

EXPLANATORY NOTE

REAL ESTATE (BROKERS AND AGENTS) BILL

1. The Bill for consideration is the Real Estate (Brokers and Agents) Bill (the Bill).
2. The purpose of the Bill is to provide for the licensing of real estate brokers and real estate agents and to regulate and control the practice of a real estate business.
3. The Bill contains fifty clauses.
4. In the preliminary part of the Bill, clause 1 of the Bill provides for the short title.
5. Clause 2 of the Bill provides for the interpretation, including, the circumstances under which a person is or not deemed to engage in the practice of a real estate business.
6. Part I of the Bill (Real Estate Board) contains clauses 3 to 23 of the Bill. Clauses 3 and 4 of the Bill provide for the establishment and composition of the Real Estate Board (the Board). The grounds on which a person may be disqualified from being a member of the Board are identified in clause 5 of the Bill. Clauses 6 and 7 of the Bill provide for the functions and powers of the Board. Clauses 8 and 9 of the Bill provide for the tenure and resignation of a member of the Board. By virtue of clause 10 of the Bill, the Minister may, by written notice, revoke the appointment of a member of the Board, including, for committing an act of misconduct, or where the member is unable to perform the functions of the office. Vacancy of the office of a member of the Board and remuneration and other expenses of the Board are provided for in clauses 11 and 12 of the Bill. Clauses 13 and 14 of the Bill provide for the appointment of the secretary to the Board and for meetings of the Board. Clauses 15 and 16 of the Bill provide for the declaration of interest and misconduct by a member of the Board. Clauses 17 and 18 of the Bill make provision for the validity of decisions of the Board and for the Board to appoint a committee to carry out its functions or

powers. The seal of the Board, the duty of confidentiality and the oath of secrecy are provided for in clauses 19 and 20 of the Bill. Clause 21 of the Bill provides for the protection from liability of a member of the Board. By virtue of clause 22 of the Bill, fees payable to the Board must be paid into the Consolidated Fund. The power of the Board to regulate its own procedure is provided under clause 23 of the Bill.

7. Part II of the Bill (Licensing of real estate brokers and real estate agents) contains clauses 24 to 44 of the Bill. Clause 24 of the Bill restricts a person from engaging in the practice of a real estate business unless he or she is the holder of a valid licence. However, a real estate broker or a real estate agent is exempted from the requirement to obtain a licence to engage in the practice of a real estate business for a period of two years from the commencement of the Bill if he or she satisfies certain requirements. Clauses 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35 of the Bill provide for the application for a licence; the approval or refusal of an application; the issue of a licence and a provisional licence; the conditions of a licence; the effect of a licence; the duration of a licence; the display of a licence; the admissibility of a licence as evidence; the prohibition on the transfer or assignment of a licence and the renewal of a licence. Under clause 36 of the Bill, the Board is required to publish in the *Gazette* a list of real estate brokers and real estate agents licensed under the Bill. Clauses 37 and 38 of the Bill provide for the suspension and revocation of a licence. The duty of the Board to keep and maintain a register of real estate brokers and real estate agents licensed under the Bill is provided for in clause 39 of the Bill. By virtue of clause 40 of the Bill, a licensee has a duty to inform the Board of a change in his or her name, address or other particulars that appear on the Register. Clause 41 of the Bill provides for the removal of the name and particulars of a real estate broker or real estate agent from the Register. By virtue of clause 42 of the Bill, a licensee is restricted from employing a person to engage in the practice of a real estate business unless he or she is the holder of a licence. Under clause 43 of the Bill, a real estate broker or real estate agent aggrieved by a decision of the Board may appeal the decision to the High Court. Clause 44 of the Bill provides for the suspension of a decision of the Board.

8. Part III of the Bill (Obligations of real estate broker or real estate agent) contains clauses 45, 46 and 47 of the Bill which provide for clients' money to be held on trust, the keeping of clients' accounts and fees or other reward.
9. Part IV of the Bill (Complaints) contains clauses 48 and 49 of the Bill. Clause 50 of the Bill provides for the application of the complaints and disciplinary procedure provisions under the Consumer Protection Act, Cap. 13.24 to the Bill. The categories of misconduct for which a real estate broker or real estate agent may be subjected to disciplinary proceedings are provided for in clause 49 of the Bill.
10. Miscellaneous provisions are provided under Part V of the Bill. Clause 50 of the Bill provides for the service of a notice and clause 51 of the Bill empowers the Minister to make Regulations.

SAINT LUCIA

No. of 2023

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SAINT LUCIA

No. of 2023

AN ACT to provide for the licensing of real estate brokers and real estate agents, to regulate and control the practice of a real estate business and for related matters.

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BE IT ENACTED by the King’s Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

PRELIMINARY**Short title**

1. This Act may be cited as the Real Estate (Brokers and Agents) Act, 2023.

Interpretation

2.—(1) In this Act —

“applicant” means a person who makes an application under section 25(1) for a licence to practice as a real estate broker or real estate agent;

“Association” means the Realtors’ Association (Saint Lucia) Incorporated which is a non-profit company incorporated under the Companies Act, Cap. 13.01;

“Board” means the Real Estate Board established under section 3;

“CARICOM” means the Caribbean Community established under Article 2 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, signed at Nassau, The Bahamas on the 5th day of July, 2001;

“CARICOM Member State” means a member state of CARICOM;

“Chairperson” means the Chairperson of the Board appointed under section 4;

“clients’ money” means money received by a real estate broker or a real estate agent which is paid to him or her, being money paid, in whole or in part, as consideration for the disposition of an interest in land or as money paid by a person as evidence of his or her intention to acquire an interest in land or as consideration for services in respect of the rental of land;

“committee” means a committee of the Board appointed under section 18;

“co-operative apartment building” means a residential structure that is erected, owned or operated jointly by members of a registered housing co-operative society that affords the members the right to occupy and live within assigned apartment units as residents of the apartment unit and as co-owners of the apartment building;

“Court” means the High Court;

“Deputy Chairperson” means the Deputy Chairperson of the Board designated under section 4;

“consideration” means a benefit, right or interest that is given, received or exchanged as part of an agreement or transaction;

“developer” means a person who has subdivided land of which he or she is an owner for the purpose of selling a lot;

“isolated transaction” means a total of no more than two transactions involving the sale, exchange, rent or lease of land during a twelve-month period;

“land” includes —

(a) property registered under the Land Registration Act, Cap. 5.01 or the Condominium Act, Cap. 5.05;

(b) a house, building or part of a house or building;

(c) in relation to a transaction relating to land, goods, chattels or other property;

“licence” means a licence issued under section 28;

“licensed financial institution” has the meaning assigned under the Banking Act, Cap. 12.01;

“licensee” means a real estate broker or real estate agent who holds a licence;

“Minister” means the Minister responsible for commerce;

“Ministry” means the Ministry responsible for commerce;

“national” means an individual who is a citizen or permanent resident of a CARICOM Member State;

“prescribed” means specified under Regulations;

“Register” means the Register of Real Estate Brokers and Real Estate Agents maintained under section 39;

“real estate agent” means an individual who is subject to the direction, control or management, or acts on behalf, of a real estate broker;

“real estate broker” means an individual who engages in the practice of real estate business, in whole or in part;

“Secretary” means the person appointed as Secretary under section 13.

(2) For the purposes of this Act, a person engages in the practice of real estate business if, with the intent to collect or receive consideration, directly or indirectly paid, or expressly or impliedly promised, he or she —

- (a) appraises, auctions, sells, exchanges, purchases, leases, rents or offers, attempts or agrees to appraise, auction or negotiate the sale, exchange, purchase, lease or rental of land or otherwise functions as a real estate broker or real estate agent in relation to land;
- (b) advertises or holds out to the public by an oral or a printed representation that he or she is engaged in the business of appraising, auctioning, selling, exchanging, purchasing, leasing or renting land;
- (c) manages land or engages in other business concerned with the management of land in a consultative capacity or as an agent;
- (d) takes part in the procuring of sellers, purchasers, lessors, lessees, landlords or tenants of land; or
- (e) directs or assists in the procuring of prospects, or the negotiation or closing of a transaction which results in a sale, exchange, lease or rental of land of another or is calculated to have that result.

(3) Subject to subsection (4), a person does not engage in the practice of real estate business by reason of the fact that —

- (a) he or she acts as an attorney-at-law for another under a valid power of attorney for the purposes of negotiating or executing a contract, transfer or conveyance in respect of an interest in real estate;
- (b) being a person practising as an attorney-at-law, he or she furnishes to another person legal advice and services ancillary to his or her practice as an attorney-at-law in connection with real estate business within the scope of his or her profession or a prescribed limit;
- (c) he or she is —
 - (i) an officer of the court acting under the direction of a court of competent jurisdiction,
 - (ii) an administrator, executor, receiver or trustee acting under or by virtue of an appointment by will or legal document or by order of a court of competent jurisdiction, or
 - (iii) an assignee, custodian, liquidator, receiver, trustee or other person acting under the Companies Act, Cap. 13.01;
- (d) he or she deals with land of which he or she is an owner or a part owner, except that a developer who personally sells subdivided lots is deemed to be engaging in the practice of real estate business;
- (e) he or she is a public officer acting in the course of his or her official duties;
- (f) being a person employed as, or acting in the capacity of, a manager of a condominium, co-operative apartment building or complex, he or she carries out duties in relation to the renting of separate units within that condominium, co-operative apartment building or complex;
- (g) he or she is employed as or acting as a full-time salaried employee of a bank, trust or insurance company trading in real estate, owned or administered by the company.

(4) An individual is regarded as engaging in the practice of real estate business if he or she accepts or receives consideration for the services under subsection (3) in addition to payment received in the ordinary course of his or her employment or profession.

PART I REAL ESTATE BOARD

Establishment of Real Estate Board

3. There is established a body to be known as the Real Estate Board.

Composition

4.—(1) The Board comprises five persons appointed by the Minister as follows —

- (a) an attorney-at-law of not less than five years standing nominated by the Saint Lucia Bar Association;
- (b) a senior officer in the Ministry nominated by the Permanent Secretary in the Ministry;
- (c) a person nominated by the Saint Lucia Coalition of Service Industries;
- (d) two persons nominated by the Association.

(2) A person nominated by the Association under subsection (1) (d) must be a real estate agent or real estate broker licensed under this Act.

(3) The Minister shall appoint one of the members under subsection (1) as Chairperson of the Board.

(4) The members of the Board shall designate a member of the Board as the Deputy Chairperson.

(5) The Minister shall, by Notice published in the *Gazette*, publish the names of the members of the Board as first appointed and every change in membership of the Board.

Disqualification

5. A person is disqualified from being a member of the Board, is not eligible to be a member of the Board, or is not eligible to continue as a member of the Board if that person —

- (a) has filed for bankruptcy in a court or is an undischarged bankrupt;
- (b) is declared by a Court to be mentally incapacitated by reason of unsoundness of mind;
- (c) has been convicted of a criminal offence, except —
 - (i) a minor traffic offence, or
 - (ii) an offence that is spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13;
- (d) has committed an act of misconduct under section 16; or
- (e) is a member of Parliament.

Functions of the Board

6. The functions of the Board are —

- (a) to consider and determine an application for a licence to practice real estate business;
- (b) to issue a licence, with or without conditions, for the practice of real estate business;
- (c) to keep and maintain a register of all real estate brokers and real estate agents licensed under this Act;
- (d) to make internal rules governing its procedures subject to the approval of the Minister;
- (e) to co-operate with a Government ministry, department of statutory body responsible for the enforcement of the laws of Saint Lucia relating to the practice of real estate business;
- (f) to perform other functions specified under this Act.

Powers of the Board

7. The powers of the Board are —

- (a) to make an enquiry and a request for further information as the Board considers necessary;
- (b) to appoint a committee under section 18;
- (c) to suspend a licence under section 37;
- (d) to revoke a licence under section 38;
- (e) to give directions.

Tenure

8. A member of the Board holds office for a period of two years and is eligible for re-appointment.

Resignation

9.—(1) A member of the Board, other than the Chairperson, may resign his or her office by submitting, through the Chairperson, a written notice to the Minister.

(2) The Chairperson may resign his or her office by written notice to the Minister.

(3) A resignation takes effect on the date of receipt of the written notice.

Revocation

10.—(1) The Minister may, by written notice, revoke the appointment of a member of the Board if the Minister is satisfied that the member —

- (a) is disqualified from being a member under section 5;
- (b) is unable to perform the functions of his or her office;
- (c) commits an act of misconduct under section 16;

- (d) fails to attend three consecutive meetings of the Board without presenting a medical certificate or a written excuse —
 - (i) in the case of the Chairperson, to the Minister,
 - (ii) in the case of any other member, to the Chairperson;
- (e) fails to act in the best interest of the Board.

(2) The Minister shall state the reasons for the revocation of the appointment of a member of the Board in a written notice under subsection (1).

Vacancy

11.—(1) The office of a member of the Board is vacated —

- (a) on the death of the member;
- (b) if the member becomes disqualified under section 5;
- (c) if the member resigns under section 9;
- (d) if the Minister revokes the appointment of the member under section 10;
- (e) on the expiry of the member's term of appointment.

(2) Where a vacancy occurs in the membership of the Board, the Minister may, in accordance with section 4, appoint a person to act for the remaining period of the tenure of the previous member.

Remuneration and other expenses

12.—(1) A member of the Board must be paid remuneration for his or her services as determined by Cabinet.

(2) The expenses of the Board are to be paid out of the Consolidated Fund.

Secretary

13.—(1) The Board shall appoint a person on terms and conditions that the Board determines to perform the functions of Secretary to the Board.

(2) The Secretary shall take minutes of the meetings of the Board and perform such other tasks assigned to him or her by the Board.

Meetings

14.—(1) The Board shall meet at least four times each year or at such times as may be necessary or expedient for the conduct of its business.

(2) The meetings of the Board must be held at a place and time and on the day the Chairperson determines.

(3) The Chairperson may call a special meeting of the Board.

(4) Notwithstanding subsection (3), the Chairperson shall call a special meeting of the Board within seven days of receipt of a written request for that purpose to the Chairperson by two members of the Board.

(5) The Chairperson and any other member is deemed to be present at a meeting of the Board if the Chairperson or the other member participates by telephone, video link or satellite, and all members participating in the meeting are able to hear and speak to each other.

(6) At a meeting of the Board —

(a) the Chairperson presides;

(b) if the Chairperson is not present, the Deputy Chairperson presides; or

(c) if the Chairperson or the Deputy Chairperson is not present, the members present shall designate a member of the Board to preside.

(7) The quorum at a meeting of the Board is three members of the Board, including the member presiding at the meeting.

(8) Decisions of the Board must be taken by a simple majority of votes of members present and voting at the meeting.

(9) The Chairperson or Deputy Chairperson has an original vote and in cases of equal division the Chairperson or Deputy Chairperson has the casting vote.

(10) The Board may co-opt a person to attend a meeting of the Board at which it is proposed to deal with a particular matter, for the purpose of assisting or advising the Board, and a co-opted person does not have the right to vote.

Declaration of interest

15.—(1) A member of the Board who has a pecuniary or other interest in a matter before the Board shall —

- (a) declare the nature of his or her interest at the first meeting of the Board at which it is practicable to do so; and
- (b) not vote in respect of that matter.

(2) If a member of the Board declares an interest under subsection (1), the member of the Board must leave the meeting on discussion of the matter and must not receive other communication on the matter.

(3) A declaration under subsection (1) and the departure of a member of the Board from the meeting under subsection (2) must be noted in the minutes of the meeting.

Misconduct

16. A member of the Board commits misconduct if he or she —

- (a) seeks to influence the vote of another member of the Board in relation to a matter before the Board;
- (b) contravenes any other provision of this Act.

Validity of decisions of the Board

17. A decision or act of the Board or act done under the authority of the Board, if the decision was taken or the act was done or authorized by a majority vote of members, is not invalid by reason that there was —

- (a) a defect in the appointment of a member;
- (b) a vacancy in the Board.

Committees

18.—(1) The Board may appoint a committee as it considers fit to assist in the performance of its functions or powers.

(2) The Board may delegate, in writing, to a committee appointed under subsection (1) its functions or powers.

(3) Subject to subsection (4), the Board shall determine the constitution, terms and conditions of a committee appointed under subsection (1).

(4) The Board may appoint persons who are not members of the Board to a committee appointed under subsection (1), and such persons shall not comprise more than one-half of the membership of the committee.

(5) The Chairperson of a committee appointed under subsection (1) shall be a member of the Board other than the Chairperson of the Board.

(6) A committee appointed under subsection (1) shall —

- (a) advise and make recommendations to the Board with respect to matters within the functions of the Board;
- (b) keep a record of a decision it makes when exercising a power delegated to it by the Board.

(7) The recommendations made by a committee appointed under subsection (1) are not binding on the Board and may be considered by the Board in making decisions.

(8) A member of a committee appointed under subsection (1), other than a member of the Board, may be paid such remuneration and allowances as determined by Cabinet.

Seal

19.—(1) The Board must have an official seal.

(2) The official seal of the Board must be kept in the custody of the Chairperson or the Secretary.

(3) The affixing of the official seal must be witnessed and authenticated by the signature of the Chairperson or the Deputy Chairperson.

(4) A document or a decision of the Board, except a document or decision required by law to be under seal, must be signed by —

- (a) the Chairperson or a member authorized in writing by the Chairperson to act on his or her behalf; and
- (b) the Secretary.

Confidentiality and oath of secrecy

20.—(1) A member of the Board and the Secretary shall at all times preserve and aid in preserving confidentiality with regard to all matters coming to his or her knowledge in the performance of his or her functions under this Act.

(2) Subject to subsection (3), a member of the Board or the Secretary shall not disclose confidential matters to a person or permit a person to have access to records in the possession, custody or control of the Board.

(3) Subsection (2) does not apply to a disclosure —

- (a) in respect of which the written consent of a licensee or the Board was given voluntarily;
- (b) for the purpose of enabling or assisting the Board in exercising a function conferred on it under this Act or any other law;
- (c) if the information disclosed is or has been available to the public from another source;
- (d) if the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a licensee or member of the Board to which the information relates, to be ascertained;
- (e) lawfully made to a person with a view to the institution of, or for the purpose of —
 - (i) criminal proceedings, or
 - (ii) disciplinary proceedings relating to the discharge of duties by a member of the Board or the Secretary; or
- (f) for the purposes of legal proceedings pursuant to a court order.

(4) A member of the Board and the Secretary shall take the prescribed oath of secrecy.

Protection from liability

21. A member of the Board, a member of a committee appointed by the Board or the Secretary is not personally liable for any act or default of the Board or a committee, done or omitted to be done in good faith in the course of the operations of the Board or the committee.

(2) Where a member of the Board is exempted from liability by reason of subsection (1), the Board is liable to the extent that it would be if the member was an agent of the Board.

Fees to be paid into the Consolidated Fund

22. Licensing fees and other sums that become payable to the Board under this Act must be paid into the Consolidated Fund.

Board to regulate its own procedures

23. Subject to this Act, the Board shall regulate its own procedures.

PART II
LICENSING OF REAL ESTATE BROKERS AND REAL ESTATE AGENTS

Restriction on engaging in the practice of real estate business

24.—(1) Subject to subsection (3), a real estate broker or real estate agent shall not engage in the practice of real estate business unless he or she is the holder of a valid licence.

(2) A person who contravenes subsection (1) commits an offence and —

- (a) in the case of a person who derives a monetary or material benefit from a transaction while engaging in the practice of real estate business, is liable on summary conviction to payment of seven per cent of the value of the transaction or the selling price of the property;
- (b) in the case of a person who does not derive a monetary or material benefit from a transaction while engaging in the practice of real estate business, is liable on summary conviction —
 - (i) to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both, and

(ii) in the case of a continuing offence, to a further fine of one thousand dollars for each day during which the offence continues.

(3) It is a defence for a person charged under subsection (2) that —

(a) a transaction involving the sale or exchange of land is an isolated transaction not undertaken in the course of, or in the furtherance of, or with intent to carry on the practice of real estate business;

(b) a transaction involving the lease or rent of land is an isolated transaction not undertaken in the course of, or in furtherance of, or with intent to carry on the practice of real estate business.

(4) Notwithstanding this section, for a period of six months from the commencement of this Act, a real estate broker or real estate agent may engage in the practice of real estate business without completing the prescribed real estate course if or he she is issued with a provisional licence under section 27.

(5) Subsection (4) does not apply to a real estate broker or real estate agent who —

(a) has had an order in bankruptcy made against him or her which remains undischarged;

(b) has been convicted of a criminal offence under this Act or any other enactment of an offence involving fraud, dishonesty, money laundering, terrorist financing or proliferation financing.

Application for licence

25.—(1) Subject to subsection (3), a real estate broker or real estate agent may make an application to the Board for a licence to engage in the practice of real estate business.

(2) An application under subsection (1) must —

(a) be in the prescribed form;

- (b) be accompanied by —
- (i) evidence of the applicant's nationality,
 - (ii) evidence that the applicant is eighteen years of age,
 - (iii) a certified copy of the national identification card, drivers' licence or passport of the applicant,
 - (iv) a certified copy of the examination results of the prescribed real estate course,
 - (v) a certificate of good character issued by the Royal Saint Lucia Police Force within three months of the application,
 - (vi) in the case of a real estate agent, evidence that the applicant has at least two years employment experience in an administrative or technical capacity in a prescribed field,
 - (vii) in the case of a real estate broker, evidence that the applicant has at least three years employment experience as a real estate agent or is licensed to practice as a real estate broker in another country,
 - (viii) the prescribed fee,
 - (ix) any other document or information the Board reasonably requires in support of the application.

(3) A real estate broker or real estate agent may make an application under this section if he or she —

- (a) is a national;
- (b) has successfully completed the prescribed real estate course;
- (c) in the case of a real estate broker, has at least three years experience as a real estate agent or, at the time of the application, is licensed as a real estate agent in another country by a licensing body authorized to licence real estate brokers;
- (d) in the case of a real estate agent, has at least two years employment experience in an administrative or technical capacity in a prescribed field.

Approval or refusal of application

26.—(1) The Board shall consider an application for a licence received under section 25.

(2) The Board may approve an application for a licence if the Board is satisfied that the applicant —

- (a) complies with section 25(2);
- (b) meets the requirements under section 25(3).

(3) The Board may refuse an application for a licence if —

- (a) the Board is not satisfied as to any of the matters specified under subsection (2);
- (b) the applicant has been declared a bankrupt by an order of the court which remains undischarged;
- (c) the applicant has been convicted of a criminal offence under this Act or under any other enactment of an offence involving fraud, dishonesty, money laundering, terrorist financing or proliferation financing, except —
 - (i) a minor traffic offence, or
 - (ii) an offence that is spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act, Cap. 3.13.

(4) Where an application is refused under subsection (3), the Board shall give the applicant written reasons for refusing the application and inform him or her of the right of appeal under section 43.

(5) Notwithstanding subsection (4), the Board shall, prior to refusing an application, give the applicant a reasonable opportunity to make a representation to the Board in support of the application, whether orally or in writing.

(6) An applicant may be represented before the Board by an attorney-at-law or another representative of his or her choice.

(7) The Board shall, within forty-five days after receipt of the application for a licence, inform the applicant of its decision in writing.

Provisional licence

27.—(1) Notwithstanding section 26, where an applicant has not completed the prescribed real estate course, the Board may, on payment of the prescribed fee, issue a provisional licence to the applicant in the prescribed form if he or she satisfies the requirements under section 25, except section 25(2)(b)(iv) and (3)(b).

(2) A provisional licence entitles a real estate broker or real estate agent to engage in the practice of real estate business for six months from the commencement of this Act.

Issue of licence

28. Where the Board approves an application for a licence under section 26(2), the Board shall, on payment of the prescribed licence fee, issue a licence to the applicant in the prescribed form.

Conditions of licence

29.—(1) A licence is subject to the conditions that the Board determines and that may be attached to the licence.

(2) A licensee shall comply with the conditions of the licence.

(3) The Board may give a direction requiring the licensee to comply with a condition of a licence by a specified date.

(4) Where a license is issued to a real estate broker or real estate agent pursuant to section 26(4), the licence is subject to the condition that the real estate broker or real estate agent completes the prescribed real estate course within six months of the commencement of the Act.

Effect of licence

30. A licence entitles the licensee to engage in the practice of real estate business subject to any conditions imposed by the Board under section 29.

Duration of licence

31. Subject to this Act, a licence remains in force for one year from the date of issuance.

Display of licence

32. A licensee shall display his or her licence in a conspicuous place on his or her premises or place of business.

Admissibility of licence as evidence

33. In proceedings for an offence under this Act, a document purporting to be a copy of a licence and bearing the Board's seal is *prima facie* evidence of the issue and contents of the licence.

Licence not transferable or assignable

34.—(1) A licensee shall not transfer or assign a licence issued to him or her to another person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

Renewal of licence

35.—(1) A licensee may make an application to the Board to renew his or her licence no later than thirty days prior to the expiration date of his or her licence.

(2) An application for renewal under subsection (1) must be in the prescribed form and accompanied by the prescribed renewal fee.

(3) The Board shall, within twenty-one days of the receipt of an application for renewal under subsection (1), make a determination on the application and inform the applicant of the decision in writing.

(4) The Board shall not grant an application for renewal under subsection (1) if —

(a) the applicant has had an order in bankruptcy made against him or her which remains undischarged;

(b) the applicant has been convicted of a criminal offence under this Act or under any other enactment of an offence involving fraud, dishonesty or money laundering.

(5) Notwithstanding subsection (3), the Board shall, prior to refusing an application for renewal, give the applicant a reasonable opportunity to make a representation to the Board in support of the application, whether orally or in writing.

(6) An applicant may be represented before the Board by an attorney-at-law or another representative of his or her choice.

(7) The Board shall, within forty-five days after receipt of the application for renewal, inform the applicant of its decision in writing.

Publication of list of real estate brokers and real estate agents

36. The Board shall cause to be published in the *Gazette* —

- (a) no later than ninety days after the commencement of this Act, a list containing the name and address of real estate brokers and real estate agents licensed under this Act;
- (b) no later than sixty days after a real estate broker or real estate agent is issued with a licence under this Act, the name and address of the real estate broker or real estate agent; and
- (c) no later than the 31st day of January of each year, a list containing the name and address of real estate brokers and real estate agents licensed under this Act.

Suspension of a licence

37.—(1) Subject to subsections (2) and (3), the Board may suspend a licence if a licensee fails to comply with a condition subject to which his or her licence was approved under section 29.

(2) The Board may suspend a licence for a period the Board thinks fit not exceeding six months.

(3) The Board shall, before suspending a licence under subsection (1) —

- (a) cause a notice to be served on the licensee requiring the licensee to take action within a period specified in the notice;

- (b) give the licensee an opportunity to make representations in writing to the Board, including the reasons that the Board must not suspend the licence.

(4) Where the Board suspends a licence under subsection (1), the Board shall —

- (a) give the licensee notice in writing of the suspension;
- (b) provide the reasons for the suspension; and
- (c) inform the licensee of the right of appeal under section 43.

(5) Where the Board suspends a licence under subsection (1), the licence ceases to have effect for the period of the suspension.

(6) The Board shall publish a notice of the suspension of a licence in the *Gazette* not later than the second issue after a decision to suspend the licence is made.

(7) On suspension of a licence under subsection (1), the Board may require a licensee to surrender his or her licence to the Board for the period of the suspension.

(8) A person who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Revocation of a licence

38.—(1) Subject to subsections (2) and (3), the Board may revoke a licence if a licensee —

- (a) has an order in bankruptcy made against him or her which remains undischarged;
- (b) has been convicted of a criminal offence under this Act or any other enactment of an offence involving fraud, dishonesty or money laundering;
- (c) has committed misconduct under section 49 following disciplinary proceedings under Part IV;
- (d) has procured his or her licence under this Act as a result of a misleading, false or fraudulent representation;

(e) fails to comply with —

(i) a binding written agreement under section 44(1) of the Consumer Protection Act, Cap. 13.24,

(ii) an order of the Tribunal under section 59 of the Consumer Protection Act, Cap. 13.24;

(f) is deceased.

(2) The Board shall, before revoking a licence under subsection (1)(c), give the licensee an opportunity to make representations in writing to the Board.

(3) Where the Board revokes a licence under subsection (1), the Board shall —

(a) give the licensee notice in writing of the revocation;

(b) provide the reasons for the revocation; and

(c) inform the licensee of the right of appeal under section 43.

(4) A real estate broker or real estate agent whose licence is revoked under subsection (1) shall make a new application for a licence to engage in the practice of a real estate business.

(5) Notwithstanding subsection (4), where the Board revokes a licence under subsection (1), the Board may fix a time before which a real estate broker or real estate agent is not eligible to make a new application for a licence.

(6) The Board shall publish a notice of the revocation of a licence in the *Gazette* not later than the second issue after a decision to revoke the licence is made.

(7) Where a licence is revoked under subsection (1), the Board may, in writing, require the real estate broker or real estate agent to immediately return his or her licence to the Board.

(8) A person who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Register

39.—(1) The Board shall maintain a register to be known as the Register of Real Estate Brokers and Real Estate Agents which contains —

- (a) the name and address of the licensee;
- (b) the date of issue of the licence;
- (c) a description of the qualifications of the licensee under section 25(2).

(2) The Register shall be kept at the Ministry and may be opened for inspection by the public each business day during the opening hours of the Ministry.

Change in particulars

40.—(1) A licensee shall inform the Board of a change in his or her name or address or other particulars relating to him or her that appear on the Register.

(2) Where a licensee informs the Board of a change in his or her name, address or other particulars relating to him or her, the Board shall make the necessary alterations in the Register to reflect the change.

Removal of name from Register on revocation of licence

41. The Board shall remove the name and particulars of a licensee from the Register where his or her licence is revoked under section 38.

Restriction on employment of unlicensed persons

42.—(1) A licensee shall not employ another person to engage in the practice of a real estate business unless the person employed is the holder of a licence issued under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction —

- (a) to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both; and

- (b) in the case of a continuing offence, to a further fine of one thousand dollars for each day during which the offence continues.

Appeal

43.—(1) A real estate broker or real estate agent who is aggrieved by a decision of the Board under this Act may, within twenty-eight days after the date on which he or she is informed of the decision of the Board, appeal against the decision to the Court.

(2) The Court may, after considering the appeal, make an order in the matter it considers appropriate and the Board, or the appellant, as the case may be, shall comply with the order.

Suspension of a decision of the Board

44. On application to the Board made in the prescribed manner and within the prescribed period, the Board may direct that a decision of the Board made under this Act be suspended until the expiration of the period within which a real estate broker or real estate agent may lodge an appeal under section 43 or, if an appeal has been lodged within that period, until the appeal has been heard and no further appeal has been lodged within the time limit for a further appeal.

PART III OBLIGATIONS OF REAL ESTATE BROKER OR REAL ESTATE AGENT

Clients' money to be held on trust

45.—(1) A real estate broker or real estate agent who receives clients' money holds it in trust for the beneficiary.

(2) A real estate broker or real estate agent shall not make clients' money available for the payment of a debt or liability to any person other than the person for whom he or she holds the clients' money in trust.

Keeping clients' accounts

46.—(1) A real estate broker who receives clients' money, whether paid to himself or herself or to another real estate broker or real estate agent employed by him or her shall, without delay, pay such clients' money into an account maintained by him or her with a licensed financial institution.

(2) A real estate agent who is employed by a real estate broker and receives client's money shall immediately pay it to his or her employer for the purpose of being paid into the clients' account.

(3) An account under subsection (1) must contain in the title of the account the word "client".

(4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both.

Fees or other reward

47.—(1) A real estate broker or real estate agent who engages in the practice of a real estate business without a licence or in contravention of a condition of a licence shall not —

- (a) bring a suit or action for the recovery of a fee or reward for, or in respect of, anything done by him or her on behalf of another person in the course of engaging in the practice of a real estate business;
- (b) be entitled to a lien on money or other property of another person for the purpose of recovering a fee or reward.

(2) Nothing under subsection (1) prevents a real estate broker or real estate agent from taking any step or bringing an action for the recovery of a fee or reward for, or in respect of, anything lawfully done by him or her while he or she is a licensee if he or she subsequently ceases to be a licensee.

**PART IV
COMPLAINTS**

Application of the Consumer Protection Act, Cap. 13.24

48.—(1) Section 2, Part I, Part II and Part III of the Consumer Protection Act, Cap. 13.24 apply to this Act in relation to making a complaint against a real estate broker or real estate agent where the person making the complaint has reasonable grounds to believe that the real estate broker or real estate agent has engaged in misconduct or contravenes this Act.

(2) Without prejudice to section 2 of the Consumer Protection Act, Cap. 13.24 —

- (a) a real estate broker or real estate agent is a supplier for the purposes of section 2 of the Consumer Protection Act, Cap. 13.24;
- (b) a person who under an agreement or a transaction hires or avails the service of a real estate broker or real estate agent in relation to the practice of a real estate business is a consumer for the purposes of section 2 of the Consumer Protection Act, Cap. 13.24.

Misconduct

49. For the purposes of section 48(1), a real estate broker or real estate agent commits an act of misconduct if he or she —

- (a) is dishonest in the performance of his or her professional duties;
- (b) commits impropriety, gross negligence or incompetence in the performance of his or her duties, or of any act, default or conduct which violates the prescribed Code of Ethics and Standards of Practice;
- (c) in the case of a real estate agent, fails to account to the real estate broker, or being a real estate broker, fails to account to a client, to whom he or she is employed for any money, funds, deposit, cheque, draft, title, mortgage, conveyance, lease or other document or thing of value or for any profit, which has come into his or her possession in the course of engaging in the practice of a real estate business;

- (d) in the case of a real estate broker, carries on business or any part of that business under more than one name or description with intent to deceive;
- (e) knowingly makes a false or misleading statement or a material omission in or from an answer to a question put to him or her by the Board at any proceeding of the Board under this Act;
- (f) advertises for sale any land and fails to disclose his or her name and the fact that he or she is a real estate broker or real estate agent in a manner calculated to represent to the public that he or she is the owner of the land and is selling his or her own property;
- (g) advertises land without the consent of the owners;
- (h) acts as a real estate broker or real estate agent and who owns or acquires an interest in land or whose immediate family or partners in the practice of a real estate business owns or acquires an interest in land and fails to notify the owner of such interest;
- (i) acts as a real estate broker or real estate agent and accepts commission, rebate or profit on expenditures made whilst acting as an agent in the management of land without the owner's consent;
- (j) misrepresents his or her ability and makes an appraisal that is outside his or her field of experience, unless he or she fully discloses his or her inexperience to the client and obtains the assistance of an appraiser with the necessary expertise and fully identifies to the client the assisting appraiser and the nature of the appraiser's contribution;
- (k) as a real estate broker, fails to notify the owner of the existence of all written offers made in respect of a parcel of land.

PART V
MISCELLANEOUS

Service of notice

50.—(1) Except as may otherwise be provided in this Act, a notice required to be given by the Board to a person under this Act shall, unless the contrary is proved, be deemed to be served if served on the individual personally or sent by registered post to the address shown in the register in which his or her name is entered.

(2) A copy of a notice served on a real estate agent shall be sent concurrently with the notice, by registered post, to the real estate broker by whom he or she is employed.

Regulations

51.—(1) The Minister may, on the recommendation of the Board, make Regulations to give effect to this Act.

(2) Without limiting the generality of subsection (1), the Minister may make Regulations to prescribe —

- (a) the code of ethics and standards of practice that governs the conduct of real estate brokers and real estate agents;
- (b) the form and manner in which an application under this Act is made and the particulars to be given in an application;
- (c) the fees to be paid under this Act;
- (d) the form of the licence to be issued under this Act;
- (e) the manner in which and the time at which the Board shall hear a person whose licence it proposes to suspend or revoke;

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(f) any additional qualifications to be satisfied by applicants for licensing as real estate brokers and real estate agents under this Act;

(g) a matter or thing required to be prescribed.

Passed in the House of Assembly this day of , 2023.

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Speaker of the House of Assembly.

Passed in the Senate this day of , 2023.

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President of the Senate