

LAND AGENTS ACT, 1925-1936.

BEING

LAND AGENTS ACT, 1925, No. 1723 OF 1925 [ASSENTED TO
6TH JANUARY, 1926.]

AS AMENDED BY

LAND AGENTS ACT, 1927, No. 1807 OF 1927 [ASSENTED TO
30TH NOVEMBER, 1927.]

LAND AGENTS ACT AMENDMENT ACT, 1933, No. 2115 OF 1933
[ASSENTED TO 28TH SEPTEMBER, 1933.]

STATUTE LAW REVISION ACT, 1934, No. 2168 OF 1934
[ASSENTED TO 15TH NOVEMBER, 1934.]

AND

STATUTE LAW REVISION ACT, 1936, No. 2293 OF 1936
[ASSENTED TO 8TH OCTOBER, 1936.]

**An Act to make provision with respect to the licensing
of land agents, and for other purposes.**

BE IT ENACTED by the Governor of the State of South
Australia, with the advice and consent of the Parliament
thereof, as follows:

1. (1) This Act may be cited as the "Land Agents Act, 1925-1936," and shall, except section 35 hereof, come into force on a day to be fixed by proclamation. Short title and commencement.

(2) The said section 35 shall come into force on the date of the passing of this Act.

2. (1) For the purposes of this Act every person shall be deemed to be a land agent whose business is to act as agent in respect of the sale or other disposal or letting of land or of interests in land, or the purchase or other acquisition or taking on lease of land or of interests in land. "Land agent" defined.
Amended by 1807, 1927, s. 3, and 2115, 1933, s. 3 (1).

Administration: The administration of this Act was by proclamation committed to the Attorney-General: *Gazette* 28th January, 1926, p. 152.

s. 1. This Act, except section 35, was proclaimed to commence on 7th January, 1926: *Gazette* 7th January, 1926, p. 1.

s. 2. In *re* a Fidelity Bond under the LAND AGENTS ACTS, 1925 AND 1937. *Ex parte* JAMES (1931) S.A.S.R. 73. The ordinary meaning of "land agent" does not include a person whose only business in connection with land is to collect rents. *Semble*, that section 2 as then enacted furnished an exhaustive definition of "land agent" for the purposes of this Act. Since this decision the law has been altered by

The term land agent also includes any person whose business is the selling, whether as owner or otherwise, of land in allotments.

In this section and wherever elsewhere used in this Act the terms "lease" and "letting" include any demise, letting, or agreement for the demise or letting of any land.

(2) A person who carries on any such business as afore-said shall be deemed to be a land agent within the meaning of this Act, notwithstanding that he may carry on any other business either in conjunction with such first-mentioned business or separately therefrom:

Provided that a solicitor shall not be deemed to be a land agent for the purposes of this Act by reason merely of the fact that he may, in connection with his business as a solicitor, act as agent in respect of the sale or purchase or other disposal or letting or acquisition or taking on lease of land or of interests in land.

(3) Where two or more persons carry on business jointly as land agents each of those persons shall be deemed to be a land agent.

(4) Notwithstanding the foregoing provisions of this section, a person who sells or offers to sell any land or interest in land by auction shall not, by reason of that fact, be deemed to be a land agent within the meaning of this Act.

Exemption of
sales of land
by public
auction.

Inserted by
1807, 1927,
s. 4.

2a. The provisions of this Act shall not apply to any land or interest in land sold at public auction, nor to any contract for the sale of any land or interest in land sold as afore-said, and no person shall be deemed to be a land agent by reason only of the fact that he acts as agent in respect of the sale or other disposal at public auction of any land or interest in land.

Land agents
to be licensed.

3. (1) After the expiration of three months after the commencement of this Act, no person shall carry on business as a land agent unless he is the holder of a licence under this Act.

s. 2. section 3 of the Land Agents Act Amendment Act, 1933, so as to include the
(*contd.*) persons mentioned within the term "land agent."

In *re* a Fidelity Bond given by the COLONIAL MUTUAL FIRE INSURANCE COMPANY LIMITED (1931) S.A.S.R. 173. Held that a person who acts as agent for either a mortgagor or mortgagee in respect of the giving or obtaining a mortgage over land is doing work which is part of the business of a land agent as defined in section 2. Where moneys representing interest were paid by a mortgagor to a land agent to be paid by the agent to the mortgagee, held that this transaction was no part of the business of a land agent.

(2) Where two or more persons carry on business in partnership as land agents, it shall be sufficient compliance with this section if one of those persons is the holder of a licence under this Act.

(3) Where a company carries on business as a land agent it shall be sufficient compliance with this section if some person appointed in writing by the general manager or pursuant to a resolution of the directors is the holder of a licence under this Act.

3a. (1) In any case where the Minister is satisfied—

Power to
exempt letting
agents.

- (a) that any person is required by this Act to obtain a licence under this Act by reason only of the fact that he carries on business as an agent in respect of the letting of land or of interests of land; and
- (b) that the said person does not carry on any other business of a land agent as defined by this Act; and
- (c) that the main means of livelihood of such person is other than the said business of an agent in respect of the letting of land or interests in land,

Inserted by
2115, 1933,
S. 4.

the Minister may by notice in writing declare that such person be exempt from compliance with section 3.

(2) Any such notice may be given subject to any condition thought fit by the Minister and may be revoked at any time.

(3) During such time as any such notice is in force, the person to whom it applies shall be exempt from compliance with section 3.

4. Every licence shall, unless sooner terminated in accordance with this Act, continue in force until the thirty-first day of March then next following, and may from time to time be renewed for the period ending on the thirty-first day of March next after the commencement of an order for renewal.

Duration of
licences.

5. (1) Every person who desires to obtain a licence under this Act shall make application for such licence in the form prescribed by regulations.

Application
for licence.

(2) An application under this section shall be filed in the local court of full jurisdiction nearest by the most convenient route to the place named in the application as the place of business or principal place of business of the applicant.

(3) Every such application shall state the place or places of business of the applicant. Where the applicant has or proposes to have two or more places of business he shall specify in his application which of those places of business is his principal place of business. The application shall also contain such other particulars as may be prescribed.

Provisions as to bonds.

Subsec. (1) substituted by 1807, 1927, s. 5 (1), and amended by S.L.R. Act, 1936.

6. (1) With every application for the grant of a licence made after the first day of January, nineteen hundred and twenty-eight, there shall be filed in the local court a fidelity bond to His Majesty given by an insurance company in the sum of five hundred pounds. In this Act "insurance company" means any company within the meaning of that term as defined in the Insurance Companies (Deposits) Act, 1924, which has deposited a sum of money with the Treasurer in accordance with the requirements of that Act and means any person who is complying with the provisions of the Insurance Act 1932 of the Commonwealth, with respect to deposits.

Subsec. (2) substituted by 1807, 1927, s. 5 (1).

(2) Every such bond shall be in such one of the forms contained in the schedule to this Act as is applicable or in a form to the like effect.

(3) The sum of five hundred pounds named in a fidelity bond under this section shall not be deemed to be a penalty, but shall be liquidated damages, and shall accordingly be recoverable in full, as a debt due by the surety or sureties to His Majesty unless the surety or sureties prove performance of every condition upon which the bond is defeasible.

(4) Every sum so recovered shall be paid into the general revenue, and the residue, after the deduction of costs and other expenses, may, with the approval of the Governor, and without further appropriation than this Act, be applied—

Para. (a) substituted by 1807, 1927, s. 5 (2).

(a) in compensating any person for any loss sustained by reason of any breach of any condition of the bond; and

(b) in refunding to the surety or sureties any balance left after payment of such compensation.

Inserted by 1807, 1927, s. 5 (3).

(5) If at any time during the currency of the licence of a land agent the bond filed by him under this Act ceases to be of full force and effect, such land agent shall, until a

bond of full force and effect is filed by him, be deemed to be unlicensed.

7. (1) A fidelity bond given under this Act may, if so provided therein, enure not only during the term of the licence in respect of which it is originally given, but during the term of any licence to the same person issued in renewal of a licence under this Act.

Fidelity bond may enure so as to apply to renewals of licence.

(2) If a fidelity bond is so given as to enure in respect of the renewal or further renewal of a licence, it shall be lawful for the surety or sureties, by notice in writing addressed to the clerk of the local court, at any time before the issue of a licence in renewal, to determine his or their liability under the bond in respect of any act or default that may be done or made after the thirty-first day of March next following the date of such notice, and in any such case the court shall not issue a licence in renewal until another approved bond has been lodged by the applicant.

7a. (1) Any person who is required by this Act or any regulation made hereunder to file a fidelity bond in a local court may in lieu of filing such a bond deposit with the Treasurer securities issued by the State or Commonwealth the face value of which is six hundred pounds. Upon receipt of any such securities the Treasurer shall issue to the person depositing them a certificate certifying the fact of deposit, and such certificate shall be filed in the local court in lieu of the fidelity bond.

Deposit of Government securities in lieu of fidelity bond.

Inserted by 2115, 1933, s. 5.

(2) All such securities shall be transferred to the Treasurer and held by him as security for the performance of the same conditions as would have been required to be included in the fidelity bond in lieu of which such securities are deposited, and upon the breach of any such condition the Treasurer shall sell such securities and apply the proceeds thereof in the following order of priority:—

- (a) in payment of the costs of selling the securities;
- (b) in compensating any person up to but not exceeding the sum of five hundred pounds for any loss sustained by reason of any breach of any such condition; and
- (c) in refunding to the person depositing such securities or his successor in title or nominee any balance left after payment of such costs and compensation.

(3) While the securities are held by the Treasurer the person depositing them shall be entitled to the interest accruing thereon.

(4) The Treasurer shall on application duly made re-transfer the securities deposited under this section to the person who deposited them, or his successor in title or nominee, if he is satisfied that that person or the firm or company on whose behalf that person holds a licence—

(a) has ceased to carry on business as a land agent or land salesman, as the case may be, for at least six months and has not committed any breach of any condition rendering such securities liable to be sold; or

(b) has deposited a fidelity bond in substitution for such securities.

(5) So long as the Treasurer holds securities as required by this section on behalf of any person, that person shall be deemed to have complied with the requirements of this Act as to the deposit of a fidelity bond.

Exemption of
licensed land
brokers and
auctioneers.

Amended by
2115, 1933,
s. 6, and
S.L.R. Act,
1936.

8. If the person who makes an application pursuant to this Act for the issue or renewal of a licence is a licensed land broker under The Real Property Act, 1886, or a licensed auctioneer under the Auctioneers Act, 1934, he shall not be required to pay the licence fee payable pursuant to this Act.

Notice of
application
for licence.

9. (1) Notice in the prescribed form of every application for a licence under this Act shall be published by the applicant twice at least in some newspaper to be approved for the purpose by the clerk of the local court in which the application is filed, and the application for the licence shall not be heard before the expiry of one month after the first publication of such notice.

(2) Any person who objects to the issue of a licence under this Act may, within one month after the first publication of the notice of application, pursuant to the last preceding subsection, file in the local court in which the application for a licence is filed a notice in the prescribed form of his objection to the application and of the grounds thereof.

(3) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant, or, in the case of an application

by or on behalf of a firm, the character or financial position of the partners, or, in the case of application by or on behalf of a company, the financial position of the company or the character of the directors or of the general manager.

10. Every application for a licence under this Act and the objections thereto (if any) shall be heard by a special magistrate exercising jurisdiction in the local court in which the application is filed, and the special magistrate, if satisfied that the provisions of this Act have been complied with, and that the applicant is a fit person to be the holder of a licence to carry on business as a land agent, shall, on payment of the prescribed fee, issue to the applicant a licence in the prescribed form.

Hearing of application.

11. (1) Before granting an application for a licence to carry on business as a land agent, the local court shall require the production of sufficient evidence to satisfy the court that the character and financial position of the applicant are such that he is, in the opinion of the court, having regard to the interests of the public, a fit and proper person to carry on business as a land agent.

Court to require evidence as to character and financial position.

(2) Where application for a licence is made by two or more persons in partnership, the court may, in the exercise of its powers under this section, require the production of evidence as to the character and financial position of each of the partners.

(3) Where application for a licence is made by a company, the court may, in the exercise of its powers under this section, require the production of evidence as to the financial position of the company, and as to the character of the directors and general manager, and of any other person in respect of whom application to hold the licence on behalf of the company has been made.

12. (1) Every application for the renewal of a licence shall be made not earlier than the first day of January and not later than the last day of February preceding the date of the expiry of the licence, and shall be made in the form and in the manner prescribed by regulations.

Provisions as to renewal of licences.

Subsecs. (1), (1a), and (1b) inserted by 1807, 1927, s. 6 (1).

(1a) Every such application shall be made to and filed in the local court of full jurisdiction nearest by the most convenient route to the registered office of the land agent at the time of making the application.

(1b) With every application for the renewal of a licence there shall be filed in the local court a fidelity bond to His

Majesty given by an insurance company in the sum of five hundred pounds or a receipt for the renewal premium on a like fidelity bond previously filed: Provided that if the applicant has previously filed a fidelity bond complying with this section which will enure and remain of full force and effect during the period of renewal of the applicant's licence the applicant shall be deemed to have complied with this section. All the provisions relating to fidelity bonds filed in the court on the application for the grant of a licence in the first instance shall apply with the necessary modifications to bonds filed on the application for the renewal of a licence.

(2) Every person who objects to the renewal of a licence under this Act may, at any time before the seventh day of March in any year, file in the local court in which application for the renewal of the licence has been filed, a notice in the prescribed form of his objection to the application and of the grounds thereof.

(3) No such objection shall be considered unless and so far as the grounds thereof affect the character or financial position of the applicant, or the dishonest or fraudulent conduct of any person in the employ of the applicant, or, in the case of an application by or on behalf of a firm, the character or financial position of the partners, or the dishonest or fraudulent conduct of any person in the employ of the firm, or, in the case of an application by or on behalf of a company, the financial position of the company or the character of the directors, or of the general manager or the dishonest or fraudulent conduct of any person in the employ of the company.

(4) Where any objection is lodged to the renewal of a licence, the court shall hear and determine the application for renewal in the same manner as if it were an application for the issue of a licence.

Amended by
1807, 1927,
s. 6 (2).

(5) In the absence of any objection to an application for the renewal of a licence the court may, on payment of the prescribed fee, grant a renewal without further inquiry as to the fitness of the applicant to carry on the business of a land agent.

An application for renewal of a licence to which no objection has been filed may be dealt with by the court sitting in chambers at such time and place as the court thinks fit.

(6) The court may, in its discretion, hear and determine any application for the renewal of a licence, or any objection to such renewal, notwithstanding that the application

or objection may not have been filed within the times limited by this section in that behalf.

(7) If application for the renewal of a licence has been filed, but is not determined on or before the thirty-first day of March, in any year, the licence shall, notwithstanding anything to the contrary in this Act, be deemed to be extended until the application is disposed of by a court in accordance with this Act.

13. On the hearing of any application for a licence or for the renewal of a licence under this Act the court shall, if any objection to the application has been filed, have jurisdiction to determine what costs (if any) shall be paid to or by the objector or the applicant respectively, and to adjudge that such costs be paid.

Court may
award costs.

14. No licence under this Act shall be issued to an insolvent who has not obtained his certificate of discharge or whose certificate of discharge is suspended for a term not yet expired, or is subject to conditions not yet fulfilled.

Disqualifi-
cation of
applicants.

15. Within ten days after the issue of a licence under this Act, or the renewal of any such licence, the clerk of the local court shall, in the prescribed form, notify the Minister of the fact of such issue or renewal and of such other matters in relation thereto as may be prescribed.

Notice of
issue or
renewal of
licences to be
given.

16. The Minister shall cause to be kept a register of land agents, in which shall be recorded—

Register of
licences.

- (a) the name and description of every person to whom a licence is issued under this Act:
- (b) the amount of the fees paid or payable in respect thereof:
- (c) the date of the issue of the licence:
- (d) in the case of a licence issued to a person as representative of a firm or company, the name of that firm or company and also the name and description of the partners of such firm:
- (e) particulars as to the place or places of business of the licensee, and in cases where a licensee has two or more places of business, his principal place of business:
- (f) such other particulars as may be prescribed.

17. The register shall, on payment of the prescribed fee, be open to inspection within ordinary business hours by any person desirous of inspecting the same.

Inspection of
register.

Publication
of list of land
agents.

18. (1) A list (herein referred to as the main list) of the names and descriptions of all persons licensed to carry on business as land agents, as on a date to be therein specified, together with such of the relevant particulars appearing in the register as the Minister thinks fit, shall be published in the *Gazette* during the month of May of each year. Supplementary lists may be published in like manner as the Minister may from time to time direct.

(2) The production of copies of the *Gazette* containing the main list and all supplementary lists for any year shall, until the contrary is proved, be sufficient evidence in all judicial proceedings of the contents of the register, and the absence of the name of any person from the main list and the supplementary lists shall, until the contrary is proved, be sufficient evidence that such person is not registered as a land agent.

Amended by
1807, 1927,
s. 7.

(3) A certificate under the hand of the Minister that any person is or is not registered as a land agent on the date of that certificate, or as to any other matter concerning the contents of the register, shall, in all judicial proceedings, be sufficient evidence of the fact or facts therein certified to, and judicial notice shall in all courts be taken of the signature of the Minister.

The Minister shall, upon the request in writing of any person and payment of the prescribed fee, issue a certificate stating any such matters as are referred to in this subsection.

Transfer of
licences.

19. (1) A licensee, or the personal representative of a deceased licensee, or the assignee in insolvency of a licensee who has been adjudged insolvent, or the liquidator of a company, being a licensee, may, on payment of the prescribed fee, transfer a licence under this Act to any person approved by a special magistrate in that behalf.

(2) Every application for a transfer under this section shall be filed and advertised, and objections may be received, and the application and objections (if any) shall be heard and determined in all respects as if the application for a transfer were an application for the grant of a licence under this Act.

Land agent to
have regis-
tered office.

20. (1) Subject to the provisions of this section as to changing the registered office of a land agent, the place of business of a land agent mentioned in his application for a licence, or, where a land agent has two or more places of business, his principal place of business, shall be deemed to be the registered office of the land agent.

(2) Any summons, notice, order, or other document required to be served upon a land agent may be served by leaving the same at his registered office or by sending it through the post in a prepaid and registered letter addressed to the land agent at that office.

(3) A land agent may by notice in writing, filed in the local court nearest by the most convenient route to the land agent's registered office prior to the change, change his registered office to any other place of business.

Amended by
1807, 1927,
s. 8.

(4) Notice of the change of the registered office of a land agent shall be forthwith given by the clerk of the local court to the Minister, who shall cause a memorandum of such change to be entered in the register of land agents.

21. Every person to whom a licence as a land agent is issued under this Act shall exhibit and keep exhibited in a prominent place on his registered office, and on every branch office, so as to be easily read from outside that office, a notice of his name and of the fact that he is licensed as a land agent, together with the name or style under which he carries on business as a land agent, if such business is not carried on in his own name.

Land agent to
display notice
on registered
office.

22. A licence under this Act shall authorise the holder thereof to act as a land agent in any part of South Australia during the currency of the licence.

Effect of
licence.

Amended by
1807, 1927,
s. 9.

23. (1) All moneys received by a land agent in respect of the sale, lease, or other disposal of land or of any interest in land, or in respect of any other transaction in his capacity as a land agent, shall be applied as follows:—

Duty of land
agent with
respect to
moneys re-
ceived in
course of his
business.

Amended by
2115, 1933,
s. 7.

- i. In payment of the expenses, commission, and other charges of or incidental to such sale, lease, or other disposal or transaction as aforesaid:

s. 23. (1) In *re* a Fidelity Bond under the LAND AGENTS ACTS, 1925 AND 1927. *Ex parte* JAMES (1931) S.A.S.R. 73. Observations as to the interpretation of "lease of land" and "other transaction." The passage in which "lease" occurs shows that it means neither a lease as the title under which a tenant occupies, nor his interest in the land, but the transaction pursuant to which his interest is acquired. The reference to "other transactions" is to the other transactions referred to in section 2. Since this decision the last paragraph in subsection (1) has been enacted.

In *re* a Fidelity Bond given by the COLONIAL MUTUAL FIRE INSURANCE COMPANY LIMITED (1931) S.A.S.R. 173. If a person has obtained a licence as a land agent and has undertaken to do work for a client which comes within the business of a land agent as defined in section 2, he may be presumed to be acting in his capacity as a land agent and is therefore obliged to apply in manner provided by section 23 moneys received by him in respect of such transaction. Meaning of "person lawfully entitled thereto" discussed.

- II. In payment of the balance (if any) to the person or persons lawfully entitled thereto.

Any money collected or received by a land agent as agent for any person and being rent, interest, principal, deposit, instalments, or other moneys whatever payable under any lease, mortgage, or contract for the sale of land shall be deemed to be money received by the land agent in his capacity as a land agent.

(2) Pending the payment of any balance as aforesaid, it shall be paid by the land agent into a general or separate trust account, and shall not be withdrawn therefrom save for the purpose of paying the same to the person or persons entitled thereto, as hereinbefore provided.

(3) Every person who commits a breach of this section shall be liable to a penalty not exceeding fifty pounds.

(4) Save as herein provided, moneys paid into a trust account pursuant to this section shall not be available for payment of the debts of the land agent, or be liable to be attached or taken in execution under the order or process of any court.

Land agent
to furnish
account to
principal.

24. (1) Forthwith on the demand of the person for whom he has acted as agent, or, if no such demand is made, then within twenty-eight days after the receipt by him of any moneys in respect of the sale, lease, or other disposal of land, or in respect of any other transaction in his capacity as a land agent, every land agent shall render to the person on whose behalf he has acted as agent an account in writing, setting forth particulars of all such moneys, and as to the application thereof.

Amended by
S.L.R. Act,
1936.

(2) If any land agent refuses, or for a period of seven days after demand neglects or fails to render an account as aforesaid, or, in the absence of a demand, neglects or fails to render an account within the period of twenty-eight days aforesaid, he shall be liable to a fine not exceeding ten pounds.

Indictable
offence by
land agents

25. Every person is liable on indictment to imprisonment for five years or to a fine of two hundred pounds who—

- (a) fraudulently converts to his own use any moneys received by him in his capacity as a land agent; or

- (b) renders an account purporting to be an account of any moneys received by him as aforesaid, knowing the same to be false in any material particular.

25a. (1) In this section and sections 25b, 25d, and 25e "subdivided land" means any one or more vacant allotments of land shown on a plan of subdivision deposited in the Lands Titles Registration Office at Adelaide or any part of such an allotment: Provided that the term shall not include any allotments which as allotments are suitable or intended wholly or mainly for use for agricultural, pastoral, horticultural, or viticultural purposes. Land shall be deemed to be vacant within the meaning of this section if no house or building suitable for human occupation is built thereon.

Offences in connection with the sale of subdivided land.

Inserted by 1807, 1927, s. 10.

(2) Any person who, in connection with the selling of any subdivided land or any interest in such land, knowingly makes a false representation which is likely to induce another person to buy such land or interest shall be guilty of an offence, and shall, on summary conviction, be liable to imprisonment for any term not exceeding twelve months, or to a fine not exceeding one hundred pounds.

In any proceedings under this subsection, if it is proved that the defendant made any false representation, he shall be deemed to have made such representation with knowledge of its falsity unless he satisfies the court that he had reasonable ground to believe and did believe it to be true.

(3) Any person who in order to induce any other person (in this subsection called "the prospective purchaser") to purchase subdivided land states—

- (a) that he or any other person will buy at a profit to be received in the future by the prospective purchaser any other land or chattel then owned by the prospective purchaser; or
- (b) that he or some other person will at some future time obtain for the prospective purchaser a profit on such subdivided land or any part thereof,

shall be guilty of an offence, and shall be liable on summary conviction to imprisonment for any term not exceeding twelve months or to a fine not exceeding one hundred pounds.

s. 25a. *GEORGE V. GREATER ADELAIDE DEVELOPMENT COMPANY LTD.* (1929) 43 C.L.R. 91; 36 A.L.R. 72; 4 Austr. Digest 605; affirming *GREATER ADELAIDE DEVELOPMENT COMPANY LTD. V. GEORGE* (1929) S.A.S.R. 199. Where a contract of sale is entered into prior to the deposit of a plan of subdivision in the Lands Titles Registration Office, the land is not "subdivided land" within the meaning of section 25a and following sections.

Contracts
relating to
subdivided
land voidable
in certain
cases.

Inserted by
1807, 1927,
s. 10.

25b. Any contract for the sale of any subdivided land or interest in such land made after the commencement of the Land Agents Act, 1927, shall be voidable at the option of the purchaser at any time within six months from the making thereof unless such contract complies with the following requirements, namely:—

I. Such contract shall be in writing and shall contain the following particulars, namely:—

(a) The name, address, and description of the vendor:

(b) The name, address, and description of the person who is, at the time when the contract is made, the registered proprietor of the land sold:

(c) A statement whether or not a plan of subdivision relating to the land sold has been deposited in the Lands Titles Registration Office, and whether or not such plan has been approved by the Government Town Planner, and the name, if any, of the subdivision, and number of such plan:

(d) The name, address, and description of some person to whom all moneys falling due under the contract may be paid; and

II. Such contract, if the consideration therein mentioned is five hundred pounds or more, or if it is one of a number of contracts forming substantially one transaction in which the total consideration is five hundred pounds or more, shall be executed by the purchaser in the presence of two witnesses, neither of whom shall be the vendor, the vendor's agent or any person employed by the vendor's agent.

s. 25b. OUTER SUBURBAN PROPERTY LIMITED v. CLARKE (1933) S.A.S.R. 221; 4 Austr. Digest 466. Where the respondent signed a form of "contract" for the purchase of land and, after obtaining his signature, the agent of the appellant, without the knowledge of or authority from the respondent, filled in the additional particulars required by section 25b and after that the contract was signed on behalf of the vendor, held on the facts that no contract was concluded, and held further that (if any contract had been concluded) there was no contract in writing containing the particulars required by section 25b. Meaning of contract "in writing" discussed.

LESKE v. S. A. REAL ESTATE INVESTMENT COMPANY, LIMITED (1930) 45 C.L.R. 22; affirming S. A. REAL ESTATE INVESTMENT COMPANY, LIMITED v. LESKE (1929) S.A.S.R. 288. "Person" in paragraph (d) includes body corporate. A provision in an agreement requiring payments under the agreement to be made at the office of the vendor company held to be sufficient compliance with paragraph (d).

A purchaser shall not be deemed to have elected to affirm a contract which is voidable under this section by reason of any payments of money made by the purchaser pursuant to the contract within the period of six months aforesaid.

25c. Any agreement whereby a person purports to waive any right which he may have under this Act to avoid a contract shall be void and of no effect.

Prohibition of contracting out.

Inserted by 1807, 1927, s. 10.

25d. In any action which comes on for trial after the commencement of the Land Agents Act, 1927, if it is shown that any false representation was made and that any person was induced by such representation to enter into a contract to purchase subdivided land or any interest in such land, the person making such representation shall be deemed to have made the same with knowledge of its falsity unless it is proved that he had reasonable ground to believe and did believe that such representation was true.

Onus of proof as to knowledge of falsity of representation.

Inserted by 1807, 1927, s. 10.

25e. In any such action as aforesaid if it is shown that any person was induced—

Contracts induced by excessive persuasion.

(a) to enter into any contract to purchase subdivided land or any interest in such land; or

Inserted by 1807, 1927, s. 10.

(b) to affirm any such contract, being voidable by such person,

by any unreasonable persuasion on the part of any person acting or appearing to act on behalf of the vendor or the vendor's agent, then according to the nature of the case—

(a) such contract whether equitable or otherwise shall be deemed to have been induced by undue influence, and shall be voidable at the option of such first-mentioned person accordingly; or

(b) such affirmation shall be void and of no effect.

25f. If any person resident in the State enters into a contract within the State for the sale of land which contract would if governed by the law of the State be or be held to be void or voidable under this Act and judgment is obtained on or in respect of such contract in any other State, and a certificate of such judgment is registered in any court within the State, the person against whom the judgment was obtained may apply to such court at any time within forty-two days of his receiving notice of the registration of the certificate of the judgment to set aside the same on any ground of defence which would have been available to such person if the action

Provision as to judgments obtained in other States on voidable contracts.

Inserted by 1807, 1927, s. 10.

upon which such judgment was obtained had been brought in a court within the State and the contract had been governed by the law of the State. Upon any application to set aside a judgment under this section the court may make such order in conformity with this section as it deems just and shall observe as nearly as possible the usual practice of the court on the hearing of applications for a stay of proceedings on certificates of judgment registered in such court under the Act of the Commonwealth Parliament known as the Service and Execution of Process Act, 1901-1924.

Application of
sections
25d, 25e, and
25f.

Inserted by
1807, 1927,
s. 10.

25g. The provisions of sections 25d, 25e, and 25f shall apply in respect of all contracts whether made before or after the passing of the Land Agents Act, 1927: Provided that nothing in the said sections shall affect any contract which, prior to the commencement of the Land Agents Act, 1927, has been completely performed, or apply in any action relating to any such contract.

Land agent
not to act as
land broker
in connection
with same
transaction.

26. (1) A land agent who is also a licensed land broker under The Real Property Act, 1886, shall not act as a land broker for either party in connection with or in the completion of any transaction in which he is employed as a land agent, without the consent in writing of the purchaser.

(2) A land agent who acts in contravention of this section shall be liable to a penalty not exceeding fifty pounds.

Cancellation
of licences.
Substituted by
1807, 1927,
s. 11.

27. (1) Subject as hereinafter mentioned the Attorney-General or any other person may apply to the local court of full jurisdiction nearest by the most convenient route to the registered office of the holder of any licence for an order directing either the first or both of the following things, namely:—

(a) that such licence be cancelled:

(b) that the holder of such licence be disqualified either temporarily or permanently, or until the fulfilment of a condition imposed by the court, from holding a licence.

(2) Where a licence is held by one member of a firm on behalf of all the members of the firm, or by a person on behalf of a company, an order under this section may direct either the first or both of the following things, namely:—

(a) that the licence be cancelled:

(b) that any member of the firm or the company be disqualified either temporarily or permanently, or

until the fulfilment of a condition imposed by the court, from being entitled to have a licence held on his or its behalf.

(3) An order under this section may be made upon any of the following grounds, namely:—

- (a) that the licence was improperly obtained contrary to the provisions of this Act; or
- (b) that the holder of the licence has at any time been convicted of any offence against this Act or any offence involving dishonesty, whether such conviction took place before or after the commencement of the Land Agents Act, 1927; or
- (c) that the holder of the licence is not a fit and proper person to continue any longer to be licensed; or
- (d) that he has been guilty, whether before or after the commencement of the Land Agents Act, 1927, of such conduct as renders him unfit to continue any longer to be licensed; or
- (e) if the licence was granted on behalf of a firm, that any member of the firm has been convicted of any offence against this Act or any offence involving dishonesty, whether such conviction took place before or after the commencement of the Land Agents Act, 1927, or is not a fit and proper person to be permitted any longer to carry on business as a land agent, or has been guilty, whether before or after the commencement of the Land Agents Act, 1927, of such conduct as renders him unfit to carry on business as a land agent;
- (f) if the licence was granted on behalf of a company, that any of the directors thereof or the general manager thereof has been convicted, whether before or after the commencement of the Land Agents Act, 1927, of any offence involving dishonesty; or
- (g) upon any other grounds which the court deems sufficient.

(4) Every application under this section shall be made and notice thereof shall be served on the persons affected in accordance with the regulations.

(5) Upon being satisfied of the truth of any of the grounds aforesaid the court may make such order in accordance with this section and such order as to costs as it thinks just.

(6) When any land agent or member of a firm of land agents or director or manager of a company carrying on business as a land agent has been convicted before any court of an offence against this Act or any offence involving dishonesty such court may of its own motion and without further notice to any person make any such order as mentioned in subsection (1) or subsection (2) of this section.

(7) Where any land agent or member of a firm of land agents or director or manager of a company carrying on business as a land agent is a party to an action in the Supreme Court or in a local court of full jurisdiction in which his or its conduct as a land agent are in question, and such court is satisfied, on the evidence before it in such action, that a proper case exists for making any such order as mentioned in subsection (1) or subsection (2) of this section, such court may, of its own motion and without further notice to any person, make any such order as aforesaid.

Notice of
cancellation.

28. Forthwith after the cancellation of a licence as herein provided, whether by a court of its own motion or on application, the clerk of the court shall send notice in writing of such cancellation and of the grounds thereof to the Minister.

Removal of
name from
register on
cancellation of
licence.

29. The Minister shall cause to be removed from the register the name of every land agent whose licence has been cancelled as aforesaid, and also the name of every land agent who—

(a) dies; or

(b) is adjudged insolvent; or

(c) has not before the first day of May of any year obtained a renewal of his licence pursuant to the provisions of this Act.

Evidence of
contracts of
agency.

30. No person shall be entitled to sue for or recover any commission, reward, or other valuable consideration, in respect of the sale, lease, exchange, or other disposal of land or any interest in land, or in respect of his services as agent in any other like transaction, unless his appointment to act as agent is in writing signed either before or after such transaction by the person to be charged with such commission, reward, or consideration, or by some person on his behalf lawfully authorised to sign such appointment.

30a. No person required to hold a licence under this Act shall be entitled to sue for or recover any commission, reward, or other valuable consideration, in respect of his services as agent in connection with the sale, lease, exchange, or other disposal of land or any interest in land, or in connection with any other like transaction unless he proves that he was the holder of a licence for the time being in force at the time of rendering the service in respect of which he sues.

Prohibition on
unlicensed
persons suing
for commis-
sion.

Inserted by
1807, 1927,
s. 12.

30b. (1) In any legal proceedings whatever *prima facie* evidence of the fact that any person is at any time the holder of a licence may be given by production of a document purporting to be a licence granted by a local court of full jurisdiction to such person and purporting to be in force at such time.

Proof that
person is
licensed
or unlicensed.

Inserted by
1807, 1927,
s. 12.

(2) The allegation in any complaint that any person is not or was not the holder of a licence under this Act at any time mentioned in the complaint shall be *prima facie* evidence of that fact.

31. Every person, not being the holder of a licence under this Act, commits an offence and is liable to a fine of fifty pounds who describes himself in writing or holds himself out as a land agent, or carries on business as a land agent.

Holding out
as land agent
without
licence.

32. All proceedings in respect of offences against this Act (not being indictable offences) shall be disposed of summarily and shall be heard and determined by a special magistrate sitting alone.

Summary
proceedings
to be before
magistrate.

32a. For the purpose of hearing and determining any application, objection, or other matter under this Act all the provisions of the Local Courts Act, 1926, relating to summoning, swearing, and examining witnesses, and compelling the production of books and documents, and punishing witnesses for any contravention of or failure to comply with any requirement of the said Act shall apply as if the special magistrate exercising jurisdiction under this Act were a local court exercising jurisdiction under the Local Courts Act, 1926, and such special magistrate, with respect to the matters aforesaid, shall have and may exercise all the powers of a local court.

Power of
magistrate as
to witnesses
and evidence.

Inserted by
1807, 1927,
s. 13.

s. 31. *UREN v. TRESTRAIL* (1929) S.A.S.R. 17. As to what constitutes a person holding himself out as a land agent. Where the defendant in a newspaper inserted an advertisement advertising the sale of a "mixed business," held that, by the advertisement, the defendant did not hold out that he carried on business as a land agent.

LENTHALL v. HILLSON (1933) S.A.S.R. 31; 6 Austn. Digest 133. In a prosecution under section 31, the Justices Act, 1921, binds the Crown in the sense that the penalty is recoverable under that Act, and not otherwise.

Enforcement
of orders as
to costs.

Inserted by
1807, 1927,
s. 13.

32b. Any order made by the court for costs under this Act may be enforced in like manner as a judgment of a local court under the Local Courts Act, 1926.

Civil remedies
not affected.

33. Nothing in this Act shall affect any civil remedy that any person may have against a land agent in respect of any matter.

Duty of Com-
missioner of
Police to
object to
granting
licences and
renewals
in certain
cases.

Inserted by
1807, 1927,
s. 14.

33a. (1) The clerk of any local court in which any application for a licence or for renewal of a licence is filed, shall forthwith, after such filing, give notice thereof to the Commissioner of Police.

(2) If the said Commissioner is of opinion that the applicant is not a fit and proper person to be licensed he shall take all proper steps to object to the granting of the application and shall be represented at the hearing thereof.

Contracting
out.

Substituted by
1807, 1927,
s. 15.

34. (1) No term or provision of any agreement for the sale and purchase of land or any interest in land shall be so construed as in any way to prevent the purchaser from claiming or being awarded damages or any other relief in respect of fraud or misrepresentation in connection with the purchase of such land or interest in land.

(2) This section applies to any agreement or term or provision of any agreement whether made before or after the commencement of the Land Agents Act, 1925.

Regulations.

35. (1) The Governor may from time to time, make regulations under this Act—

Amended by
1807, 1927,
s. 16 (a).

(a) prescribing forms of applications for licences or renewals of licences, and of objections to the granting or renewal of licences under this Act:

(b) prescribing forms of advertisements and other notices under this Act:

(c) prescribing the fees payable on the issue or renewal or transfer of licences under this Act:

Paras. (c1)
to (c11)
inserted by
1807, 1927,
s. 17.

(c1) requiring all land salesmen to be registered annually and empowering any person, body or court to grant certificates of registration after such inquiry as may be prescribed:

(c2) granting to any person the right to object to the granting of any application for registration as a land salesman or for renewal of such registration:

- (c3) prescribing all matters incidental to applications for registration and renewal of registration as a land salesman and objections thereto and to the hearing and determination of such applications and objections:
- (c4) requiring all land salesmen to procure and deposit or file as prescribed a fidelity bond to His Majesty in the prescribed amount and in the prescribed form and containing the prescribed conditions, and prescribing all matters connected with or incidental to such bonds:
- (c5) providing for the keeping of a register of land salesmen and the inspection of the same, and for the annual publication in the *Gazette* of a list of registered land salesmen and requiring every registered land salesman to file as, when and where prescribed the name and address of his employer:
- (c6) providing for the cancellation of the registration of any land salesman by any person, court, or body on any grounds prescribed, with or without application made for the purpose by any person:
- (c7) empowering the person, court, or body hearing or determining any application for or objection to registration or renewal of registration as a land salesman to award costs:
- (c8) prescribing fees payable in connection with any such application or objection:
- (c9) creating offences and prescribing penalties:
- (c10) prescribing the mode in which any fact relevant to any matter arising under this Act may be proved in any court:
- (c11) prescribing any matters necessary or convenient to ensure that only fit and proper persons shall act as land salesmen:
- (d) providing for an annual audit of the trust accounts of every land agent, and the manner in which, and the persons or class of persons by whom, such audit shall be conducted, and for a report of the result of such audit:
- (e) requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed:

- (f) prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record:
- (g) prescribing a scale of fees to be paid to such auditors:
- (h) prescribing that, in the absence of any agreement in writing to the contrary, the auditor's fees shall be paid by the land agent:
- (i) prescribing various maximum rates of commission which may be charged by land agents for their services in transactions of various natures defined in such regulations:
- (j) generally to ensure that all such trust accounts shall be duly kept and audited:
- (k) prescribing penalties, not exceeding one hundred pounds in any case, for the breach of any regulation under this Act, and generally for the purpose of carrying this Act into effect.

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

Amended by
1807, 1927,
s. 16 (b).

(3) The fees payable in respect of the issue or renewal of licences shall be uniform, save that reduced fees may be prescribed in respect of licences issued after the first day of April in any year.

Substituted by
1807, 1927,
s. 18.

THE SCHEDULE.

FORM NO. 1.

FIDELITY BOND TO BE FILED BY PERSON APPLYING FOR LAND AGENT'S LICENCE ON HIS OWN BEHALF.

Know all men by these presents that of is held and firmly bound unto His Majesty the King in the sum of five hundred pounds (£500) for the payment of which sum to His Majesty the said binds itself and its assigns firmly by these presents.

Whereas of has applied for the issue to him on his own behalf of a licence under the Land Agents Acts, 1925 and 1927:

Now the condition of the above-written bond is such that if such licence shall be granted to the said and if the said shall during the currency of the term of such licence [and during the currency of the term of every licence granted to him in renewal of such licence]—

- (a) always duly apply all moneys received by him in the manner required by the said Acts;
- (b) always duly render accounts in writing of all moneys received by him within the times and to the persons required by the said Acts;
- (c) always fully satisfy within one month from the giving or making thereof any judgment or order given against him for the payment of any sum of money received by him in connection with the sale of any land, or for the payment of any sum of money as damages for fraud, misrepresentation, or breach of contract, condition, or warranty;

then the above-written obligation shall be void, but otherwise shall remain in full force and effect.

Signed, sealed, and delivered, &c.

FORM NO. 1A.

FIDELITY BOND TO BE FILED BY PERSON APPLYING FOR LAND
AGENT'S LICENCE ON BEHALF OF A FIRM.

Know all men by these presents that of is held and firmly bound unto His Majesty the King in the sum of five hundred pounds (£500) for the payment of which sum to His Majesty the said binds itself and its assigns firmly by these presents.

Whereas of who with of and of carries on the business of land agents in partnership under the firm name of has applied for the issue to him of a licence under the Land Agents Acts, 1925 and 1927, on behalf of himself and the said and

Now the condition of the above-written bond is such that if such licence shall be granted to the said and if during the currency of the term of such licence [and during the currency of the term of every licence granted in renewal of such licence]—

- (a) they the said and the said and the said [insert names of all partners] and each of them shall always duly apply all moneys received by them or any of them in the manner required by the said Acts; and
- (b) they the said and the said and the said shall always duly render accounts in writing of all moneys received by them or any of them within the times and to the persons required by the said Acts; and
- (c) every judgment or order given or made against the said and the said and the said or any of them for the payment of any sum of money received in connection with the sale of any land, or for the payment of any sum of money as damages for fraud, misrepresentation, or breach of warranty or condition shall be fully satisfied within one month from the giving or making thereof,

then the above written obligation shall be void, but otherwise shall remain in full force and effect.

Signed, sealed, and delivered, &c.

FORM 1B.

BOND TO BE FILED BY PERSON APPLYING FOR LAND AGENT'S
LICENCE ON BEHALF OF A COMPANY.

Know all men by these presents that of is held and firmly bound unto His Majesty the King in the sum of five hundred pounds (£500) for the payment of which sum to His Majesty the said binds itself and its assigns firmly by these presents.

Whereasof has applied for the issue to him on behalf of....., a company incorporated according to the laws of, whose registered office in South Australia is situated at, of a licence under the Land Agents Acts, 1925 and 1927.

Now the condition of the above-written bond is such that if such licence shall be granted to the said, and if during the currency of the term of the said licence [and during the currency of the term of every licence granted in renewal of the said licence]—

- (a) the said [name of company] shall always duly apply all moneys received by it in the manner required by the said Acts:
- (b) the said [name of company] shall always duly render accounts in writing of all moneys received by it within the times and to the persons required by the said Acts:
- (c) the said [name of company] shall always fully satisfy within one month from the giving or making thereof any judgment or order given against the said [name of company] for the payment of any sum of money received in connection with the sale of any land, or for the payment of any sum of money as damages for fraud, misrepresentation, or breach of contract, condition, or warranty:

then the above-written obligation shall be void, but otherwise shall remain in full force and effect.

Signed, sealed, and delivered, &c.

Regulations.

The following regulations were in force under this Act on 26th April, 1937:—

Gazette—28th January, 1926, p. 153.
 11th February, 1926, p. 267.
 18th March, 1926, p. 794.
 9th February, 1928, p. 262.
 16th February, 1928, p. 331.
 24th October, 1929, p. 954.