

1980

c 431 Real Estate and Business Brokers Act

Ontario

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CHAPTER 431

Real Estate and Business Brokers Act

1. In this Act,

Interpre-
tation

- (a) "broker" means a person who, for another or others, for compensation, gain or reward or hope or promise thereof, either alone or through one or more officials or salesmen, trades in real estate, or a person who holds himself out as such;
- (b) "business" means an undertaking carried on for the purpose of gain or profit, and includes an interest in any such undertaking, and, without limiting the generality of the foregoing, includes a boarding house, hotel, store, tourist camp and tourist home;
- (c) "business premises" does not include a dwelling;
- (d) "Director" means the Director of the Consumer Protection Division of the Ministry of Consumer and Commercial Relations;
- (e) "dwelling" means any premises or any part thereof occupied as living accommodation;
- (f) "Minister" means the Minister of Consumer and Commercial Relations;
- (g) "officer" means the chairman or vice-chairman of the board of directors, president, vice-president, secretary, treasurer or secretary-treasurer or general manager of a corporation or a partner or general manager of a partnership and includes the manager of the real estate department of a trust company;
- (h) "prescribed" means prescribed by this Act or the regulations;
- (i) "real estate" includes real property, leasehold and business whether with or without premises, fixtures, stock-in-trade, goods or chattels in connection with the operation of the business;

- (j) "register" means the register under this Act;
- (k) "Registrar" means the Registrar of Real Estate and Business Brokers;
- (l) "regulations" means the regulations made under this Act;
- (m) "salesman" means a person employed, appointed or authorized by a broker to trade in real estate;
- (n) "trade" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt, and the verb "trade" has a corresponding meaning;
- (o) "Tribunal" means The Commercial Registration Appeal Tribunal under the *Ministry of Consumer and Commercial Relations Act*. R.S.O. 1970, c. 401, s. 1; 1971, c. 50, s. 76 (1); 1972, c. 1, ss. 1, 23 (5), 53 (1, 2).

R.S.O. 1980,
c. 274

REGISTRAR

Registrar

2.—(1) There shall be a Registrar of Real Estate and Business Brokers who shall be appointed by the Lieutenant Governor in Council.

Powers and
duties

(2) The Registrar may exercise the powers and shall discharge the duties conferred and imposed upon him by this Act and the regulations under the supervision of the Director. R.S.O. 1970, c. 401, s. 2.

REGISTRATION

Registration

3.—(1) No person shall,

- (a) trade in real estate as a broker unless he is registered as a broker;
- (b) trade in real estate as a salesman unless he is registered as a salesman of a registered broker;
- (c) act on behalf of a corporation or partnership in connection with a trade in real estate unless he and

the corporation or partnership are registered as brokers.

(2) Any change in the membership of a partnership shall be deemed to create a new partnership for the purpose of registration. Change in partnership

(3) A change in the officers of a corporation registered as a broker may be made only with the consent of the Registrar. R.S.O. 1970, c. 401, s. 3. Change in officers of corporation

4.—(1) No broker shall conduct a business of trading in real estate from more than one place at which the public is invited to deal unless he is registered in respect of each such place, one of which shall be designated in the registration as the main office and the remainder as branch offices. Registration of branch offices

(2) Each branch office shall be under the supervision of a registered broker and each branch office having more than one registered salesman shall be under direct management by a registered broker or by a salesman who has been registered for at least two years and who is under the supervision of a registered broker. R.S.O. 1970, c. 401, s. 4. Management of branch offices

5. Registration shall not be required in respect of any trade in real estate by, Exemptions

- (a) an assignee, custodian, liquidator, receiver, trustee or other person acting under the *Bankruptcy Act* (Canada), the *Corporations Act*, the *Business Corporations Act*, the *Judicature Act*, the *Winding-up Act* (Canada), or to a person acting under the order of any court, or an executor or trustee selling under the terms of a will, marriage settlement or deed of trust; R.S.C. 1970, cc. B-3, W-10
R.S.O. 1980, cc. 95, 54, 223
- (b) an auctioneer where the trade is made in the course of and as part of his duties as auctioneer;
- (c) a person who is registered under the *Securities Act* where the trade is made in the course of and as part of his business in connection with a trade in securities; R.S.O. 1980, c. 466
- (d) a bank or a loan, trust or insurance company trading in real estate owned or administered by the company;

R.S.O. 1980,
c. 268

- (e) a person in respect of any mine or mining property within the meaning of the *Mining Act* or in respect of the real estate included in a Crown grant or lease, a mining claim or mineral lands under the *Mining Act* or any predecessor thereof;
- (f) a full-time salaried employee of a party to a trade where the employee is acting for or on behalf of his employer in respect of land situate in Ontario;
- (g) a person who is practising as a solicitor of the Supreme Court where the trade is made in the course of and as a part of the solicitor's practice;
- (h) a person, on his own account, in respect of his real estate, where such trade did not result from,
 - (i) an offer of such person to act, in connection with such trade or any other trade, for or on behalf of the other party or one of the other parties to the trade, or
 - (ii) a request that such person act, in connection with such trade or any other trade, for or on behalf of the other party or one of the other parties to the trade,

and the interest of such person in the real estate was acquired prior to such offer or request;

- (i) a person in respect of the provision for another, for remuneration other than by commission, of all consultations, undertakings and services necessary to arrange for the routing of a right of way including the acquisition of land or interests in land for the purpose, and his employees engaged in the project; or
- (j) a person specifically exempted by the regulations in respect of any class of trades in real estate. R.S.O. 1970, c. 401, s. 5.

Registration
of agencies

6.—(1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

- (a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(c) the applicant is a corporation and,

(i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

(2) A registration is subject to such terms and conditions Conditions of registration to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. 1971, c. 50, s. 76 (2), *part*.

7.—(1) A corporation having share capital shall not be Registration of broker corporation registered as a broker,

(a) unless the persons holding shares carrying at least 51 per cent of the voting rights attached to all shares of the corporation for the time being outstanding are registered brokers, but this clause does not apply to a corporation that is a trust company registered under the *Loan and Trust Corporations Act*; R.S.O. 1980, c. 249

(b) if any broker holding voting shares of the corporation acts as broker in respect of any other business registered as a broker or holds voting shares in any other corporation registered as a broker, but this clause does not apply to the holding of voting shares of a corporation that is a trust company registered under the *Loan and Trust Corporations Act* where the shares held do not give the holder a substantial interest; or

(c) if a salesman holds shares of the corporation carrying more than 10 per cent of the voting rights attached to all shares of the corporation for the time being outstanding.

Exception

R.S.O. 1980,
c. 249

(2) Clause (1) (b) does not apply to a corporation that is a trust company registered under the *Loan and Trust Corporations Act* in which a broker holds voting shares amounting to a substantial interest where the shares were held and the trust company was registered under this Act on the 28th day of October, 1970.

Share-
holders other
than brokers
or salesmen

(3) A person other than a broker or salesman may hold voting shares of more than one corporation registered as brokers except that where such person holds voting shares in more than one such corporation he shall not hold more than 10 per cent of the voting shares of each such corporation for the time being outstanding.

Salesmen
as share-
holders

(4) A salesman shall not,

- (a) acquire shares of a corporation registered as a broker unless the shares are acquired while he is a salesman for the corporation, but this clause does not apply to the acquisition of shares of a corporation that is a trust company registered under the *Loan and Trust Corporations Act*;
- (b) hold shares in more than one corporation registered as brokers, at the same time, other than shares of a corporation that is a trust company registered under the *Loan and Trust Corporations Act*; or
- (c) become a salesman for another broker until he discloses his interest to such broker. R.S.O. 1970, c. 401, s. 7.

Refusal to
register

8.—(1) Subject to section 9, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 6 or 7.

Revocation

(2) Subject to section 9, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 6 or 7 if he were an applicant or where the registrant is in breach of a term or condition of the registration. 1971, c. 50, s. 76 (2), *part*.

Notice of
proposal
to refuse
or revoke

9.—(1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or registrant.

(2) A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Registrar and the Tribunal, and he may so require such a hearing. ^{Notice requiring hearing}

(3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in his notice under subsection (1). ^{Powers of Registrar where no hearing}

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar. ^{Powers of Tribunal where hearing}

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act. ^{Conditions of order}

(6) The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. ^{Parties}

(7) Notwithstanding subsection (1), the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. ^{Voluntary cancellation}

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his registration, a registrant has applied for renewal of his registration and paid the prescribed fee, his registration shall be deemed to continue, ^{Continuation of registration pending renewal}

(a) until the renewal is granted; or

(b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order.

Order of
Tribunal
effective,
stay
R.S.O. 1980,
c. 274

(9) Notwithstanding that a registrant appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal. 1971, c. 50, s. 76 (2), *part*; 1972, c. 1, s. 23 (5).

Further
applications

10. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. R.S.O. 1970, c. 401, s. 23.

Investigation
of complaints

11.—(1) Where the Registrar receives a complaint in respect of a broker and so requests in writing, the broker shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

Idem

(2) The request under subsection (1) shall indicate the nature of the inquiry involved.

Idem

(3) For the purposes of subsection (1), the Registrar or any persons designated in writing by him may at any reasonable time enter upon the business premises of the registrant to make an inspection in relation to the complaint. R.S.O. 1970, c. 401, s. 24.

Inspection

12.—(1) The Registrar or any person designated by him in writing may at any reasonable time enter upon the business premises of the registrant to make an inspection to ensure that the provisions of this Act and the regulations relating to registration and the maintenance of trust accounts and the regulation of trades are being complied with.

Idem

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as a broker or salesman while unregistered, the Registrar or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 3 or 4. R.S.O. 1970, c. 401, s. 25.

Powers on
inspection

13.—(1) Upon an inspection under section 11 or 12, the person inspecting,

- (a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection; and

- (b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection. R.S.O. 1970, c. 401, s. 26 (1); 1971, c. 50, s. 76 (4).

(2) A copy made as provided in subsection (1) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. R.S.O. 1970, c. 401, s. 26 (2). Admissibility of copies

14. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation as if it were an inquiry under that Act. 1971, c. 50, s. 76 (5), *part*. Investigations by order of Minister

15.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has, Investigation by Director

- (a) contravened any of the provisions of this Act or the regulations; or

- (b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to his fitness for registration under this Act, R.S.C. 1970, c. C-34

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence has occurred, and the person appointed shall report the result of his investigation to the Director.

- (2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the Powers of investigator

affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the subject-matter of the investigation; and
- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Removal of
books, etc.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause (2) (a) or

subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. ^{Admissibility of copies}

(7) The Minister or Director may appoint any expert ^{Appointment of experts} to examine books, papers, documents or things examined under clause (2) (a) or under subsection (4). 1971, c. 50, s. 76 (5), *part.*

16.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 11, 12, 13, 14 or 15, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except, ^{Matters confidential}

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. 1971, c. 50, s. 76 (5), *part.* ^{Testimony in civil suit}

17. Where, upon the report of an investigation made under subsection 15 (1), it appears to the Director that a person may have, ^{Report}

- (a) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970,
c. C-34

- (b) committed an offence, under the *Criminal Code* (Canada) or under the law of any jurisdiction, that is relevant to his fitness for registration under this Act,

the Director shall send a full and complete report of the investigation, including the report made to him, any transcript of evidence and any material in the possession of the Director relating thereto, to the Minister. R.S.O. 1970, c. 401, s. 28; 1971, c. 50, s. 76 (6).

Order to
refrain from
dealing with
assets

18.—(1) Where,

- (a) an investigation of any person has been ordered under section 15; or
- (b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a person that are connected with or arise out of the business in respect of which such person is registered,

the Director, if he believes it advisable for the protection of clients or customers of the person referred to in clause (a) or (b), may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause (a) or (b), to hold such assets or trust funds or direct the person referred to in clause (a) or (b) to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), the *Judicature Act*, the *Corporations Act*, the *Business Corporations Act* or the *Winding-up Act* (Canada), or until the Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction. 1971, c. 50, s. 76 (7).

R.S.O. 1980,
c. 223, 95, 54
R.S.C. 1970,
cc. B-3, W-10

Bond
in lieu

(2) Subsection (1) does not apply where the person referred to in clause (1) (a) or (b) files with the Director,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*; or

R.S.O. 1980,
c. 192

- (c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director determines.

(3) Any person in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just. Application for direction

(4) In any of the circumstances mentioned in clause (1) (a) or (b), the Director may in writing or by telegram notify any land registrar that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered against the lands mentioned therein and has the same effect as the registration of a certificate of *lis pendens* except that the Director may in writing revoke or modify the notice. R.S.O. 1970, c. 401, s. 29 (2-4). Notice to land registrar

(5) Any person referred to in clause (1) (a) or (b) in respect of whom a direction has been given by the Director under subsection (1) or any person having an interest in land in respect of which a notice has been registered under subsection (4) may, at any time, apply to the Tribunal for cancellation in whole or in part of the direction or registration and the Tribunal shall dispose of the application after a hearing and may, if it finds that such a direction or registration is not required in whole or in part for the protection of clients or customers of the applicant or of other persons interested in the land or that the interests of other persons are unduly prejudiced thereby, cancel the direction or registration in whole or in part, and the applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal. 1971, c. 50, s. 76 (8). Application for cancellation of direction or registration

REGULATION OF TRADING

19.—(1) Every broker shall keep a trade record sheet in the prescribed form and proper books and accounts with respect to his trades and shall enter therein in the case of each trade, Books, etc., to be kept

(a) the nature of the trade;

(b) a description of the real estate involved sufficient to identify it;

- (c) the true consideration for the trade;
- (d) the names of all parties to the trade;
- (e) the amount of deposit received and a record of the disbursement thereof; and
- (f) the amount of his commission or other remuneration and the name of the party paying it.

Trust
ledger

(2) Every broker shall maintain a trust account for every person from whom trust moneys are received in which shall be entered full details of all trust moneys so received and disbursements therefrom. R.S.O. 1970, c. 401, s. 30.

Bank
account

R.S.O. 1980,
c. 102

20.—(1) Every broker shall maintain an account designated as a trust account in a chartered bank, loan or trust company, credit union, as defined in the *Credit Unions and Caisses Populaires Act*, or Province of Ontario Savings Office in which shall be deposited all moneys that come into his hands in trust for other persons in connection with his business, and he shall at all times keep such moneys separate and apart from moneys belonging to himself or to the partnership, in the case of a partnership, and shall disburse such moneys only in accordance with the terms of the trust. R.S.O. 1970, c. 401, s. 31 (1); 1980, c. 6, s. 5.

Unclaimed
trust moneys

(2) Where a broker holds moneys in trust for a period of one year after the person for whom it is held first became entitled to payment of the moneys and such person cannot be located, the broker shall pay the moneys to the Treasurer of Ontario who shall pay the moneys to the person appearing to the Treasurer to be entitled thereto. R.S.O. 1970, c. 401, s. 31 (2).

Notice of
changes

21.—(1) Every broker shall, within five days after the event, notify the Registrar in writing of,

- (a) any change in his address for service;
- (b) any change in the officers in the case of a corporation or partnership;
- (c) any commencement or termination of employment, appointment or authorization of a salesman.

(2) Every salesman shall, within five days after the ^{Idem} event, notify the Registrar in writing of,

- (a) any change in his address for service;
- (b) any commencement or termination of his employment, appointment or authorization by a broker.

(3) The Registrar shall be deemed to be notified under ^{Idem} subsections (1) and (2) on the day on which he is actually notified or, where the notification is by mail, on the day of mailing.

(4) Every broker carrying on the business of trading in ^{Financial statements} real estate shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the proprietor or officer of the broker's business and certified by a person licensed under the *Public Accountancy Act*. ^{R.S.O. 1980, c. 405}

(5) The information contained in a financial statement ^{Statement confidential} filed under subsection (4) is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. R.S.O. 1970, c. 401, s. 32.

22. No action shall be brought for commission or for remuneration for services in connection with a trade in real estate unless at the time of rendering the services the person bringing the action was registered or exempt from registration and the court may stay any such action at any time upon summary application. R.S.O. 1970, c. 401, s. 33. ^{Action for commission or remuneration}

23. Subject to section 32, no action shall be brought to ^{Idem} charge any person for the payment of a commission or other remuneration for the sale, purchase, exchange or leasing of real estate,

- (a) unless the agreement upon which the action is brought is in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized; or
- (b) unless the broker or his salesman has obtained an offer in writing that is accepted; or

(c) unless the broker having been authorized in writing to list the property,

(i) shows the property to the purchaser, or

(ii) introduces the purchaser to the vendor for the purpose of discussing the proposed sale, purchase, exchange or leasing. R.S.O. 1970, c. 401, s. 34.

Promises to
resell, etc.,
prohibited

24. No broker or salesman shall, as an inducement to purchase, sell or exchange real estate, make any representation or promise that he or any other person will,

(a) resell or in any way guarantee or promise to resell any real estate offered for sale by him;

(b) purchase or sell any of the purchaser's real estate;

(c) procure a mortgage, extension of a mortgage, lease or extension of a lease; or

(d) purchase or sell a mortgage or procure a loan,

unless at the time of making the representation or promise the broker or salesman making it delivers to the person to whom the representation or promise is made a statement signed by the broker or salesman clearly setting forth all the details of the representation or promise made. R.S.O. 1970, c. 401, s. 35.

Carrying on
business as
individual

25. A broker carrying on business alone and not through an incorporated company shall carry on business in his own name only and shall not use any description, words or device that would indicate that his business is being carried on by more than one person or by a company, but a surviving or remaining partner may carry on business in the name of the original partnership in which case he shall publish on all letterheads and circulars used by him in connection with his business the fact that he is the sole proprietor thereof. R.S.O. 1970, c. 401, s. 36.

Broker not to
trade until
notified of
registration

26. No broker or salesman shall trade in real estate until notified in writing by the Registrar that he is registered. R.S.O. 1970, c. 401, s. 37.

Unregistered
broker and
salesman

27. A person who is not registered as a broker shall neither directly nor indirectly hold himself out as being a broker and a person who is not registered as a salesman shall neither directly nor indirectly hold himself out as being a salesman. R.S.O. 1970, c. 401, s. 38.

28. Every broker shall, when advertising to purchase, sell, exchange or lease real estate, clearly indicate his own name as being the party advertising and that he is a broker, and any reference to the name of a salesman in the advertisement shall clearly indicate the broker as being the employer of the salesman. R.S.O. 1970, c. 401, s. 39.

29. No broker shall,

Employment of unregistered person or salesman of other broker

(a) employ or engage the salesman of another broker to trade in real estate or permit such salesman to act on his behalf;

(b) employ or engage an unregistered person to trade in real estate or permit such person to act on his behalf; or

(c) pay any commission or other remuneration to any person referred to in clause (a) or (b),

but this section does not prevent the employing, engaging or paying of a person who is duly registered or licensed as a broker or its equivalent in another jurisdiction in respect of a trade in that jurisdiction. R.S.O. 1970, c. 401, s. 40.

30. No salesman shall trade in real estate on behalf of any broker other than the broker who, according to the records of the Registrar, is his employer, and no salesman is entitled to or shall accept any commission or other remuneration for trading in real estate from any person except the broker who is registered as his employer. R.S.O. 1970, c. 401, s. 41.

Salesmen trading for other brokers

31.—(1) No broker or salesman shall purchase, lease, exchange or otherwise acquire for himself or make an offer to purchase, lease, exchange or otherwise acquire for himself, either directly or indirectly, any interest in real estate for the purpose of resale unless he first delivers to the vendor a written statement that he is a broker or salesman, as the case may be, and the vendor has acknowledged in writing that he has received the statement.

Statement where broker or salesman purchases for resale

(2) Where real estate in respect of which a broker or salesman is required to give a statement under subsection (1) is listed with the broker or, in the case of a salesman, is listed with the broker by whom the salesman is employed, appointed or authorized to trade in real estate, the statement shall include,

Idem, where property listed with purchaser

(a) full disclosure of all facts within his special knowledge that affect or will affect the resale value of the real estate; and

(b) the particulars of any negotiation or agreement by or on behalf of the broker or salesman for the sale, exchange, lease or other disposition of any interest in the real estate to any other person.
R.S.O. 1970, c. 401, s. 42.

Breaking
of contract
prohibited

32.—(1) No broker or salesman shall induce any party to a contract for sale or rental of real estate to break the contract for the purpose of entering into another such contract.

Commission

(2) Unless agreed to in writing by the vendor, no broker is entitled to claim commission from him in respect of a trade in real estate if the real estate is to the knowledge of the broker covered by an unexpired exclusive listing agreement with another broker.

Date of
signing
listing
or offer

(3) Every person signing a listing agreement or an agreement for sale or rental of real estate shall state with his signature the date upon which the signature was actually affixed. R.S.O. 1970, c. 401, s. 43.

Statements
to be
delivered in
purchase of
business

33.—(1) Where a trade in a business is negotiated by a broker or his salesman, the broker or his salesman, as the case may be, shall before a binding agreement of purchase and sale is signed by the parties deliver to the person acquiring the business,

(a) a profit and loss statement or statement showing the revenue and disbursements of the business during the preceding twelve months or since the acquisition of the business by the person disposing of it; and

(b) a statement of the assets and liabilities of the business; and

(c) a statement containing a list of all fixtures, goods, chattels, rights and other assets relating to or connected with the business that are not included in the transaction,

and every such statement shall be signed by the person disposing of the business or his agent lawfully authorized in that behalf.

(2) Where the broker or salesman, as the case may be, ^{Waiver} delivers to the person acquiring the business a statement under oath of the person disposing of the business setting forth,

- (a) the terms and conditions under which the person disposing of the business holds possession of the premises in which the business is being carried on; and
- (b) the terms and conditions under which the person disposing of the business has sublet a part of the premises in which the business is being carried on; and
- (c) all liabilities of the business; and
- (d) that the person disposing of the business has made available such books of account of the business as he possesses for inspection by the person acquiring the business, or that the person disposing of the business has refused to do so or has no books of account of the business, as the case may be,

the person acquiring the business may waive compliance with clauses (1) (a) and (b) by signing and delivering to the broker or salesman, as the case may be, a statement that he has received and read the statement under oath of the person disposing of the business.

(3) Unless the statement mentioned in clause (1) (c) is delivered in accordance with subsection (1), all fixtures, goods, chattels and rights and other assets relating to or connected with the business shall be deemed to be included in the transaction. ^{What to be deemed included in transaction} R.S.O. 1970, c. 401, s. 44.

34.—(1) No broker or salesman shall request or enter into an arrangement for the payment to him of commission or other remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price thereof, nor is a broker or salesman entitled to retain any commission or other remuneration computed upon any such basis. ^{Type of commission prohibited}

(2) All commission or other remuneration payable to a broker in respect of a trade in real estate shall be upon an agreed amount or percentage of the sale price or ^{Commission and remuneration, scale}

rental, as the case may be, and, where no agreement as to the amount of the commission has been entered into, the rate of commission or other basis or amount of remuneration shall be that generally prevailing in the community where the real estate is situate. R.S.O. 1970, c. 401, s. 45.

Agreement
to list real
estate with
broker

35.—(1) Every broker and salesman shall, immediately after the execution of an agreement to list real estate for sale, exchange, lease or rent with the broker, deliver to the person who has signed the agreement a true copy thereof.

Expiry of
agreement

(2) An agreement with a broker to list real estate for sale, exchange, lease or rental is not valid,

- (a) if it does not contain a provision that it will expire on a certain date specified therein;
- (b) if it contains a provision for more than one date on which it may expire; or
- (c) if a true copy of it is not delivered by the broker or his salesman to the other party immediately after its execution. R.S.O. 1970, c. 401, s. 46.

Agreements
to sell,
purchase,
etc.

36. Where a broker or salesman has secured an acceptance of an offer to sell, purchase, exchange, lease or rent real estate, he shall require each of the parties to sign a sufficient number of copies of the agreement and he shall retain one signed copy and shall forthwith deliver one signed copy to each of the parties. R.S.O. 1970, c. 401, s. 47.

TRADING IN SUBDIVISION LOTS OUTSIDE ONTARIO

Interpre-
tation

37. In sections 38 to 46, "subdivision" means improved or unimproved land divided or proposed to be divided into five or more lots or other units for the purpose of sale or lease and includes land divided or proposed to be divided into condominium units. R.S.O. 1970, c. 401, s. 48.

Sale of
subdivision
land outside
Ontario
prospectus
required

38.—(1) No person shall, in any capacity, trade in real estate, where the real estate is a lot or unit of land in a subdivision located outside Ontario, until there has been filed with the Registrar a prospectus containing the prescribed information and until there has been obtained from the Registrar a certificate of acceptance thereof.

(2) No person shall make any representation, written or oral, that the Director or the Registrar has passed upon the financial standing, fitness or conduct of any person in connection with any such prospectus or upon the merits of any such prospectus. R.S.O. 1970, c. 401, s. 49.

Certain representations prohibited

39.—(1) No person shall, either as a vendor or as a broker or salesman, enter into or negotiate any contract for the sale or lease of a lot or a unit of land in a subdivision located outside Ontario unless,

Prospectus to be delivered to purchaser

(a) a copy of the prospectus referred to in section 38 or such shorter form of the prospectus as the Registrar may have approved for distribution to the public has been delivered to the prospective purchaser or tenant, as the case may be;

(b) the prospective purchaser or tenant has in writing acknowledged receipt of a copy of the prospectus or the shorter form of the prospectus and that he has been afforded the opportunity to read it; and

(c) he is a registered broker or the contract is negotiated by a registered broker.

(2) Every acknowledgment referred to in subsection (1) shall be retained by the vendor or broker and be available for inspection by the Registrar for a period of not less than three years.

Acknowledgment to be retained for inspection

(3) A purchaser or tenant who has entered into a contract where subsection (1) applies is entitled to rescission of the contract if,

When purchaser entitled to rescission

(a) subsection (1) has not been complied with; and

(b) written notice of exercising the right of rescission is served on the vendor or broker within ninety days of the signing of the contract.

(4) In an action for rescission under subsection (3), the onus of proving compliance with subsection (1) rests upon the vendor.

Onus of proof

(5) The right of rescission provided in this section is in addition to any other rights that the purchaser or tenant may have in respect of the contract. R.S.O. 1970, c. 401, s. 50.

Other rights preserved

Material
in support of
prospectus

40. Each prospectus submitted to the Registrar for filing shall be accompanied by,

- (a) an affidavit of the owner of the subdivision or, where the owner is a corporation, any three directors thereof, as to the correctness of every matter of fact stated in the prospectus;
- (b) a copy of every plan referred to in the prospectus;
- (c) a copy of every form of contract referred to in the prospectus;
- (d) such documents as the Registrar may require to support any statement of fact, proposal or estimate set out in the prospectus;
- (e) such financial particulars of the owner as the Registrar may require; and
- (f) the prescribed fees. R.S.O. 1970, c. 401, s. 51.

Conditions
precedent
to grant of
certificate

41. The Registrar shall not grant a certificate of acceptance where it appears that,

- (a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive, or has the effect of concealing material facts;
- (b) adequate provision has not been made for the protection of deposits or other funds of purchasers or for assurance of title or other interest contracted for;
- (c) the prospectus fails to comply in any substantial respect with any of the requirements prescribed;
- (d) the requirements of section 40 have not been complied with in any substantial respect;
- (e) the proposed methods of offering do not accord with standard real estate practices in Ontario. R.S.O. 1970, c. 401, s. 52.

Inquiries re
prospectus

42.—(1) The Registrar may make such inquiries with respect to a prospectus as are necessary to determine whether a certificate of acceptance should be issued, including,

- (a) and examination of the subdivision and any of the surrounding circumstances; and

- (b) the obtaining of reports from public authorities or others within or outside Ontario. 1971, c. 50, s. 76 (9).

(2) The reasonable and proper costs of such inquiries or reports shall be borne by the person on whose behalf the prospectus was filed. R.S.O. 1970, c. 401, s. 53 (2). Costs

43.—(1) The Registrar shall grant the certificate of acceptance where the requirements of this Act and the regulations have been complied with and he shall not refuse to grant such a certificate without serving a notice of his proposal to refuse on the person on whose behalf the prospectus was filed, and section 9 applies with necessary modifications to the proposal in the same manner as to a proposal to refuse to register an applicant. Powers of Registrar

(2) Where it appears to the Registrar, subsequent to the filing of a prospectus and the granting of a certificate of acceptance therefor, that any of the conditions referred to in section 41 exist, he may revoke the certificate of acceptance and order that all trading in the subdivisions to which the prospectus refers shall cease forthwith. Stop orders

(3) Subject to subsection (4), the Registrar shall not revoke a certificate of acceptance and make an order under subsection (2) without serving notice of his proposal to revoke the certificate and make the order, together with written reasons therefor, on the person on whose behalf the prospectus was filed, and section 9 applies with necessary modifications to the proposal in the same manner as to a proposal by the Registrar to revoke a registration. Notice of revocation of hearing

(4) The Registrar, by notice to the person on whose behalf a prospectus was filed, may provisionally suspend the certificate of acceptance and make a provisional order under subsection (2) where continued trading in the subdivision is, in the Registrar's opinion, an immediate threat to the public interest and the Registrar so states in such notice giving his reasons therefor, and thereafter section 9 applies as if the notice given under this section was a notice of proposal to revoke the certificate and make the order under subsection (3). 1971, c. 50, s. 76 (10), *part*. Provisional order

44.—(1) If a change occurs with regard to any of the matters set out in any prospectus, Change in circumstances

- (a) that would have the effect of rendering a statement in the prospectus false or misleading; or

- (b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time of filing,

the person who filed the prospectus shall, within twenty days of the change occurring, notify the Registrar in writing of the change and shall file an amendment to the prospectus or a new prospectus as the Registrar may direct.

New
prospectus
every
12 months

(2) Where trading in real estate mentioned in section 38 is still in progress twelve months from the date of the filing of the last prospectus, a new prospectus shall be filed with the Registrar within twenty days from the expiration of such twelve-month period.

Application
of ss. 37-43

(3) Sections 37 to 43 apply with necessary modifications where a prospectus is amended or a new prospectus is filed under subsection (1) or (2). R.S.O. 1970, c. 401, s. 56.

Approval of
advertisements

45. No person shall publish or cause to be published any advertisement for the sale of a lot or unit in a subdivision located outside Ontario until the advertisement has been approved by the Registrar. R.S.O. 1970, c. 401, s. 58.

Application
of ss. 37 to 45

46. Sections 37 to 45 do not apply in respect of a sale of a lot or unit in a subdivision in which the vendor has not, within the previous five years, owned directly or indirectly five or more lots or units. R.S.O. 1970, c. 401, s. 59.

GENERAL

False
advertising

47. Where the Registrar believes on reasonable and probable grounds that a broker is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material and section 9 applies with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse a registration and the order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final. 1971, c. 50, s. 76 (11).

Service

48.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently

given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry of Consumer and Commercial Relations. R.S.O. 1970, c. 401, s. 61 (1); 1972, c. 1, s. 53 (3).

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. 1971, c. 50, s. 76 (12). ^{Where service deemed to be made}

(3) Notwithstanding subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before the Tribunal. R.S.O. 1970, c. 401, s. 61 (3). ^{Exception}

49.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. ^{Restraining orders}

(2) An appeal lies to the Divisional Court from an order made under subsection (1). R.S.O. 1970, c. 401, s. 62. ^{Appeal}

50.—(1) Every person who, knowingly,

^{Offences}

- (a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

- Corporations (2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein.
- Consent of Minister (3) No proceedings under this section shall be instituted except with the consent of the Minister.
- Limitation (4) No proceeding under clause (1)(a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.
- Idem (5) No proceeding under clause (1)(b) or (c) shall be commenced more than two years after the time when the subject-matter of the proceeding arose. R.S.O. 1970, c. 401, s. 63.

Certificate
as evidence

51. A statement as to,

- (a) the registration or non-registration of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Director;
or
- (d) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 401, s. 64; 1971, c. 50, s. 76 (13).

Regulations

52. The Lieutenant Governor in Council may make regulations,

- (a) prescribing any class of trades in real estate or of real estate brokers or salesmen that shall be exempt from all or any of the provisions of this Act;
- (b) requiring registrants or any class thereof to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

- (c) requiring and governing the books, accounts and records that shall be kept by registered brokers and providing for the disposition of unclaimed money;
- (d) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;
- (e) prescribing the fees payable upon applications for registration and renewal of registration and any other fees in connection with the administration of this Act and the regulations;
- (f) prescribing the fees payable upon the filing of a prospectus;
- (g) prescribing the practice and procedure upon investigations under sections 11 and 13;
- (h) prescribing forms and providing for their use;
- (i) prescribing the information required to be contained in a prospectus;
- (j) requiring registrants to make returns and furnish information to the Registrar;
- (k) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (l) prescribing the form and contents of the list of persons registered under this Act that is to be prepared by the Registrar and the date of publication thereof and governing its distribution;
- (m) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
- (n) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof. R.S.O. 1970, c. 401, s. 65; 1971, c. 50, s. 76 (14).

53. The Registrar may, from time to time, prepare, publish and distribute a list of all persons registered under this Act. R.S.O. 1970, c. 401, s. 66.

List of
registered
persons to
be published

