

## EXPLANATORY NOTES

This Bill would repeal and replace the *Real Estate Trading Act*.

The Bill would

- allow the minister to appoint the Superintendent of Real Estate Brokers and Salespersons and the Deputy Superintendent of Real Estate Brokers and Salespersons;
- allow the Superintendent of Real Estate Brokers and Salespersons to issue a personal real estate corporation licence;
- require real estate brokers and salespersons to obtain errors and omissions liability insurance;
- authorize the Superintendent of Real Estate Brokers and Salespersons to establish a code of conduct for real estate brokers and salespersons;
- authorize the Superintendent of Real Estate Brokers and Salespersons to prescribe continuing education requirements for real estate brokers and salespersons;
- require that a real estate broker or salesperson disclose referral fees;
- establish the Real Estate Recovery Fund;
- allow unclaimed money held in a real estate broker's trust account for more than 2 years to be paid to the Real Estate Recovery Fund;
- prohibit a person who is licensed as a real estate broker or salesperson under the Act and either registered as a mortgage broker under the *Mortgage Brokers Act* or employed or contracted by a mortgage broker registered under the *Mortgage Brokers Act* from providing both services to a person in relation to a trade in real estate;

- authorize the Superintendent of Real Estate Brokers and Salespersons to impose administrative penalties;
- authorize the Superintendent of Real Estate Brokers and Salespersons to issue orders; and
- increase the penalties for offences.

# A BILL

## AN ACT RESPECTING THE REGULATION OF REAL ESTATE TRADING IN THE PROVINCE

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*Be it enacted by the Lieutenant-Governor and House of Assembly  
in Legislative Session convened, as follows:*

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| Short title    | 1. This Act may be cited as the <i>Real Estate Trading Act, 2019</i> . |
| Interpretation | 2. (1) In this Act<br><br>(a) "affiliated person" means                |

- (i) the spouse or cohabiting partner of a controlling individual,
  - (ii) a child of a controlling individual,
  - (iii) a corporation, all of the shares of which are beneficially owned by one or more of a controlling individual and the other individuals referred to in subparagraphs (i) and (ii), or
  - (iv) a trust, all of the beneficiaries of which are one or more of a controlling individual and the other individuals referred to in subparagraphs (i) and (ii);
- (b) "broker" means a person who holds a licence issued under paragraph 6(1)(a);
- (c) "broker licence" means a licence issued under paragraph 6(1)(a);
- (d) "business" means an undertaking carried on for profit or gain or an interest in an undertaking;
- (e) "cohabiting partner" means either of 2 persons who are cohabiting and
- (i) have cohabited continuously in a conjugal relationship outside marriage for not less than one year, or
  - (ii) have entered into a written agreement in respect of their cohabitation, in which they agree on their respective rights and obligations during cohabitation, upon ceasing to cohabit or upon the death of either of them;
- (f) "controlling individual" means the individual who is the sole voting shareholder of a personal real estate corporation;
- (g) "deputy superintendent" means a person appointed under subsection 4(2);
- (h) "designated representative" means a person designated in accordance with subsection 8(1);

- (i) "employ" in relation to a broker, includes a person who is contracted by the broker to trade on its behalf;
- (j) "family member" includes a spouse, cohabiting partner, parent, child, brother, sister, grandparent and grandchild;
- (k) "former Act" means the *Real Estate Trading Act*;
- (l) "fund" means the Real Estate Recovery Fund established under section 25;
- (m) "licence" means a licence issued under section 6;
- (n) "licensee" means a person who holds a licence issued under section 6;
- (o) "lease" means an agreement by which one person conveys real estate to another person for a specified term and for a specified amount of money;
- (p) "person" includes a partnership, a corporation and the heirs, executors, administrators or other legal representatives of a person;
- (q) "personal real estate corporation" means a person who holds a licence issued under paragraph 6(1)(e);
- (r) "personal real estate corporation licence" means a licence issued under paragraph 6(1)(e);
- (s) "real estate" includes freehold and leasehold property and chattels real and a business, whether with or without the premises, fixtures, stock-in-trade, goods or chattels used in connection with the operation of the business;
- (t) "referral fee" means any form of compensation, direct or indirect, paid for the referral of a person to or from a licensee;
- (u) "restricted broker" means a person who holds a licence issued under paragraph 6(1)(c);

- (v) "restricted broker licence" means a licence issued under paragraph 6(1)(c);
- (w) "restricted salesperson" means a person who holds a licence issued under paragraph 6(1)(d);
- (x) "restricted salesperson licence" means a licence issued under paragraph 6(1)(d);
- (y) "salesperson" means a person who holds a licence issued under paragraph 6(1)(b);
- (z) "salesperson licence" means a licence issued under paragraph 6(1)(b);
- (aa) "spouse" means either of 2 persons who
  - (i) are married to each other,
  - (ii) are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity, or
  - (iii) have gone through a form of a marriage with each other, in good faith, that is void and are cohabiting or have cohabited with each other within the preceding year;
- (bb) "superintendent" means the Superintendent of Real Estate Brokers and Salespersons appointed under subsection 4(1); and
- (cc) "trade" or "trading" includes
  - (i) a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease or otherwise,
  - (ii) an offer or attempt to list real estate for the purpose of a disposition, acquisition or transaction, and
  - (iii) an act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of a disposition, acquisition, transaction, offer or attempt.

(2) A reference in this Act to a corporation does not include a personal real estate corporation.

(3) Unless the context indicates otherwise, a reference in this Act to

- (a) a broker includes a restricted broker;
- (b) a broker licence includes a restricted broker licence;
- (c) a salesperson includes a restricted salesperson; and
- (d) a salesperson licence includes a restricted salesperson licence.

Non-application of Act

**3.** This Act does not apply to

- (a) an assignee, custodian, liquidator, receiver, trustee or other person trading under an Act of the province or of Canada;
- (b) a person trading under an order of a court;
- (c) an administrator of an estate trading on behalf of the estate;
- (d) an executor of an estate trading under the terms of a will;
- (e) a trustee trading under the terms of a deed of trust;
- (f) a bank, credit union, loan, trust or insurance company trading in the ordinary course of its business;
- (g) a member of the Law Society of Newfoundland and Labrador trading in the course of his or her practice;
- (h) a person who completes not more than 3 trades in a calendar year relating to real estate owned by him or her or in which he or she has a substantial interest;
- (i) a person who rents property owned by him or her or in which he or she has a substantial interest;
- (j) a person in the business of property management who arranges a lease agreement; or

- (k) a person or class of persons exempted from the application of this Act by the regulations.

Superintendent and deputy superintendent

4. (1) The minister shall appoint a Superintendent of Real Estate Brokers and Salespersons.

(2) The minister may appoint a Deputy Superintendent of Real Estate Brokers and Salespersons who shall perform the duties and exercise the powers of the superintendent where

- (a) the superintendent is absent or unable to act;
- (b) the superintendent considers it necessary to delegate his or her authority; or
- (c) the office of the superintendent is vacant.

Powers and duties of superintendent

5. (1) The superintendent may

- (a) establish a code of conduct;
- (b) prescribe continuing education requirements;
- (c) direct disbursement of a deposit from a trust account in accordance with the regulations; and
- (d) perform the other duties and exercise the powers conferred by this Act.

(2) For the purpose of carrying out his or her powers and duties under this Act, the superintendent has the powers, privileges and immunities that are or may be conferred on a commissioner under the *Public Inquiries Act, 2006*.

Types of licences

6. (1) The superintendent may issue the following licences:

- (a) a broker licence which authorizes the holder of the licence to trade;
- (b) a salesperson licence which authorizes the holder of the licence to act as a salesperson of a broker and trade on behalf of that broker;



- (c) a restricted broker licence which authorizes the holder of the licence to trade on his or her behalf;
- (d) a restricted salesperson licence which authorizes the holder of the licence to act as a salesperson of a restricted broker and trade on behalf of that broker; and
- (e) a personal real estate corporation licence which authorizes the holder of the licence to act as a salesperson of a broker and trade on behalf of that broker.

(2) The superintendent may issue a licence or refuse to issue a licence.

(3) Where the superintendent refuses to issue a licence, the superintendent shall, upon the request of the applicant, provide written reasons for refusing to issue the licence.

(4) A licence issued under paragraph (1)(b), (d) or (e) shall state the name of the broker with whom the salesperson is employed.

(5) The termination of the employment of a salesperson with a broker shall be

- (a) a termination of his or her salesperson licence; and
- (b) where the salesperson is a controlling individual, a termination of his or her personal real estate corporation licence.

(6) The superintendent may impose terms and conditions on a licence.

(7) A licence is not transferrable or assignable.

Application for  
licence

7. (1) A person applying for a licence under paragraphs 6(1)(a), (b), (c) or (d) shall submit to the superintendent

- (a) an application in the form set by the superintendent;
- (b) the fee set by the minister;
- (c) a certificate of conduct from the Royal Newfoundland Constabulary or a certified criminal records check from the

Royal Canadian Mounted Police satisfactory to the superintendent;

- (d) a bond to the Crown in the amount prescribed in the regulations;
- (e) payment to the fund in the amount set by the minister;
- (f) proof of errors and omissions liability insurance in the amount prescribed in the regulations; and
- (g) other information or documentation prescribed in the regulations.

(2) Where the applicant is

- (a) a partnership, the applicant shall provide a current certificate of conduct from the Royal Newfoundland Constabulary or a certified criminal records check from the Royal Canadian Mounted Police for each partner in the partnership; or
- (b) a corporation, the applicant shall provide a current certificate of conduct from the Royal Newfoundland Constabulary or a certified criminal records check from the Royal Canadian Mounted Police for the designated representative.

(3) In addition to the requirements in subsections (1) and (2), a person applying for a licence under paragraph 6(1)(a) or (b) shall provide proof, satisfactory to the superintendent, of the successful completion of the prescribed examinations.

(4) In addition to the requirements in subsections (1) and (2), a person applying for a licence under paragraph 6(1)(b) or (d) shall provide a statement made by or on behalf of the broker for whom the applicant proposes to act as salesperson,

- (a) recommending the applicant as an appropriate person to receive a salesperson licence; and
- (b) declaring that, where the applicant is granted a licence, the applicant shall act as a salesperson employed by and representing the broker.

(5) Where the superintendent requires further information in order to assess the application, the superintendent shall request further information from the applicant and the applicant shall provide that information in the time set by the superintendent.

Designated representative

8. (1) Where a corporation or partnership applies for a broker licence, it shall designate an individual to act on its behalf for the purposes of the licence.

(2) The designated representative shall be an individual who

(a) is a director of the corporation or a partner in the partnership;

(b) is active in the day to day operations of the corporation or partnership and knowledgeable of the business of the corporation or partnership;

(c) holds a valid salesperson licence; and

(d) successfully completed the prescribed examinations for the corporation or partnership to obtain its broker licence.

(3) A broker licence issued to a corporation or partnership shall be in the name of the corporation or partnership and shall state on the licence the name of the designated representative.

(4) Notwithstanding subsections (1) to (3), a corporation or partnership may designate another individual who satisfies the requirements in paragraphs (2)(b), (c) and (d) who, in the absence or incapacity of the designated representative, shall act as the designated representative.

(5) Where a corporation or partnership designates a person under subsection (4), it shall provide the name of that person to the superintendent.

(6) Where a designated representative dies, becomes incapacitated or terminates his or her employment with a broker and the broker does not have an alternate designated representative, the superintendent may

- (a) allow the broker to appoint a designated representative that does not meet the requirements in subsection (2) or (4) for a term of not more than 6 months; and
- (b) allow the broker to carry on business during that time.

Personal real estate  
corporation licence

9. (1) A person applying for a personal real estate corporation licence shall submit to the superintendent

- (a) an application in the form set by the superintendent;
- (b) the fee set by the minister;
- (c) proof satisfactory to the superintendent that
  - (i) it is incorporated under the *Corporations Act*,
  - (ii) all the voting shares of the corporation are legally and beneficially owned by a single individual,
  - (iii) the sole director of the corporation is the controlling individual,
  - (iv) all non-voting shares of the corporation are legally and beneficially owned by the controlling individual or an affiliated person of the controlling individual, and
  - (v) the legal name of the personal real estate corporation includes the words "personal real estate corporation";
- (d) an application for a salesperson licence for the controlling individual or where the controlling individual already holds a salesperson licence, a request to amend the controlling individual's salesperson licence to comply with subsection (4);
- (e) proof satisfactory to the superintendent that the controlling individual held a salesperson licence for at least 2 years during the 5 years preceding the application for the personal real estate corporation licence;
- (f) the written consent of the broker for which the controlling individual proposes to act as a salesperson;

- (g) a bond to the Crown in the amount prescribed in the regulations;
- (h) payment to the fund in the amount set by the minister;
- (i) proof of errors and omissions liability insurance in the amount prescribed in the regulations; and
- (j) other information or documentation prescribed in the regulations.

(2) A personal real estate corporation licence shall

- (a) indicate the name of the controlling individual; and
- (b) be subject to any terms and conditions that apply to the salesperson licence of the controlling individual.

(3) A personal real estate corporation may be licensed only in relation to the same broker as the controlling individual and shall be employed by that broker to trade on behalf of that broker.

(4) The licence of a controlling individual shall indicate

- (a) the name of the personal real estate corporation by which the controlling individual is employed to trade on its behalf; and
- (b) the name of the broker of the personal real estate corporation.

(5) Where the superintendent requires further information in order to assess an application, the superintendent shall request further information from the applicant and the applicant shall provide that information in the time period set by the superintendent.

Personal real estate  
corporation

**10.** (1) A controlling individual may be employed by a personal real estate corporation to trade on behalf of a broker, and may receive remuneration in relation to a trade from a personal real estate corporation, where

- (a) the controlling individual and the personal real estate corporation have each obtained a licence under this Act;

- (b) the trades provided by the personal real estate corporation are provided only by the controlling individual;
- (c) any other persons employed by the personal real estate corporation are not licensees;
- (d) the personal real estate corporation does not conduct any business other than the trading of real estate and ancillary services directly associated with the trading of real estate; and
- (e) the controlling individual and the personal real estate corporation comply with the requirements in this Act, the regulations and the code of conduct.

(2) A controlling individual employed by a personal real estate corporation in accordance with paragraph (1)(b) is considered, for the purposes of this Act and the regulations, to be employed by the broker of the personal real estate corporation, but shall not be employed by that broker or any other broker to trade on behalf of that broker.

(3) The fact that a controlling individual is employed by a personal real estate corporation to trade on behalf of a broker does not affect

- (a) the controlling individual's liability with respect to trades;
  - (b) the controlling individual's obligations and responsibilities to a person who has employed the controlling individual to trade on his or her behalf; or
  - (c) the application of this Act, the regulations and the code of conduct to the controlling individual.
- (4) The superintendent may
- (a) amend the licence of a personal real estate corporation to reflect the terms and conditions applicable to the salesperson licence of the controlling individual; and
  - (b) amend the licence of the controlling individual to reflect the terms and conditions applicable to the personal real estate corporation licence.

(5) Where a personal real estate corporation ceases to meet the criteria set out in subparagraphs 9(1)(c)(i) to (v), its personal real estate corporation licence is terminated.

(6) Where the salesperson licence of a controlling individual is suspended or cancelled, the controlling individual's personal real estate corporation licence is suspended or cancelled as of the time at which the controlling individual's licence is suspended or cancelled.

(7) Where the licence of a personal real estate corporation is

(a) suspended or cancelled, or

(b) terminated under subsection (5) or 6(5)

the salesperson licence of the controlling individual is suspended or cancelled or terminated as of the time at which the personal real estate corporation's licence is suspended, cancelled or terminated.

Duties of licensees

**11.** A licensee shall

(a) pay the annual fee set by the minister;

(b) file an annual report in the form set by the superintendent;

(c) comply with this Act, the regulations, the code of conduct and the terms and conditions of the licence issued under this Act;

(d) maintain errors and omissions liability insurance in the amount prescribed in the regulations;

(e) pay the amount set by the minister to the fund when required by the superintendent;

(f) complete the continuing education requirements set by the superintendent; and

(g) provide information or documentation to the superintendent where requested.

Notice of changes

**12.** A licensee shall notify the superintendent in writing of the following changes within 10 days of the change:

- (a) a change in the address for service;
- (b) a change in email address;
- (c) a change in the partners where the licensee is a partnership or a change in the directors where the licensee is a corporation;
- (d) a change in the account number, branch or location of the licensee's trust account;
- (e) the commencement and termination of employment of a salesperson;
- (f) a change in any information submitted in the licensee's application for a licence; and
- (g) a change in any information in the most recent annual report submitted by the licensee.

Certificate

**13.** (1) Where required by the superintendent, a broker shall file a certificate stating the broker's financial position.

(2) A certificate referred to in subsection (1) shall be signed by

(a) the broker or where the broker is

(i) a partnership, by the partners; or

(ii) a corporation, by the designated representative; and

(b) an accountant approved by the superintendent.

Temporary broker  
licence

**14.** (1) Notwithstanding section 6, where a broker who is an individual dies or becomes incapacitated, the superintendent may issue a temporary broker licence to the executor or administrator of the deceased broker's estate or the incapacitated broker's power of attorney.

(2) A licence issued under subsection (1) shall be for a term of not more than 6 months and shall authorize the holder of the licence to carry on business of a broker only in relation to trading on behalf of the deceased or incapacitated broker.



(3) Where a temporary broker licence is issued under subsection (1), salespersons of the deceased or incapacitated broker at the time of the death or incapacitation of the broker shall be considered to be licensed as salespersons of the person to whom the temporary licence was issued for the term of the temporary licence.

Variation, suspension or cancellation of licence

**15.** The superintendent may vary, suspend or cancel a licence where

- (a) the superintendent is satisfied that the licensee contravened
  - (i) this Act or the regulations,
  - (ii) a condition of the licence,
  - (iii) an order issued under this Act, or
  - (iv) the code of conduct;
- (b) the superintendent is satisfied that the licensee made one or more false or misleading statements in the application for a licence, the information provided in support of the application or an annual report;
- (c) the licensee failed to file an annual report;
- (d) the licensee failed to pay the annual fee;
- (e) the licensee did not satisfy the continuing education requirements; or
- (f) the superintendent is satisfied that it is in the public interest to vary, suspend or cancel the licence.

Licence required

**16.** A person shall not

- (a) trade or hold himself or herself out as a broker, unless he or she holds a valid licence issued under paragraph 6(1)(a) or (c); or
- (b) trade or hold himself or herself out as a salesperson, unless he or she holds a valid licence issued under paragraph 6(1)(b), (d) or (e).

Records

**17.** (1) A broker shall keep a record of the following information relating to a trade:

- (a) the nature of the trade;
- (b) a description of the real estate involved in the trade;
- (c) the consideration for the trade;
- (d) the names of the parties to the trade;
- (e) the amount of the deposit received and the information relating to the disbursement of the deposit;
- (f) the amount of the commission or other remuneration;
- (g) the name of the person paying the commission; and
- (h) other information prescribed in the regulations.

(2) A broker shall maintain a trust account record in which the broker shall enter the full details of the receipt and disbursement of trust money.

Agreements

**18.** (1) Immediately after the execution of an agreement to list real estate for sale, exchange or lease with a broker, the broker or the salesperson shall deliver to the signatories of the agreement a copy of the agreement.

(2) An agreement referred to in subsection (1) is not valid where

- (a) it does not state a specific date on which the agreement ends;
- (b) it states more than one date on which the agreement ends; or
- (c) a copy of the agreement is not delivered by the broker or the broker's salesperson to the person who signed the agreement immediately after its execution.

(3) Where a broker or salesperson has secured an acceptance of an offer to sell, purchase, exchange or lease real estate, the broker or the broker's salesperson shall require each of the parties to sign copies of the agreement, and the broker or salesperson shall retain one signed

copy and shall immediately deliver one signed copy to the signatories involved in the trade.

Disclosure re:  
purchase of real  
estate for own  
purpose

**19.** (1) Where a broker intends to, either directly or indirectly,

- (a) purchase;
- (b) make an offer to purchase; or
- (c) acquire

for himself, herself or a family member an interest in real estate listed with the broker or salesperson for sale, he or she shall clearly disclose in writing to the person selling the real estate that

- (d) he or she is purchasing the real estate or acquiring an interest in the real estate for himself, herself or a family member;
- (e) he or she is about to negotiate, is negotiating or has negotiated for the resale or other disposition of the real estate and provide details regarding the negotiation; and
- (f) where he or she intends to resell the real estate for his or her own benefit or the benefit of a family member, that he or she intends to resell the real estate for his or her own benefit or the benefit of a family member.

(2) Where a broker or salesperson does not provide disclosure to a seller in accordance with subsection (1), the seller is not liable to pay commission to the broker or salesperson.

Referral

**20.** (1) Where, in the course of providing services, a licensee refers a person to a service provider or another licensee and the licensee knows that he or she may be entitled to receive a referral fee, remuneration or benefit from that service provider or other licensee for making the referral, the licensee shall disclose in writing to the person that the licensee referred that

- (a) he or she forwarded the person's name and contact information to the service provider or other licensee;

- (b) he or she may be entitled to receive a referral fee, remuneration or benefit from the service provider or other licensee for making the referral; and
- (c) the details of the referral fee.

(2) A licensee shall retain a copy of the disclosure referred to in subsection (1).

Payment of commission

**21.** (1) Commission or other remuneration payable to a broker in respect of a trade shall be the amount agreed upon by the parties or a percentage of the sale price or rental.

(2) Where an agreement has not been entered into regarding the amount of commission, the rate of the commission or the amount of remuneration payable to a broker shall be that generally prevailing in the community where the real estate is located.

(3) Notwithstanding subsections (1) and (2), the Lieutenant-Governor in Council may make regulations prescribing or limiting the amount of commission, the rate of commission or other remuneration charged or collected by brokers.

(4) A broker or salesperson shall not request or enter into an agreement for the payment of commission or other remuneration based on the difference between the price at which the real estate is listed for sale and the actual sale price of the real estate.

(5) Where the payment of commission or other remuneration is based on the difference at which real estate is listed for sale and the actual sale price of the real estate, the broker or salesperson is not entitled to the commission or remuneration.

Action for commission

**22.** An action shall not be brought for commission or remuneration for services relating to a trade unless

- (a) at the time the services were rendered the person bringing the action was licensed under this Act or exempted from licensing under this Act;
- (b) the broker or the broker's salesperson entered into a written agreement with

- (i) the person to be charged the commission, or
- (ii) a person authorized to sign the agreement on that person's behalf;
- (c) the broker or the broker's salesperson obtained a written offer that is accepted; or
- (d) the broker having been authorized in writing to list the property
  - (i) shows the property to the purchaser, or
  - (ii) introduces the purchaser to the seller for the purpose of discussing the proposed sale, purchase, exchange or lease.

Trade of business

**23.** (1) Where a trade of a business is negotiated by a broker or the broker's salesperson, the person negotiating the trade shall, before an agreement of purchase and sale is signed by the parties, deliver to the person acquiring the business,

- (a) a profit and loss statement or a statement showing the revenue and expenditures of the business, during the preceding 12 months or since the acquisition of the business by the person selling the business;
- (b) a statement of the assets and liabilities of the business; and
- (c) a statement containing a list of fixtures, goods, chattels, rights and other assets relating to or connected with the business that are not included in the trade.

(2) A statement referred to in subsection (1) shall be signed by the person selling the business or a person authorized to act on that person's behalf.

(3) A person acquiring a business may waive the requirements in paragraphs (1)(a) and (b) where

- (a) the broker or a salesperson of that broker delivers to the person acquiring the business an affidavit of the person selling the business

- (i) setting out the terms and conditions under which the person selling the business holds possession of the premises in which the business is being carried on,
- (ii) setting out the terms and conditions of a sublease, where the person selling the business has sublet a part of the premises in which the business is being carried on,
- (iii) setting out the liabilities of the business, and
- (iv) stating that
  - (A) he or she allowed the person acquiring the business to inspect the books of account of the business, or
  - (B) there are no books of account of the business; and
- (b) the person acquiring the business
  - (i) signs a statement that he or she received and read the affidavit of the person selling the business, and
  - (ii) delivers that statement to the broker or the broker's salesperson.

(4) Where a statement referred to in paragraph (1)(c) is not delivered to the person acquiring the business, the fixtures, goods, chattels and rights and other assets relating to or connected with the business shall be considered to be included in the transaction.

Bond

**24.** (1) A bond shall continue in force for a period of 2 years after the licence to which it relates ends or is cancelled.

(2) A bond given under this Act shall be forfeited and the amount of the bond shall be recoverable from the person bound by it as a debt due the Crown, where

- (a) a conviction of an offence under this Act or of an offence involving fraud, theft, or conspiracy to commit an offence involving fraud or theft under the *Criminal Code* has been made by a court;

- (b) a civil judgment arising out of a trade in real estate has been made; or
- (c) a winding-up or receiving order has been made under the *Bankruptcy Act* (Canada) or the *Winding Up Act* (Canada),

against the person in respect of whose conduct the bond was conditioned and that conviction, judgment or order has become final.

(3) The superintendent shall assign the proceeds of a bond forfeited under subsection (2) to the Supreme Court.

(4) The proceeds shall be distributed out of the Supreme Court to a person who has

- (a) become a judgment creditor of the broker or salesperson in respect of a claim arising out of a trade; or
- (b) otherwise proved his or her claim to the satisfaction of the court in respect of that claim.

(5) Where the Crown becomes a creditor of a person under this Act, the debt may be recovered by action or other proceeding in a court as a debt due the Crown.

(6) Where a bond has been forfeited under subsection (2), the balance of the proceeds remaining, less the expenses of the Supreme Court, shall be repaid out of the Supreme Court to the bonding company at the end of 2 years following the payment to the Crown of the proceeds of the bond.

Fund

**25.** (1) The minister shall establish an assurance fund to be known as the Real Estate Recovery Fund for the purpose of paying in whole or in part claims arising against a licensee relating to money held in trust by a licensee who

- (a) has committed fraud;
- (b) has committed a breach of trust;
- (c) fails to disburse or account for money held in a trust account; or

(d) declares bankruptcy.

(2) The fund shall consist of money paid into it by licensees in accordance with the regulations and interest, dividends and other returns earned upon the investment of money in the fund.

(3) The minister shall direct the superintendent to be responsible for the financial management and administration of and disbursement of payments from the fund in accordance with the regulations.

(4) The fund shall be held in trust for those persons, who, in accordance with the regulations, are entitled to receive payments out of the fund.

(5) Money in the fund shall be invested in investments authorized by the *Trustee Act*.

(6) The costs and expenses in administering the fund may, in accordance with the regulations, be paid out of the fund to the minister.

(7) The fund shall, in accordance with the regulations, be audited annually and a report on that audit shall be submitted to the minister not more than 90 days after the end of the preceding fiscal year established for the fund.

(8) Notwithstanding another Act, the money in the fund does not form part of the Consolidated Revenue Fund and the fund is not a division of the Consolidated Revenue Fund, but the money is the property of the Crown.

Trust account

**26.** (1) A broker shall maintain at least one interest-bearing trust account of a type approved by the superintendent in a financial institution that is authorized to receive money on deposit.

(2) A deposit shall be paid directly to a broker and the broker shall

(a) issue a receipt for the deposit; and

(b) deposit the monies in a trust account in accordance with subsection (3).



(3) A broker shall deposit in a trust account money received in trust for other persons in connection with trades and shall deposit the money within 2 banking days of receipt of the money.

(4) A broker shall only disburse money from a trust account where

- (a) the offer of purchase has not been accepted by the seller;
- (b) the trade has been completed;
- (c) the terms of the agreement of purchase and sale relating to the disbursement of the money have been satisfied;
- (d) the broker receives written notice from the seller and purchaser authorizing either
  - (i) the return of the money to the purchaser, or
  - (ii) the release of the money to the seller;
- (e) the superintendent has directed the disbursement of the money;
- (f) a court has directed the disbursement of the money; or
- (g) the money was deposited into the trust account in error.

(5) Interest earned on money deposited in a trust account referred to in subsection (1) shall be the property of the broker.

(6) Where there is a dispute regarding a deposit held in a trust account, the broker shall make every reasonable effort to resolve the dispute.

(7) Where the broker is not able to resolve a dispute regarding a deposit held in a trust account, either party to the dispute may apply to the superintendent to direct the disbursement of the deposit.

Unclaimed trust  
money

**27.** (1) Where a broker holds money in trust for more than 2 years, the broker may apply, in the manner acceptable to the superintendent, to have the money paid to the fund.

(2) Notwithstanding subsection (1), a broker shall not pay the money to the fund where the broker has the express authorization from the person who is entitled to the money held in trust to continue to hold the money in trust.

(3) Where at any time a person establishes to the satisfaction of the superintendent that he or she is entitled to money paid to the fund under subsection (1), the superintendent shall pay the money to him or her from the fund.

(4) A dispute regarding entitlement to money under this section shall be determined by the superintendent.

Prohibition

**28.** A person who is licensed under this Act and either registered as a mortgage broker under the *Mortgage Brokers Act* or employed or contracted by a mortgage broker registered under the *Mortgage Brokers Act* shall not provide services under the authority of this Act and the *Mortgage Brokers Act* to a person in relation to a trade.

Permitted salespersons

**29.** A broker shall not

- (a) employ or permit the salesperson of another broker or a person who is not licensed as a salesperson under this Act to trade; or
- (b) pay commission or other remuneration to a person referred to in paragraph (a).

Trading for other brokers prohibited

**30.** (1) A salesperson shall not trade on behalf of a broker other than a broker

- (a) who is licensed as a broker under this Act; and
- (b) by whom the salesperson is employed.

(2) A salesperson is not entitled to and shall not accept a commission or other remuneration for a trade from a person other than the broker with whom the salesperson is employed.

Promises to resell prohibited

**31.** (1) A broker or salesperson shall not make a representation or promise that he, she or another person will

- (a) resell or in any way guarantee or promise to resell real estate offered for sale by him or her;
- (b) purchase or sell the purchaser's real estate;
- (c) obtain a mortgage, extension of a mortgage, lease or extension of a lease; or
- (d) purchase or sell a mortgage or obtain a loan.

(2) Notwithstanding subsection (1), a broker or salesperson may make a representation referred to in subsection (1) where he or she delivers to the person to whom the representation or promise is made, when it is made, a statement signed by him or her clearly setting out the details of the representation or promise.

Breaking of contract  
prohibited

**32.** (1) A broker or salesperson shall not induce a person to break a contract for the sale or lease of real estate for the purpose of entering into another contract for the sale or lease of that real estate.

(2) Unless agreed to in writing by the seller, a broker is not entitled to claim commission from a seller respecting a trade where the broker is aware that another broker has an unexpired exclusive listing agreement in relation to the real estate.

Advertising

**33.** (1) A broker shall not advertise to purchase, sell, exchange or lease real estate unless the advertisement clearly indicates

- (a) the broker's name as the advertiser; and
- (b) that the broker is a broker.

(2) Where a broker references the name of a salesperson in an advertisement, the advertisement shall clearly indicate that the salesperson is employed by the broker.

- (3) An advertisement shall not be
  - (a) false;
  - (b) inaccurate;

- (c) reasonably capable of misleading the recipient or intended recipient;
- (d) offensive or harmful to the best interests of the public; or
- (e) prohibited by law.

Carrying on business as an individual

**34. (1)** A broker who is an individual shall

- (a) carry on business in his or her name only; and
- (b) not make any representation that would indicate that his or her business is being carried on by more than one person.

(2) Notwithstanding subsection (1), a surviving or remaining partner may carry on business in the name of the original partnership where all representations made by the surviving or remaining partner in connection with his or her business indicate that the surviving or remaining partner is the sole proprietor of the business.

Administrative penalty

**35. (1)** Where the superintendent is of the opinion that a person has committed, as specified by regulation, a contravention of this Act for which an administrative penalty applies, the superintendent or a person authorized by the superintendent may, in writing, notify that person that he or she is to pay to the government of the province an administrative penalty in the amount set out in the notice for each day or part of a day the contravention occurs or continues to occur.

(2) A person who pays an administrative penalty with respect to a contravention may not be charged with an offence under this Act with respect to that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notification under subsection (1), the government of the province may recover the amount owing in respect of the penalty as a debt due the Crown.

(4) For the purpose of this section, an administrative penalty is a monetary penalty imposed in accordance with the regulations for a contravention of this Act or the regulations.

Order of superintendent

**36. (1)** Where after a hearing the superintendent determines that a licensee contravened this Act, the regulations, the code of conduct or an

order of the superintendent, the superintendent may make one or more of the following orders:

- (a) an order suspending or cancelling the licensee's licence;
- (b) an order imposing conditions or restrictions on the licensee;
- (c) an order requiring the licensee to pay to the fund a fine not exceeding \$10,000; or
- (d) another order prescribed in the regulations.

(2) The superintendent may publish a summary of an order issued under this section in accordance with the regulations.

Inspectors

**37.** (1) The superintendent may designate persons or classes of persons to act as inspectors for the purpose of this Act and the regulations.

(2) The superintendent and the deputy superintendent are inspectors for the purpose of this Act and the regulations.

(3) A person shall not knowingly make a false or misleading statement, either orally or in writing, to an inspector while he or she is exercising powers or carrying out duties or functions under this Act or the regulations.

Powers of inspectors

**38.** (1) An inspector may, at all reasonable times, for purposes related to the administration or enforcement of this Act or the regulations, inspect or examine the premises, processes, books and records of a person that the inspector may consider relevant for the purpose of determining compliance with this Act or the regulations, and the inspector may, without a warrant,

- (a) enter any premises where
  - (i) any property, books or records are or may be kept, or
  - (ii) anything is done or is suspected by the inspector of being done in connection with a requirement of this Act or the regulations;
- (b) make copies, extracts, photographs or videos the inspector considers necessary;

- (c) require the owner or person in charge of a premises to give the inspector all reasonable assistance, including the production of books and records as requested by the inspector, and to answer all proper questions relating to the administration or enforcement of this Act or the regulations and, for that purpose, require the owner or person in charge to attend at the premises with the inspector; and
- (d) require the owner or person in charge to make available the means to generate and manipulate books and records that are in machine readable or electronic form and any other means or information necessary for the inspector to assess the books and records.

(2) Notwithstanding subsection (1), an inspector shall not enter a dwelling-house without the consent of the occupant except under the authority of a warrant issued under section 40 or 41.

Order of inspector

**39.** Where an inspector finds that a person is not in compliance with a provision of this Act or the regulations, the inspector may order that person to comply with the provision and may require the order to be carried out immediately or within the period of time that the inspector specifies.

Contravention of Act suspected

**40.** (1) Where during the course of an inspection under section 38 or otherwise an inspector believes on reasonable grounds that there has been a contravention of this Act or the regulations, the inspector may, with a warrant issued under subsection (2) or section 41, seize and take away any of the books or records that may be required as evidence of a contravention and may retain those documents until the time they are required in a court proceeding.

(2) A Provincial Court judge who is satisfied upon oath or affirmation there are reasonable grounds for believing there is in or on a premises anything that may provide evidence with respect to a suspected offence under this Act or the regulations, may issue a warrant authorizing an inspector to enter the premises and to

- (a) search;
- (b) examine the contents of the premises and make those inquiries that the inspector considers necessary; and

(c) copy, extract, photograph, video, seize and take away evidence, books and records,

for the purpose of investigating the suspected offence.

(3) The owner or person in charge of a premises referred to in this section or a person there shall not obstruct an inspector in the carrying out of his or her duties under this section as authorized by the warrant.

Telewarrant

**41.** (1) Where, in the opinion of an inspector it would not be practical to appear before a Provincial Court judge to apply for a warrant, the inspector may make the application by telephone or other means of telecommunication.

(2) Where an inspector acts under the authority of a warrant obtained under this section, the inspector shall provide a facsimile of the warrant to the owner or person in charge of a premises present at the time the warrant is carried out.

(3) In subsection (2), "facsimile" includes a record produced by electronic means or a written record of a telephone conversation made by both parties to the conversation while it is in progress and which the parties have confirmed as to its accuracy by reading their record of the conversation to one another at the end of the conversation.

Protection from liability

**42.** The superintendent, deputy superintendent, an inspector or a person acting on behalf of the superintendent or deputy superintendent, shall not be liable for anything done in good faith in the exercise or performance of a power, duty or function conferred or imposed on him or her under this Act.

Appeal

**43.** A person may appeal a decision or order of the superintendent, the deputy superintendent or an inspector made under this Act to the Financial Services Appeal Board in accordance with the *Financial Services Appeal Board Act*.

Notice

**44.** (1) A notice given under this Act or the regulations shall be considered sufficiently served where it is

(a) delivered or sent by prepaid registered mail to the address for service provided by the person; or

(b) sent electronically to the email address provided by the person.

(2) For the purpose of this section, where a notice or document is sent by registered mail, it shall be considered to have been served on the fifth day after mailing, and the service may be proved by providing evidence that the notice or document was prepaid and properly addressed and sent.

(3) For the purpose of this section, where a notice or document is sent electronically, it shall be considered to have been served on the day it is sent, if the document is sent by 4 p.m., or the next day that is not a Saturday or holiday, if the document is sent after 4 p.m.

Offences

**45.** (1) A person who contravenes this Act, the regulations or an order under this Act is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000, and in default of payment or in addition to that fine, to imprisonment for a term not exceeding 2 years.

(2) Each contravention of this Act, the regulations or an order under this Act constitutes a new and separate offence.

(3) Where an offence under this Act or the regulations is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Limitation period

**46.** A prosecution under this Act or the regulations shall be started within 2 years from the date on which the superintendent becomes aware of the alleged offence.

Regulations

**47.** The Lieutenant-Governor in Council may make regulations

- (a) exempting persons or classes of persons from the application of this Act;
- (b) prescribing the requirements, qualifications and conditions for issuing licences;
- (c) respecting information and documentation to be provided with an application for a licence;



- (d) prescribing the amount of errors and omissions liability insurance;
- (e) prescribing the amount of bonds;
- (f) providing for examination of applicants for licences;
- (g) exempting persons from the examination requirements for licensees;
- (h) respecting the method of payment for deposits;
- (i) respecting the process for the superintendent to resolve disputes regarding deposits held in trust and directing the disbursement of those deposits;
- (j) prescribing the annual reports to be made by licensees and the information to be contained in those reports;
- (k) prescribing the books, accounts and records to be kept and maintained by brokers;
- (l) respecting the administration and auditing of the fund, books and records required to be maintained under this Act and the fiscal year of the fund;
- (m) respecting the establishment and maintenance of the fund, requiring licensees to contribute to the fund and prescribing the amount and manner of making contributions to the fund;
- (n) respecting the administration and audit of trust accounts and the books and records to be maintained by brokers with respect to those trust accounts;
- (o) respecting advertising;
- (p) prescribing or limiting the commission or rates of commission that may be charged and collected by brokers;
- (q) respecting the contravention of sections of this Act and the regulations for which an administrative penalty may be imposed and the time, amount and manner in which those penalties may be imposed and collected;

- (r) respecting orders of the superintendent;
- (s) respecting hearings;
- (t) respecting the publication of orders of the superintendent;
- (u) defining a word or phrase used but not defined in this Act;  
and
- (v) generally, to give effect to this Act.

Fees and forms

**48.** The minister may set fees and establish forms for the purpose and administration of this Act and the regulations.

Transitional

**49. (1)** A person who is the superintendent immediately before the coming into force of this Act shall continue to be the superintendent.

**(2)** A person who is the deputy superintendent immediately before the coming into force on this Act shall continue to be the deputy superintendent.

**(3)** Where an applicant submitted an application under the former Act and that application has not been issued or refused on the coming into force of this Act, it shall be considered to be an application under this Act.

**(4)** On the coming into force of this Act, a valid licence issued under the former Act shall continue to be valid as though it were a licence issued under this Act until one year after the coming into force of this Act.

**(5)** Where a complaint proceeding was started under the former Act but not concluded before the coming into force of this Act, the proceeding shall be concluded under the former Act as if the former Act were still in force.

**(6)** A decision under the former Act shall continue to be in force and shall be considered to be a decision under this Act.

SNL2009 cC-31.1  
Amdt.

**50.** Paragraph 95(f) of the *Consumer Protection and Business Practices Act* is repealed and the following substituted:

- (f) a person in respect of business for the carrying on of which he or she is required to be licensed under the *Securities Act*, the *Insurance Adjusters, Agents and Brokers Act*, the *Insurance Companies Act* or the *Real Estate Trading Act, 2019*; or

CNLR 1006/96  
Amdt.

**51. Paragraph 6(b) of the *Mortgage Brokers Regulations* published under the *Mortgage Brokers Act* is repealed and the following substituted:**

- (b) a real estate broker, licensed under the *Real Estate Trading Act, 2019*, acting in the ordinary course of his or her business;

Repeal

**52. Paragraphs 7(1)(d) and 9(1)(g) shall be repealed on the day that section 25 comes into force.**

RSNL1990 cR-2  
Rep.

**53. The *Real Estate Trading Act* is repealed.**

Commencement

**54. (1) This Act comes into force on January 1, 2020.**

**(2) Notwithstanding subsection (1), paragraphs 6(1)(e) and 7(1)(e) and sections 9, 10 and section 25 or a subsection, paragraph or subparagraph of those sections come into force on a day or days to be proclaimed by the Lieutenant-Governor in Council.**