 86/1994
s. 9(h). |

s. 15

or violence which was punishable by imprisonment for 3 months or more; or

S. 14(5)(f) substituted by No. 86/1994 s. 9(h).

- (f) who is the subject of an order by any regulatory body in or outside Victoria disqualifying him or her from acting as an estate agent or agent's representative (or an equivalent occupation under the jurisdiction of the regulatory body)—

shall not be eligible to be granted an estate agent's licence.

15 Licensing of corporations

S. 15(1) substituted by No. 10028 s. 9(a), amended by No. 41/2003 s. 20(1), substituted by No. 41/2003 s. 21(1).

- (1) Subject to this section, a corporation is not eligible to be granted an estate agent's licence, or to hold or to continue to hold an estate agent's licence, unless the corporation has a licensed estate agent acting as the officer in effective control of its estate agency business.

S. 15(1A) inserted by No. 29/1989 s. 7(1)(a), amended by Nos 86/1994 s. 47(e)(i)(ii) (vii), 72/2001 s. 3(Sch. item 7.3(a)), repealed by No. 41/2003 s. 20(2).

* * * * *

S. 15(1B) inserted by No. 38/1993 s. 4, amended by Nos 86/1994 s. 47(e)(iv), 72/2001 s. 3(Sch. item 7.3(a)), repealed by No. 41/2003 s. 20(2).

* * * * *

Estate Agents Act 1980
 No. 9428 of 1980
 Part III—Licences

s. 15

* * * * *

S. 15(1C)
 inserted by
 No. 86/1994
 s. 10(1)
 amended by
 Nos 44/2001
 s. 3(Sch.
 item 39.2),
 9/2002
 s. 3(Sch.
 item 6.2),
 repealed by
 No. 41/2003
 s. 20(2).

* * * * *

S. 15(2)
 amended by
 Nos 10028
 s. 9(b)(c),
 86/1994
 s. 47(e)(iii)
 (v)–(vii),
 substituted by
 No. 41/2003
 s. 20(2),
 repealed by
 No. 103/2004
 s. 37.

* * * * *

S. 15(2A)
 inserted by
 No. 10028
 s. 9(d),
 amended by
 Nos 86/1994
 s. 47(e)(v)(vii),
 72/2001
 s. 3(Sch.
 item 7.3(b)),
 substituted by
 No. 41/2003
 s. 20(2),
 repealed by
 No. 103/2004
 s. 37.

(3) A corporation is not eligible to be granted an estate agent's licence if any of its directors would be ineligible, under section 14(5), to be granted an estate agent's licence as an individual.

S. 15(3)
 amended by
 Nos 9500
 s. 3(a),
 86/1994
 s. 47(e)(iii),
 substituted by
 No. 41/2003
 s. 20(2).

Estate Agents Act 1980
 No. 9428 of 1980
 Part III—Licences

s. 15

<p>S. 15(3A) inserted by No. 9500 s. 3(b), amended by No. 86/1994 s. 47(d), repealed by No. 41/2003 s. 20(2).</p>	*	*	*	*	*
<p>S. 15(4) repealed by No. 41/2003 s. 21(2).</p>	*	*	*	*	*
<p>S. 15(5) amended by Nos 9500 s. 3(c), 29/1989 s. 7(1)(b), 86/1994 ss 10(2), 47(d), repealed by No. 103/2004 s. 37.</p>	*	*	*	*	*
<p>S. 15(6) amended by No. 86/1994 s. 47(d), repealed by No. 103/2004 s. 37.</p>	*	*	*	*	*
<p>S. 15(7) inserted by No. 86/1994 s. 10(3), amended by No. 72/2001 s. 3(Sch. item 7.4), repealed by No. 41/2003 s. 21(2).</p>	*	*	*	*	*

16 Eligibility for employment as an agent's representative

- (1) A person is eligible to be employed as an agent's representative if she or he—
- (a) is at least 18 years of age; and
 - (b) has passed any prescribed courses of instruction or examination; and
 - (c) has not, within the last 10 years in Australia or elsewhere, been convicted or had found proven against him or her any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more; and
 - (d) is not an insolvent under administration; and
 - (da) is not a represented person within the meaning of the **Guardianship and Administration Act 1986**; and
 - (e) is not presently subject to a declaration under section 28A(1)(f) that she or he is ineligible to act as an agent's representative; and
 - (f) has not, in relation to anything she or he has done or not done, had a claim allowed against the Fund under Part VII or any corresponding fund established under any corresponding previous enactment; and
 - (g) is not the subject of an order by any regulatory body in or outside Victoria disqualifying him or her from acting as an agent's representative (or an equivalent occupation under the jurisdiction of the regulatory body).
- (1A) Despite subsection (1), a person remains eligible to be employed as an agent's representative for 30 days after the person—

S. 16 amended by Nos 10028 s. 10(a)–(c), 29/1989 s. 8(a), substituted by No. 86/1994 s. 11.

S. 16(1)(da) inserted by No. 52/1998 s. 71(1).

S. 16(1)(e) amended by No. 52/1998 s. 71(2).

S. 16(1)(f) amended by No. 17/2004 s. 7(2).

S. 16(1A) inserted by No. 41/2003 s. 22(1).

s. 16

S. 16(1A)(a)
amended by
No. 17/2004
s. 7(2).

- (a) has, in relation to anything he or she has done or not done, a claim allowed against the Fund under Part VII or any corresponding fund established under any corresponding previous enactment; or
- (b) becomes an insolvent under administration; or
- (c) is convicted of, or has found proven against him or her, any offence involving fraud, dishonesty, drug trafficking or violence which is punishable by imprisonment for 3 months or more.

Note

Section 22A provides that if an agent's representative is convicted of, or has found proven against him or her, an offence described in subsection (1)(c), the conviction or finding doesn't take effect (and thus the 30 day period doesn't begin) until all avenues of appeal in relation to the conviction or finding have been exhausted.

S. 16(1B)
inserted by
No. 41/2003
s. 22(1).

- (1B) A person who applies within the 30 day period referred to in subsection (1A) for permission under section 31A, 31B or 31C to be employed as an agent's representative remains eligible to be employed as an agent's representative until the application is withdrawn or is refused by the Authority.
- (2) A person must not act as an agent's representative unless she or he is eligible to be employed as an agent's representative.

Penalty: 500 penalty units.

- (3) A person must not intentionally misrepresent to any other person that she or he is eligible to be employed as an agent's representative.

Penalty: 500 penalty units.

(4) An estate agent must not appoint a person to act as an agent's representative unless the agent, or, in the case of a corporation, the officer in effective control of the estate agency business of the corporation—

(a) has been given—

(i) a copy of a certificate from the Chief Commissioner of Police that indicates that the person is not ineligible to be an agent's representative under subsection (1)(c) and that—

(A) is not more than 6 months old; or

(B) is more than 6 months old, but that is accompanied by a statutory declaration of the person stating that he or she has not been found guilty of any disqualifying offence; and

S. 16(4)(a) substituted by No. 41/2003 s. 22(2).

S. 16(4)(a)(i)(B) amended by No. 1/2010 s. 7(a)(i).

* * * * *

S. 16(4)(a)(ii) repealed by No. 1/2010 s. 7(a)(ii).

* * * * *

Note to s. 16(4) repealed by No. 1/2010 s. 7(b).

(b) has taken any other reasonable steps that are necessary to ensure that the person is eligible to be employed as an agent's representative.

Penalty: 500 penalty units.

(5) An estate agent must not employ a person to act as an agent's representative at any time during which the person's name is on the record of ineligible persons in the register.

Penalty: 500 penalty units.

S. 16(5) substituted by No. 52/1998 s. 71(3).

s. 16B

(6) At the request of the Authority, the Chief Commissioner of Police may give the Authority a report concerning the criminal record of an agent's representative or of a person who has applied for a job as an agent's representative.

S. 16(7)
substituted by
No. 41/2003
s. 22(3).

(7) An estate agent must keep any document obtained under subsection (4) in relation to an agent's representative for at least 2 years after the agent's representative ceases to be employed by the agent in that capacity.

Penalty: 25 penalty units.

S. 16(8)
inserted by
No. 41/2003
s. 22(3).

(8) A person is ineligible to be an agent's representative if the person—

- (a) gave the estate agent a copy of a certificate or notice under subsection (4)(a)(i)(B) or (4)(a)(ii) before being appointed; and
- (b) fails to provide the agent, within 6 weeks of starting employment, with a certificate from the Chief Commissioner of Police that is not more than 6 weeks old and that indicates that the person is not ineligible to be an agent's representative under subsection (1)(c).

S. 16A
inserted by
No. 86/1994
s. 11,
repealed by
No. 52/1998
s. 72.

* * * * *

S. 16B
inserted by
No. 86/1994
s. 11.

16B Offence to aid unqualified person to be an agent's representative

A person must not cause or permit or aid or abet any person who is not eligible to be an agent's representative to work as an agent's representative.

Penalty: 500 penalty units.

16C Transitional provision concerning former sub-agents

S. 16C
inserted by
No. 86/1994
s. 11.

- (1) For the purposes of this Act, any period during which a person was employed as a licensed sub-agent before section 11 of the **Estate Agents (Amendment) Act 1994** came into operation is to be regarded as a period during which the person was employed as an agent's representative.
- (2) Any person who was employed as a licensed sub-agent immediately before section 11 of the **Estate Agents (Amendment) Act 1994** came into operation is deemed to be eligible to be employed as an agent's representative for as long as he or she continues to be employed as an agent's representative by the employer employing him or her immediately before section 11 came into operation.
- (3) However, subsection (2) ceases to apply to a person if, as a result of an event occurring after section 11 of the **Estate Agents (Amendment) Act 1994** came into operation, subsection (2) becomes the only reason the person is still eligible to be an agent's representative.

* * * * *

S. 16C(4)
repealed by
No. 41/2003
s. 23.

- (5) Any reference in any Act, regulation, local law, subordinate instrument, deed, contract, order or other document to a licensed sub-agent or a sub-agent is to be construed as a reference to an agent's representative, unless the contrary intention appears.

s. 17

17 Application for estate agent's licence

S. 17(1)
amended by
Nos 9500 s. 4,
9925 s. 5(a),
10028 s. 11(a),
substituted by
No. 86/1994
s. 10(4).

- (1) A person may apply to the Authority for an estate agent's licence.

S. 17(1A)
inserted by
No. 86/1994
s. 10(4).

- (1A) The application must be made in the form specified by the Authority and must be accompanied by the prescribed fee.

S. 17(2)
amended by
No. 86/1994
s. 10(5)(a).

- (2) An application by a person other than a corporation must—

(a) state—

- (i) the address of the place or places at which the applicant intends to carry on business;
- (ii) the address which he desires to be recorded as a registered office for the purposes of this Act;
- (iii) where the applicant intends to carry on business at more than one place, the address which he desires to be recorded as his principal office for the purposes of this Act; and
- (iv) in the case of an application by a member of a partnership, the names and addresses of all the partners;

S. 17(2)(b)
repealed by
No. 86/1994
s. 10(5)(b).

* * * * *

(c) be accompanied by—

S. 17(2)(c)
amended by
Nos 9500 s. 4,
10028 s. 11(b),
86/1994
ss 10(5)(c),
47(f),
substituted by
No. 8/2003
s. 45.

* * * * *

S. 17(2)(c)(i)
repealed by
No. 1/2010
s. 8(a).

- (ii) if the applicant has applied to be granted a licence in accordance with section 14(1)(a), full particulars of the applicant's employment as an agent's representative during the relevant period; and
- (iii) a statement by the applicant certifying that the particulars contained in the application are true and correct.

* * * * *

S. 17(2)(d)
amended by
Nos 9925
s. 5(a), 10028
s. 11(c),
repealed by
No. 86/1994
s. 10(5)(d).

* * * * *

S. 17(3)
amended by
Nos 9925
s. 5(b),
86/1994
ss 10(5)(e),
47(g),
repealed by
No. 52/1998
s. 73.

s. 17

S. 17(4)
inserted by
No. 86/1994
s. 10(6).

(4) An application by a corporation must—

(a) state—

(i) the address of the place or places at which the corporation intends to carry on business; and

(ii) its registered office under the Corporations Act; and

(iii) the address which is to be recorded as its registered office for the purposes of this Act; and

(iv) if the corporation intends to carry on business at more than one place, the address which it desires to be recorded as its principal office for the purposes of this Act; and

(b) contain any other details that are required by the Authority; and

(c) be accompanied by the documents referred to in section 19.

S. 17(4)(a)(ii)
amended by
No. 44/2001
s. 3(Sch.
item 39.2).

S. 17(4)(c)
substituted by
No. 1/2010
s. 8(b).

S. 17(4)(d)
repealed by
No. 1/2010
s. 8(b).

S. 18
amended by
Nos 9500 s. 4,
9699 s. 23,
9925 s. 5(a),
10028
s. 12(a)(b),
repealed by
No. 86/1994
s. 10(7).

* * * * *

* * * * *

19 Certain documents to be lodged by particular corporations

(1) An application for an estate agent's licence by a corporation shall be accompanied by—

S. 19(1)
amended by
No. 1/2010
s. 9.

(a) in the case of a corporation with one or more directors who hold an estate agent's licence, a statement made by one of those directors—

S. 19(1)(a)
substituted by
No. 8/2003
s. 46(1).

(i) certifying that he or she has the authority to make the application on behalf of the corporation; and

(ii) declaring the name and address of each director and the secretary of the corporation and of the officer in effective control of its proposed estate agency business; and

(iii) certifying that the particulars contained in the application are true and correct;

(b) in the case of a corporation without a director who holds a current estate agent's licence, but where one or more of the directors have lodged an application for an estate agent's licence, a statement made by one of the directors who has lodged such an application—

S. 19(1)(b)
amended by
No. 29/1989
s. 10,
substituted by
No. 8/2003
s. 46(1).

(i) certifying that he or she has the authority to make the application on behalf of the corporation; and

(ii) declaring the name and address of each director and the secretary of the corporation and of the officer in effective control of its proposed estate agency business; and

(iii) certifying that the particulars contained in the application are true and correct;

s. 19

S. 19(1)(c)
inserted by
No. 8/2003
s. 46(1).

- (c) in the case of a private corporation with a director who holds an estate agent's licence, a statement made by that director—
- (i) certifying that he or she has the authority to make the application on behalf of the corporation; and
 - (ii) declaring the name and address of each member of the corporation; and
 - (iii) declaring—
 - (A) the number and type of shares held by each member of the corporation; and
 - (B) whether those shares confer voting rights; and
 - (C) whether the member holds shares on behalf of another person and, if so, the name and address of that person; and
 - (iv) certifying that the particulars contained in the application are true and correct;

S. 19(1)(d)
inserted by
No. 8/2003
s. 46(1).

- (d) in the case of a private corporation without a director who holds a current estate agent's licence, but where one or more of the directors have lodged an application for an estate agent's licence, a statement made by one of those directors—
- (i) certifying that he or she has the authority to make the application on behalf of the corporation; and
 - (ii) declaring the name and address of each member of the corporation; and

-
- (iii) declaring—
- (A) the number and type of shares held by each member of the corporation; and
 - (B) whether those shares confer voting rights; and
 - (C) whether the member holds shares on behalf of another person and, if so, the name and address of that person; and
- (iv) certifying that the particulars contained in the application are true and correct.

* * * * *

S. 19(2)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(g)(h),
repealed by
No. 8/2003
s. 46(2).

19A Consent to disclosure of information

- (1) The Authority may require a licensee or an applicant for an estate agent's licence to provide the Authority, at the time of submitting the application or at any time during the currency of the licence, with any consent required by another person or body to enable the Authority to check or confirm information relevant to the licence or application.
- (2) Without limiting subsection (1), consent includes—
 - (a) the consent of the licensee or the applicant; and
 - (b) the consent of another person other than the licensee or the applicant; and

S. 19A
inserted by
No. 8/2003
s. 47.

(c) if the licensee or applicant is a corporation, the consent of a director of the corporation and, in the case of a private corporation, the consent of a member of the private corporation.

(3) The Authority may refuse to consider an application for an estate agent's licence under section 17 if the applicant does not provide to the Authority the required consent within 14 days after the requirement is made.

20 Application to be referred to Director and Chief Commissioner

(1) If an application is made under section 17, the Authority, except in the prescribed circumstances, must give any details of the application that the Authority considers relevant to the Director and the Chief Commissioner of Police.

(2) The Director and the Chief Commissioner of Police, on receiving details of the application, must make any inquiries in relation to the application that the Director or the Chief Commissioner of Police considers appropriate.

(3) The Director and the Chief Commissioner, after receiving the results of the inquiries, must report to the Authority.

(4) A report may include recommendations.

20A Provision of information for the purposes of this Act

For the purposes of determining compliance with this Act or for carrying out the functions of the Authority or the Director under this Act—

(a) the Authority may disclose to the Director any information collected in the course of carrying out the Authority's functions under this Act; and

S. 20
amended by
Nos 9500 s. 4,
9925 s. 5(a),
10028
s. 13(a)–(c),
29/1989
s. 9(a)(b),
repealed by
No. 86/1994
s. 7(2),
new s. 20
inserted by
No. 52/1998
s. 74.

S. 20A
inserted by
No. 8/2003
s. 48.

- (b) the Director may disclose to the Authority any information collected in the course of carrying out the Director's functions under this Act; and
- (c) the Director must disclose to the Authority the details of any successful claim made on the Fund in relation to an estate agent or an agent's representative.

21 Grant and effect of licence

- (1) The Authority must consider every application for an estate agent's licence. **S. 21(1) amended by No. 86/1994 ss 7(3), 47(k), substituted by No. 52/1998 s. 75(1).**
- (2) In considering an application for a licence, the Authority may—
 - (a) conduct any inquiries it thinks fit;
 - (b) require an applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek and use advice and information on the application from any other person or body or source it thinks fit.**S. 21(2) amended by No. 9925 s. 5(a), repealed by No. 86/1994 s. 12(1), new s. 21(2) inserted by No. 52/1998 s. 75(1).**
- (3) The Authority may engage or appoint any person to assist it in considering an application. **S. 21(3) substituted by Nos 86/1994 s. 12(2), 52/1998 s. 75(1).**
- (3A) The Authority may refuse to grant a licence to a person if the person does not provide the further information required within a reasonable time of the requirement being made. **S. 21(3A) inserted by No. 52/1998 s. 75(1).**
- (3B) The Authority is not required to conduct a hearing to determine whether to grant a licence or refuse to issue a licence. **S. 21(3B) inserted by No. 52/1998 s. 75(1).**

s. 21

S. 21(4)
amended by
No. 86/1994
ss 12(3), 47(k).

(4) Where the Authority—

(a) is satisfied that the applicant is eligible to be the holder of a licence;

S. 21(4)(b)
amended by
Nos 86/1994
ss 12(4), 47(l),
41/2003 s. 24.

(b) if the applicant is an individual, is satisfied that he or she is of good character and has received no information that he or she is not a fit and proper person to hold a licence;

S. 21(4)(c)
repealed by
No. 86/1994
s. 47(j).

* * * * *

the Authority shall grant the applicant a licence (subject to section 36(2)(a)).

S. 21(4A)
inserted by
No. 10028
s. 14,
amended by
No. 86/1994
s. 47(k).

(4A) A licence granted under subsection (4) shall be subject to such conditions and limitations as the Authority sees fit to impose.

S. 21(4B)
inserted by
No. 86/1994
s. 12(5),
amended by
No. 52/1998
s. 75(2).

(4B) If the Authority is not satisfied of any thing referred to in subsection (4) in relation to an applicant, it must refuse to issue a licence to the applicant and must give the applicant written notice of the refusal within 14 days of the refusal.

S. 21(4C)(4D)
inserted by
No. 86/1994
s. 12(5),
repealed by
No. 52/1998
s. 75(3).

* * * * *

S. 21(5)
amended by
No. 9925
s. 5(a),
substituted by
Nos 86/1994
s. 12(6),
52/1998
s. 75(4).

(5) A licence—

(a) must be in a form determined by the Authority; and

(b) must be issued and signed by the Registrar; and

(c) must be endorsed with any conditions and limitations imposed by the Authority under subsection (4A).

- (5A) A decision of the Authority to grant a licence lapses unless the applicant for the licence pays the prescribed licence fee to the Authority within 28 days of receiving written notice from the Authority that it has granted the licence. **S. 21(5A) inserted by No. 86/1994 s. 12(6).**
- (6) The Authority may postpone its consideration of an application for a licence until such time as it considers appropriate. **S. 21(6) substituted by No. 86/1994 s. 12(6).**
- (7) Subject to this Act, a licence authorises the estate agent to whom it has been granted to be and to act as an estate agent in all parts of Victoria until the licence is surrendered, suspended or cancelled. **S. 21(7) substituted by No. 86/1994 s. 12(6).**
- * * * * *
- * * * * *
- (10) Subject to subsection (11), the holder of an estate agent's licence may at any time surrender the licence by notice in writing addressed to the Authority accompanied by the licence, and the surrender shall be effective as on the date of the receipt of the notice by the Authority. **S. 21(10) amended by Nos 9925 s. 5(a), 86/1994 ss 7(3), 47(l), 52/1998 s. 75(5).**
- (11) If an application has been made to the Tribunal to conduct an inquiry under section 25 in relation to an estate agent, the estate agent may not, without leave of the Tribunal, surrender the licence unless the Tribunal has determined to take action under section 28A or has determined not to take any such action. **S. 21(11) inserted by No. 52/1998 s. 75(6).**

s. 21A

S. 21A
inserted by
No. 52/1998
s. 76.

21A Conditions of licence

- (1) The Authority may—
 - (a) impose conditions that must be complied with before it grants a licence; and
 - (b) on granting a licence, impose conditions or restrictions on a licence; and
 - (c) at any time on the application of any person, or on its own initiative, impose conditions or restrictions on a licence or vary or revoke any of those conditions or restrictions.
- (2) A licensee must comply with the conditions or restrictions on a licence.

Penalty: 100 penalty units.

S. 21B
inserted by
No. 52/1998
s. 76.

21B Endorsement of licence

- (1) If under section 21A, 28A or 31D, a condition or restriction or limitation is imposed on an estate agent or varied or revoked, the Authority may require the estate agent to produce the licence for endorsement of or variation or revocation of the condition or restriction or limitation.
- (2) An estate agent must comply with a requirement under subsection (1).

Penalty: 10 penalty units.

S. 22
amended by
Nos 9925
s. 5(a), 9945
s. 3(1)(Sch. 1
item 13),
substituted by
No. 86/1994
s. 13.

22 Automatic cancellation of licence on bankruptcy etc.

- (1) A person's licence as an estate agent is automatically cancelled if the person—
 - (a) becomes an insolvent under administration;
or
 - (b) becomes an externally-administered body corporate; or

S. 22(1)(b)
amended by
No. 101/1998
s. 37(2).

(c) becomes a represented person within the meaning of the **Guardianship and Administration Board Act 1986**.

(2) A person's licence as an estate agent is automatically cancelled 30 days after the person—

(a) is convicted of, or has found proven against him or her, any offence involving fraud, dishonesty, drug trafficking or violence which is punishable by imprisonment for 3 months or more; or

(b) has, in relation to anything she or he has done or not done, a claim allowed against the Fund under Part VII or any corresponding fund established under any corresponding previous enactment; or

S. 22(2)(b)
amended by
No. 17/2004
s. 7(2).

(c) is made the subject of an order by any regulatory body in or outside Victoria disqualifying him or her from acting as an estate agent or agent's representative (or an equivalent occupation under the jurisdiction of the regulatory body).

(2A) A corporation's licence as an estate agent is automatically cancelled 30 days after—

S. 22(2A)
inserted by
No. 41/2003
s. 25(1).

(a) the licence of a director who holds an estate agent's licence is cancelled under subsection (1) or (2); or

(b) the corporation is notified in writing by the Authority that a director of the corporation who is not a licensed estate agent would, if the director were to apply for a licence, be ineligible, under section 14(5), to be granted an estate agent's licence; or

(c) the corporation has a claim allowed against the Fund under Part VII; or

S. 22(2A)(c)
amended by
No. 17/2004
s. 7(2).

s. 22A

(d) the corporation is convicted of, or has found proven against it, an offence involving fraud, dishonesty, drug trafficking or violence that, if it was a natural person, would be punishable by imprisonment for 3 months or more.

S. 22(2B)
inserted by
No. 41/2003
s. 25(1).

(2B) Subsections (2A)(a) and (2A)(b) do not apply if the director ceases to be a director of the corporation within the 30 day period referred to in subsection (2A).

S. 22(3)
amended by
No. 101/1998
s. 37(3).

(3) If a person whose licence would otherwise be cancelled by subsection (2) applies for permission under section 31A or 31C within the 30 day period referred to in that subsection, the person's licence is only automatically cancelled if the application is withdrawn or is refused by the Authority.

S. 22(4)
inserted by
No. 41/2003
s. 25(2).

(4) If a corporation whose licence would otherwise be cancelled by subsection (2A) is eligible to apply for, and applies for, permission under section 31CA within the 30 day period referred to in that subsection, the corporation's licence is only automatically cancelled if the application is withdrawn or is refused by the Authority.

S. 22A
inserted by
No. 41/2003
s. 26.

22A Delay of effect of certain convictions

- (1) This section applies if one of the following people is convicted of, or has found proven against him or her, an offence involving fraud, dishonesty, drug trafficking or violence which is punishable by imprisonment for 3 months or more—
- (a) a person who is employed as an agent's representative;
 - (b) a person (including a corporation) who holds a licence as an estate agent;
 - (c) a person who is the director of a corporation that holds an estate agent's licence.

- (2) For the purposes of sections 16 and 22, the conviction or finding of guilt of the person only takes effect on—
- (a) the day on which the conviction or finding is upheld or confirmed by the last applicable court of appeal; or
 - (b) the day on which leave to appeal is refused by the last applicable court of appeal; or
 - (c) the day after the day on which the last applicable appeal period ends—
- whichever occurs last.

23 Annual licence fee and statement

- (1) A licensed estate agent must pay to the Authority the prescribed annual licence fee on the anniversary of the date the agent was last granted a licence under section 21.
- (2) An annual licence fee may be paid at any time in the 6 weeks before it falls due.
- (3) The payment must be accompanied by a statement in respect of the year up to the date that the payment is made that is in a form approved by the Authority and that is signed—
 - (a) by the agent, if the agent is a natural person; or
 - (b) if the agent is a corporation, by the officer in effective control of the estate agency business of the corporation.
- (4) The statement must contain any information, and be accompanied by any documents, required by the Authority.

S. 23
amended by
Nos 9500 s. 6,
9925 s. 5(a),
10028
s. 15(a)–(g),
29/1989
s. 8(b)(c),
repealed by
No. 86/1994
s. 12(7),
new s. 23
inserted by
No. 86/1994
s. 14.

s. 24

S. 24
amended by
No. 29/1989
s. 10,
repealed by
No. 86/1994
s. 12(7),
new s. 24
inserted by
No. 86/1994
s. 14.

24 Extension of time

- (1) On payment of the prescribed fee (if any), a person may apply to the Authority for an extension of time, or a further extension of time, in which to comply with section 23.
- (2) The Authority may grant the application if it is made before the date in relation to which the extension is sought.

S. 24A
inserted by
No. 86/1994
s. 14.

24A Failure to comply with section 23

- (1) If a licensed estate agent fails to comply with section 23, the Authority must give the agent a written notice stating that unless the agent complies with that section and also pays to the Authority the prescribed late payment or lodgement fee by the date specified in the notice, the agent's licence will be cancelled.
- (2) The date specified in the notice must be at least 14 days after the date on which the notice is given to the agent.
- (3) If the agent has not complied with section 23 and paid the late payment or lodgement fee by the date specified in the notice, the licence is automatically cancelled.

S. 24B
inserted by
No. 86/1994
s. 14,
amended by
No. 52/1998
s. 77.

24B If details given in application or annual statement change

If, before a decision is made under section 21 to grant or refuse a licence or while a licence is in force, a material change occurs in any of the details provided in the application for the licence or in the last statement lodged under section 23, the licensed estate agent must give the Authority written details of the change within 14 days after the agent becomes aware of the change.

Penalty: 25 penalty units.

24C No application for 2 years after refusal

If the Authority refuses an application for a licence, the applicant is not entitled to lodge another application for a licence until the end of 2 years after the refusal unless the Authority otherwise permits in a particular case.

S. 24C
inserted by
No. 52/1998
s. 78.

24D Lost licence

If the Registrar is satisfied that a licence has been lost or destroyed, the Registrar, on payment of the prescribed fee, may issue a duplicate licence or further copy.

S. 24D
inserted by
No. 52/1998
s. 78.

25 Inquiries into estate agents

S. 25
amended by
Nos 9576
s. 11(1)(Sch),
9925 s. 5(a),
10028
s. 16(a)–(c),
substituted by
No. 86/1994
s. 15.

(1) At any time the Director or the Chief Commissioner of Police may apply to the Tribunal for the holding of an inquiry to determine whether an estate agent—

S. 25(1)
amended by
No. 52/1998
s. 79(1).

(a) has contravened or failed to comply with this Act or the regulations; or

S. 25(1)(a)
amended by
No. 41/2003
s. 27(1).

(aa) has contravened or failed to comply with the **Sale of Land Act 1962**; or

S. 25(1)(aa)
inserted by
No. 41/2003
s. 27(1).

(b) is of good character or is otherwise a fit and proper person to hold a licence; or

(c) has been guilty of conduct as an estate agent which renders him or her unfit to hold a licence; or

s. 25

(d) improperly obtained, or is improperly holding, a licence.

S. 25(2)
amended by
No. 52/1998
s. 79(1).

(2) In addition to the matters listed in subsection (1), in the case of an estate agent that is a corporation, the Director or the Chief Commissioner of Police may also apply to the Tribunal for the holding of an inquiry to determine whether a director of the corporation or the officer in effective control of the estate agency business of the corporation or, in the case of a private corporation, any member of the corporation—

S. 25(2)(a)
amended by
No. 41/2003
s. 27(2).

(a) has contravened or failed to comply with this Act or the regulations or has failed to pay any fines imposed on him or her, or any costs that he or she was required to pay under this Act; or

S. 25(2)(aa)
inserted by
No. 41/2003
s. 27(2).

(aa) has contravened or failed to comply with the **Sale of Land Act 1962** or has failed to pay any fines imposed on him or her, or any costs that he or she was required to pay under that Act; or

(b) is of good character or is otherwise a fit and proper person to hold a licence; or

(c) has been guilty of conduct as an estate agent which renders him or her unfit to hold a licence; or

(d) improperly obtained, or is improperly holding, a licence.

S. 25(3)–(6)
repealed by
No. 52/1998
s. 79(2).

* * * * *

* * * * *

S. 26
amended by
No. 86/1994
s. 47(k),
repealed by
No. 52/1998
s. 80.

* * * * *

S. 27
amended by
No. 86/1994
ss 45(d), 47(k),
repealed by
No. 52/1998
s. 80.

28 Inquiries into agents' representatives

S. 28
amended by
Nos 9925
s. 5(a), 10028
s. 17,
substituted by
No. 86/1994
s. 16.

(1) At any time the Director may apply to the Tribunal for the holding of an inquiry to determine whether an agent's representative—

S. 28(1)
amended by
No. 52/1998
s. 81(1).

- (a) is eligible to be an agent's representative; or
- (b) is of good character or is otherwise a fit and proper person to be an agent's representative; or
- (c) has been guilty of conduct as an agent's representative which renders him or her unfit to be an agent's representative; or

(ca) has contravened or failed to comply with the **Sale of Land Act 1962**; or

S. 28(1)(ca)
inserted by
No. 41/2003
s. 27(3).

(d) has contravened or failed to comply with this Act or the regulations.

* * * * *

S. 28(2)–(5)
repealed by
No. 52/1998
s. 81(2).

S. 28A
inserted by
No. 52/1998
s. 82.

28A Determination of Tribunal on inquiry

- (1) After conducting an inquiry in respect of a person under section 25 or 28, the Tribunal, if it considers it appropriate, may, by order, do any one or more of the following—
 - (a) reprimand the person;
 - (b) require the person to comply within, or for, a specified time with a requirement specified by the Tribunal;
 - (c) cancel any licence held by the person and disqualify the person either permanently or for a specified period from holding a licence;
 - (d) suspend any licence held by the person for a specified period not exceeding one year;
 - (e) impose any condition or limitation on any licence held by the person;
 - (f) declare any person to be ineligible to hold a licence or to be an agent's representative either permanently or temporarily;
 - (g) require the person to enter into an undertaking to perform, or not to perform, certain tasks to be specified in the undertaking.
- (2) In addition to the powers conferred by subsection (1), if the Tribunal determines that the person has contravened or failed to comply with this Act or the regulations, it may impose a penalty not exceeding \$5000 on the person and specify when the penalty must be paid.
- (3) Any penalty imposed under subsection (2) must be paid to the Fund.

S. 28A(3)
amended by
No. 17/2004
s. 7(2).

- (4) If the Tribunal suspends or cancels a licence, the cancellation or suspension takes effect on the date specified by the Tribunal.
- (5) If an estate agent fails to pay a penalty imposed under subsection (2) by the required date, the Tribunal may without giving the agent an opportunity to be heard—
 - (a) suspend the agent's licence until the penalty is paid; and
 - (b) cancel the licence if the penalty has still not been paid after the end of a further period of time equal to the initial period of time the agent had in which to pay the penalty.
- (6) A reference to a person in this section includes a reference to any person who was an estate agent or agent's representative at the time of any breach or alleged breach of any relevant law, even though the person is not an estate agent or agent's representative at the time any action is taken under this Act.

29 Cancellation of licences in other cases

- (1) Any person who causes or permits or aids or abets any person who is not a licensed estate agent to carry on business as an estate agent shall be guilty of an offence.

S. 29(1)
amended by
No. 86/1994
ss 6(3), 45(e).

Penalty: 500 penalty units.

* * * * *

S. 29(2)
repealed by
No. 86/1994
s. 47(m)(ii).

- (3) In any proceedings against an estate agent for an offence under this section it shall be prima facie evidence of that offence if an unauthorized person has possession of that estate agent's licence or represents himself as the holder of that estate agent's licence.

S. 29(3)
amended by
No. 86/1994
s. 47(m)(i)(ii).

Estate Agents Act 1980
No. 9428 of 1980
Part III—Licences

s. 29

S. 29(4)
amended by
No. 86/1994
s. 47(m)(i)(iv)
(A)(B).

(4) It shall be a defence under this section if the accused estate agent took all reasonable steps to prevent the unauthorized person from carrying on business under that estate agent's licence or if the accused estate agent did not know and could not reasonably have been expected to have known that the unauthorized person was representing himself as holder of that estate agent's licence.

S. 29(5)
amended by
No. 86/1994
s. 47(m)(i)(v).

(5) Where any agent is convicted of an offence under subsection (1) or (2), in addition to any penalty, his licence shall become absolutely void and shall be cancelled and delivered up to the court and the court may order that the agent be disqualified either permanently or for such period as the court specifies from holding a licence as an estate agent.

S. 29(6)
amended by
No. 86/1994
s. 47(m)(i)(vi).

(6) If an agent is convicted in any court of any indictable offence or if in any proceeding before a court to which any agent is a party the court is satisfied that he has been guilty of fraud and that he ought to be disqualified from carrying on the business of an estate agent the court may order that—

S. 29(6)(a)
amended by
No. 86/1994
s. 47(m)(vii).

- (a) he be disqualified either permanently or for such period as the court specifies from holding a licence under this Act as an agent; and
- (b) his licence be cancelled and delivered up forthwith.

S. 29(7)
amended by
Nos 9925
s. 5(a),
57/1989
s. 3(Sch.
item 66.2),
86/1994
s. 47(l).

(7) In every case where a licence is delivered up to a court under this Act the licence and copy of any order of the court in relation thereto shall be sent forthwith by the proper officer of the court to the Authority.

- (8) In this section *unauthorized person* means any person who for the purposes of subsection (1) does not hold an estate agent's licence.

S. 29(8)
amended by
No. 86/1994
s. 47(m)(viii).

29A Suspended and cancelled licences must be returned

- (1) If the Tribunal suspends or cancels a licence, the person to whom the licence was issued must return the licence to the Authority within the period specified by the Tribunal.

S. 29A
inserted by
No. 86/1994
s. 17,
substituted by
No. 52/1998
s. 83.

Penalty: 25 penalty units.

- (2) If a licence is automatically suspended or cancelled under this Act, the person to whom the licence was issued must return the licence to the Authority within 7 days of becoming aware of the suspension or cancellation.

Penalty: 25 penalty units.

29B Duties of agents and officers in effective control

- (1) This section applies to a natural person—
- (a) who is a licensed estate agent who carries on an estate agency business; or
 - (b) who is an officer in effective control of the estate agency business of a corporation.
- (2) The person must—
- (a) be regularly and usually in charge at the principal office of the estate agent; and
 - (b) give regular and substantial attendance at that office; and
 - (c) properly control and supervise any estate agency business carried on by the agent or for which the person is responsible; and
 - (d) take reasonable steps to ensure that any estate agents, agents' representatives or other employees of the business comply with the provisions of this Act, the **Sale of Land Act**

S. 29B
inserted by
No. 86/1994
s. 17,
substituted by
No. 41/2003
s. 28.

s. 29C

1962 and any other laws relevant to the conduct of the business while they are engaged in that business; and

- (e) establish procedures designed to ensure that the business is conducted in accordance with the law and good estate agency practice; and
- (f) monitor the conduct of the business in a manner that will ensure, as far as is practicable, that those procedures are complied with; and
- (g) properly control and supervise the management of any branch office of the estate agency business.

Penalty: 25 penalty units.

S. 29C
inserted by
No. 41/2003
s. 28.

29C Offence to procure contravention of section 29B

A person involved in the management or control of the estate agency business of a licensed estate agent must not—

- (a) prevent or hinder another person from complying with any duty imposed on that other person by section 29B; or
- (b) induce or procure another person to contravene any duty imposed on that other person by section 29B.

Penalty: 25 penalty units.

30 Management of estate agency office

- (1) Subject to this Act, a person shall not manage the day to day operation of an estate agency office unless he is a licensed estate agent.

S. 30(1A)
inserted by
No. 9500
s. 7(a).

- (1A) A licensed estate agent shall not while he manages an estate agency office act as the manager of any other estate agency office.

(2) Despite subsection (1), a person who held an unexpired approval granted under this section immediately before section 18 of the **Estate Agents (Amendment) Act 1994** came into operation may continue to manage the branch office specified in the approval unless he or she is disqualified from doing so under subsection (7).

S. 30(2) amended by No. 10028 s. 18(a), substituted by No. 86/1994 s. 18(1).

* * * * *

S. 30(2A) inserted by No. 9500 s. 7(b), amended by No. 10028 s. 18(b), repealed by No. 86/1994 s. 18(2).

* * * * *

S. 30(2B) inserted by No. 10028 s. 18(c), repealed by No. 86/1994 s. 18(2).

(3) A person to whom subsection (2) applies may apply to the Authority for permission to manage a branch office different to the one specified in the approval.

S. 30(3) amended by Nos 9500 s. 7(c), 10028 s. 18(d), substituted by No. 86/1994 s. 18(3).

(4) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.

S. 30(4) amended by Nos 9500 s. 7(d), 10028 s. 18(e)(i)–(iii), substituted by No. 86/1994 s. 18(3).

(5) Sections 23 to 24B apply to a person to whom subsection (2) applies as if—

S. 30(5) amended by No. 9925 s. 5(a), substituted by No. 86/1994 s. 18(3).

(a) a reference to a licensed estate agent was a reference to the person; and

s. 30

- (b) a reference to the date a licence was granted was a reference to the date the person first received approval under this section; and
- (c) a reference to a prescribed fee was a reference to a fee prescribed for the purposes of this section; and
- (d) a reference to a form approved by the Authority was a reference to a form approved by the Authority for the purposes of this section; and
- (e) a reference to the cancellation of a licence was a reference to the effect of subsection (6).

S. 30(6)
substituted by
No. 86/1994
s. 18(3).

- (6) If a person to whom subsection (2) applies fails to comply with section 23 within the time specified by the notice under section 24A(1), subsection (2) ceases to apply to him or her and any permission granted to him or her under subsection (4) is automatically revoked.

S. 30(7)
substituted by
No. 86/1994
s. 18(3).

- (7) The Tribunal may, after giving the person the chance to be heard, disqualify any person to whom subsection (2) applies from acting as a branch manager if the Tribunal is satisfied that he or she has contravened or failed to comply with this Act, or is not eligible to be an agent's representative.

S. 30(8)
substituted by
No. 86/1994
s. 18(3).

- (8) A person who is authorised to act as the manager of a branch office by subsection (2) must not, while he or she manages that branch office, act as a branch manager in any other branch office of his or her employer or for any other estate agent.
- (9) Any person who manages the day to day operation of an estate agency office in contravention of the provisions of this section shall be guilty of an offence.

* * * * *

S. 30AA
inserted by
No. 10028
s. 19,
substituted by
No. 86/1994
s. 19,
repealed by
No. 41/2003
s. 29.

* * * * *

S. 30AB
inserted by
No. 86/1994
s. 19,
repealed by
No. 1/2010
s. 10.

30A Absence of estate agent or branch manager

S. 30A
inserted by
No. 9500 s. 8.

(1) Notwithstanding section 30(1) where a licensed estate agent or branch manager is to be absent from the estate agency office which he manages—

(a) for a period which is greater than seven days but not more than 30 days, the licensed estate agent or the employer of the branch manager (as the case may be) shall in writing appoint a licensed estate agent or agent's representative to manage the office during that period of absence;

S. 30A(1)(a)
amended by
Nos 10028
s. 20, 86/1994
s. 47(n)(ii).

(b) for a period greater than 30 days the licensed estate agent or the employer of the branch manager (as the case may be) shall advise the Authority in writing of the proposed absence and shall nominate a licensed estate agent or agent's representative to manage the office during that period of absence.

S. 30A(1)(b)
amended by
No. 86/1994
s. 47(n)(i)(ii).

(2) Where the Authority is satisfied that a person nominated pursuant to subsection (1)(b) is capable of managing the estate agency office concerned it may approve and permit that person to manage that office for a period specified by the Authority.

S. 30A(2)
amended by
No. 86/1994
s. 47(n)(i).

s. 31

S. 30A(3)
amended by
No. 86/1994
s. 47(n)(i).

- (3) Notwithstanding section 30(1) an appointment in writing made under subsection (1)(a) and an approval given by the Authority under subsection (2) shall authorize the person so appointed or approved to manage the estate agency office in respect of which the appointment was made or the approval was given during the period of the absence of the estate agent or branch manager or for the period specified by the Authority (as the case may be).

S. 31
amended by
No. 86/1994
s. 47(o).

31 Effect of disqualification

A person disqualified under this Act from holding a licence or being an agent's representative shall not, while his disqualification continues, be capable of becoming or continuing as a director, member, manager or officer of a corporation which is a licensed estate agent.

S. 31A
(Heading)
inserted by
No. 17/2004
s. 7(4).

31A Person involved in Fund claim may regain licence etc. in exceptional circumstances

S. 31A
inserted by
No. 86/1994
s. 20.

S. 31A(1)
amended by
No. 17/2004
s. 7(2).

- (1) This section applies to a person in relation to whom a claim has been allowed against the Fund under Part VII or against a corresponding fund established under any corresponding previous enactment.

S. 31A(2)
amended by
No. 52/1998
s. 84(1).

- (2) The person may apply to the Authority for permission to hold an estate agent's licence or to be employed as an agent's representative.

S. 31A(2A)
inserted by
No. 8/2003
s. 49.

- (2A) An application under this section must—
(a) be in the form approved by the Authority;
and

-
- (b) contain the information required by the Authority; and
- (c) be accompanied by the documents required by the Authority; and
- (d) be accompanied by the prescribed fee (if any).
- (2B) In considering an application under this section, the Authority may—
- (a) conduct any inquiries it thinks fit;
- (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
- (c) seek advice and information on the application from any other person or body as it thinks fit.
- (2C) The Authority may refuse to give its permission if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.
- (3) The Authority may give its permission if it is satisfied—
- (a) that the person has refunded all amounts paid out of the Fund or the corresponding fund in respect of the claim; and
- (b) that there were exceptional circumstances which gave rise to the claim against the person; and
- (c) that having regard to the conduct of the person before and after the claim, there is no reasonable expectation that the person will not comply with this Act and the regulations in future; and
- S. 31A(2B) inserted by No. 8/2003 s. 49.**
- S. 31A(2C) inserted by No. 8/2003 s. 49.**
- S. 31A(3) amended by No. 52/1998 s. 84(1).**

s. 31B

(d) that the giving of the permission is not contrary to the public interest.

(4) Section 14(5)(c) does not apply to a person in respect of whom permission has been given.

(5) A person in respect of whom permission has been given is eligible to act as an agent's representative, despite section 16(1)(f).

S. 31B
inserted by
No. 86/1994
s. 20.

31B Bankrupt person may be allowed limited right to hold licence etc.

(1) This section applies to a person who is an insolvent under administration.

(2) The person may apply to the Authority for permission to hold an estate agent's licence as an employee or to be employed as an agent's representative.

S. 31B(2)
amended by
No. 52/1998
s. 84(1).

(2A) An application under this section must—

(a) be in the form approved by the Authority;
and

(b) contain the information required by the Authority; and

(c) be accompanied by the documents required by the Authority; and

(d) be accompanied by the prescribed fee (if any).

S. 31B(2A)
inserted by
No. 8/2003
s. 50.

(2B) In considering an application under this section, the Authority may—

(a) conduct any inquiries it thinks fit;

(b) require the applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;

(c) seek advice and information on the application from any other person or body as it thinks fit.

S. 31B(2B)
inserted by
No. 8/2003
s. 50.

- (2C) The Authority may refuse to give its permission if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.
- (3) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.
- (4) Section 14(5)(d) does not apply to a person in respect of whom permission has been given.
- (5) A person in respect of whom permission has been given is eligible to act as an agent's representative, despite section 16(1)(d).
- (6) A person to whom permission has been given and who is an insolvent under administration must not act as the officer in effective control of any estate agency business.

S. 31B(2C)
inserted by
No. 8/2003
s. 50.

S. 31B(3)
amended by
No. 52/1998
s. 84(1).

Penalty: 25 penalty units.

31C Person with criminal record may be allowed limited right to hold licence etc.

S. 31C
inserted by
No. 86/1994
s. 20.

- (1) This section applies to a person who has, within the last 10 years in Australia or elsewhere, been convicted or had found proven against him or her any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more.
- (2) The person may apply to the Authority for permission to hold an estate agent's licence or to be employed as an agent's representative.
- (2A) An application under this section must—
- (a) be in the form approved by the Authority;
and
 - (b) contain the information required by the Authority; and

S. 31C(2)
amended by
No. 52/1998
s. 84(1).

S. 31C(2A)
inserted by
No. 8/2003
s. 51.

s. 31CA

- (c) be accompanied by the documents required by the Authority; and
- (d) be accompanied by the prescribed fee (if any).

S. 31C(2B)
inserted by
No. 8/2003
s. 51.

- (2B) In considering an application under this section, the Authority may—
 - (a) conduct any inquiries it thinks fit;
 - (b) require the applicant to provide any further information that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the application from any other person or body as it thinks fit.

S. 31C(2C)
inserted by
No. 8/2003
s. 51.

- (2C) The Authority may refuse to consider the application if the applicant does not provide the further information required, or his or her consent for the Authority to obtain that information, within a reasonable time after the requirement is made.

S. 31C(3)
amended by
No. 52/1998
s. 84(1).

- (3) The Authority may give its permission if it is satisfied that it is not contrary to the public interest for it to do so.
- (4) Section 14(5)(e) does not apply to a person in respect of whom permission has been given.
- (5) A person in respect of whom permission has been given is eligible to act as an agent's representative, despite section 16(1)(c).

S. 31CA
inserted by
No. 41/2003
s. 30.

31CA Corporation may be allowed to hold licence despite disqualifying factors

- (1) A corporation may apply to the Authority for permission to be granted, or to continue to hold, an estate agent's licence even though—

-
- (a) it, or one of its directors, is a person in relation to whom a claim has been allowed against the Fund under Part VII or against a corresponding fund established under any corresponding previous enactment; or
- (b) it has been convicted of, or has had found proven against it, an offence involving fraud, dishonesty, drug trafficking or violence that, if it was a natural person, would be punishable by imprisonment for 3 months or more; or
- (c) one of its directors is a person who has, within the last 10 years in Australia or elsewhere, been convicted or had found proven against him or her any offence involving fraud, dishonesty, drug trafficking or violence which was punishable by imprisonment for 3 months or more, but who is still eligible to be a director of the corporation under the Corporations Act despite the conviction or finding of guilt.
- (2) An application must—
- (a) be in the form approved by the Authority; and
- (b) contain the information required by the Authority; and
- (c) be accompanied by any documents required by the Authority; and
- (d) be accompanied by any fee required by the regulations for the purposes of this section.
- (3) The Authority may give its permission if it is satisfied—
- (a) that the giving of the permission is not contrary to the public interest; and

S. 31CA(1)(a)
amended by
No. 17/2004
s. 7(2).

-
- (b) in the case of an application made in the circumstances described in subsection (1)(a)—
- (i) that the person has refunded all amounts paid out of the Fund or the corresponding fund in respect of the claim; and
 - (ii) that there were exceptional circumstances which gave rise to the claim against the person; and
 - (iii) that having regard to the conduct of the person before and after the claim, there is no reasonable expectation that the person will not comply with this Act and the regulations in future; and
- (c) in the case of an application made in the circumstances described in subsection (1)(a) involving a director or in subsection (1)(c), that there is a substantive reason why the person should remain a director of the corporation.
- (4) In considering an application, the Authority may—
- (a) conduct any inquiries it thinks fit;
 - (b) require the applicant to provide any further information relating to the application that the Authority thinks fit in the manner required by the Authority;
 - (c) seek advice and information on the application from any other person or body as it thinks fit.
- (5) The Authority may refuse to give its permission if the applicant does not provide the further information required, or any consent needed by
-

the Authority to obtain that information, within a reasonable time after the requirement is made.

- (6) If the Authority gives its permission, the corporation is eligible to be granted, or to continue to hold, an estate agent's licence, despite anything to the contrary in section 15(3) or 22(2A).

31D Authority may impose conditions

S. 31D
inserted by
No. 86/1994
s. 20.

- (1) In giving its permission under section 31A, 31B, 31C or 31CA, the Authority may impose any conditions it considers appropriate to ensure the ongoing protection of the public interest.

S. 31D(1)
amended by
Nos 52/1998
s. 84(1),
41/2003 s. 31.

- (2) The Authority may at any time impose conditions in respect of the permission or vary or revoke any conditions it has previously imposed.

S. 31D(2)
amended by
No. 52/1998
s. 84(1),
substituted by
No. 52/1998
s. 84(2).

- (3) A person to whom permission has been given must comply with any conditions imposed in respect of the permission.

Penalty: 25 penalty units.

- (4) If the Authority is satisfied that any condition imposed in respect of a permission has been contravened or not complied with, it may revoke the permission.

S. 31D(4)
amended by
No. 52/1998
s. 84(1),
substituted by
No. 52/1998
s. 84(3).

- (5) Before taking any action under this section, the Authority may seek and use information and advice from any person or body or other source as it thinks fit.

S. 31D(5)
inserted by
No. 52/1998
s. 84(3).

s. 31E

S. 31E
inserted by
No. 86/1994
s. 20.

31E Disability etc. of licensed estate agent

- (1) The following people may carry on the estate agency business of a person who was a licensed estate agent for 30 days after the person ceases to be licensed—
 - (a) if the person dies, the executor named in the person's will or the administrator of the person's estate or any person who intends applying for letters of administration in relation to the person's estate;
 - (b) if the person becomes an insolvent under administration, the assignee, trustee or receiver of the person;
 - (c) if the person becomes a represented person within the meaning of the **Guardianship and Administration Board Act 1986**, the guardian or administrator of the person or any person nominated by the guardian or administrator;
 - (d) if the person becomes an externally-administered body corporate, the liquidator, official manager, receiver, receiver and manager or other external administrator.
- (2) If a person authorised to carry on a business applies to the Authority within the 30 day period for permission to carry on the business for a longer period, the person may continue to carry on the business until the Authority makes a decision on the application.
- (3) The Authority may grant an application if it is satisfied that it is not contrary to the public interest to do so.
- (4) In granting its permission, the Authority may limit it in any way it thinks appropriate and may impose any conditions it thinks appropriate to ensure the ongoing protection of the public interest.

S. 31E(1)(d)
amended by
No. 101/1998
s. 37(2).

- (5) A person who carries on an estate agency business under this section is deemed to be the holder of the former agent's licence for the purposes of this Act.

32 Application for review

- (1) A person whose interests are affected by a decision of the Authority under this Act may apply to the Tribunal for review of the decision.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

S. 32 substituted by No. 10155 s. 69(1)(c), amended by No. 86/1994 s. 47(p)(i)(ii), substituted by No. 52/1998 s. 85.

33 The Register

- (1) The Registrar must keep a register of estate agents and agent's representatives open for public inspection in the form determined by the Registrar.
- (2) The purposes of keeping the register are—
- (a) to enable members of the public to have access to information about—
 - (i) licensed estate agents and agent's representatives;
 - (ii) other people involved in estate agency business; and
 - (b) to record the names of all persons declared ineligible to hold a licence or to be an agent's representative.

S. 33 amended by Nos 9925 s. 5(c), 86/1994 s. 47(q)(r), substituted by Nos 52/1998 s. 86, 8/2003 s. 52.

-
- (3) The register must contain details of the following in relation to each licensed estate agent or estate agency business—
- (a) licence number issued by the Authority;
 - (b) name and registered office;
 - (c) date of grant, surrender, cancellation or suspension of the licence;
 - (d) licence conditions;
 - (e) any Tribunal or court orders concerning the estate agent or agent's representative that affects the licence or status of the agent's representative of which the Registrar has notice;
 - (f) any claims allowed by the Fund (or any like fund established under a previous enactment) in relation to a licensed estate agent or agent's representative of which the Registrar has notice;
 - (g) address and telephone number of the principal office of the licensed estate agent;
 - (h) if the licensed estate agent has branch offices—
 - (i) the address of each branch office;
 - (ii) the name of each branch manager;
 - (iii) the date of appointment of each branch manager;
 - (iv) the date of cessation of appointment of each branch manager;
-

-
- (i) if the licensed estate agent is operating under a franchise agreement—
 - (i) the name and address of the franchisor;
 - (ii) the date of commencement of the franchise agreement;
 - (iii) the date of cessation of the franchise agreement;
 - (j) if the licensed estate agent is a corporation—
 - (i) the name of each director;
 - (ii) the date of appointment of each director;
 - (iii) the date of cessation of appointment of each director;
 - (iv) the name of the officer in effective control;
 - (v) the date of appointment of the officer in effective control;
 - (vi) the date of cessation of appointment of the officer in effective control;
 - (k) if the licensed estate agent is an employee of a licensed estate agent, the name and address of the employer;
 - (l) if the licensed estate agent employs agent's representatives—
 - (i) the name and registered address of each agent's representative employed by the licensee;
 - (ii) the date of commencement of employment of each agent's representatives;
 - (iii) the date of cessation of employment of each agent's representative;
-

-
- (m) if a licensed estate agent employs licensed estate agents—
- (i) the name of each licensed estate agent employee;
 - (ii) the date of commencement of employment of each licensed estate agent employee;
 - (iii) the date of cessation of employment of each licensed estate agent employee;
- (n) all business names under which the licensed estate agent conducts estate agency business;
- (o) Australian Business Number (if any) issued under the A New Tax System (Australian Business Number) Act 1999 of the Commonwealth issued to the licensed estate agent;
- (p) Internet site address maintained by the licensee for the purposes of an estate agency business (if any).
- (4) The register must also contain details of—
- (a) all applications for licences refused by the Authority during the last two years;
 - (b) all permission determinations under section 31A, 31B or 31C;
 - (c) any other information prescribed by the regulations as forming part of the register.
- (5) A person in accordance with the regulations (if any) and on payment of the prescribed fee (if any) may—
- (a) inspect the register; and
 - (b) obtain copies of, or extracts from, the register.
-

- (6) Subject to the **Public Records Act 1973**, the Registrar may, if in his or her opinion it is no longer necessary or desirable to retain it, remove any information from the register 12 years after the information was added to the register.
- (7) In the exercise and performance of his or her duties under this section the Registrar must act on any information which appears to the Registrar sufficient in each case.

*	*	*	*	*	S. 34 amended by Nos 9925 s. 5(a)(b), 10028 s. 21(a)–(c), 86/1994 ss 45(f), 47(r)–(u), 52/1998 s. 87(1)–(4), repealed by No. 8/2003 s. 52.
*	*	*	*	*	S. 34A inserted by No. 52/1998 s. 88, repealed by No. 8/2003 s. 52.

35 Registered office and address

- (1) Every licensed estate agent shall have a registered office within Victoria, and every agent's representative shall have a registered address within Victoria, to which all communications and notices may be addressed.
- (2) Any change in the situation of a registered office or registered address shall be promptly notified in writing to the Registrar by the agent or agent's representative concerned, and the Registrar shall alter the register accordingly.

S. 35(1)
amended by
No. 86/1994
s. 47(v)(i).

S. 35(2)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(v)(ii),
52/1998
s. 89(1)(2).

Estate Agents Act 1980
No. 9428 of 1980
Part III—Licences

s. 35

S. 35(3)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(v)(ii),
52/1998
s. 89(2).

(3) An estate agent shall within fourteen days of the establishment of a branch office advise the Registrar in writing of the address of that branch office.

S. 35(3A)
inserted by
No. 29/1989
s. 11(1).

(3A) Subject to subsection (3B), every licensed estate agent must have a principal office in Victoria.

S. 35(3B)
inserted by
No. 29/1989
s. 11(1).

(3B) A licensed estate agent who is also licensed or otherwise authorised under the laws of another State to carry on the business of an estate agent in that State who operates an estate agency business in that State and the main or only estate agency office of that business is located within that State may have his or her principal office outside Victoria if it is within 48 kilometres of Victoria.

S. 35(4)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(v)(ii),
52/1998
s. 89(1)(2).

(4) Any change in the situation of the principal office or a branch office of an estate agent shall be promptly notified in writing to the Registrar by the estate agent concerned and the Registrar shall alter the register accordingly.

(5) For the purposes of this Act where a licensed estate agent carries on business at only one place that place shall be recorded as his principal office.

S. 35(6)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(v)(ii)(iii),
52/1998
s. 89(1)(2).

(6) Every estate agent shall, within seven days after he employs and within seven days after ceasing to employ any agent's representative, in writing notify the Registrar of such employment or cessation of employment and the Registrar shall enter the fact in the register.

S. 35(7)
amended by
No. 86/1994
s. 47(v)(iii).

(7) Any agent or agent's representative who carries on business without complying with the requirements of this section shall be guilty of an offence.

36 Name of estate agency business

- (1) This section applies if, in the opinion of the Authority, the name under which a person operates, or proposes to operate, an estate agency business—
- (a) incorporates the name of an unlicensed person or the name of an agent's representative or any name which might be confused with the name already used by a licensed estate agent; and
 - (b) may mislead the public.
- (2) The Authority—
- (a) may refuse to issue the person with an estate agent's licence until the person chooses a name that is acceptable to the Authority; or
 - (b) if the person already holds an estate agent's licence, may require the person to change the name of the estate agency business.
- (3) A person must comply with any requirement made by the Authority under subsection (2)(b) within the time specified by the Authority.

Penalty applying to this subsection: 25 penalty units.

* * * * *

S. 36
amended by
Nos 9500 s. 9,
9925 s. 5(a),
substituted by
No. 10028
s. 22,
amended by
No. 38/1993
s. 6(c),
substituted by
No. 86/1994
s. 21.

S. 37
amended by
Nos 9500
s. 10, 10028
s. 23,
repealed by
No. 86/1994
s. 45(g).

Pt 4
(Heading)
amended by
No. 86/1994
s. 45(h).

PART IV—AGENTS AND AGENTS' REPRESENTATIVES

38 Unlicensed person pretending to be licensed as agent

Every person not being a licensed estate agent who keeps up or exhibits on or near his office house or place of business or anywhere else or allows to remain unobliterated any sign writing painting or other mark implying that the office house or place of business is that of a person licensed to carry on the business of an estate agent shall be guilty of an offence.

39 As to displaying notice on places of business

Every licensed estate agent carrying on the business of an estate agent shall paint or affix and keep painted or affixed on each place of business so as to be easily read from outside—

- (a) in the case of an estate agent other than a corporation—
 - (i) his name and description as a licensed estate agent; and
 - (ii) if the business is not carried on in his own name, the name under which he or the partnership in which he is a partner is registered under the **Business Names Act 1962**; and

-
- (b) in the case of an estate agent being a corporation—
- (i) its name and description as a licensed estate agent;
 - (ii) the name of every director of the corporation engaged in the estate agency work of the corporation who is a licensed estate agent and his description as a licensed estate agent; and
 - (iii) if the business is not carried on in its own name, the name under which it is registered under the **Business Names Act 1962**.

40 Letterhead

- (1) Every licensed estate agent (other than a corporation) shall have his name and description as a licensed estate agent printed or shown on all correspondence from his estate agency business.
- (2) Every licensed estate agent being a corporation shall have its name and description as a licensed estate agent and the name of every director of the corporation engaged in the estate agency work of the corporation who is a licensed estate agent and his description as a licensed estate agent printed or shown on all correspondence from its estate agency business.
- (3) A person who is not a licensed estate agent or a director of a corporation which is a licensed estate agent shall not use or permit to have used on any correspondence from an estate agency business anything which implies or indicates that he is a licensed estate agent or a director of a corporation which is a licensed estate agent (as the case may be).

41 Production of licence by agent

S. 41(1)
amended by
Nos 9925
s. 5(a), 10028
s. 24(a),
86/1994
s. 47(w)(i)–(iv),
52/1998
s. 90.

(1) Every licensed estate agent shall within seven days of a demand being made at the premises where he carries on his business produce his licence to the Authority, to the Director or to any member of the police force or to any person with whom that agent is transacting or attempting to transact any business as an estate agent.

S. 41(2)
inserted by
No. 10028
s. 24(b).

(2) Every licensed estate agent shall at every premises where he carries on his business display a copy of his licence in a conspicuous position available to the public.

42 Advertising

S. 42(1)
amended by
Nos 10028
s. 25, 86/1994
s. 47(x),
52/1998 s. 113,
41/2003
s. 32(1).

(1) Any estate agent who publishes any advertisement relating to or in connexion with his business without specifying therein a name under which the agent carries on business and the address of his registered office his principal office or any one of his branch offices shall be guilty of an offence.

(2) Any person who wilfully and falsely advertises or in any way wilfully and falsely represents that as an estate agent he has a particular property or business for sale shall be guilty of an offence.

(3) Any person who in any way wilfully and falsely represents that as an estate agent he has sold a property or holds a deposit in respect of the sale of a property shall be guilty of an offence.

S. 42(4)
amended by
No. 41/2003
s. 32(1).

(4) Any estate agent who publishes or permits or authorizes to be published as part of any advertisement any false or misleading statement or representation concerning any property or business which is or is stated or represented to be for sale shall be guilty of an offence.

-
- (5) For the purposes of this section an advertisement shall be deemed to be misleading—
- (a) if it refers to the "gross profit" or the "clear profit" of a business stated or represented to be for sale; or
 - (b) if it mentions any amount as being the profit of a business stated or represented to be for sale which is not the average weekly net profit of the business for the period of three years immediately before the publication of the advertisement or for the whole of any lesser period during which the business has been carried on by the vendor.
- (6) In any proceedings under this section—
- (a) production of a newspaper containing an advertisement having specified therein the name of an estate agent or of an advertisement published in any other form having specified therein the name of an estate agent shall be prima facie evidence that the estate agent published or authorized to be published the advertisement and all statements and representations made therein; and
 - (b) evidence on oath that an advertisement was published and that any statement or representation was made in or as part of the advertisement and that the name of any estate agent was specified or mentioned in or as part of or as having authorized the publication of the advertisement shall be prima facie evidence that the agent published or authorized the publication of the advertisement and the statement or representation.

S. 42(6)(b)
amended by
No. 41/2003
s. 32(2).

s. 43

43 Franchising agreements

S. 43
amended by
Nos 10028
s. 26(a)(i)(ii)
(b), 10155
s. 69(1)(d),
substituted by
No. 29/1989
s. 12.

S. 43(1)
amended by
No. 86/1994
s. 47(y)(i).

S. 43(2)(a)
amended by
No. 8/2003
s. 53.

S. 43(2)(b)
amended by
No. 86/1994
s. 47(y)(i).

- (1) An estate agent who enters into a franchising agreement must give notice to the Authority of the agreement.
- (2) A notice under subsection (1)—
 - (a) must be in a form approved by the Authority and contain the prescribed particulars; and
 - (b) must be given to the Authority within 30 days after the agreement is entered into.
- (3) If an estate agent carries on business pursuant to a franchising agreement—
 - (a) each party to the agreement is jointly and severally liable for any defalcation by the estate agent; and
 - (b) each party to the agreement is jointly and severally liable for any liability incurred by the estate agent as a result of negligence by the estate agent or by an employee or servant of the estate agent in the performance of the duties of an estate agent; and
 - (c) each party to the agreement is jointly and severally liable for any costs or fines arising out of any proceedings instituted in respect of that defalcation or negligence.
- (4) If an estate agent contravenes this section each party to the franchising agreement is guilty of an offence.

(5) In this section—

franchising agreement means an agreement whereby an estate agent is authorized to carry on business under any name in consideration of any other person entitled to carry on business under that name receiving any consideration whether by way of a share in the profits of the estate agent's business or otherwise;

S. 43(5) def. of *franchising agreement* amended by No. 86/1994 s. 47(y)(ii).

defalcation has the same meaning as in Part VII.

44 Persons not to be employed by agents

- (1) An estate agent shall not employ in any capacity in connexion with his business any person—
- (a) who is for the time being disqualified under this Act from holding a licence; or
 - (b) whose application for a licence has been refused by the Authority, unless such an application has been subsequently granted; or
 - (c) in relation to whom any claim has been allowed against the Fund under Part VII, unless the Tribunal permits the employment; or
 - (d) who because of his conduct or reputation is not a fit and proper person to be employed in an estate agency.
- (2) A person who under subsection (1) is not permitted to be employed by an estate agent in any capacity in connexion with his business shall not participate or be in any way concerned in the business of an estate agent.

S. 44(1) amended by No. 86/1994 s. 47(z)(i).

S. 44(1)(b) amended by No. 86/1994 s. 47(z)(ii).

S. 44(1)(c) amended by Nos 86/1994 s. 47(z)(iii), 17/2004 s. 7(2).

S. 44(1)(d) amended by No. 9549 s. 2(1)(Sch. item 57).

S. 44(2) amended by No. 86/1994 s. 47(z)(iv)(v).

S. 45
amended by
Nos 10028
s. 27, 29/1989
s. 13(a)(b),
38/1993
s. 6(d),
repealed by
No. 86/1994
s. 47(za),
new s. 45
inserted by
No. 41/2003
s. 33.

45 Continuing professional development

- (1) The Director may require estate agents or agent's representatives to undertake specified training or professional development activities.
- (2) The Director must publish notice of the making of a requirement in the Government Gazette.
- (3) A requirement takes effect on the date the notice is published, or on any later date specified in the notice.
- (4) A requirement—
 - (a) may specify that it applies generally to all agents or agent's representatives, or only to specified classes or sub-classes of agents or agent's representatives;
 - (b) may specify that every person to whom it applies must undertake a specified activity by a specified time;
 - (c) may assign point (or other) values to specified activities and require that a person undertake within a specified time activities that have a specified total point (or other) value;
 - (d) must identify the providers of any required activity;
 - (e) may provide for the Director—
 - (i) to extend a time limit that applies to a person with respect to the requirement;
 - (ii) to exempt, or partially exempt, a class of person from having to comply with the requirement on specified grounds.

-
- (5) If the Director makes a requirement under this section, an agent or agent's representative to whom the requirement applies must not knowingly fail to comply with the requirement.

Penalty: 25 penalty units.

45A Requirement may be disallowed

S. 45A
inserted by
No. 41/2003
s. 33.

- (1) On or before the 6th sitting day after notice of the making of a requirement is published in the Government Gazette, the Minister must ensure that a copy of the requirement is laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the requirement but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (3) A requirement may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to a requirement as if—
- (a) a reference in that Part to a "statutory rule" were a reference to the requirement; and
 - (b) a reference in section 23(1)(c) of that Part to "section 15(1)" were a reference to subsection (1).
- (5) A reference to a requirement in this section includes a reference to any amendment to a requirement.

s. 45B

S. 45B
inserted by
No. 41/2003
s. 33.

45B Further publication of requirement

- (1) The Director must publish a requirement made under section 45 on an Internet site maintained by the Director or the Authority as soon as is practicable after notice of the making of the requirement is published in the Government Gazette.
- (2) A failure to comply with subsection (1) does not affect the validity of a requirement.

46 Employees statements

S. 46(1)
amended by
Nos 10028
s. 28(a),
86/1994
s. 47(zb)(i)(ii).

- (1) Every estate agent shall—
 - (a) make or cause to be made and keep at his registered office in Victoria a true statement in writing containing particulars as to the name and the work or services of and the salary wages or commission paid in each month to each person employed by him in connexion with his business as an agent;
 - (b) produce that statement for inspection during office hours whenever demanded by the Director or by a member of the police force of or above the rank of sergeant or by any person authorized in writing by the Director or by any such member of the police force; and
 - (c) from time to time advise the Director in writing of the premises at which are kept the records from which that statement was made and their location on those premises.

S. 46(1)(b)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zb)(iii),
52/1998 s. 91.

S. 46(1)(c)
inserted by
No. 10028
s. 28(b),
amended by
Nos 86/1994
s. 47(zb)(iii)
(iv), 52/1998
s. 91.

- (2) Any agent who makes any false entry in any statement made under subsection (1) shall be guilty of an offence.

47 Authorization of agents' representatives

(1) Notwithstanding anything in this Act or any law to the contrary, an agent's representative shall not perform for an estate agent any of the functions of an estate agent unless the agent's representative has been lawfully authorized in writing by the estate agent to do so.

S. 47(1)
amended by
No. 86/1994
s. 47(zc)(i)(ii).

(2) An agent's representative who is employed by an estate agent must not undertake employment under section 30(3) with another estate agent as a branch manager for that other agent.

S. 47(2)
amended by
No. 86/1994
s. 47(zc)(iii),
substituted by
No. 41/2003
s. 34.

Penalty: 25 penalty units.

(2A) An agent's representative who is employed by an estate agent as a branch manager under section 30(2) or 30(3) must not undertake employment with another estate agent.

S. 47(2A)
inserted by
No. 41/2003
s. 34.

Penalty: 25 penalty units.

(3) Any agent's representative who makes any false representation (whether verbally or in writing or by conduct) to any person to the effect that the agent's representative is employed by or authorized to act as an agent's representative for any specified estate agent shall be guilty of an offence.

S. 47(3)
amended by
No. 86/1994
s. 47(zc)(i)(ii)
(iv).

47A Seller must be given estimated selling price

S. 47A
inserted by
No. 41/2003
s. 6.

(1) Before obtaining a person's signature to an engagement or appointment to sell any real estate on behalf of the person, an estate agent (or an agent's representative employed by the agent) must ensure that the engagement or appointment states the agent's (or representative's) estimate of the selling price of the real estate, and that the estimate complies with this section.

Penalty: 100 penalty units.

s. 47B

-
- (2) The estimate—
- (a) may be a single amount or a price range; and
 - (b) must be the amount the agent or representative believes, on the basis of his or her experience, skills and knowledge, that a willing but not anxious buyer would pay for the real estate, or in the case of a price range, the range within which that amount is likely to fall; and
 - (c) must be set out in a manner approved by the Director.
- (3) If an estimate is expressed as a price range, the difference between the upper and lower limits of the range must not exceed 10% of the amount of the lower limit of the range.
- (4) Nothing in this section requires the estimated selling price and the seller's reserve price to be the same amount.

S. 47B
inserted by
No. 41/2003
s. 6.

47B False representation to seller or prospective seller

An estate agent or agent's representative must not make a false representation to a seller or prospective seller of real estate as to the agent's or representative's estimate of the selling price of the real estate.

Penalty: 200 penalty units.

S. 47C
inserted by
No. 41/2003
s. 6.

47C False representation to prospective buyer

- (1) This section applies to an estate agent who holds a written engagement or appointment to sell real estate, and to any agent's representative employed by the agent.

-
- (2) In making any statement while marketing the real estate, the agent or representative must not state as his or her estimate of the selling price of the real estate a price that is less than the estimated selling price, or in the case of a price range, less than the lower limit of that range, stated in the engagement or appointment.

Penalty: 200 penalty units.

- (3) For the purposes of this section, a statement is made while marketing real estate if—
- (a) it is made in an advertisement in respect of the property that is published, or caused to be published, by the agent; or
 - (b) it is made (whether orally or in writing) to a person as a prospective purchaser of the real estate.

47D Director may require information concerning estimates

S. 47D
inserted by
No. 41/2003
s. 6.

- (1) The Director may require an estate agent who has accepted an engagement or appointment to sell real estate to provide the Director with evidence of the reasonableness of the estimated selling price or price range of the real estate set out in the engagement or appointment.
- (2) The Director must make the requirement in writing and must specify the date by which the agent must comply with the requirement.
- (3) The agent must comply with the requirement on or before the compliance date specified in the notice.

Penalty applying to this subsection: 60 penalty units.

S. 48
amended by
Nos 10028
s. 29(a)-(d),
86/1994
s. 47(zd)(i)(ii),
substituted by
No. 41/2003
s. 35.

48 Notice of commission sharing must be given

- (1) This section applies if an estate agent agrees to share any commission to which he or she becomes entitled in respect of any estate agency work with a person who is not—
 - (a) a licensed estate agent or an agent's representative in his or her employ; or
 - (b) a licensed estate agent with whom he or she is in partnership.
- (2) Before obtaining a person's signature to an engagement or appointment to do any estate agency work on behalf of the person, the agent must ensure that the person is given a statement that complies with subsection (3).

Penalty: 100 penalty units.
- (3) The statement—
 - (a) must state that any commission the agent is entitled to under the engagement or appointment will be shared with one or more other people; and
 - (b) must identify by name every person who is entitled to share the commission with the agent; and
 - (c) must contain any other details required by the regulations; and
 - (d) must be in a form approved by the Director.
- (4) An estate agent must not pay to another person any share of a commission that the agent has obtained in respect of any estate agency work if the agent failed to comply with subsection (2) in respect of the work.

Penalty: 100 penalty units.

- (5) Nothing in this section applies to any engagement or appointment entered into before the date of commencement of section 35 of the **Estate Agents and Sale of Land Acts (Amendment) Act 2003**.

48A Agent must not retain any rebate

S. 48A
inserted by
No. 41/2003
s. 8.

- (1) An estate agent who is engaged or appointed to do any estate agency work for a person (the *client*) is not entitled to retain any amount the agent receives from another person as a rebate in respect of—
- (a) any outgoings; or
 - (b) any prepayments made by the client in respect of any intended expenditure by the agent on the client's behalf; or
 - (c) any payments made by the client to another person in respect of the work.
- (2) On receiving any amount of rebate referred to in subsection (1), the agent must immediately pay the amount to the client.

Penalty: 60 penalty units.

- (3) Despite subsection (2), the agent does not have to pay to the client an amount of rebate if the agent, in anticipation of receiving the rebate, has already given that amount to the client either directly or by reducing the amount charged for the outgoing or prepayment to which the rebate relates.

48B Rebates must be factored into costs of expenses

S. 48B
inserted by
No. 41/2003
s. 8.

- (1) An estate agent must not seek to obtain from the client an amount for any outgoings or proposed outgoings (the *expenses*) that is more than the amount paid, or payable, by the agent for those expenses.

Penalty: 60 penalty units.

- (2) In determining the amount paid, or payable, by the agent, any amount of rebate received or receivable by the agent in respect of the expenses must be taken into account by the agent.
- (3) If it is not possible to determine the final amount paid, or payable, for the expenses at the time the agent seeks payment for those expenses, the agent may estimate the amount.
- (4) If an estimate is made and paid, and the agent becomes aware that the amount paid in respect of the expenses is less than the estimate, the agent must immediately pay any difference between the estimate and the amount paid by the agent to the client.

Penalty: 60 penalty units.

- (5) For the purposes of this section, an amount of rebate is receivable by an agent only if the agent has an accrued right to receive the amount at the time the agent seeks payment in respect of the expenses in respect of which the rebate is to be received – the amount is not receivable if at that time the receipt of the rebate is contingent on the happening of an event that has not occurred.

S. 48C
inserted by
No. 41/2003
s. 8.

48C Treatment of non-monetary rebates

- (1) For the purposes of sections 48A and 48B, if a rebate is, or is to be, obtained as a benefit rather than as a payment of money, a reference in those sections to the amount of the rebate is to be read as a reference to the value of the rebate.
- (2) The dollar amount that is to be attributed to the value of the rebate is a reasonable estimate of the value of the rebate in dollars to the agent.

s. 48D

48D Repeated breaches within 12 months

S. 48D
inserted by
No. 41/2003
s. 8.

- (1) A person who on 3 or more separate occasions occurring on separate days within any period of 12 months engages in conduct that constitutes an offence against section 48A or 48B is guilty of an offence and is liable to a penalty not exceeding 240 penalty units.
- (2) It is immaterial whether or not the conduct is of the same nature, or constitutes the same offence, on each occasion.
- (3) Proceedings cannot be taken under this section in respect of conduct occurring on a particular occasion if that conduct has resulted in a charge of committing an offence against section 48A or 48B being found proven against the person.

48E Right of recovery of rebates

S. 48E
inserted by
No. 41/2003
s. 8.

A person who is entitled to be paid an amount in respect of a rebate under section 48A or 48B may recover the amount as a debt due to the person by the agent if the agent fails to pay the amount to the person as required by that section.

* * * * *

S. 49
repealed by
No. 86/1994
s. 47(ze).

49A Offence not to give certain information about commission

S. 49A
inserted by
No. 86/1994
s. 22.

- (1) An estate agent must not obtain, or seek to obtain, any payment from a person in respect of work done by, or on behalf of, the agent or in respect of any outgoings incurred by the agent unless—
 - (a) the agent holds a written engagement or appointment that is signed by the person (or the person's representative); and

s. 49A

- (b) before obtaining the person's signature to the engagement or appointment, the agent (or an agents' representative employed by the agent) informed the person (or the person's agent or representative) that the commission to be paid to the agent under the engagement or appointment and any money to be paid by the person in respect of outgoings were subject to negotiation; and
- (c) the engagement or appointment contains—
- (i) details of the commission and outgoings that have been agreed; and
 - (ii) if a fee is to be calculated on a percentage basis, a statement of that fee expressed as both a percentage and as the dollar amount that would be payable on the reserve price or any other relevant amount set out in the engagement or appointment; and
 - (iii) a rebate statement that complies with subsection (4); and
 - (iv) a statement in a form approved by the Director as to where a complaint concerning any commission or outgoings in the engagement or appointment can be made; and
 - (v) anything else required by the Director; and
- (d) the agent (or an agent's representative employed by the agent) gave the person a copy of the signed engagement or appointment.

S. 49A(1)(c)(iii)
substituted by
No. 41/2003
s. 9(1).

S. 49A(1)(c)(iv)
amended by
No. 52/1998
s. 92.

S. 49A(1)(c)(v)
amended by
No. 52/1998
s. 92.

Penalty: 100 penalty units.

-
- (2) An estate agent or agent's representative must not destroy any document required by this section and must retain any such document for the prescribed period.

Penalty: 100 penalty units.

- (3) If an estate agent takes any money in respect of commission or outgoings from any money held in trust by the agent on behalf of a person, the agent must give the person written notice of the amount taken, and why it was taken, within 7 days of taking it.

Penalty: 100 penalty units.

- (4) A rebate statement complies with this subsection if it is in a form approved by the Director and it contains—

S. 49A(4)
inserted by
No. 41/2003
s. 9(2).

- (a) a statement of whether or not the agent will be, or is likely to be, entitled to any rebate in respect of—

(i) any outgoings; or

(ii) any prepayments made by the person engaging or appointing the agent (the *client*) in respect of any intended expenditure by the agent on the client's behalf; or

(iii) any payments made by the client to another person in respect of the work; and

- (b) if such an entitlement will, or is likely to, occur, details of—

(i) the goods or services to which the rebate relates; and

(ii) the name of the person providing the rebate; and

s. 50

(iii) the amount of the rebate that will be attributable to the engagement or appointment, or if that amount is not known at the time the statement is made, an estimate (in dollars) of the amount; and

(c) a statement that the agent is not entitled to retain any rebate and must not charge the client an amount for any expenses that is more than the cost of those expenses; and

(d) any other statements or details required by the regulations.

(5) Section 48C also applies for the purposes of subsection (4)(b)(iii).

S. 49A(5)
inserted by
No. 41/2003
s. 9(2).

50 Commission

(1) An estate agent is not entitled to sue for or recover or retain any commission or money in respect of any outgoings for or in respect of any transaction unless—

(a) at all material times in relation to the transaction he or she is the holder of an estate agent's licence; and

(b) the agent has complied with section 49A(1) with respect to the engagement or appointment to undertake the transaction and is not in breach of section 49A(2) with respect to the engagement or appointment; and

S. 50(1)
amended by
Nos 10028
s. 30(a)(i),
41/2003
s. 9(3)(a).

S. 50(1)(a)
amended by
Nos 86/1994
s. 23(1),
41/2003
s. 9(3)(b).

S. 50(1)(b)
amended by
No. 10028
s. 30(a)(ii),
substituted by
No. 86/1994
s. 23(1),
amended by
No. 41/2003
s. 9(3)(c).

(c) the agent has complied with sections 48A and 48B with respect to the engagement, appointment or transaction.

S. 50(1)(c) amended by No. 10028 s. 30(a)(iii)(iv), repealed by No. 86/1994 s. 23(1), new s. 50(1)(c) inserted by No. 41/2003 s. 9(3)(c).

* * * * *

S. 50(1)(d) amended by No. 10028 s. 30(a)(iii)(iv), repealed by No. 86/1994 s. 23(1).

* * * * *

S. 50(2)(3) repealed by No. 86/1994 s. 23(2).

(4) Any estate agent who demands or receives or retains from or pays out of any moneys held by him or her on behalf of another person any fee in respect of negotiating or procuring an advance under the **Co-operative Housing Societies Act 1958** or any loan under the **Housing Act 1983** and any estate agent who for or in respect of any service or transaction or any auctioneer who for or in respect of the sale by auction of any real estate demands receives or retains from any moneys received by him or her an amount by way of commission or otherwise which is in excess of the amount allowed by the agent's engagement or appointment to act shall be guilty of an offence against this Act; and the Court, in addition to imposing any penalty, may order the agent or auctioneer, to refund any excess or improper amount received or retained by him or her.

S. 50(4) amended by Nos 9500 s. 11, 10028 s. 30(b), 29/1989 s. 23(b), 86/1994 s. 23(3), 41/2003 s. 9(3)(d).

s. 51

S. 50(5)
amended by
Nos 10028
s. 30(c),
86/1994
s. 23(4),
41/2003
s. 9(3)(e).

- (5) Any covenant agreement or condition whereby any person agrees to waive or surrender any right or remedy which he or she may have in respect of the excess or improper amount received or retained by an estate agent or auctioneer, or in any event, any covenant agreement or condition whereby any person agrees to waive or surrender any right or remedy which he or she may have against any estate agent or auctioneer under this Act shall be absolutely void and of no effect whatsoever.

51 Statement concerning finance only to be given if finance promised

S. 51(1)
substituted by
No. 86/1994
s. 24.

- (1) This section applies if an estate agent or auctioneer (or any employee or person acting on behalf of an estate agent or auctioneer) makes any promise to a person with respect to the obtaining of a loan of money to defray some or all of the cost of the purchase price of any real estate or business.

S. 51(1A)
inserted by
No. 86/1994
s. 24.

- (1A) Before obtaining any signature from the person (or any agent of the person) on any document that legally binds, or that is intended to legally bind, the person in respect of the purchase of the real estate or business, the estate agent or auctioneer must—
- (a) give to the person, or to any other person signing the document on behalf of that person, a statement in writing as provided for in this section; and
 - (b) obtain from the person to whom the statement is given an acknowledgement in writing of the receipt of that statement.

- (2) Notwithstanding anything in subsection (1A)—
- (a) it shall not be necessary in any case where there are two or more purchasers to give a statement in writing to more than one of the purchasers; and
 - (b) a statement in writing shall be deemed to be duly given if it is given to a person who is authorized by the purchaser to receive it on his behalf or who is authorized by one of two or more purchasers to receive it on their behalf.
- (3) Every statement given under this section—
- (a) shall set out so that it can be readily identified the situation or description of the real estate or business in relation to which the statement is given;
 - (b) shall state the name and address of the seller and of the purchaser;
 - (c) shall—
 - (i) set out in accordance with the requirements of subsection (4) particulars of any promise made by the auctioneer or agent (or by any employee or agent's representative) with respect to the obtaining of a loan of money for defraying wholly or in part the purchase price and state whether the loan is to be obtained by the auctioneer or agent and state also that any other promise which may previously have been made with respect to the obtaining of a loan of money for defraying wholly or in part the purchase price is withdrawn.

S. 51(2)
amended by
No. 86/1994
s. 25(a).

S. 51(3)(c)(i)
amended by
Nos 86/1994
ss 25(b),
47(zf), 17/2004
s. 10(1).

Estate Agents Act 1980
No. 9428 of 1980

Part IV—Agents and Agents' Representatives

s. 51

S. 51(3)(c)(ii)
repealed by
No. 86/1994
s. 25(c).

* * * * *

- (d) shall state the date on which the statement is given; and
- (e) shall be signed by the auctioneer or agent or by a person authorized in writing by the auctioneer or agent.

S. 51(4)
amended by
Nos 86/1994
s. 47(zg),
17/2004
s. 10(1).

- (4) The particulars required to be set out by subsection (3)(c)(i) shall be the terms of the promise actually made by the auctioneer or agent (or by any employee or agent's representative) save that it shall not in any circumstances be necessary to set out any particulars other than or in addition to—
 - (a) the amount of the loan;
 - (b) the rate of interest payable under the loan (but not any higher rate which may be payable if default is made in complying with the terms and conditions upon which the loan is obtained);
 - (c) the date by which (if the terms and conditions upon which the loan is obtained are complied with) the loan is to be repaid;
 - (d) if the loan is to be repayable by instalments, the amount of each instalment and the intervals at which the instalments are to be payable; and
 - (e) the person, body, or institution from whom or which the loan is to be obtained.

(5) If a statement containing substantially—

S. 51(5)
amended by
Nos 86/1994
s. 47(zg),
17/2004
s. 10(1).

(a) the particulars and information required to be
set out and stated by subsection (3)(c)(i)—

S. 51(5)(a)
amended by
No. 86/1994
s. 25(b).

* * * * *

S. 51(5)(b)
repealed by
No. 86/1994
s. 25(c).

is given in accordance with the provisions of this
section the purchaser shall not be entitled, under
or by virtue of the provisions of this section, to
avoid any such contract agreement or document
on the ground that the auctioneer or agent (or his
employee or agent's representative) has made a
promise with respect to the obtaining of a loan of
money which is not set out in the statement.

(6) If a statement containing substantially—

(a) the particulars and information required to be
set out and stated by subsection (3)(c)(i)—

S. 51(6)(a)
amended by
No. 86/1994
s. 25(b).

* * * * *

S. 51(6)(b)
repealed by
No. 86/1994
s. 25(d).

is not given in accordance with the provisions of
this section, the purchaser may at his option by
notice in writing given to the seller or to the
auctioneer or agent—

(a) within one month after he first signs any
contract, agreement or document in respect
of the sale; and

- (b) before the purchaser has—
- (i) paid the whole of the purchase money;
or
 - (ii) taken possession of the property; or
 - (iii) accepted title to the property—

avoid the contract agreement or document; and in any civil proceedings arising out of or connected with the contract agreement or document the onus of proving that the statement was duly given shall lie upon the party so alleging.

- (7) If in respect of any sale to which this section applies—
- (a) a loan of money is not obtained by or on behalf of the purchaser in compliance with any promise set out in any statement given to the purchaser pursuant to this section; and
 - (b) the purchaser has not already paid the whole of the purchase money or taken possession of the property or accepted title to the property—

the purchaser, if he has done all things reasonably required to be done to obtain the loan of money, may by notice in writing given, within three months after he first signs any such contract agreement or document in respect of the sale, to the seller or to the auctioneer or agent avoid that contract agreement or document.

- (8) Upon any avoidance under this section of a contract agreement or document—
- (a) the seller shall be liable for the repayment to the purchaser of all money paid by the purchaser under the contract agreement or document; and

S. 51(8)
amended by
No. 57/1989
s. 3(Sch.
item 66.4).

(b) the auctioneer or agent (as the case may be) shall be liable for the repayment to the purchaser of such part of the said money as was paid to him by the purchaser—

and the money shall be recoverable by the purchaser accordingly as a civil debt recoverable summarily in the Magistrates' Court or in any court of competent jurisdiction.

(9) Where an auctioneer or agent has under subsection (8) been required to pay and has paid any money to the purchaser that money, to the extent of any amount received by the seller in respect of the transaction, shall be recoverable by the auctioneer or agent from the seller as a civil debt recoverable summarily in the Magistrates' Court or in any court of competent jurisdiction unless the seller proves to the satisfaction of the court that the promise with respect to the obtaining of a loan of money was made without his knowledge connivance or consent.

**S. 51(9)
amended by
No. 57/1989
s. 3(Sch.
item 66.4).**

(10) Where a promise is made without the knowledge connivance or consent of the seller, the seller may recover from the auctioneer or agent concerned any money paid under the contract and not received by the seller which the seller has repaid to the purchaser and in addition any damage suffered by the seller consequent on the avoidance by the purchaser of the contract.

(11) Every contract or agreement made or entered into with intent, or the effect of which would be, to evade or avoid the operation of any provision of this section shall to the extent of the evasion or avoidance be absolutely void and of no legal effect.

s. 51

S. 51(12)
amended by
Nos 9945
s. 3(1)(Sch. 1
item 14),
86/1994
s. 25(e).

- (12) An auctioneer or agent who, being so required by the provisions of subsection (1A) fails to give in respect of a sale of any real estate or business a statement in writing containing substantially the particulars and information required by subsection (3) shall be guilty of an offence against this Act and liable to a penalty of not more than 10 penalty units.
- (13) Notwithstanding anything to the contrary in this section a contract agreement or document in respect of the sale of any real estate or business shall not be voidable by the purchaser by reason only of a contravention by the auctioneer or agent of any of the provisions of this section if the court is satisfied that the auctioneer or agent acted honestly and reasonably and that the purchaser is substantially in as good a position as if all the relevant provisions of this section had been complied with.
- (14) In this section *promise* does not include—
- (a) a promise that a seller of land will transfer the land to the purchaser conditionally upon his at the same time executing a proper mortgage in favour of the seller to secure payment of all or any part of the moneys payable or that would thereafter but for the execution of the mortgage become payable by the purchaser pursuant to the contract of sale; or
 - (b) a promise that the terms of a sale will be or will include a provision that the purchase price or any part thereof shall be or may be paid by instalments.

52 Statement to be given on sale of small business

- (1) A person seeking to sell a small business or an estate agent who—
- (a) obtains the signature of a purchaser or of a person acting on behalf of a purchaser to any contract agreement or document in respect of a sale of a small business which is legally binding upon or intended legally to bind the purchaser; or
 - (b) accepts a deposit in relation to a sale of a small business—

shall before obtaining the signature or accepting the deposit give to the purchaser or to any person signing the contract agreement or document on behalf of the purchaser or to any person paying the deposit on behalf of the purchaser, in addition to the statement required to be given by section 51, a statement in writing in the prescribed form and containing the prescribed particulars and shall obtain from the person to whom the statement is given an acknowledgement in writing of the receipt of that statement.

- (2) The statement shall be signed by the vendor of the business.

**S. 52(2)
amended by
No. 86/1994
s. 26.**

- (3) If in purported pursuance of this section a statement is given which is not in the prescribed form or does not contain the prescribed particulars or which states any of those particulars inaccurately or if no statement at all is given pursuant to this section the purchaser may by notice in writing given to the vendor or to the estate agent—
- (a) within three months after he first signs any contract agreement or document in respect of the sale; and

(b) before he takes possession of the business—
avoid the contract agreement or document, and in
any civil proceedings arising out of or connected
with the contract agreement or document the onus
of proving that the statement was duly given shall
lie upon the party so alleging.

S. 52(4)
amended by
No. 57/1989
s. 3(Sch.
item 66.5).

(4) Upon the avoidance of a contract agreement or
document under this section the vendor shall be
liable for the repayment to the purchaser of any
money paid by the purchaser under the contract
agreement or document and the estate agent shall
be liable for the repayment to the purchaser of
such part of the money as was paid to him by the
purchaser and the money shall be recoverable by
the purchaser accordingly as a civil debt
recoverable summarily in the Magistrates' Court
or in any court of competent jurisdiction.

S. 52(5)
amended by
No. 57/1989
s. 3(Sch.
item 66.5).

(5) Where an estate agent has under subsection (4)
been required to pay and has paid any money to
the purchaser that money, to the extent of any
amount received by the vendor in respect of the
transaction, shall be recoverable by the estate
agent from the vendor as a civil debt recoverable
summarily in the Magistrates' Court or in any
court of competent jurisdiction unless the vendor
proves to the satisfaction of the court that the
failure to give a statement to the purchaser as
required by this section or the failure to include in
the statement the prescribed particulars or the
inaccurate giving of those particulars was without
his knowledge connivance or consent.

(6) Every contract or agreement made or entered into
with intent, or the effect of which would be, to
avoid or evade the operation of any provision of
this section shall to the extent of the evasion or
avoidance be absolutely void and of no legal
effect.

- (7) A vendor or an estate agent who, upon being so required under subsection (1), fails to give in respect of a sale of a business a statement in writing in the prescribed form and containing the prescribed particulars shall be guilty of an offence and liable to a penalty of not more than 10 penalty units.
- (8) This section does not apply to or in relation to the sale of any business in connection with which a licence or permit is in force under the **Liquor Control Reform Act 1998** and which the purchaser could not lawfully carry on without a licence under that Act.

S. 52(7)
amended by
No. 9945
s. 3(1)(Sch. 1
item 15).

S. 52(8)
substituted by
No. 97/1987
s. 181(3),
amended by
No. 74/2000
s. 3(Sch. 1
item 43).

53 Copy of contract etc. to be delivered to person signing

- (1) When an estate agent (whether by himself or by an employee or agent's representative) secures the signing of any person to any contract agreement or other document pertaining to the sale purchase or exchange of any property or business or of any interest therein or of the good-will of any business he shall at the time the signature is obtained deliver a copy of the agreement document or contract to the person signing it and obtain from that person an acknowledgement in writing of the receipt of that copy.
- (2) Where the estate agent (whether by himself or by an employee or agent's representative) secures the signature of more than one person to a contract agreement or other document under subsection (1) it shall be sufficient compliance with that subsection if the estate agent delivers a copy of the contract agreement or document to one of the persons signing it and obtains from that person an acknowledgement in writing of the receipt of that copy.

S. 53(1)
amended by
Nos 86/1994
s. 47(zh),
17/2004
s. 10(1).

S. 53(2)
amended by
Nos 86/1994
s. 47(zh),
17/2004
s. 10(1).

s. 53A

S. 53A
(Heading)
inserted by
No. 18/2005
s. 18(Sch. 1
item 39.3).

S. 53A
inserted by
No. 86/1994
s. 27.

S. 53A(1)
amended by
No. 35/1996
s. 453(Sch. 1
item 28.2),
substituted by
No. 18/2005
s. 18(Sch. 1
item 39.4).

S. 53A(1)(b)
amended by
No. 75/2006
s. 192(Sch. 2
item 2.4) (as
amended by
No. 17/2007
s. 32(1)).

S. 54
amended by
Nos 9925
s. 5(a), 10028
s. 31(1),
53/1988
s. 45(Sch. 3
items 14–16)
(as amended
by No.
47/1989
s. 23(2)),
substituted by
No. 86/1994
s. 28.

53A Exemption concerning the Legal Profession Act 2004

- (1) An agent or agent's representative is not guilty of an offence against section 2.2.2(1) of the **Legal Profession Act 2004** only because he or she fills up—
 - (a) a standard form of contract permitted by the regulations or approved by the Legal Services Board or a professional association (within the meaning of the **Legal Profession Act 2004**); or
 - (b) a contract prepared by an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**) or a licensee (within the meaning of the **Conveyancers Act 2006**).
- (2) This does not apply if the agent or agent's representative fills up the form for, or in expectation of, any direct or indirect fee, gain or reward other than the appropriate commission.

54 Default time limit on sole agency agreements

- (1) If an agreement stating that an estate agent is to act as the sole agent for the sale of any real estate or business does not state when the sole agency is to end, the sole agency ends—
 - (a) in the case of a sale by auction, 30 days after the date of the auction;

- (b) in any other case, 60 days after the date the agreement is signed by, or on behalf of, the seller of the real estate or business.
- (2) A sole agency provision in an agreement is void unless the agreement contains a copy of subsection (1).

55 Restriction on agent purchasing property

- (1) An estate agent shall not whether directly or indirectly or by himself or any partner or agent's representative purchase or be in any way concerned or beneficially interested in the purchase of any real estate or business which he is commissioned by any principal to sell.

S. 55(1)
amended by
Nos 86/1994
s. 47(zi),
41/2003
s. 36(1).

Penalty: 120 penalty units.

- (2) Any person who is convicted of an offence against subsection (1) shall, in addition to any penalty imposed by the court, be ordered by the court to account for and pay over to his principal all profits resulting or which in the opinion of the court may result from the purchase and any subsequent dealings with that real estate or business.

- (3) An employee of an estate agent shall not whether directly or indirectly purchase or be in any way concerned or beneficially interested in the purchase of any real estate or business which his employer is by any owner thereof commissioned to sell.

S. 55(3)
amended by
Nos 41/2003
s. 36(1),
17/2004
s. 10(1).

Penalty: 120 penalty units.

- (4) Any person who is convicted of an offence against subsection (3) shall in addition to any penalty imposed by the court, be ordered by the court to account for and pay over to his employer's principal all profits resulting or which in the opinion of the court may result from the purchase and any subsequent dealings with that real estate or business.

Estate Agents Act 1980
No. 9428 of 1980

Part IV—Agents and Agents' Representatives

s. 55

S. 55(5)
amended by
Nos 86/1994
s. 47(zj),
41/2003
s. 36(1).

- (5) An estate agent, a partner of an estate agent, an agent's representative or any other employee of an estate agent shall not accept title to any property which the estate agent is commissioned by any principal to sell.

Penalty: 120 penalty units.

- (6) Any person who is convicted of an offence against subsection (5) shall in addition to any penalty imposed by the court, be ordered by the court to transfer title in the property to the estate agent's principal or to account for and pay over to the principal all profits resulting or which in the opinion of the court may result from the acceptance of title and any subsequent dealings with that property.

- (7) An estate agent shall not charge any commission to and shall repay any commission paid by the principal in respect of any real estate or business which he is commissioned to sell in any case where in relation thereto he has been found guilty of an offence against subsection (1).

S. 55(8)
amended by
Nos 10028
s. 32(a),
17/2004
s. 10(1).

- (8) For the purposes of this section, an estate agent or employee shall be deemed to be beneficially interested in the purchase of real estate or a business if the purchase is made by or on behalf of—

(a) in the case of an estate agent—

S. 55(8)(a)(i)
amended by
No. 72/2001
s. 3(Sch.
item 7.5).

- (i) the estate agent or the spouse or domestic partner, parent, brother, sister or child of that estate agent;

-
- (ii) a corporation body or association of persons or firm or partnership carrying on business for profit or gain of which the estate agent or the spouse or domestic partner, parent, brother, sister or child of the estate agent is a member; **S. 55(8)(a)(ii) amended by No. 72/2001 s. 3(Sch. item 7.5).**
- (iii) where the estate agent is a corporation, that corporation or any member thereof or the spouse or domestic partner, parent, brother, sister or child of any member thereof; or **S. 55(8)(a)(iii) amended by No. 72/2001 s. 3(Sch. item 7.5).**
- (iv) where the estate agent carries on business as such as a member of a firm or partnership—any other person who is a member of that firm or partnership, or the spouse or domestic partner, parent, brother, sister or child of that person; **S. 55(8)(a)(iv) amended by No. 72/2001 s. 3(Sch. item 7.5).**
- (b) in the case of an employee— **S. 55(8)(b) amended by No. 17/2004 s. 10(1).**
- (i) the employee or the spouse or domestic partner, parent, brother, sister or child of the employee; or **S. 55(8)(b)(i) amended by Nos 72/2001 s. 3(Sch. item 7.5), 17/2004 s. 10(1).**
- (ii) a corporation, body or association of persons or firm or partnership carrying on business for profit or gain of which the employee or the spouse or domestic partner, parent, brother, sister or child of the employee is a member. **S. 55(8)(b)(ii) amended by Nos 72/2001 s. 3(Sch. item 7.5), 17/2004 s. 10(1).**
-

s. 55

S. 55(9)
inserted by
No. 10028
s. 32(b),
amended by
Nos 84/1996
s. 467(Sch. 6
item 5),
44/2001
s. 3(Sch.
item 39.3),
9/2002
s. 3(Sch.
item 6.3),
substituted by
No. 41/2003
s. 36(2).

S. 55(9)(b)
amended by
No. 1/2010
s. 11.

S. 55(10)
inserted by
No. 86/1994
s. 29,
amended by
No. 72/2001
s. 3(Sch.
item 7.5).

S. 55(10)(b)
amended by
No. 52/1998
s. 93(1).

S. 55(11)
inserted by
No. 86/1994
s. 29,
amended by
No. 52/1998
s. 93(1).

- (9) This section does not apply if property is purchased by a person who is a shareholder and not an employee of—
- (a) an estate agent which is a corporation the shares of which are listed on an Australian Stock Exchange or which is a prescribed corporation; or
 - (b) an estate agent which is a co-operative registered under the **Co-operatives Act 1996** or a co-operative company within the meaning of Division 9 of Part III of the Income Tax Assessment Act 1936 of the Commonwealth that is taken to be registered in Victoria.
- (10) Despite subsection (8)(b), this section does not apply to the spouse or domestic partner, parent, brother, sister or child of an employee if—
- (a) the employee is not a licensed estate agent or an agent's representative; and
 - (b) the principal is informed in writing of the prospective purchaser's relationship to the employee and agrees to the purchase in the form approved by the Director before the purchaser signs any document that legally binds, or that is intended to legally bind, the purchaser in respect of the sale.
- (11) In the case of a sale by auction, if the principal agreed to the purchase in the form approved by the Director, the principal may withdraw from the contract within 72 hours of signing the contract by giving a written notice of withdrawal to the other party to the contract.

-
- (12) If this right of withdrawal is exercised—
- (a) the principal is not liable to the other party to the contract in any way; and
 - (b) the person holding any deposit paid by the other party must return it immediately to the other party; and
 - (c) the principal is not liable to pay the estate agent any commission or outgoings in respect of the failed sale.
- (13) If a principal signs the form approved by the Director under subsection (10), the estate agent must send a copy of the signed form to the Director within 7 days of the signing.
- Penalty: 25 penalty units.
- (14) A person may make a purchase that would otherwise be prohibited by this section if—
- (a) the person applies in writing to the Director before the contract of sale is signed for permission to make the purchase; and
 - (b) the Director notifies the person in writing that the Director is satisfied that the purchase would not be contrary to the interests of the owner of the real estate or business to be sold if the conditions (if any) imposed by the Director are complied with.
- (15) If a person makes a purchase after receiving a notice under subsection (14)(b), the person must comply with any conditions imposed by the Director that are set out in the notice.
- Penalty: 25 penalty units.
- S. 55(12)**
inserted by
No. 86/1994
s. 29.
- S. 55(13)**
inserted by
No. 86/1994
s. 29,
amended by
No. 52/1998
s. 93(1).
- S. 55(14)**
inserted by
No. 86/1994
s. 29,
amended by
No. 52/1998
s. 93(1)(2),
substituted by
No. 41/2003
s. 36(3).
- S. 55(15)**
inserted by
No. 86/1994
s. 29,
amended by
No. 52/1998
s. 93(1),
substituted by
No. 41/2003
s. 36(3).

56 Certain commissions illegal

An estate agent who has undertaken to sell a business shall not directly or indirectly receive from any person who makes any loan or gives any accommodation to a purchaser of the business to enable him to pay the whole or any part of the purchase money for the business or any stock plant or equipment sold therewith any commission or other consideration in relation to the loan or accommodation and a person who makes any such loan or gives any such accommodation shall not directly or indirectly pay any such commission or other consideration to the estate agent.

S. 56A
inserted by
No. 52/1998
s. 94.

56A Power of Director to investigate disputes

- (1) The Director may investigate any dispute that arises between an estate agent and—
 - (a) a client of the estate agent; or
 - (b) another estate agent; or
 - (c) a member of the public.
- (2) However the Director must not investigate any dispute between an estate agent and a client of an estate agent concerning the amount of commission or outgoings charged by the agent unless the Director is given notice of the dispute within 28 days after the day that the client receives—
 - (a) an account for the amount in dispute; or
 - (b) notice that the agent has taken from the agent's trust account the amount in dispute—whichever is the later.
- (3) Subsection (2) does not apply if, in the opinion of the Director, there are exceptional circumstances.

-
- (4) At the request of a party to the dispute, the Director may refer to the Tribunal at any time a dispute concerning the amount of commission or outgoings charged.

56B Powers of Tribunal in relation to disputes

S. 56B
inserted by
No. 52/1998
s. 94.

- (1) If a dispute concerning the amount of commission or outgoings charged by an estate agent is referred to the Tribunal under section 56A, the Tribunal—
- (a) may determine the dispute; and
 - (b) in the case of excess commission or outgoings, may order the payment of compensation.
- (2) In determining whether an estate agent or agent's representative has charged excess commission or outgoings, the Tribunal must have regard to—
- (a) the terms of any agreement between the parties to the dispute relating to the payment of commission and outgoings;
 - (b) the real estate services performed by the estate agent or agent's representative;
 - (c) whether or not the conduct of the estate agent or agent's representative was unfair or unreasonable in the circumstances;
 - (d) any other matter the Tribunal considers relevant.
- (3) The parties to the dispute are parties to the proceeding under this section.

PART V—BUILDERS AND SUBDIVIDERS OF LAND

57 Representation etc. by builders and subdividers of land

- (1) Any person—
- (a) who having erected or caused to be erected either completely or partially any building on any land for the purpose of selling the land and building obtains the signature of a purchaser or of a person acting on behalf of a purchaser to any contract agreement or document in respect of a sale by him of that land and building which is legally binding upon or intended legally to bind the purchaser or accepts a deposit in relation to the sale; or
 - (b) who obtains any such signature to any such contract agreement or document in respect of the sale by him of any land which contains a provision or is executed in conjunction with a separate contract agreement or document which provides that he shall erect or cause to be erected any building on the land or complete or cause to be completed any building thereon which is not complete or who accepts a deposit in relation to such a transaction; or

(c) who subdivides any land into separate allotments or lots for the purpose of selling the allotments or lots and who obtains any such signature to any such contract agreement or document in respect of the sale of any of the allotments or lots or accepts a deposit in relation thereto—

S. 57(1)(c)
amended by
No. 53/1988
s. 45(Sch. 3
item 17) (as
amended by
No. 47/1989
s. 23(2)).

shall before obtaining that signature or accepting that deposit give to the purchaser or to any person signing the contract agreement or document on behalf of the purchaser or to any person paying a deposit on behalf of the purchaser a statement in writing in accordance with the provisions made by section 51 with respect to auctioneers and estate agents, and the provisions of that section shall so far as they are applicable and with such modifications as are necessary apply to and in relation to any contract agreement or document referred to in this section.

(2) Any person who being so required by the provisions of subsection (1) fails to give a statement accordingly in respect of a sale of land by him shall be guilty of an offence and shall be liable to a penalty of not more than 10 penalty units.

S. 57(2)
amended by
No. 9945
s. 3(1)(Sch. 1
item 16).

s. 58

Pt 6 (Heading)
amended by
No. 103/2004
s. 38(1).

**PART VI—ACCOUNTS, AUDIT AND MONITORING OF
ESTATE AGENCY BUSINESS**

Pt 6 Div. 1
(Heading)
inserted by
No. 103/2004
s. 38(2).

Division 1—Accounts and Audit

58 Definitions

In this Part unless inconsistent with the context or
subject-matter—

S. 58 def. of
*authorized bill
of exchange*
amended by
No. 29/1989
s. 14(a),
repealed by
No. 38/1993
s. 5(2).

* * * * *

S. 58 def. of
*authorized
investment*
amended by
No. 9699 s. 23,
repealed by
No. 38/1993
s. 5(2).

* * * * *

S. 58 def. of
bank
amended by
No. 9902
s. 2(1)(Sch.
item 80),
repealed by
No. 38/1993
s. 5(2).

* * * * *

* * * * *

S. 58 def. of *building society* inserted by No. 29/1989 s. 14(b), repealed by No. 11/2001 s. 3(Sch. item 24.2(a)).

commencing date means the day fixed as the commencing date by proclamation of the Governor in Council published in the Government Gazette;

estate agent includes an executor, administrator or trustee (other than a trustee company within the meaning of the **Trustee Companies Act 1984**) of the estate of a deceased estate agent who is carrying on the business of the agent pursuant to this Act;

S. 58 def. of *estate agent* amended by Nos 10168 s. 3, 55/1987 s. 57(3)(Sch. 5 item 27), 45/1994 s. 42(Sch. item 4.3).

financial institution means an authorised deposit-taking institution in respect of which there is in force a declaration under section 4(5) of the **Trustee Act 1958**, as in force immediately before the commencement of section 4 of the **Trustee and Trustee Companies (Amendment) Act 1995**, or section 60(6)(b) of this Act;

S. 58 def. of *financial institution* inserted by No. 29/1989 s. 14(c), amended by Nos 104/1995 s. 6(Sch. 1 item 7), 11/2001 s. 3(Sch. item 24.2(b)).

moneys includes an instrument for the payment of money in any case where the instrument may be paid into an authorised deposit-taking institution;

S. 58 def. of *moneys* amended by No. 11/2001 s. 3(Sch. item 24.2(c)).

s. 58A

S. 58 def. of *negotiable certificate of deposit* repealed by No. 38/1993 s. 5(2).

* * * * *

quarter day means the 31st March, 30th June, 30th September or 31st December.

S. 58A inserted by No. 29/1989 s. 21.

58A Agents licensed interstate

The provisions of sections 59 and 63(3) do not apply to a licensed estate agent who is also licensed or otherwise authorised under the laws of another State or Territory to carry on the business of an estate agent in that State or Territory in relation to a transaction where—

- (a) the property or business that is the subject of the transaction is located in that other State or Territory; and
- (b) the estate agent complies with the provisions of the laws of that State or Territory corresponding with sections 59 and 63(3).

59 Trust money

S. 59(1) amended by Nos 86/1994 s. 47(zk), 17/2004 s. 10(1), 1/2010 s. 13(1).

(1) Every estate agent who as such (whether himself or by an employee or agent's representative) receives or holds any money on behalf of any person in respect of any transaction or who as such holds any money so received as a stakeholder or in trust pending the completion of any transaction—

S. 59(1)(a) amended by No. 29/1989 s. 15(a)(i).

- (a) shall pay that money into a financial institution (but not into a branch of that financial institution for which the estate agent is responsible for the day to day operation) to a trust account in the name of the agent—

- (i) if facilities of an authorised deposit-taking institution are available within sixteen kilometres of the place of business of the agent—before the end of the next business day after the day on which the money is received;
- (ii) in any other case—before the end of the third business day after the day on which the money is received;
- (b) shall retain that money in that trust account until paid—
- (i) to the persons entitled thereto (including, where the ownership of any chattels stock or book debts has been agreed to be transferred as part of the transaction, any person other than the parties to the transaction who has any right as mortgagee or lienee in any of such chattels stock or book debts) or such persons' legal practitioners or at such persons' direction;
- * * * * *
- (c) shall not withdraw or cause any payment to be made from any money paid into a trust account under this subsection unless the withdrawal or payment is made in the form of a trust account cheque or an electronic funds transfer or in such other form as the Director directs in a particular case.

S. 59(1)(a)(i) amended by No. 11/2001 s. 3(Sch. item 24.3).

S. 59(1)(b)(i) amended by Nos 29/1989 s. 15(a)(ii), 35/1996 s. 453(Sch. 1 item 28.3).

S. 59(1)(b)(ii) repealed by No. 29/1989 s. 15(a)(ii).

S. 59(1)(c) amended by Nos 9500 s. 12(i)(ii), 86/1994 ss 32(1), 47(zl), 52/1998 s. 95.

Penalty: 120 penalty units.

Estate Agents Act 1980
No. 9428 of 1980

Part VI—Accounts, Audit and Monitoring of Estate Agency Business

s. 59

S. 59(2)
amended by
No. 9945
s. 3(1)(Sch. 1
item 17),
repealed by
No. 1/2010
s. 13(2).

* * * * *

S. 59(3)
amended by
Nos 10028
s. 33(a),
29/1989
s. 15(b).

(3) All money to be paid into a trust account under subsection (1) shall be kept in a separate current account in a financial institution.

(4) Subject to any obligations of the agent as a stakeholder or trustee money so paid into any trust account under this section shall not be available for the payment of any debt or claim of any person other than the persons entitled thereto or be liable to be attached or taken in execution under the order or process of any court at the instance of any such other person.

S. 59(5)
amended by
No. 29/1989
s. 15(c).

(5) Save as otherwise expressly provided in this Act a financial institution shall not be under any obligation to control or supervise the operations upon a trust account of any agent or to see to the application by the agent of any money drawn out of the trust account.

S. 59(5A)
inserted by
No. 10028
s. 33(b),
amended by
Nos 29/1989
s. 15(d),
86/1994
s. 47(zi),
52/1998
s. 95.

(5A) Notwithstanding anything contained in this Act or in any regulation law rule or practice to the contrary, the manager of a financial institution with which an estate agent holds a trust account shall advise the Director of any overdrawing in that account as soon as he knows of it.

Estate Agents Act 1980
No. 9428 of 1980

Part VI—Accounts, Audit and Monitoring of Estate Agency Business

s. 59

- (6) It shall not be necessary for any agent's representative to pay money received by him into a financial institution to a trust account pursuant to this section; but every agent's representative shall pay forthwith to the licensed estate agent for whom he is acting as an agent's representative or to a trust account specified by the agent all money received from or on behalf of any person by the agent's representative in respect of any transaction in his capacity of agent's representative for the licensed estate agent.
- S. 59(6) amended by Nos 29/1989 s. 15(e), 86/1994 s. 47(zm) (i)–(iii).
- (7) Every estate agent shall—
- S. 59(7) amended by No. 1/2010 s. 13(3).
- (a) within 14 days of the opening of any trust account under this section, notify the Director in writing of the existence, name and number of that account and the address of the branch of the financial institution at which that account is held;
- S. 59(7)(a) amended by Nos 10028 s. 33(c), 29/1989 s. 15(f), 86/1994 s. 47(zl), 52/1998 s. 95.
- (b) within 14 days of the closure of any trust account under this section, notify the Director in writing of that closure.
- S. 59(7)(b) amended by Nos 86/1994 s. 47(zl), 52/1998 s. 95.
- Penalty: 60 penalty units.
- (8) This section does not apply in relation to—
- S. 59(8) inserted by No. 41/2003 s. 37.
- (a) a cheque received by an estate agent from a tenant for the amount of bond made payable to the Residential Tenancies Bond Authority established under the **Residential Tenancies Act 1997**;
- (b) a cheque received by an estate agent from a person made payable to another person in prescribed circumstances;
- S. 59(8)(b) amended by No. 17/2004 s. 8(1)(a).

s. 59A

S. 59(8)(c)
inserted by
No. 17/2004
s. 8(1)(b).

(c) a security deposit received by an estate agent acting on behalf of a landlord of retail premises from a tenant.

S. 59(9)
inserted by
No. 17/2004
s. 8(2).

(9) In subsection (8)(c), *landlord, retail premises* and *tenant* have the same meanings as they have in the **Retail Leases Act 2003**.

S. 59A
inserted by
No. 41/2003
s. 38.

59A Unidentified trust money

(1) Section 59 also applies in relation to a payment by electronic funds transfer that is—

(a) received by an estate agent from a person whom the estate agent cannot identify for the purposes of keeping full and accurate accounting records; or

(b) received by an estate agent who cannot identify, for the purposes of keeping full and accurate accounting records, the person entitled to the payment.

S. 59A(2)
amended by
No. 44/2008
s. 109.

(2) If, at the end of a period of 12 months that started on the date of receiving a payment referred to in subsection (1), an estate agent has—

(a) not identified the person from whom he or she received the payment; or

(b) not identified the person entitled to the payment—

then despite section 59(1)(b), the payment must be dealt with as unclaimed money under the **Unclaimed Money Act 2008**.

60 Secretary's power to enter into arrangements with financial institutions

S. 60
amended by
No. 9500 s. 13,
substituted by
No. 29/1989
s. 16.

(1) The Secretary may enter into an arrangement with an authorised financial institution for the keeping of estate agents' trust accounts.

S. 60(1)
amended by
Nos 86/1994
s. 30(a)(b),
52/1998 s. 96.

(2) An arrangement entered into by the Secretary under subsection (1), may provide for all or any of the following matters:

S. 60(2)
amended by
Nos 86/1994
s. 30(a),
52/1998 s. 96.

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

S. 60(2)(a)
amended by
Nos 86/1994
s. 30(a),
52/1998 s. 96.

(b) The manner by which the Secretary is informed of amounts held in estate agents' trust accounts;

S. 60(2)(b)
amended by
Nos 86/1994
s. 30(a),
52/1998 s. 96.

(c) The auditing of balances in estate agents' trust accounts;

(d) Any other relevant matter.

(3) Any interest received by the Secretary under an arrangement entered into under subsection (1) must be paid into the Fund.

S. 60(3)
amended by
Nos 86/1994
s. 30(a),
52/1998 s. 96,
17/2004
s. 7(2).

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

s. 61

S. 60(5)
amended by
Nos 86/1994
s. 30(a),
52/1998 s. 96.

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

- (6) In this section—

S. 60(6) def. of
*authorised
financial
institution*
amended by
No. 86/1994
s. 30(a),
substituted by
No. 86/1994
s. 30(c).

authorised financial institution means a financial institution that—

- (a) was an authorised financial institution for the purposes of this section immediately before section 30 of the **Estate Agents (Amendment) Act 1994** came into operation; or
- (b) has since 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.

S. 60A
inserted by
No. 29/1989
s. 16,
repealed by
No. 86/1994
s. 31.

* * * * *

S. 61
amended by
Nos 10028
s. 34, 29/1989
s. 17,
substituted by
No. 86/1994
s. 31.

61 Appointment of authorised institutions to handle trust accounts

S. 61(1)
amended by
No. 52/1998
s. 97.

- (1) The Secretary may recommend to the Minister that a financial institution be declared to be an authorised financial institution for the purposes of section 60 if the Secretary is satisfied that the financial institution offers satisfactory terms and conditions.

(2) The Governor in Council, may by Order published in the Government Gazette, declare a financial institution to be an authorised financial institution for the purposes of section 60 if—

(a) the Secretary makes a recommendation under subsection (1); and

S. 61(2)(a)
amended by
No. 52/1998
s. 97.

(b) the Minister accepts the recommendation.

62 Liability of principal for certain acts etc. of agents' representatives

S. 62
amended by
No. 86/1994
s. 47(zn)(i)(ii).

Every estate agent shall be personally liable for all money received from or on behalf of any person by any agent's representative acting as an agent's representative for him in respect of any transaction whether or not the agent's representative is acting within the terms of his authority.

63 Duty to keep accounts of trust money received etc.

(1) Every estate agent shall—

(a) keep full and accurate accounting records so as to show the true position of all moneys received by him and required to be dealt with in accordance with section 59 and any disbursements or disposal of, or dealing with, those moneys in such a manner as—

- (i) to disclose at any time the entitlement to those moneys;
- (ii) to show particulars of every transaction to which the accounting records relate;
- (iii) to specify the day on which, or the period during which, every such transaction took place; and

s. 63

S. 63(1)(b)
amended by
No. 9500 s. 14.

(iv) to enable the accounts of those moneys to be conveniently and properly audited in accordance with this Act;

(b) before the end of the next business day after the day on which the money is received, disbursed, disposed of or dealt with enter into the accounting records the particulars required under paragraph (a); and

(c) correctly balance the accounts at the end of each month; and

S. 63(1)(d)
amended by
No. 29/1989
s. 19(1).

(d) keep records of all balances of accounts held at authorised financial institutions of such moneys and keep such files and other records as will explain a transaction referred to in this subsection.

(2) The accounting records and files and other records referred to in subsection (1) shall be kept in written or printed form in the English language or so as to enable the accounting records and files or other records to be readily accessible and readily convertible into written or printed form in the English language.

S. 63(3)
amended by
No. 10028
s. 35(a)(i)(ii),
substituted by
No. 41/2003
s. 39(1).

(3) Subject to subsection (4), if an estate agent receives money (including rent money) for or on behalf of any other person, the agent must—

(a) immediately write out and give to the person from whom the money was received a receipt for the money; and

(b) retain a duplicate copy of the receipt (or other record approved by the Director) clearly marked with the word "Duplicate" for a period of 7 years.

* * * * *

S. 63(3A)
inserted by
No. 10028
s. 35(b),
amended by
Nos 86/1994
s. 47(z),
52/1998
s. 98,
repealed by
No. 41/2003
s. 39(1).

(3B) Receipts given under subsection (3) and the duplicate copies or other records of those receipts shall—

S. 63(3B)
inserted by
No. 10028
s. 35(b).

(a) have the words "Trust Account" printed on them;

(b) be numbered sequentially, or numbered or marked by some other method approved by the Director which ensures that each receipt can be identified and that the number or mark on each copy or record is the same as that on its original; and

S. 63(3B)(b)
amended by
Nos 86/1994
s. 47(z),
52/1998 s. 98.

(c) have that numbering or marking endorsed on them before they are written out.

(4) An estate agent is not required to—

S. 63(4)
amended by
Nos 10028
s. 35(c),
86/1994
s. 32(2),
substituted by
No. 41/2003
s. 39(2).

(a) retain a duplicate copy of a receipt in relation to a cash payment if an electronic record of the payment was made as soon as was practicable after the payment was received;

(b) give a receipt in relation to a payment made in the form of a cheque or an electronic funds transfer if—

(i) an electronic record of the payment was made as soon as was practicable after the payment was received; and

(ii) the person making the payment does not request a receipt;

s. 63A

(c) retain a receipt or the duplicate copy of the receipt in relation to a payment made in the form of a cheque or an electronic funds transfer if an electronic record of the payment was made as soon as was practicable after the payment was received.

(5) The estate agent shall—

(a) produce the retained duplicates other records and receipts (as the case may be) to the auditor at every audit and at such times as the auditor reasonably requires; and

(b) deliver to the auditor at every audit a statutory declaration stating what receipt forms came into his possession since the last audit.

S. 63(5)(a)
amended by
No. 10028
s. 35(d).

S. 63(6)
repealed by
No. 10028
s. 35(e).

* * * * *

S. 63(7)–(9)
amended by
No. 9925
s. 5(a),
repealed by
No. 10028
s. 35(e).

* * * * *

S. 63A
inserted by
No. 41/2003
s. 40.

63A Director's supervisory role in audits

(1) The Director may issue directions in relation to the conduct of audits under this Part.

(2) An auditor must comply with—

(a) any direction issued by the Director under subsection (1); and

(b) any prescribed auditing standards.

(3) If the Director is satisfied that an auditor has failed to comply with a direction issued under subsection (1), the Director may direct that the

auditor no longer audit an estate agent's accounts of trust money.

- (4) The Director must give the auditor a reasonable opportunity to make written or oral submissions, or both, before giving a direction under subsection (3).
- (5) A direction under subsection (3) must be published in the Government Gazette and takes effect on the day it is published in the Government Gazette.
- (6) As soon as is practicable after making a direction under subsection (3), the Director must give a copy of the direction to each approved industry association.

64 Annual audit of trust accounts

- (1) Within three months after 30 June in each year, every person who carried on business as an estate agent during the whole or any part of the previous financial year shall cause his accounts of trust money for the whole or the part of that financial year to be audited.

S. 64(1)
amended by
No. 9925
s. 5(a),
substituted by
No. 10028
s. 36(a),
amended by
No. 41/2003
s. 41(1).

- (1A) The agent must not engage a person or firm as an auditor for the purposes of subsection (1) if the person or firm is not qualified under section 66 to act as the auditor.

S. 64(1A)
inserted by
No. 41/2003
s. 41(2).

Penalty: 25 penalty units.

- (2) The auditor shall—
 - (a) take all reasonable steps to ensure that his report is completed within three months after 30 June; and
 - (b) as soon as he has completed his report—
 - (i) deliver the report and a signed copy of it to the agent concerned; and

S. 64(2)
substituted by
No. 10028
s. 36(b).

s. 64

S. 64(2)(b)(ii)
amended by
Nos 86/1994
s. 47(zp),
52/1998
s. 99(1).

(ii) send a copy to the Director and advise the agent concerned in writing of the date on which he has done so.

S. 64(3)
amended by
No. 8/2003
s. 54(a)(b).

(3) The agent shall retain the signed copy of the report for a period of 7 years after it was delivered to the agent and produce it on demand pursuant to this section.

Penalty: 20 penalty units.

S. 64(4)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zp),
52/1998
s. 99(1).

(4) If an estate agent carries on business at more than one place the Director may give such directions as he thinks fit for separate audits of the accounts of trust money in respect of the business carried on at each place or for the acceptance by the auditor of the certificates of some person approved by the Director with respect to the examination of the accounts of trust money kept at any branch of the business.

S. 64(5)
amended by
Nos 9925
s. 5(b),
86/1994
s. 47(zp),
52/1998
s. 99(1).

(5) The Director may if in his opinion just cause exists for doing so vary or revoke any approval or direction granted or given by him under this section.

(6) For the purpose of any audit or report under this section every estate agent shall as and when the auditor so requires produce to the auditor all such books papers accounts documents and securities in his possession custody or power as are reasonably necessary for the purpose of the audit and shall furnish the auditor with all such information and particulars as he reasonably requires.

(7) The auditor may examine such books papers accounts documents and securities at any time either during or after the end of the period in respect of which the audit is made.

Estate Agents Act 1980
No. 9428 of 1980

Part VI—Accounts, Audit and Monitoring of Estate Agency Business

s. 64

-
- (8) The manager or other officer for the time being in charge of the authorised financial institution in which the agent has his trust account shall on request of the auditor produce all such books papers accounts documents and securities as are reasonably necessary for the purpose of the audit. **S. 64(8) amended by No. 29/1989 s. 19(2).**
- (9) The auditor's report shall be in the form approved by the Director and contain such particulars as are prescribed. **S. 64(9) amended by No. 8/2003 s. 54(c).**
- (10) Every estate agent shall prepare and certify under his own hand and produce to the auditor a statement setting forth in detail particulars of—
- (a) moneys on the last day of the period to which the audit relates held by the agent for or on behalf of any other person; and
 - (b) negotiable or bearer securities or deposit receipts in the name of the agent which represent money drawn from the agent's trust account and which are held by the agent on that day.
- (11) The auditor shall examine the statement and write on or attach to it a report of his examination in which he shall express his opinion as to whether or not the statement is correct and shall deliver the statement and the report to the agent.
- (12) The statement delivered pursuant to subsection (11) shall be retained by the agent and produced on demand to the auditor making the next succeeding audit of the agent's accounts together with a signed copy of the report of the last preceding audit.
- (13) Where the estate agent's accounts are being audited for the first time or where for any other reason no statement containing the particulars set out in subsection (10) and relating to the previous period of audit is available for the purpose of audit

the agent shall in lieu thereof make out and produce to the auditor before the making of his report a statement containing the like particulars as to money and negotiable securities held on the first day of the period to which the audit relates.

(14) Every statement made under subsections (10) and (13) shall be verified by the statutory declaration of the agent or, in the case of partnership, by the statutory declaration of one of the partners or, in the case of a corporation, by the statutory declaration of a director or the secretary thereof or of the person in effective control of the estate agency business of the corporation.

(15) If an auditor in the course of auditing an estate agent's accounts discovers that the accounts are not kept in such a manner as to enable them to be properly audited or discovers any matter which appears to him to involve dishonesty or a breach of the law on the part of the agent, or discovers loss or deficiency of trust money or failure to pay or account for any such money or to comply with the provisions of this section, he shall—

(a) forthwith send or deliver to the Director a report setting out the facts so discovered and deliver a signed copy of the report to the agent; and

(b) set out the facts so discovered in his report of the result of the audit.

(16) An auditor is not required to report a deficiency under this section if—

(a) the deficiency was caused solely by an error by an authorised deposit-taking institution or by inadvertence; and

(b) the deficiency is rectified within 2 business days of its discovery.

S. 64(15)(a)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zp),
52/1998
s. 99(1).

S. 64(16)
inserted by
No. 103/2004
s. 39(1).

64A Audit ordered by Director

S. 64A
inserted by
No. 10028
s. 37.

(1) The Director may at any time during the financial year cause the accounts of trust money of an estate agent to be audited.

S. 64A(1)
amended by
Nos 86/1994
s. 47(zq),
52/1998
s. 99(1),
41/2003
s. 42(1).

(1A) The Director must not engage a person or firm as an auditor for the purposes of subsection (1) if the person or firm is not qualified under section 66 to act as the auditor.

S. 64A(1A)
inserted by
No. 41/2003
s. 42(2).

(2) The auditor shall as soon as he has completed a report of an audit conducted under subsection (1) send it to the Director and the Director shall as soon as he or she receives the report send a copy of it to the estate agent.

S. 64A(2)
amended by
Nos 86/1994
s. 47(zq),
52/1998
s. 99(1)(2).

(3) The powers given to and duties imposed on persons by section 64 (other than subsection (1) or (2) of that section) shall apply to an audit conducted under this section.

(4) Subject to subsection (5), the costs of an audit conducted under this section shall be paid from the Fund.

S. 64A(4)
amended by
Nos 86/1994
s. 47(zr),
52/1998
s. 99(1),
substituted by
No. 52/1998
s. 99(3),
amended by
Nos 41/2003
s. 42(3),
17/2004
s. 7(3).

s. 64B

S. 64A(5)
inserted by
No. 41/2003
s. 42(4).

- (5) The Director may recover the costs of an audit from the estate agent if—
- (a) an auditor in the course of auditing the agent's accounts discovers that the accounts are not kept in a manner that enables them to be properly audited; or
 - (b) any matter discovered in the course of the audit appears to the Director on reasonable grounds to involve dishonesty, or a breach of this Part or any other law, by the agent.

S. 64A(6)
inserted by
No. 41/2003
s. 42(4).

- (6) An estate agent to whom subsection (5) applies may apply to the Tribunal for a review of the Director's decision to recover the cost of the audit from the agent.

S. 64B
inserted by
No. 10028
s. 37.

64B Audit where estate agent's business ceased during financial year

- (1) Where an agent has ceased to carry on his business as an estate agent, whether by reason of his death, or the surrender, cancellation or suspension of his licence or for any other reason, that estate agent or (in the case of an estate agent who has died) his executor, trustee or administrator (as the case may be) shall—

S. 64B(1)(a)
amended by
Nos 86/1994
s. 47(zs),
52/1998
s. 99(1).

- (a) within 28 days after the cessation of the carrying on of the business, notify the Director in writing of the cessation; and

S. 64B(1)(b)
amended by
No. 41/2003
s. 43(1).

- (b) within three months after the cessation of the carrying on of the business cause the accounts of trust money for the business for that part of the financial year for which the estate agent carried on business to be audited.

- (1A) The agent or executor, trustee or administrator, as the case may be, must not engage a person or firm as an auditor for the purposes of subsection (1) if the person or firm is not qualified under section 66 to act as the auditor.

S. 64B(1A)
inserted by
No. 41/2003
s. 43(2).

Penalty: 25 penalty units.

- (2) The powers given to and duties imposed on persons by section 64 (other than subsection (1) or (2) of that section) shall apply to an audit conducted under this section, and for that purpose any reference in section 64 to the estate agent shall, in a case of the death of an estate agent, be read as a reference to his executor, trustee or administrator (as the case may be).

S. 64B(2)
amended by
No. 29/1989
s. 23(c).

- (3) As soon as the report has been completed, the auditor must—

S. 64B(3)
inserted by
No. 86/1994
s. 33.

- (a) give it to the agent (or executor or trustee or administrator) concerned; and
- (b) give a copy of it to the Director and advise the agent (or executor or trustee or administrator) concerned in writing that he or she has done so and of the date on which it was done.

S. 64B(3)(b)
amended by
No. 52/1998
s. 99(1).

65 Variation of date of audit

- (1) Notwithstanding anything in section 64 an estate agent may apply in writing to the Director to fix some date other than the thirtieth day of June as the date to which his trust accounts are to be audited and the Director may in his discretion permit the agent to substitute such other date for the thirtieth day of June and that substituted date shall be no later than twelve months after the date on which an auditor's report of that estate agent's accounts under section 64 was last given.

S. 65(1)
amended by
Nos 9925
s. 5(a), 10028
s. 38, 86/1994
s. 47(zs),
52/1998
s. 99(1).

s. 66

S. 65(2)
amended by
Nos 9925
s. 5(b),
86/1994
s. 47(zs),
52/1998
s. 99(1).

- (2) The Director may upon giving not less than one year's notice to the agent revoke any permission granted under this section.

S. 65(3)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zs),
52/1998
s. 99(1).

- (3) When permission is granted under this section the Director shall fix the period in respect of which the first audit shall be made, and the permission may be given upon such conditions with respect to the time within which the first or any subsequent audit shall be made or otherwise as the Director thinks fit.

- (4) So long as the permission remains in force and subject to any conditions which may be imposed section 64 shall in relation to the agent concerned be read as if such other date was substituted for the 30th day of June.

S. 65(5)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zs),
52/1998
s. 99(1).

- (5) When any date has been substituted for the thirtieth day of June under this section the date so substituted shall not be further changed except by permission of the Director granted in accordance with this section.

S. 66
amended by
No. 10028
s. 39.

66 Qualified auditors

S. 66(1)
amended by
Nos 86/1994
s. 34(1),
52/1998
s. 99(1),
substituted by
No. 41/2003
s. 44(1).

- (1) A person is not qualified to act as an auditor under section 64, 64A or 64B in respect of an estate agent—
- (a) unless he or she is an approved auditor;
 - (b) if he or she is, or at any time within 2 years before the last day of the period in respect of which the audit is to be made, has been, an employee or partner of the agent, or of any

partner of the agent, whose accounts of trust money are to be audited.

(2) A person shall not audit the accounts of an estate agent—

(a) if he is an employee or partner of that estate agent;

S. 66(2)(a)
amended by
No. 17/2004
s. 10(1).

(b) if he is an employee of any other estate agent actually in practice;

S. 66(2)(b)
amended by
No. 17/2004
s. 10(1).

(c) if he is himself an estate agent carrying on business as such;

(d) if he is in any way engaged in keeping or entering up the trust account records of an estate agent or has those records in his custody or control; or

(e) in the case of an estate agent being a corporation, if he is a member, director, officer or employee of the corporation.

S. 66(2)(e)
amended by
No. 17/2004
s. 10(1).

(3) A firm shall not be qualified to act as auditor under section 64, 64A or 64B unless it is approved by the Director and—

S. 66(3)
amended by
Nos 86/1994
s. 47(zt),
52/1998
s. 99(1).

(a) at least one member of the firm is ordinarily resident in a State or Territory of the Commonwealth;

(b) all the members of the firm ordinarily so resident are approved auditors; and

S. 66(3)(b)
substituted by
No. 86/1994
s. 34(2),
amended by
No. 52/1998
s. 99(1),
substituted by
No. 41/2003
s. 44(2).

s. 66

(c) no member of the firm is or at any time within two years before the last day of the period in respect of which the audit is to be made has been—

S. 66(3)(c)(i)
amended by
No. 17/2004
s. 10(1).

(i) a partner or employee of the estate agent or of any partner of the estate agent; or

S. 66(3)(c)(ii)
amended by
No. 17/2004
s. 10(1).

(ii) in the case of an estate agent being a corporation, an officer or employee of the corporation—

whose trust account is to be audited.

(4) The appointment of a firm as auditor shall be taken to be the appointment of all persons who are members of the firm, whether resident in a State or Territory of the Commonwealth or not, at the date of the appointment.

(5) When a firm has been appointed as auditor and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor by virtue of subsection (3), be deemed to be appointed under section 64, 64A or 64B as auditor of the estate agent and the appointment shall be taken to be the appointment of all persons who are members of the firm as newly constituted.

S. 66(6)
amended by
No. 41/2003
s. 44(3).

(6) A report made or given by a firm appointed as auditor under section 64, 64A or 64B shall be signed in the firm's name and in his or her own name by a member of the firm who is an approved auditor.

- (7) Subject to the provisions of this section the auditor by whom the audit of and reports on an estate agent's accounts are to be made shall be selected by the agent.
- (8) The fees payable by an estate agent to an auditor for an audit under this section shall be such as are agreed on between the agent and the auditor.
- (9) The Director, if in his or her opinion just cause exists for doing so, may vary or revoke any approval permission or authority granted or given by the Director under this section.

S. 66(9)
amended by
Nos 86/1994
s. 47(zt),
52/1998
s. 99(1),
substituted by
No. 52/1998
s. 99(4).

- (10) A person who ceases to be qualified to audit accounts of trust money must immediately cease auditing any accounts of trust money under this Act.

S. 66(10)
inserted by
No. 41/2003
s. 44(4).

Penalty: 25 penalty units.

- (11) Any audit of an account of trust money purportedly carried out under section 64, 64A or 64B by a person who is not a qualified auditor is not a valid audit for the purposes of section 64, 64A or 64B.

S. 66(11)
inserted by
No. 41/2003
s. 44(4).

67 Non-disclosure by auditors

S. 67
amended by
No. 10028
s. 40.

- (1) Except in so far as this Act otherwise provides an auditor shall not divulge to any person or in any proceedings any information which he has obtained in the course of conducting any audit under section 64, 64A or 64B.
- (2) An auditor shall not be guilty of a breach of this section by reason only that he discloses information—

S. 67(2)
amended by
No. 9902
s. 2(1)(Sch.
item 81).

s. 68

S. 67(2)(a)
amended by
No. 10028
s. 40.

- (a) by means of or in a report made pursuant to section 64, 64A or 64B; or
- (b) in or for the purpose of any legal proceedings arising out of any such report or instituted in connexion with the accounts of the agent to whom the information relates.

68 Right of persons beneficially interested to obtain information

S. 68(1)
amended by
Nos 9925
s. 5(a), 10028
s. 41(a),
86/1994
s. 47(zu),
35/1996
s. 453(Sch. 1
item 28.4),
52/1998
s. 99(1).

- (1) On request by any person interested in any money or securities held or which ought to be held or which have been received by an estate agent the Director may disclose to such person or his legal practitioner such portion of any report of an auditor, or of any statutory declaration statement or other document delivered to the Director under section 64, 64A or 64B as in the opinion of the Director affects such person.

S. 68(2)
amended by
Nos 10028
s. 41(a)(b),
86/1994
s. 47(zu),
52/1998
s. 99(1).

- (2) A report of an auditor under section 64, 64A or 64B or a statutory declaration statement or other document delivered to the Director under section 64, 64A or 64B shall be available in the hands of the Director for inspection by the auditor appointed to audit the accounts of the same estate agent for the succeeding year.

69 Agents having no accounts to audit

S. 69(1)
amended by
Nos 9925
s. 5(a), 10028
s. 42(a),
86/1994
s. 47(zu),
52/1998
s. 99(1),
substituted by
No. 41/2003
s. 45.

- (1) It is not necessary for a licensed estate agent to comply with section 64 or 64B in respect of a financial year if the agent, in the course of that year, neither received nor held any money for, or on behalf of, any other person.

(1A) The Director may require, by notice in writing, any licensed estate agent or any executor, trustee or administrator of an estate agent to make and deliver to the Director a statutory declaration as to whether the estate agent held any money for, or on behalf of, another person during a period specified by the Director in the notice.

S. 69(1A)
inserted by
No. 10028
s. 42(b),
amended by
Nos 86/1994
s. 47(zu),
52/1998
s. 99(1),
substituted by
No. 41/2003
s. 45.

(1B) If the Director imposes a requirement on a person under subsection (1A), the person must comply with the requirement within the time specified by the Director in the notice imposing the requirement.

S. 69(1B)
inserted by
No. 41/2003
s. 45.

Penalty: 25 penalty units.

(2) Where the accounts of trust money are kept by a partnership of estate agents an audit of those accounts under section 64, 64A or 64B and the certificates and report of the auditor thereon shall operate as regards those accounts as an audit certificate and report in relation to each estate agent who is a member of that partnership.

S. 69(2)
amended by
No. 10028
s. 42(c).

Division 2—Monitoring of estate agency business

Pt 6 Div. 2
(Heading)
inserted by
No. 103/2004
s. 40.

70 Definitions

In this Division—

estate agent includes licensed estate agent and any person—

- (a) whose estate agent's licence has expired or has been cancelled; or
- (b) who is a director or officer of a corporation which is a licensed estate agent; or

S. 70
amended by
Nos 9902
s. 2(1)(Sch.
item 82), 9925
s. 5(a)(b),
10028 s. 43,
29/1989
ss 11(2), 19(3),
86/1994 ss 35,
47(zu),
52/1998
s. 99(1),
41/2003 s. 46,
substituted by
No. 103/2004
s. 40.

s. 70A

- (c) where the licence of a corporation has expired or has been cancelled, who was a director or officer of the corporation at the time the licence expired or was cancelled;

trust account includes any account of or with respect to any moneys received or held by a person in respect of any transaction by that person as an estate agent.

S. 70A
inserted by
No. 41/2003
s. 47,
substituted by
No. 103/2004
s. 40.

70A Production of identity card

An inspector must produce his or her identity card for inspection—

- (a) before exercising a power under this Division other than a requirement made by post; and
(b) at any time during the exercise of a power under this Division, if asked to do so.

Penalty: 10 penalty units.

S. 70B
inserted by
No. 41/2003
s. 47,
substituted by
No. 103/2004
s. 40.

70B Accounts and other documents available for inspection and audit

An estate agent must, at all reasonable times at each office at which that estate agent carries on business as an estate agent, keep all documents (including trust accounts and records) relating to the business carried on at that office available for inspection or audit by an inspector in a form in which they can be readily and expeditiously inspected or audited by an inspector.

Penalty: 25 penalty units.

70C Estate agent to produce documents and answer questions

S. 70C
inserted by
No. 41/2003
s. 47,
substituted by
No. 103/2004
s. 40.

For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, an inspector may require an estate agent at a time and place specified by the inspector—

- (a) to answer orally or in writing any questions put by the inspector relating to the estate agent's business as an estate agent;
- (b) to supply orally or in writing information required by the inspector relating to that business;
- (c) to produce to the inspector specified documents or documents of a specified class (including trust accounts and records) relating to that business.

70D Third parties to produce documents and answer questions relating to estate agent's business

S. 70D
inserted by
No. 41/2003
s. 47,
substituted by
No. 103/2004
s. 40.

For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, an inspector may require any person who has possession, custody or control of documents (including trust accounts and records) relating to an estate agent's business as an estate agent—

- (a) to answer orally or in writing any questions put by the inspector relating to the estate agent's business as an estate agent;
- (b) to supply orally or in writing information required by the inspector relating to that business;

s. 70E

- (c) to produce to the inspector specified documents or documents of a specified class (including trust accounts and records) relating to that business.

S. 70E
inserted by
No. 41/2003
s. 47,
substituted by
No. 103/2004
s. 40.

70E Ministers, police and public authorities to produce information to inspectors

- (1) For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, the Director or an inspector may request a specified public body within a time specified by the Director or inspector—
 - (a) to answer orally or in writing any questions put by the inspector relating to an estate agent's business as an estate agent;
 - (b) to supply orally or in writing information required by the inspector relating to that business.
- (2) An inspector can only make a request under subsection (1) with the written consent of the Director.
- (3) A specified public body must comply with a request under subsection (1).
- (4) In this section *specified public body* means—
 - (a) a Minister; or
 - (b) a public statutory authority; or
 - (c) a municipal council; or
 - (d) the Chief Commissioner of Police.

70F Certain other specified persons or bodies to produce information

S. 70F
inserted by
No. 103/2004
s. 40.

- (1) For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, the Director or an inspector may require a specified person or body within a time specified by the Director or inspector—
 - (a) to answer orally or in writing any questions put by the inspector relating to an estate agent's business as an estate agent;
 - (b) to supply orally or in writing information required by the inspector relating to that business.
- (2) An inspector can only make a requirement under subsection (1) with the written consent of the Director.
- (3) In this section *specified person or body* means—
 - (a) a person who is a publisher of a publication; or
 - (b) a person who is the owner or operator of a broadcasting service; or
 - (c) a person who is the owner or operator of a telecommunications service; or
 - (d) a person who is the owner or operator of a postal service; or
 - (e) a financial institution.

s. 70G

s. 70G
inserted by
No. 103/2004
s. 40.

70G Powers on production of documents

- (1) If any documents (including trust accounts and records) are produced to an inspector under section 70C or 70D, the inspector may—
 - (a) inspect the documents or authorise a person to inspect the documents;
 - (b) make copies of or take extracts from the documents;
 - (c) seize the documents if the inspector considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings under this Act or the regulations;
 - (d) seize the documents if the inspector—
 - (i) considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings under any Consumer Act; and
 - (ii) believes on reasonable grounds, that it is necessary to seize the documents in order to prevent their concealment, loss or destruction or their use in the contravention of any Consumer Act;
 - (e) secure any seized documents against interference;
 - (f) retain possession of the documents in accordance with this Division.
- (2) An inspector must not require a person to produce a document at a place other than the person's place of business or an office of the Director without the consent of the person.

70H Order requiring supply of information and answers to questions

S. 70H
inserted by
No. 103/2004
s. 40.

- (1) For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, an inspector, with the written approval of the Director, may apply to the Magistrates' Court for an order requiring a person at a time and place specified by an inspector—
 - (a) to answer orally or in writing any questions put by an inspector relating to an estate agency business; or
 - (b) to supply orally or in writing information required by an inspector in relation to an estate agency business; or
 - (c) to produce to the inspector specified documents or documents of a specified class in relation to an estate agency business.
- (2) If the Magistrates' Court is satisfied on the basis of evidence presented by the Director that the order is necessary for the purpose of monitoring compliance with this Act or the regulations, the Court may grant the order sought.
- (3) An order under this section must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.
- (4) An inspector who executes an order under this section must, as soon as practicable after that execution, notify the Magistrates' Court in writing of the time and place of execution of the order.

s. 70I

S. 70I
inserted by
No. 103/2004
s. 40.

70I Entry or search with consent

- (1) For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, an inspector, with the consent of the occupier of the premises, may—
 - (a) enter and search any premises;
 - (b) seize anything found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations;
 - (c) examine and take and keep samples of any goods found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations;
 - (d) inspect and make copies of, or take extracts from, any document found on the premises.
- (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector has—
 - (a) produced his or her identity card for inspection; and
 - (b) informed the occupier—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and
 - (iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy or extract from a document found on the premises during the search; and

-
- (iv) that anything seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- (3) If an occupier consents to an entry and search, the inspector who requested consent must before entering the premises ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has been informed of the purpose of the search and that anything seized or taken in the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has been informed that he or she may refuse to give consent to the entry and search or to the seizure of anything or to the taking of any sample, copy or extract; and
 - (c) that the occupier has consented to such an entry and search; and
 - (d) the date and time that the occupier consented.
- (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must before seizing or taking the thing ask the occupier to sign an acknowledgment stating—
- (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.

s. 70J

- (5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the inspector leaves the premises.
- (6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or taking of the thing.

S. 70J
inserted by
No. 103/2004
s. 40.

70J Entry without consent or warrant

- (1) For the purpose of monitoring compliance with this Act or the regulations or carrying out any audit under this Act, an inspector may (with the assistance, if necessary, of another inspector or a member of the police force) do all or any of the following—
 - (a) enter and search any premises at which an estate agent is carrying on business at any time that the premises are open for business or between the hours of 9 a.m. and 5 p.m.;
 - (b) seize or secure against interference anything that the Director or inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations or with an audit under this Act that is found on or in the premises;
 - (c) inspect and make copies of or take extracts from any document kept on the premises.
- (2) An inspector must not enter or search any premises under subsection (1) unless, before that entry, the inspector has produced his or her identity card for inspection by the occupier of the premises.

70K Search warrants

S. 70K
inserted by
No. 103/2004
s. 40.

- (1) An inspector, with the written approval of the Director, may apply to a magistrate for the issue of a search warrant in relation to particular premises for the purpose of monitoring compliance with this Act or the regulations or the carrying out of any audit under this Act.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, of the inspector that the warrant is necessary for the purpose of monitoring compliance with this Act or the regulations or the carrying out of any audit under this Act, the magistrate may issue a search warrant, in accordance with the **Magistrates' Court Act 1989**, authorising an inspector named in the warrant, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
 - (a) to enter the premises specified in the warrant, if necessary by force; and
 - (b) to do all or any of the following—
 - (i) search for;
 - (ii) seize;
 - (iii) secure against interference;
 - (iv) examine and inspect;
 - (v) make copies of or take extracts from—
a thing or things of a particular kind named or described in the warrant and which the inspector believes, on reasonable grounds, to be connected with a contravention of this Act or the regulations or with an audit under this Act.

s. 70L

-
- (3) A search warrant issued under this section must state—
- (a) the purpose for which the search is required; and
 - (b) any conditions to which the warrant is subject; and
 - (c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 70L
inserted by
No. 103/2004
s. 40.

70L Announcement before entry

- (1) On executing a search warrant, the inspector executing the warrant—
- (a) must announce that he or she is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- (2) An inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

70M Details of warrant to be given to occupier

S. 70M
inserted by
No. 103/2004
s. 40.

- (1) If the occupier is present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (2) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
 - (a) identify himself or herself to a person (if any) at the premises; and
 - (b) give to the person a copy of the warrant.

70N Seizure of things not mentioned in the warrant

S. 70N
inserted by
No. 103/2004
s. 40.

A search warrant under section 70K authorises an inspector executing the search warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing—
 - (i) is of a kind which could have been included in a search warrant issued under this Division; or
 - (ii) will afford evidence about the contravention of any Consumer Act; and
- (b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or any other Consumer Act.

s. 700

S. 700
inserted by
No. 103/2004
s. 40.

700 Embargo notice

- (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue an embargo notice in the prescribed form—
 - (a) by causing a copy of the notice to be served on the occupier; or
 - (b) if the occupier cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.
- (2) A person who knows that an embargo notice relates to a thing and who—
 - (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—
the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 25 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) to prove that the accused moved the thing or the part of the thing for the purpose of protecting and preserving it.
- (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

S. 700(3)
amended by
No. 68/2009
s. 97(Sch.
item 53.1).

70P Copies of seized documents

- (1) If an inspector retains possession of a document taken or seized from a person under this Division, the inspector must give the person, within 21 days of the seizure, a copy of the document certified as correct by the inspector.
- (2) A copy of a document certified under subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

S. 70P
inserted by
No. 103/2004
s. 40.

70Q Retention and return of seized documents or things

- (1) If an inspector seizes a document or other thing under this Division, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
 - (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 70R extending the period during which the document or thing may be retained.

S. 70Q
inserted by
No. 103/2004
s. 40.

70R Magistrates' Court may extend 3 month period

- (1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Division, (or within a period extended by the Court under this section) for an extension of the period for which the inspector may retain the document or thing.

S. 70R
inserted by
No. 103/2004
s. 40.

s. 70S

- (2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—
 - (a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred or for any audit under this Act; or
 - (b) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

S. 70S
inserted by
No. 103/2004
s. 40.

70S Requirement to assist inspector during entry

To the extent that it is reasonably necessary to determine compliance with this Act or the regulations or to carry out any audit under this Act, an inspector exercising a power of entry under this Division who produces his or her identity card for inspection by the occupier of the premises or an agent or employee of the occupier may require that person—

- (a) to give information to the inspector, orally or in writing; and
- (b) to produce documents to the inspector; and
- (c) to give reasonable assistance to the inspector.

S. 70T
inserted by
No. 103/2004
s. 40.

70T Refusal or failure to comply with requirement

A person must not refuse or fail, without reasonable excuse, to comply with a requirement of an inspector under this Division.

Penalty: 25 penalty units.

70U Protection against self-incrimination

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person.

S. 70U
inserted by
No. 103/2004
s. 40,
substituted by
No. 79/2006
s. 76.

70V Offence to give false or misleading information

A person must not—

- (a) give information to an inspector under this Division that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an inspector under this Division that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

S. 70V
inserted by
No. 103/2004
s. 40.

Penalty: 25 penalty units.

70W Application of provisions relating to inspections

Sections 120, 121A, 135, 136, 137, 138 and 139 of the **Fair Trading Act 1999** apply (with any necessary modifications) in relation to the exercise or attempted exercise of a power of an inspector under this Division as if any reference in those sections to Part 10 of that Act were a reference to this Division.

S. 70W
inserted by
No. 103/2004
s. 40,
amended by
No. 79/2006
s. 77.

s. 70WA

S. 70WA
inserted by
No. 2/2008
s. 60(Sch.
item 4.1).

70WA Powers of court if requirement to produce information not complied with

- (1) If the Director is satisfied that a person has, without reasonable excuse, failed to comply with a requirement under section 70F, the Director may certify that failure to a court.
- (2) Subject to subsection (3), if an inspector is satisfied that a person has, without reasonable excuse, failed to comply with a requirement of the inspector under section 70C, 70D, 70F or 70S, the inspector may certify that failure to a court.
- (3) The inspector cannot certify a failure to a court under subsection (2) if the person to whom the failure relates has been charged with an offence against section 70T.
- (4) If the Director or an inspector so certifies under subsection (1) or (2), the court may inquire into the case and may order the person to comply with the requirement within the period specified by the court.
- (5) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence against section 70T in respect of that failure.

S. 70X
inserted by
No. 103/2004
s. 40.

70X Service of documents

- (1) A written requirement by an inspector under this Division may be given personally or by registered post to a person—
 - (a) at the last known place of business, employment or residence of the person; or
 - (b) in the case of a body corporate, at the registered office of the body corporate.

- (2) A person who provides a document or information in response to a requirement of an inspector under this Division may send that document or information to the Director by registered post.

70Y Confidentiality

S. 70Y
inserted by
No. 103/2004
s. 40.

- (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Division, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.
- Penalty: 25 penalty units.
- (2) Subsection (1) does not apply to the giving of information—
- (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or Territory or of the Commonwealth; or
 - (d) to the Business Licensing Authority established under the **Business Licensing Authority Act 1998**; or
 - (e) to any client of the estate agent, if the information is a report of the result of the carrying out of any function of an inspector under this Division if and only to the extent that it directly concerns that client; or
 - (f) with the written authority of the Director; or
 - (g) with the written authority of the person to whom the information relates.

Pt 7 (Heading)
amended by
No. 17/2004
s. 7(7).

PART VII—VICTORIAN PROPERTY FUND

71 Definitions

In this Part unless inconsistent with the context or subject-matter—

S. 71 def. of
bank
amended by
No. 9902
s. 2(1)(Sch.
item 80),
repealed by
No. 38/1993
s. 5(3).

* * * * *

S. 71 def. of
court
repealed by
No. 19/1989
s. 16(Sch.
item 20.2).

* * * * *

defalcation means any theft embezzlement failure to account fraudulent misappropriation or other act punishable by imprisonment of or in relation to any money or other property;

S. 71 def. of
Fund
repealed by
No. 8/2003
s. 55.

* * * * *

S. 71 def. of
moneys
amended by
No. 11/2001
s. 3(Sch.
item 24.4).

moneys includes instrument for the payment of money in any case where the instrument may be paid into an authorised deposit-taking institution and any security for money the title to which is transferable by delivery.

72 Victorian Property Fund

- (1) There shall be kept in the Trust Fund under the **Financial Management Act 1994** a trust account to be called the Victorian Property Fund.

S. 72
(Heading)
inserted by
No. 17/2004
s. 7(5).

S. 72(1)
amended by
No. 86/1994
s. 47(zv),
substituted by
No. 52/1998
s. 100(1),
amended by
No. 17/2004
s. 7(1).

- (2) The Secretary is responsible for the administration of the Fund.

S. 72(2)
amended by
No. 86/1994
s. 47(zv),
substituted by
No. 52/1998
s. 100(1).

* * * * *

S. 72(3)–(6)
amended by
No. 86/1994
ss 36, 47(zv),
repealed by
No. 52/1998
s. 100(2).

73 Moneys constituting Fund

The Fund shall consist of—

- (a) any interest received by the Secretary under an arrangement made under section 60;

S. 73(a)
amended by
Nos 9500
s. 15(a),
29/1989
s. 18(a),
86/1994
s. 47(zw)(ii),
52/1998
s. 101(a).

- (b) any income derived from investments of the Fund;

Estate Agents Act 1980
No. 9428 of 1980
Part VII—Victorian Property Fund

s. 73

(c) any profit arising on the realization of any investment or the revaluation of any investment of the Fund;

S. 73(ca)
inserted by
No. 9500
s. 15(b),
repealed by
No. 29/1989
s. 18(b).

* * * * *

S. 73(d)
amended by
No. 86/1994
s. 47(zw)(ii).

(d) all fees payable to the Authority pursuant to this Act;

S. 73(e)
amended by
No. 86/1994
s. 47(zw)(i),
substituted by
No. 52/1998
s. 101(b).

(e) all penalties payable to the Fund under this Act;

S. 73(f)
amended by
Nos 86/1994
s. 47(zw)(ii),
52/1998
s. 101(c).

(f) all moneys recovered by or on behalf of the Secretary in the exercise of any right of action conferred by this Part;

S. 73(g)
amended by
Nos 86/1994
s. 47(zw)(ii),
52/1998
s. 101(d).

(g) all moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the Secretary under section 87;

(h) all moneys advanced to the Fund by the Treasurer under section 86;

S. 73(ha)
inserted by
No. 9500
s. 15(c),
amended by
No. 86/1994
s. 47(zw)(ii),
substituted by
No. 52/1998
s. 101(e).

(ha) all other moneys required to be paid into the Fund under this or any other Act;

- (i) all moneys standing to the credit of the Estate Agents' Guarantee Fund at the date of coming into operation of this section; and
- (j) all other moneys lawfully paid into the Fund.

* * * * *

S. 74
repealed by
No. 52/1998
s. 102.

75 Payments out of Fund

S. 75
amended by
Nos 10028
s. 44(a),
86/1994
s. 47(zx)(iv).

- (1) Subject to this Part, there shall from time to time be paid out of the Fund as required and at the direction of the Secretary and in such order as the Secretary considers proper—

S. 75(1)
amended by
Nos 86/1994
s. 47(zx)(iv),
52/1998
s. 103(1).

- (a) any claim including costs allowed or established in respect of the Fund;

S. 75(1)(a)
amended by
Nos 86/1994
s. 47(zx)(iv),
52/1998
s. 103(2)(a).

- (b) all legal and other expenses incurred in investigating or defending claims made against the Fund or in the exercise by the Secretary of the rights, powers and authorities vested in it by this Part in relation to the Fund;

S. 75(1)(b)
amended by
Nos 86/1994
s. 47(zx)(iv),
52/1998
s. 103(2)(b).

- (ba) the costs and expenses of audits conducted under section 64A;

S. 75(1)(ba)
inserted by
No. 52/1998
s. 103(3).

- (c) the fees and remuneration payable to the members of the Council including the salary of the chairperson;

S. 75(1)(c)
amended by
No. 86/1994
s. 47(zx)(iv),
substituted by
No. 52/1998
s. 103(4).

Estate Agents Act 1980
No. 9428 of 1980
Part VII—Victorian Property Fund

s. 75

S. 75(1)(d)
amended by
Nos 38/1993
s. 6(e),
86/1994
s. 47(zx)(i),
substituted by
No. 52/1998
s. 103(4).

(d) the costs and expenses incurred by the Council in fulfilling its functions and duties under this Act;

S. 75(1)(e)
amended by
No. 86/1994
s. 47(zx)(ii)(iii),
substituted by
No. 52/1998
s. 103(4).

(e) the costs and expenses incurred by the Director or by the Secretary in the administration of this Act or the Fund;

S. 75(1)(ea)
inserted by
No. 17/2004
s. 4(1),
amended by
Nos 69/2006
s. 224(Sch. 3
item 5.2),
75/2006
s. 192(Sch. 2
item 2.1).

(ea) the costs and expenses incurred by the Director or by the Secretary in the administration of the **Conveyancers Act 2006**, the **Owners Corporations Act 2006**, the **Retirement Villages Act 1986** or the **Sale of Land Act 1962**;

S. 75(1)(f)
amended by
Nos 38/1993
s. 6(e),
86/1994
s. 47(zx)(i)(iv),
substituted by
No. 52/1998
s. 103(4),
amended by
No. 69/2006
s. 224(Sch. 3
item 5.3).

(f) the costs and expenses incurred by or in relation to the Authority or the Tribunal in fulfilling its functions and duties under this Act or the **Owners Corporations Act 2006** including the fees and remuneration payable to the members of the Authority or the Tribunal;

S. 75(1)(fa)
inserted by
No. 86/1994
s. 45(i),
repealed by
No. 52/1998
s. 103(4).

* * * * *

Estate Agents Act 1980
No. 9428 of 1980
Part VII—Victorian Property Fund

s. 75

(g) all moneys repayable to the Public Account pursuant to section 86;

* * * * *

S. 75(1)(ga) inserted by No. 9500 s. 16(a), amended by No. 86/1994 s. 47(zx)(iv), repealed by No. 52/1998 s. 103(5).

(h) any loss incurred on the realization or revaluation of any investment of the Fund;

* * * * *

S. 75(1)(ha) inserted by No. 9500 s. 16(b), repealed by No. 29/1989 s. 20(1).

(hb) any refunds of fees chargeable under this Act or the regulations which are refunds made pursuant to this Act or the regulations;

S. 75(1)(hb) inserted by No. 10028 s. 44(b).

(hc) funds towards the costs and expenses incurred by the Tribunal in fulfilling its functions and duties under the **Residential Tenancies Act 1997** including the fees and remuneration payable to the members of the Tribunal;

S. 75(1)(hc) inserted by No. 17/2004 s. 4(2).

(hd) funds for any matter relating to the regulation of estate agency practice under any other Act or law;

S. 75(1)(hd) inserted by No. 17/2004 s. 4(2).

(he) funds for other consumer protection matters relating to interests in land;

S. 75(1)(he) inserted by No. 17/2004 s. 4(2).

(hf) money payable out of the Fund in accordance with the **Conveyancers Act 2006**;

S. 75(1)(hf) inserted by No. 75/2006 s. 192(Sch. 2 item 2.2).

s. 76

S. 75(2)
inserted by
No. 10028
s. 44(c),
amended by
Nos 86/1994
s. 47(zv),
52/1998
s. 103(6).

- (i) all other moneys payable out of the Fund in accordance with the provisions of this Act.
- (2) With the approval of the Minister there may from time to time be paid out of the Fund such part of moneys paid into the Fund on a direction of the Minister under section 89 as exceeds the sum of—
- (a) the amount necessary to satisfy any claim or claims against the Fund in relation to the estate agent whose trust account was the subject of the direction; and
- (b) the legal and other expenses incurred in investigating or defending the claim or claims—

and the payment out of the Fund shall be made on such conditions as the Secretary with the approval of the Minister determines.

76 Application of excess money in Fund

S. 76
(Heading)
inserted by
No. 17/2004
s. 7(6).

S. 76
amended by
Nos 9500
s. 17, 10028
s. 45, 29/1989
s. 20(2),
substituted by
No. 86/1994
s. 37.

S. 76(1)
amended by
Nos 52/1998
s. 104(1),
17/2004
s. 7(2).

- (1) As soon as practicable after 1 July in each year, the Secretary must make the following calculation—from the amount standing to the credit of the Fund on 1 July the Secretary must subtract the sum of \$500 000 and a notional amount that in the opinion of the Secretary fairly represents the ascertained and contingent liabilities of the Fund (including any liability for claims that may not have been made by 1 July).

Estate Agents Act 1980
No. 9428 of 1980
Part VII—Victorian Property Fund

s. 76

-
- (2) If the result of the calculation is a positive amount, the Secretary must give the Minister written notice of that fact and of the amount. **S. 76(2) amended by No. 52/1998 s. 104(1).**
- (3) After consulting the Council and the Secretary and any industry associations, Government Departments and other bodies she or he thinks appropriate, the Minister may apply from the Fund an amount of money not exceeding the amount set out in the notice for one or more of the following purposes—
- (a) community education, advice or information services regarding—
- (i) the sale, purchase, lease or transfer of interests in real estate or businesses;
 - (ii) the provision of finance or credit for the purpose of the sale, purchase or lease of real estate or businesses;
 - (iii) the provision of finance or credit for the acquisition of any right to reside on land;
 - (iv) owners corporations; **S. 76(3)(a)(iv) substituted by No. 69/2006 s. 224(Sch. 3 item 5.4).**
 - (v) retirement villages;
 - (vi) residential tenancy rights and any other rights to reside on land;
 - (vii) other consumer protection matters relating to interests in land;
- (b) programs that promote the ownership of real estate; **S. 76(3)(b) substituted by No. 17/2004 s. 5(1).**
-

Estate Agents Act 1980
No. 9428 of 1980
Part VII—Victorian Property Fund

s. 76

-
- S. 76(3)(c)**
substituted by
No. 17/2004
s. 5(1).
- (c) the training of estate agents and agents' representatives;
- S. 76(3)(d)**
substituted by
No. 17/2004
s. 5(1).
- (d) dispute resolution and advocacy services in relation to disputes involving—
- (i) the sale, purchase, lease or transfer of interests in real estate or businesses;
 - (ii) the provision of finance or credit for the purpose of sale, purchase or lease of real estate or businesses;
 - (iii) a resident, or proposed or former resident, of a retirement village regarding his or her residence right in that retirement village;
 - (iv) an owners corporation or a member of an owners corporation or an occupier of a lot arising in relation to the operation of an owners corporation;
 - (v) the provision of estate agency services or owners corporation management services;
 - (vi) other consumer protection matters relating to interests in land;
- S. 76(3)(d)(iv)**
substituted by
No. 69/2006
s. 224(Sch. 3
item 5.5).
- S. 76(3)(d)(v)**
amended by
No. 69/2006
s. 224(Sch. 3
item 5.6).
- S. 76(3)(e)**
substituted by
No. 17/2004
s. 5(1).
- (e) reviewing, reforming or researching the law and procedures or reviewing and researching the markets for real estate regarding—
- (i) the sale, purchase, lease or transfer of interests in real estate or businesses;
 - (ii) the provision of finance or credit for the purpose of sale, purchase or lease of real estate or businesses;
-

-
- (iii) owners corporations; S. 76(3)(e)(iii) substituted by No. 69/2006 s. 224(Sch. 3 item 5.7).
- (iv) retirement villages;
- (v) other consumer protection matters relating to interests in land;
- (f) projects facilitating— S. 76(3)(f) substituted by No. 17/2004 s. 5(1).
- (i) the registration of interests in land;
- (ii) the compilation of other information relating to the ownership or use of land;
- (g) projects providing or facilitating housing assistance for low income or disadvantaged Victorians; S. 76(3)(g) inserted by No. 17/2004 s. 5(1).
- (h) projects regarding— S. 76(3)(h) inserted by No. 17/2004 s. 5(1).
- (i) the development of environmentally sustainable housing;
- (ii) the protection of Victoria's natural and architectural heritage.
- (4) In subsection (3), *occupier of a lot* means an occupier of a lot within the meaning of the **Owners Corporations Act 2006**. S. 76(4) inserted by No. 17/2004 s. 5(2), amended by No. 69/2006 s. 224(Sch. 3 item 5.8).
- * * * * *
- S. 77 amended by Nos 10028 s. 46, 86/1994 s. 47(zv), repealed by No. 93/1997 s. 28(Sch. item 12).

Estate Agents Act 1980
No. 9428 of 1980
Part VII—Victorian Property Fund

s. 79

S. 78
amended by
Nos 38/1993
s. 5(4),
86/1994 s. 38,
repealed by
No. 52/1998
s. 104(2).

* * * * *

S. 79
amended by
Nos 10028
s. 47, 86/1994
s. 39(a).

79 Application of Fund

S. 79(1)
amended by
No. 17/2004
s. 10(1).

(1) Subject to this Part, the Fund shall be held and applied for the purpose of compensating persons who suffer pecuniary loss by reason of a defalcation committed by an estate agent who at any time has held an estate agent's licence under this Act or any corresponding previous enactment, or by an employee or servant of that estate agent in respect of any money or other property which, in the course of or in connexion with any business in respect of which the estate agent is or was required to be licensed pursuant to this Act, was entrusted to or received by the estate agent, or an employee or servant of the estate agent, for or on behalf of another person.

S. 79(2)
inserted by
No. 86/1994
s. 39(b).

(2) For the purpose of removing doubt, a person who is an estate agent can only suffer pecuniary loss by reason of a defalcation as a result of that person's dealings as a client of another estate agent.

Note to s. 79
inserted by
No. 75/2006
s. 192(Sch. 2
item 2.3).

Note

Claims for compensation from the Fund for defalcations by conveyancers are dealt with under Part 7 of the **Conveyancers Act 2006**

80 Right to claim in respect of pecuniary loss

- (1) Subject to this Part, every person who suffers pecuniary loss as referred to in section 79 is entitled to claim compensation from the Fund.

S. 80(1)
amended by
No. 10155
s. 69(1)(e).

* * * * *

S. 80(2)
repealed by
No. 86/1994
s. 45(g).

- (3) Subject to this Part the amount that a claimant is entitled to claim as compensation from the Fund is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and disbursements incidental to the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from a source other than the Fund in reduction of the loss.

- (4) In addition to any compensation that is payable under this Part, interest is payable out of the Fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of five per cent per annum calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

- (5) In addition to any compensation payable pursuant to the provisions of this section there shall be payable out of the Fund to any claimant entitled to compensation the reasonable costs of and disbursements incidental to the making and proof of his claim.

- (6) For the purposes of this Part an executor, administrator or trustee (other than a trustee company within the meaning of the **Trustee Companies Act 1984**) of the estate of a deceased estate agent carrying on the business of that estate agent pursuant to this Act shall be deemed to be

S. 80(6)
amended by
Nos 10168
s. 3, 55/1987
s. 57(3)(Sch. 5
item 28),
45/1994
s. 42(Sch.
item 4.4).

s. 81

an estate agent holding a current estate agent's licence.

81 Claims against the Fund

S. 81(1)
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 104(1),
8/2003 s. 56.

(1) A claim for compensation from the Fund in respect of a pecuniary loss shall be made in the form approved by the Director and containing the prescribed particulars and accompanied by any documents required by the Director.

S. 81(2)
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 104(1).

(2) Subject to this Part the Secretary may allow and settle any proper claim for compensation from the Fund at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

S. 81(3)(4)
repealed by
No. 10155
s. 69(1)(f)(i).

* * * * *

S. 81(5)
amended by
Nos 86/1994
s. 47(zy),
35/1996
s. 453(Sch. 1
item 28.4),
52/1998
s. 104(1)(3).

(5) If the Secretary disallows, whether wholly or partly, a claim for compensation from the Fund, he or she must serve notice of the disallowance in the prescribed form on the claimant or his legal practitioner.

S. 81(5A)
inserted by
No. 10155
s. 69(1)(f)(ii),
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 104(1)(4).

(5A) Where—

S. 81(5A)(a)
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 104(1).

(a) the Secretary has served notice of disallowance in respect of a claim; and

(b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property in respect of which the defalcation was committed available against the estate agent in relation to whom the claim arose and all other persons liable in respect of the loss suffered by the claimant—

the claimant may apply to the Tribunal for a review of the decision of the Secretary to disallow the claim.

(5B) An application for review shall not be made under subsection (5A) after the expiration of three months after the service of notice of the disallowance under subsection (5).

S. 81(5B)
inserted by
No. 10155
s. 69(1)(f)(ii),
amended by
No. 52/1998
s. 104(5).

(6) The Secretary, if satisfied that there was a defalcation on which to found the claim, may allow the claim and act accordingly notwithstanding that the person against whom the defalcation is alleged has not been convicted or prosecuted or that the evidence on which the Secretary acts would not be sufficient to establish the guilt of the person on a criminal trial in respect of defalcation.

S. 81(6)
substituted by
No. 10155
s. 69(1)(f)(iii),
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 104(1).

* * * * *

S. 81(7)(8)
repealed by
No. 10155
s. 69(1)(f)(iii).

* * * * *

S. 82
substituted by
No. 10155
s. 69(1)(g),
repealed by
No. 86/1994
s. 47(zz).

s. 83

S. 83
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 104(1).

83 Power of Secretary to require production of securities

The Secretary may at any time require a person to produce and deliver any securities documents or information necessary to support a claim made or necessary for the purpose either of exercising its rights against an estate agent or of enabling criminal proceedings to be taken against a person in respect of a defalcation, and in default of delivery of any such securities, documents or information by the first-mentioned person, the Secretary may disallow any claim by him under this Part.

S. 84
amended by
Nos 10028
s. 48, 86/1994
ss 45(j),
47(zy),
52/1998
s. 104(1).

84 Subrogation of Secretary to rights etc. of claimant upon payment from Fund

On payment out of the Fund of any moneys in respect of a claim under this Part, the Secretary shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation including the right to benefit from any order made under section 86 of the **Sentencing Act 1991**.

S. 85
amended by
Nos 10155
s. 69(1)(h),
86/1994
s. 47(zy),
repealed by
No. 52/1998
s. 104(8).

* * * * *

S. 86
substituted by
No. 9500 s. 18.

86 Provision where Fund insufficient to meet payment out of it

- (1) Where the amount in the Fund is at any time insufficient to pay any claim liability or other outgoing in respect of which payment out of the Fund is authorized under section 75—

(a) the Treasurer may advance to the Fund out of the Public Account such moneys as are necessary for the payment required; or

* * * * *

S. 86(1)(b) amended by No. 86/1984 s. 47(zy), repealed by No. 52/1998 s. 104(6).

(2) Any moneys advanced by the Treasurer pursuant to paragraph (a) of subsection (1)—

(a) shall be chargeable with interest at such rate as is determined from time to time by the Treasurer;

(b) shall, together with any interest payable thereon, be a first charge on the Fund; and

(c) shall, together with any interest payable thereon, be repaid to the Public Account out of the Fund in such manner as the Treasurer directs.

* * * * *

S. 86(3)–(6) amended by No. 86/1994 s. 47(zy), repealed by No. 52/1998 s. 104(7).

87 Secretary may enter into contract of insurance or indemnity for purposes of Act

(1) The Secretary may, in his or her discretion, enter into a contract with any person carrying on fidelity insurance business whereby the Secretary will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part.

S. 87(1) amended by Nos 86/1994 s. 47(zy), 52/1998 s. 105(1)(a)(b).

(2) A contract referred to in subsection (1) may be entered into in relation to estate agents generally, or in relation to particular estate agents named

s. 88

therein, or in relation to estate agents generally with the exclusion of particular estate agents named therein.

S. 87(3)
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 105(1)(a),
repealed by
No. 52/1998
s. 105(1)(c).

* * * * *

S. 88
amended by
Nos 86/1994
s. 47(zy),
52/1998
s. 105(2).

88 Application of insurance moneys

A claimant against the Fund does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of a contract entered into by the Secretary under section 87 or a right or claim with respect to any moneys paid by the insurer in accordance with such a contract.

S. 89
substituted by
No. 9500 s. 19,
amended by
No. 10028
s. 49(a)–(c).

89 Freezing of trust accounts of defaulting agents

S. 89(1)
amended by
No. 29/1989
s. 19(4).

(1) Where—

S. 89(1)(b)
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zza),
52/1998
s. 104(1).

- (a) a claim has been made against the Fund in relation to any person who is or was an estate agent; or
- (b) the Minister on the basis of information supplied by the Secretary, has reasonable grounds for believing that a person who is or was an estate agent has contravened any provision of Part VI—

the Minister may by notice in writing to the manager or other principal officer of any authorised financial institution with which that

agent has deposited any money in any general or separate trust account direct that any moneys which are or may be required to satisfy any claims against the Fund shall not thenceforth be drawn from that account until further notice, and may further direct that all or any money to the credit of that account which is or may be required to satisfy any claims against the Fund shall be paid into the Fund, and that manager or principal officer shall give effect to all such directions and this section shall be a sufficient authority and indemnity therefor.

- (2) Where the Minister makes a direction under subsection (1) he may further—
- (a) direct that the estate agent whose trust account was the subject of that direction shall cease to carry on the estate agency business concerned; and
 - (b) appoint some fit and proper person to carry on the estate agency business.
- (3) A person appointed under subsection (2) shall in carrying on the estate agency business do all things necessary or expedient to be done with a view to the winding-up of that business in the interests of all persons for whom the estate agent was acting.

S. 89(2)
inserted by
No. 10028
s. 49(d).

S. 89(2)(a)
amended by
No. 29/1989
s. 23(d).

S. 89(3)
inserted by
No. 10028
s. 49(d).

90 Deficiency in trust account

- (1) If at any time there is a deficiency of money in or payable into any trust account of any estate agent the estate agent shall, unless he gives a sufficient and satisfactory explanation of the deficiency, be guilty of an indictable offence and shall be liable, if a corporation, to a penalty of not more than 200 penalty units or, if any other person, to a penalty of not more than 100 penalty units or, to

S. 90(1)
amended by
Nos 9576
s. 11(1)(Sch.),
9945 s. 3(1)
(Sch. 1 item
18(a)(b)).

imprisonment for a term of not more than two years.

S. 90(2)
amended by
No. 9848
s. 18(1).

(2) A prosecution under this section shall not be commenced without the written consent of the Director of Public Prosecutions.

S. 90(3)
inserted by
No. 103/2004
s. 39(2).

(3) This section does not apply to a deficiency of money in or payable into a trust account if—
(a) the deficiency was caused solely by an error by an authorised deposit-taking institution or by inadvertence; and
(b) the deficiency is rectified within 2 business days of its discovery.

S. 91
amended by
Nos 9576
s. 11(1)(Sch.),
9945
s. 3(1)(Sch. 1
item 19(a)(b)),
41/2003 s. 48
(LA s. 39B(1)).

91 Wrongful conversion and false accounts

(1) Without affecting the operation of Division two of Part I of the **Crimes Act 1958** any estate agent who—

- (a) fraudulently converts to his own use—
(i) any moneys received or held by him on behalf of any person in respect of any transaction in his capacity of estate agent; or
(ii) any moneys so received or held which are held by him as a stakeholder or in trust pending the completion of any transaction—

or any part of any such moneys; or

- (b) fraudulently omits to account for deliver or pay—
(i) any moneys received or held by him as aforesaid on behalf of any person or in part thereof to that person; or

(ii) any moneys so received or held by him which are or were held by him as a stakeholder or in trust pending the completion of any transaction or any part of those moneys to the person entitled thereto; or

(c) fraudulently renders an account—

(i) of any moneys received or held by him as aforesaid on behalf of any person or any part of such moneys; or

(ii) of any moneys received or held by him as aforesaid which are or were held by him as a stakeholder in trust pending the completion of any transaction or any part of such moneys—

knowing such account to be false in any material particular—

shall be guilty of an indictable offence and be liable, if a corporation, to a penalty of not more than 1000 penalty units or, if any other person, to a penalty of not more than 500 penalty units or, to imprisonment for a term of not more than ten years.

(2) Without affecting the operation of Division 2 of Part I of the **Crimes Act 1958**, any agent's representative or other employee of an estate agency business who—

S. 91(2)
inserted by
No. 41/2003
s. 48.

(a) fraudulently converts to his or her own use—

(i) any moneys received or held by him or her in the course of his or her duties as an agent's representative or other employee; or

(ii) any moneys received or held by his or her employer in the employer's capacity as an estate agent; or

-
- (b) fraudulently omits to account for, deliver or pay—
- (i) any moneys received or held by him or her in the course of his or her duties as an agent's representative or other employee; or
 - (ii) any moneys received or held by his or her employer in the employer's capacity as an estate agent; or
- (c) fraudulently renders an account of—
- (i) any moneys received or held by him or her in the course of his or her duties as an agent's representative or other employee knowing such account to be false in any material particular; or
 - (ii) any moneys received or held by his or her employer in the employer's capacity as an estate agent knowing such account to be false in any material particular—

is guilty of an indictable offence and is liable to a penalty of not more than 500 penalty units or to a term of imprisonment of not more than 10 years.

Pt 7A
(Heading and
ss 91A–91Y)
inserted by
No. 86/1994
s. 4,
amended by
No. 46/1998
s. 7(Sch. 1),
repealed by
No. 52/1998
s. 106.

* * * * *

PART VIII—MISCELLANEOUS

92 Certificate as evidence

A certificate signed, or purporting to be signed, by the Registrar certifying as to any matter relating to the contents of the register is evidence of that matter.

S. 92
amended by
Nos 9925
s. 5(a),
86/1994
s. 47(zzb)(i)(ii),
52/1998
s. 107,
substituted by
No. 8/2003
s. 57.

92A Registrar may waive fees

The Registrar may, in a particular case or class of cases—

- (a) waive or reduce fees that would otherwise be payable under this Act; or
- (b) refund, in whole or in part, fees paid under this Act.

S. 92A
inserted by
No. 86/1994
s. 40,
amended by
No. 52/1998
s. 108.

92B Verification of details supplied to the Authority

The Authority may specify how any information supplied to it under this Act is to be verified, and without limiting the scope of this power, may require that the information be supplied in the form of, or be verified by, a statutory declaration.

S. 92B
inserted by
No. 86/1994
s. 40.

92C Complaints concerning estate agents etc. are privileged

If a person—

- (a) lodges a complaint with the Authority, the Director or the Council; or

S. 92C
inserted by
No. 86/1994
s. 40.

S. 92C(a)
amended by
No. 52/1998
s. 109(a).

s. 93

S. 92C(b)
amended by
No. 52/1998
s. 109(b).

(b) produces or gives a document or any information or evidence to the Authority, Director, Council or Tribunal—

the person is not liable in any way for any loss, damage or injury suffered by another person by reason only of the lodging of that complaint or the production or giving of that evidence.

S. 93
amended by
No. 86/1994
s. 41(a)(b).

93 Furnishing incorrect particulars

Any person who in any application, annual statement, testimonial notice or other statement made under or for the purposes of this Act knowingly makes any statement which is not correct or furnishes any particulars which are not correct or omits to furnish any particulars by or under this Act required to be furnished shall be guilty of an offence.

Penalty: 100 penalty units.

S. 93A
inserted by
No. 103/2004
s. 41.

93A Application of Fair Trading Act 1999

S. 93A(1)
amended by
Nos 17/2007
s. 36(Sch.
item 4.1),
2/2008
s. 60(Sch.
item 4.2).

(1) Sections 143 and 144 and Division 2 of Part 11 (except sections 152A and 155) of the **Fair Trading Act 1999** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Fair Trading Act 1999** were a reference to this Act.

S. 93A(1A)
inserted by
No. 17/2007
s. 36(Sch.
item 4.2).

(1A) For the purposes of subsection (1), section 153 of the **Fair Trading Act 1999** applies as if a reference in that section to Part 2, 2A, 2B, 3, 4, 5 or 6 of the **Fair Trading Act 1999** were a reference to this Act.

- (2) For the purposes of subsection (1), section 154 of the **Fair Trading Act 1999** applies as if a reference to prescribed proceedings were a reference to—
- (a) proceedings for an offence against a provision of this Act (except Division 2 of Part VI and section 93); or
 - (b) proceedings on an application for an injunction under section 149, 149A, 150, 151A or 151B of the **Fair Trading Act 1999** (as applied by subsection (1)) against a person alleged to have contravened a provision of this Act (except Division 2 of Part VI and section 93); or
 - (c) proceedings on an application for an order under section 158, or for damages under section 159, of the **Fair Trading Act 1999** (as applied by subsection (1)).

S. 93A(2)(b)
amended by
No. 17/2007
s. 36(Sch.
item 4.3).

94 Offences

- (1) Every person who contravenes or fails to comply with any provision of this Act or of the regulations shall be guilty of an offence against this Act.
- (2) A person who is guilty of an offence against this Act for which no penalty is expressly provided is liable to a penalty of not more than 25 penalty units.
- (3) Where two or more persons commit or knowingly authorize or permit the commission of any offence against this Act each person shall be liable for the offence and the liability of each person shall be independent of the liability of the other or others.

S. 94(1)
amended by
No. 86/1994
s. 47(zzc).

S. 94(2)
amended by
No. 9945
s. 3(1)(Sch. 1
item 20(a)(b)),
substituted by
No. 103/2004
s. 42.

s. 94A

S. 94A
inserted by
No. 86/1994
s. 42.

94A Profit to be forfeited in case of unlicensed trading etc.

- (1) This section applies if a Court finds an offence against section 12, 13 or 29 proven against a person.
- (2) In addition to any other penalty the Court may impose on the person, the Court may order the person to pay any amount received as commission or other consideration by the person while the offence was being committed to the Fund.
- (3) Any such order is to be treated as if it were a fine imposed by the Court.

S. 94A(2)
amended by
No. 17/2004
s. 7(2).

95 Prosecutions

S. 95(1)
amended by
No. 86/1994
s. 47(zzc),
substituted by
No. 103/2004
s. 43.

- (1) Proceedings for an offence against this Act or the regulations may only be brought by—
 - (a) the Director; or
 - (b) a person authorised by the Director for the purposes of this section.

S. 95(1A)
inserted by
No. 103/2004
s. 43.

- (1A) In proceedings for an offence against this Act or the regulations it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.

S. 95(1B)
inserted by
No. 103/2004
s. 43.

- (1B) Subsection (1) does not apply to proceedings for an indictable offence.

S. 95(2)
amended by
No. 9848
s. 18(1).

- (2) Notwithstanding anything in any Act, proceedings for any offence against this Act may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Director of Public Prosecutions, at any later time.

95A Power to serve a notice

- (1) An authorised officer may serve an infringement notice on any person that he or she has reason to believe has committed an offence against this Act or the regulations specified by the regulations as an offence in respect of which an infringement notice may be issued.

S. 95A inserted by No. 86/1994 s. 43, repealed by No. 52/1998 s. 110, new s. 95A inserted by No. 41/2003 s. 10.

- (1A) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 95A(1A) inserted by No. 32/2006 s. 94(Sch. item 17(1)).

- (2) In this Division *authorised officer* means—
- (a) an inspector appointed under the **Fair Trading Act 1999**;
 - (b) a member of the police force;
 - (c) a person authorised in writing by the Director.

95B Form of notice

For the purposes of section 95A(1), an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional information approved by the Director.

S. 95B inserted by No. 41/2003 s. 10, substituted by No. 32/2006 s. 94(Sch. item 17(2)).

* * * * *

Ss 95C, 95D inserted by No. 41/2003 s. 10, repealed by No. 32/2006 s. 94(Sch. item 17(3)).

s. 95E

S. 95E
inserted by
No. 41/2003
s. 10.

95E Further proceedings concerning infringement notices

S. 95E(1)–(4)
repealed by
No. 32/2006
s. 94(Sch.
item 17(4)(a)).

* * * * *

S. 95E(5)
amended by
No. 32/2006
s. 94(Sch.
item 17(4)(b)).

- (5) Nothing in the **Infringements Act 2006** prevents the Tribunal from conducting an inquiry under section 25 or 28 and taking disciplinary action under section 28A against a person for any act or omission for which an infringement notice was issued.

96 Applications and notices in the case of corporation

- (1) Where any notice or application is by or under this Act authorized or required to be given or made by any person in connexion with a licence it may in the case of a corporation be given or made on behalf of the corporation by any chairman member of the governing body director manager secretary or officer thereof.

S. 96(2)
repealed by
No. 103/2004
s. 44.

* * * * *

97 Saving of contracts and civil liability

Save as otherwise expressly provided in this Act no contract or civil liability shall be affected by reason only of the fact that an offence against this Act has been committed.

97A Protection for things done under this Act

S. 97A
inserted by
No. 29/1989
s. 22,
amended by
No. 86/1994
s. 47(zzd).

(1) An action does not lie against an applicant or any other person on account of any information provided to the Authority, any publication made or anything done under the authority of this Act or taken, made or done bona fide purportedly under the authority of this Act or on account of any omission made bona fide in the administration of this Act.

S. 97A(1)
amended by
No. 52/1998
s. 111(1)(a)(b)
(2) (ILA
s. 39B(1)).

(2) Subsection (1) does not apply to anything done or omitted to be done in the performance of a duty by a public statutory authority, a member of a public statutory authority or any person employed in the service of the Crown.

S. 97A(2)
inserted by
No. 52/1998
s. 111(2).

98 Retention of documents

(1) A person who is permitted or required under this Act to send a copy of any document or notice to the Director or Authority must retain the original document or notice for at least 7 years after the copy was sent.

S. 98
substituted by
No. 10028
s. 53,
amended by
No. 38/1993
s. 5(5),
repealed by
No. 31/1994
s. 4(Sch. 2
item 30),
new s. 98
inserted by
No. 8/2003
s. 58.

Penalty: 20 penalty units.

(2) Subsection (1) does not apply to any document or notice—

- (a) created by a person using software approved by the Director and lodged on an Internet site operated by the State; and
- (b) forwarded by electronic transmission to the Director or Authority.

s. 98A

- (3) A person must retain any document that is required to be kept by this Act or the regulations for at least 7 years from the date of its creation.

Penalty: 20 penalty units.

S. 98A
inserted by
No. 8/2003
s. 58.

98A Offence to destroy documents required by the Act

- (1) A person must not destroy, conceal, mutilate or alter any document that the person is required to retain under this Act.

Penalty: 100 penalty units.

- (2) It is a defence to a charge under subsection (1) if the person charged can establish that the destruction, concealment, mutilation or alteration of the document was not done with the intention of defeating the purposes of this Act.

S. 99
amended by
No. 8/2003
s. 59(3) (ILA
s. 39B(1)).

99 Regulations

- (1) The Governor in Council may make regulations for or with respect to—

(a) prescribing the form and manner of keeping the register and any other forms for use under this Act (and all such forms or forms to the like effect shall be sufficient in law);

(aa) prescribing which, if any, particulars required to be given in any prescribed form are to be verified by statutory declaration or otherwise;

S. 99(1)(a)
amended by
No. 52/1998
s. 112(a).

S. 99(1)(aa)
inserted by
No. 10028
s. 54(a).

(b) requiring estate agents to give consumers of their services information in relation to those services in a form specified by the regulations or approved by the Director;

S. 99(1)(b)
repealed by
No. 52/1998
s. 112(b),
new s. 99(1)(b)
inserted by
No. 41/2003
s. 49(a).

(c) exempting any class of persons from the operation of this Act and prescribing the extent of such exemptions;

-
- | | |
|--|---|
| (d) prescribing the books accounts documents and records to be kept by licensed estate agents and agents' representatives and the manner of keeping them and the period for which they must be kept; | S. 99(1)(d) amended by Nos 86/1994 s. 44(a), 8/2003 s. 59(1). |
| (e) prescribing the duties of persons engaged to audit accounts pursuant to Part VI of this Act including the scope of and the mode of making the audit; | S. 99(1)(e) amended by No. 41/2003 s. 49(b). |
| (ea) the responsibilities of the officer in effective control of the estate agency business of a licensed estate agent that is a corporation with respect to the supervision and control of that business (including elaborating the responsibilities imposed by section 29B); | S. 99(1)(ea) inserted by No. 86/1994 s. 44(b), amended by No. 17/2004 s. 10(2). |
| (f) prescribing penalties not exceeding 20 penalty units for any contravention of or failure to comply with any regulation; | S. 99(1)(f) amended by Nos 9945 s. 3(1)(Sch. 1 item 21), 86/1994 s. 44(c). |
| (fa) prescribing, for the purposes of sections 95A to 95E— | S. 99(1)(fa) inserted by No. 41/2003 s. 11. |
| (i) the offences under this Act or the regulations in respect of which an infringement notice may be issued; and | |
| (ii) the penalties that apply if those offences are dealt with by an infringement notice; | |
| (g) prescribing fees payable— | S. 99(1)(g) amended by Nos 9925 s. 5(a), 10028 s. 54(c), 86/1994 s. 47(zze)(i)(ii), substituted by No. 52/1998 s. 112(c). |
| (i) for or on the issue of certificates by the Registrar; and | |
-

s. 99

S. 99(1)(g)(ii)
amended by
No. 8/2003
s. 59(2).

- (ii) for searches of, copies of, or extracts from the registers and other records kept by the Registrar; and
- (iii) for licences, including application fees, annual fees, late payment fees late lodgement fees and fees for applications for extensions of time;
- (iv) for other applications to the Authority under this Act;
- (v) for the issue of other documents under this Act;
- (vi) for any other procedures required by this Act, other than procedures relating to the Tribunal;

S. 99(1)(ga)
inserted by
No. 10028
s. 54(d),
amended by
No. 86/1994
s. 47(zy).

- (ga) prescribing the circumstances in which the Authority may give reductions in or refunds of fees and the amount of those reductions or refunds;

S. 99(1)(gb)
inserted by
No. 10028
s. 54(d),
amended by
No. 86/1994
s. 44(d).

- (gb) prescribing courses of education for agents' representatives;

S. 99(1)(gc)
inserted by
No. 86/1994
s. 44(e).

- (gc) regulating advertising by, and advertisements of, estate agents or agents' representatives and regulating the use by an estate agent in advertisements, or in connection with the agent's business as an estate agent, of a name, title or description which is used as a result of a franchising agreement within the meaning of section 43;

-
- (gd) regulating the giving of deposits to, and the taking of deposits by, agents and agents' representatives and the amounts or rates of such deposits, and regulating or prescribing the form of receipts for deposits; **S. 99(1)(gd) inserted by No. 86/1994 s. 44(e).**
- (ge) prescribing standard forms of contracts to give effect to agreements negotiated by agents or agents' representatives, and the use of those forms, and the permissible variations in those forms, and prohibiting or restricting the use of other forms to give effect to such contracts; **S. 99(1)(ge) inserted by No. 86/1994 s. 44(e).**
- (gf) prescribing courses of instruction and examinations and requirements establishing competency; **S. 99(1)(gf) inserted by No. 86/1994 s. 44(e), amended by No. 41/2003 s. 49(c).**
- (gg) prescribing rules of professional conduct for agents and agents' representatives; **S. 99(1)(gg) inserted by No. 86/1994 s. 44(e).**
- (h) generally, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or expedient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations under this Act may prescribe fees that differ according to differences in circumstances. **S. 99(2) inserted by No. 8/2003 s. 59(3).**
- * * * * *
- S. 100 repealed by No. 9500 s. 20.**
-

s. 101

Pt 9 (Heading
and s. 101)
inserted by
No. 17/2004
s. 9.

PART IX—TRANSITIONAL

S. 101
inserted by
No. 17/2004
s. 9,
substituted by
No. 1/2010
s. 16.

101 Rural branch manager's licence

Despite the repeal of section 30AB of this Act,
that section continues to apply to a person who
was, immediately before the commencement of
section 10 of the **Consumer Affairs Legislation
Amendment Act 2010**, the holder of a rural
branch manager's licence.

Estate Agents Act 1980
No. 9428 of 1980

Sch.

* * * * *

Sch.
repealed by
No. 10087
s. 4(1).

=====

ENDNOTES

1. General Information

The **Estate Agents Act 1980** was assented to on 27 May 1980 and came into operation as follows:

Section 99 on 9 July 1980: Government Gazette 9 July 1980 page 2360; sections 6(1)–(12)(14), 7–9 on 20 August 1980: Government Gazette 20 August 1980 page 2835; section 6(13) on 5 January 1981: Government Gazette 31 December 1980 page 4381; sections 1–5, 10–29, 31–58, 59(1)(2)(4)–(7), 60–98, 100 on 30 June 1981: Government Gazette 17 June 1981 page 1902; section 30 on 1 October 1981: Government Gazette 16 September 1981 page 3004; section 59(3) on 26 September 1984: Government Gazette 26 September 1984 page 3390.

2. Table of Amendments

This Version incorporates amendments made to the **Estate Agents Act 1980** by Acts and subordinate instruments.

Estate Agents (Amendment) Act 1980, No. 9500/1980

Assent Date: 23.12.80
Commencement Date: 30.6.81: Government Gazette 17.6.81 p. 1902
Current State: All of Act in operation

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: subject to s. 2(2)
Current State: All of Act in operation

Crimes (Classification of Offences) Act 1981, No. 9576/1981

Assent Date: 26.5.81
Commencement Date: 1.9.81: Government Gazette 26.8.81 p. 2799
Current State: All of Act in operation

Companies (Consequential Amendments) Act 1981, No. 9699/1981

Assent Date: 5.1.82
Commencement Date: S. 23(Sch. 2) on 1.7.82: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Director of Public Prosecutions Act 1982, No. 9848/1982

Assent Date: 21.12.82
Commencement Date: Ss 1–8, 17 on 12.1.83: Government Gazette 12.1.83 p. 80; rest of Act on 1.6.83: Government Gazette 11.5.83 p. 1146
Current State: All of Act in operation

Statute Law Revision Act 1983, No. 9902/1983

Assent Date: 15.6.83
Commencement Date: 15.6.83: subject to s. 2(2)
Current State: All of Act in operation

Estate Agents (Re-constitution) Act 1983, No. 9925/1983

Assent Date: 23.6.83
Commencement Date: 12.7.83: Government Gazette 12.7.83 p. 2069
Current State: All of Act in operation

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 2 on 1.9.81: s. 1(4); rest of Act on 20.12.83: Government Gazette 14.12.83 p. 4035; s. 8 repealed by No. 10096 s. 4(4)
Current State: All of Act in operation

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Estate Agents (Amendment) Act 1983, No. 10028/1983

Assent Date: 20.12.83
Commencement Date: Ss 1–17, 20, 21, 24–27, 29, 32–34, 36–49, 53, 54(a)(c)(d), 55, 56 on 21.3.84: Government Gazette 21.3.84 p. 863; ss 18, 19, 22, 23, 28, 31(1), 35 on 8.1.85: Government Gazette 19.12.84 p. 4481; s. 30 on 8.1.85: Government Gazette 8.1.85 p. 1; ss 31(2), 50–52, 54(b) were never proclaimed, repealed by No. 11/1995 s. 3(2)
Current State: All of Act in operation

Statute Law Revision Act 1984, No. 10087/1984

Assent Date: 22.5.84
Commencement Date: 22.5.84: subject to s. 3(2)
Current State: All of Act in operation

Administrative Appeals Tribunal Act 1984, No. 10155/1984

Assent Date: 20.11.84
Commencement Date: S. 69 on 1.3.85: Government Gazette 30.1.85 p. 191
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Trustee Companies Act 1984, No. 10168/1984

Assent Date: 20.11.84
Commencement Date: 5.12.84: Government Gazette 5.12.84 p. 4329
Current State: All of Act in operation

Public Contracts (Repeal) Act 1986, No. 21/1986

Assent Date: 22.4.86
Commencement Date: 22.4.86
Current State: All of Act in operation

Estate Agents (Amendment) Act 1986, No. 62/1986

Assent Date: 16.9.86
Commencement Date: 8.10.86: Government Gazette 8.10.86 p. 3854
Current State: All of Act in operation

Conservation, Forests and Lands Act 1987, No. 41/1987

Assent Date: 19.5.87
Commencement Date: S. 103(Sch. 4 items 17.1, 17.2) on 1.7.87: Government Gazette 24.6.87 p. 1694
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

State Trust Corporation of Victoria Act 1987, No. 55/1987

Assent Date: 20.10.87
Commencement Date: 2.11.87: Government Gazette 28.10.87 p. 2925
Current State: All of Act in operation

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Liquor Control Act 1987, No. 97/1987

Assent Date: 1.12.87
Commencement Date: S. 181(3) on 3.5.88: Government Gazette 27.4.88 p. 1044
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

State Bank Act 1988, No. 29/1988

Assent Date: 17.5.88
Commencement Date: 9.6.88: Government Gazette 8.6.88 p. 1582
Current State: All of Act in operation

Rural Finance Act 1988, No. 44/1988

Assent Date: 24.5.88
Commencement Date: 1.7.88: Government Gazette 29.6.88 p. 1896
Current State: All of Act in operation

Subdivision Act 1988, No. 53/1988 (as amended by No. 49/1989)

Assent Date: 31.5.88
Commencement Date: 30.10.89: Government Gazette 4.10.89 p. 2532
Current State: All of Act in operation

Local Government (Consequential Provisions) Act 1989, No. 12/1989

Assent Date: 9.5.89
Commencement Date: S. 4(1)(Sch. 2 item 39.1) on 1.11.89: Government Gazette 1.11.89 p. 2798
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Estate Agents (Amendment) Act 1989, No. 29/1989

Assent Date: 6.6.89
Commencement Date: Ss 7, 10 on 1.1.90: s. 2(1); rest of Act on 20.6.89: Special Gazette (No. 34) 20.6.89 p. 1
Current State: All of Act in operation

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.1.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

State Bank (Succession of Commonwealth Bank) Act 1990, No. 94/1990

Assent Date: 18.12.90
Commencement Date: S. 40(4) on 1.1.91: Special Gazette (No. 73) 31.12.90 p. 1
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Water (Rural Water Corporation) Act 1992, No. 50/1992

Assent Date: 30.6.92
Commencement Date: 1.7.92: Government Gazette 1.7.92 p. 1629
Current State: All of Act in operation

Estate Agents (Amendment) Act 1993, No. 38/1993

Assent Date: 25.5.93
Commencement Date: All of Act (except s. 5) on 25.5.93: s. 2(1); s. 5 on 1.9.93: s. 2(2)
Current State: All of Act in operation

Electricity Industry Act 1983, No. 130/1993

Assent Date: 14.12.93
Commencement Date: S. 122(Sch. 4 item 4) on 3.1.94: Special Gazette (No. 97) 23.12.93 p. 1
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 30) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

State Trustees (State Owned Company) Act 1994, No. 45/1994

Assent Date: 7.6.94
Commencement Date: Pt 1 (ss 1–3), s. 27 on 7.6.94: s. 2(1); rest of Act on 1.7.94: Special Gazette (No. 36) 23.6.94 p. 1
Current State: All of Act in operation

Electricity Industry (Amendment) Act 1994, No. 53/1994

Assent Date: 15.6.94
Commencement Date: S. 34(Sch. 1 item 2) on 3.10.94: s. 2(4A)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents (Amendment) Act 1994, No. 86/1994

Assent Date: 6.12.94
Commencement Date: Pt 1 (ss 1, 2) on 6.12.94: s. 2(1); s. 46 on 1.1.95; ss 3–13, 15–45, 47–53 on 1.2.95: Government Gazette 8.12.94 p. 3218; s. 14 on 1.6.96: Government Gazette 2.5.96 p. 1050
Current State: All of Act in operation

Subordinate Legislation Act 1994, No. 104/1994

Assent Date: 13.12.94
Commencement Date: 1.1.95: subject to s. .2
Current State: All of Act in operation

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Electricity Industry (Further Amendment) Act 1994, No. 110/1994

Assent Date: 20.12.94
Commencement Date: S. 41(Sch. 1 item 3) on 20.12.94: Special Gazette
(No. 100) 20.12.94 p. 1
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Electricity Industry (Amendment) Act 1995, No. 56/1995

Assent Date: 20.6.95
Commencement Date: S. 68(Sch. 1 item 1) on 20.6.95: Special Gazette
(No. 52) 20.6.95 p. 1
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995

Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 28) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Co-operatives Act 1996, No. 84/1996

Assent Date: 23.12.96
Commencement Date: S. 467(Sch. 6 item 5) on 1.10.97: Special Gazette
(No. 122) 1.10.97 p. 1
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Audit (Amendment) Act 1997, No. 93/1997

Assent Date: 16.12.97
Commencement Date: Sch. item 12 on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Rail Corporations (Amendment) Act 1997, No. 104/1997

Assent Date: 16.12.97
Commencement Date: S. 46 on 31.3.98: Special Gazette (No. 23) 31.3.98 p. 1
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998
(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Estate Agents Act 1980**

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: Ss 65–113 on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Licensing and Tribunal (Amendment) Act 1998, No. 101/1998

Assent Date: 1.12.98
Commencement Date: S. 37(3) on 1.7.98: s. 2(2); s. 37(1)(2) on 1.2.99: Government Gazette 24.12.98 p. 3204
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: S. 32 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: S. 46 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 43) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 24) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 39) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Statute Law Further Amendment (Relationships) Act 2001, No. 72/2001

Assent Date: 7.11.01
Commencement Date: S. 3(Sch. item 7) on 20.12.01: Government Gazette 20.12.01 p. 3127
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Auction Sales (Repeal) Act 2001, No. 84/2001

Assent Date: 11.12.01
Commencement Date: S. 4 on 1.1.03: s. 2(4)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Corporations (Financial Services Reform Amendments) Act 2002, No. 9/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. item 6) on 23.4.02: s. 2
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Business Licensing Legislation (Amendment) Act 2003, No. 8/2003

Assent Date: 6.5.03
Commencement Date: Ss 44–59 on 1.11.03: Government Gazette 30.10.03 p. 2744
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents and Sale of Land Acts (Amendment) Act 2003, No. 41/2003

Assent Date: 11.6.03
Commencement Date: Ss 10, 11, 46–49 on 12.6.03: s. 2(1); s. 45 on 30.6.03: Government Gazette 26.6.03 p. 1548; ss 6–9, 12–20, 22–44 on 1.2.04: Government Gazette 29.1.04 p. 179; s. 21 on 1.7.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents and Travel Agents Acts (Amendment) Act 2004, No. 17/2004

Assent Date: 18.5.04
Commencement Date: Ss 3–10 on 19.5.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Fair Trading (Enhanced Compliance) Act 2004, No. 103/2004

Assent Date: 21.12.04
Commencement Date: Ss 35, 36, 38–44 on 22.12.04: s. 2(1); s. 37 on 1.7.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 71) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 39) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 17) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 17) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 5) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Conveyancers Act 2006, No. 75/2006 (as amended by No. 17/2007)

Assent Date: 10.10.06
Commencement Date: S. 192(Sch. 2 item 2) on 1.7.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Justice Legislation (Further Amendment) Act 2006, No. 79/2006

Assent Date: 10.10.06
Commencement Date: Ss 76, 77 on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 36) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Fair Trading and Consumer Acts Amendment Act 2007, No. 17/2007

Assent Date: 29.5.07
Commencement Date: S. 36(Sch. item 4) on 30.5.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Estate Agents Act 1980
No. 9428 of 1980

Endnotes

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 60(Sch. item 4) on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 9) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 21) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Unclaimed Money Act 2008, No. 44/2008

Assent Date: 26.8.08
Commencement Date: S. 109 on 1.1.09: s. 2(2)
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 53) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: Ss 4(2)–(4), 5–11, 13, 16 on 1.8.10: Government Gazette: 22.7.10 p. 1628
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Transport Integration Act 2010, No. 6/2010

Assent Date: 2.3.10
Commencement Date: S. 203(1)(Sch. 6 item 21) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Estate Agents Act 1980**

Endnotes

3. Explanatory Details

No entries at date of publication.