

# CONSOLIDATION OF REAL ESTATE AGENTS' LICENSING ACT

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(Current to: February 15, 2015)

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## AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2011,c.10,s.30

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## GLOSSARY OF TERMS USED IN CONSOLIDATIONS

### *Miscellaneous*

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

### *Citation of Acts*

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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**REAL ESTATE AGENTS' LICENSING ACT****INTERPRETATION**

## Definitions

**1.** In this Act,

"agent" means a person who, either alone or through a salesperson or official, trades on behalf of another person for or on the hope or promise of compensation, gain or reward, and includes a person who holds himself or herself out to be a real estate agent; (*agent*)

"document" means books, accounts, accounting records, papers, contracts, computer records, correspondence and other records and documents; (*document*)

"person" includes a partnership; (*personne*)

"real estate" means

- (a) real property,
- (b) leasehold property,
- (c) a business, with or without premises, and the fixtures, stock-in-trade, goods and chattels associated with the operation of the business, or
- (d) a time-sharing agreement with respect to real or leasehold property which
  - (i) allows a person to use, occupy or possess the property for two or more periods of continuous use, and
  - (ii) provides that at least one period of continuous use following the first period of continuous use commences in a year subsequent to the year in which the first period commences; (*biens immobiliers*)

"salesperson" means an individual who is employed by an agent to trade; (*représentant*)

"superintendent" means the superintendent of real estate appointed under section 70; (*surintendant*)

"trade" means

- (a) a transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise,
- (b) an offer or attempt to list real estate for a transaction referred to in paragraph (a), or
- (c) an advertisement, negotiation or other act which directly or indirectly furthers a transaction, offer or attempt referred to in paragraph (a) or (b),

and the verb "trade" has a corresponding meaning. (*opération immobilière*)

## APPLICATION

### Application of Act

**2.** (1) This Act applies to an agent or a salesperson or to a trade by an agent or a salesperson.

### Exemption

- (2) This Act, except sections 61 to 69 and 73 to 77, does not apply to a trade by
- (a) an assignee, receiver, receiver manager, liquidator, trustee or custodian or other person acting as directed by
    - (i) an Act of Nunavut or an Act of the Parliament of Canada, or
    - (ii) an order of a court;
  - (b) an administrator of an estate or an executor or trustee acting under the terms of a will, marriage settlement or deed of trust;
  - (c) a bank, credit union or an insurer where the real estate is owned by the bank, credit union or insurer;
  - (d) a person, and an official or employee of that person, where that person
    - (i) acquires a substantial interest in real estate, or
    - (ii) disposes of real estate in which that person has a substantial interest,
 and no commission or other remuneration is paid with respect to the trade;
  - (e) a person, where the real estate consists only of mineral rights;
  - (f) a member in good standing of the Law Society of Nunavut, where the trade is made in the course of and as part of the legal practice of the member; or
  - (g) the Nunavut Housing Corporation, or a housing authority, association or society, where the trade is made in the course of business of the Nunavut Housing Corporation.

### No exemption for agent

(3) The exemption in subsection (2) does not apply where an agent or salesperson is directly or indirectly involved in the trade. S.Nu. 2011,c.10,s.30(2).

## LICENCES

### Trading in real estate

**3.** (1) No person shall trade unless the person is licensed as an agent or licensed as a salesperson.

### Employment of salesperson

(2) No agent shall employ a salesperson unless that individual is licensed as a salesperson.



#### Prohibition

**4.** No person who is not licensed as an agent or salesperson shall act as an agent or a salesperson or allow others to believe that he or she is acting as an agent or a salesperson.

#### Eligibility for licence as agent

**5.** A person is eligible to be licensed as an agent if that person maintains a business office in Nunavut and

- (a) in the case of an individual,
  - (i) has attained the age of 19 years,
  - (ii) is a resident of Nunavut, and
  - (iii) has the prescribed education, training and examination qualifications required of agents; or
- (b) in the case of a corporation or a partnership,
  - (i) is registered under the laws of Nunavut, and
  - (ii) has designated a representative under section 8. S.Nu. 2011,c.10,s.30(2).

#### Application for licence as agent

**6.** A person may apply for a licence as an agent by submitting to the superintendent

- (a) a completed application in the prescribed form;
- (b) the prescribed fee; and
- (c) a bond in the prescribed amount.

#### Application in name of agent

**7.** A corporation or partnership may apply for a licence as an agent in the name of the corporation or partnership.

#### Representative

**8.** (1) A corporation or partnership shall designate one individual who shall act as its representative.

#### Qualifications

(2) A representative shall

- (a) be licensed as a salesperson;
- (b) have the prescribed education, training and examination qualifications required of agents;
- (c) in the case of a corporation, be a member of the board of directors of the corporation or an officer or manager of the corporation; or
- (d) in the case of a partnership, be a partner or an officer or manager of the partnership.

#### Prohibition

(3) No person shall act as the representative of more than one corporation or partnership at the same time.

### Replacement of representative

(4) Where a representative dies, becomes incapacitated or ceases to comply with subsection (2), the corporation or partnership shall designate another individual as its representative under this section.

### Eligibility for licence as salesperson

- 9.** An individual is eligible to be licensed as a salesperson if he or she
- (a) has attained the age of 19 years;
  - (b) is a resident of Nunavut;
  - (c) has the prescribed education, training and examination qualifications required of salespersons; and
  - (d) is an agent or is a salesperson of an agent.
- S.Nu. 2011,c.10,s.30(2).

### Application for licence as salesperson

- 10.** (1) An individual may apply for a licence as a salesperson by submitting to the superintendent
- (a) a completed application in the prescribed form;
  - (b) a written declaration made by an agent or the representative of an agent that the applicant, if granted a licence, is to act as a salesperson of the agent; and
  - (c) the prescribed fee.

### Exception

(2) A representative or agent applying for a licence as a salesperson is not required to submit the declaration referred to in paragraph (1)(b).

### Issuance of licence

**11.** (1) The superintendent may issue a licence to an applicant if the superintendent is satisfied that the applicant has fulfilled the requirements of this Act and the regulations.

### Exemption

(2) Despite subsection (1), the superintendent may issue a licence to an applicant who does not fulfil the requirements of the Act and the regulations where the applicant is exempted by regulation. S.Nu. 2011,c.10,s.30(2).

### Expiry of licence

**12.** A licence expires at midnight on March 31 of each year, unless the licence has been previously renewed, terminated or cancelled or is a temporary licence.

### Renewal of licence

**13.** (1) The superintendent shall renew a licence if an applicant submits the prescribed fee and a completed renewal application in the prescribed form before the expiry of the existing licence.

#### Continuation of licence

(2) Where an application is made to renew a licence and the prescribed fee is paid, the licence shall be deemed to continue until the renewal is granted.

#### Duties of agent

- 14.** (1) An agent shall immediately submit to the superintendent written notice of
- (a) a change in the address of the business office of the agent;
  - (b) the amendment or cancellation of a bond provided under this Act;
  - (c) a change in the bank or credit union in which the agent maintains a trust account;
  - (d) the termination of employment of a salesperson;
  - (e) a change in the partners where the agent is a partnership;
  - (f) a change in the officers or directors of a corporation where the agent is a corporation; and
  - (g) a change of the representative where the agent is a corporation or partnership.

#### Duty of salesperson

(2) A salesperson shall immediately submit to the superintendent written notice of the termination of his or her employment with an agent.

#### Information

**15.** The superintendent may from time to time require that an agent or salesperson or an applicant for a licence verify or supplement any information submitted under the Act or regulations.

#### Change in partnership

**16.** (1) A change in the membership of a partnership terminates a licence of the partnership.

#### Termination of employment

(2) The termination of employment of a salesperson with the agent who makes the declaration referred to in paragraph 10(1)(b) terminates the licence of that salesperson.

#### Forfeiture of bond

(3) A licence issued to an agent terminates where the bond provided by the agent to the superintendent is forfeited or the bond is cancelled by the agent or surety and the agent does not replace the bond with another.

#### Temporary licence

**17.** The superintendent may issue a temporary licence for a period of time specified by the superintendent to

- (a) a partnership, where there has been a change in its membership;
- (b) the spouse, executor, administrator or trustee of an agent who has died or become incapacitated; or

- (c) a corporation or partnership, where a representative dies, becomes incapacitated or ceases to comply with subsection 8(2), and there is no person immediately qualified to replace that representative.

### CANCELLATION OR SUSPENSION OF LICENCE

#### Cancellation or suspension of licence

**18.** The superintendent may suspend or cancel the licence of an agent or salesperson where that agent or salesperson

- (a) contravenes this Act or the regulations;
- (b) makes a false statement in any application, notice, report or prospectus submitted to the superintendent under this Act or the regulations;
- (c) makes, publishes, advertises or distributes any misrepresentation respecting a trade;
- (d) does anything that dishonestly influences, discourages or induces a trade;
- (e) offers real estate for sale or lease without the consent of the owner or on terms other than those authorized by the owner;
- (f) places a sign offering real estate for sale or lease without the consent of the owner;
- (g) fails to remove a sign offering real estate for sale or lease within 10 days of the expiration of the listing;
- (h) files or continues a caveat in the Land Titles Office without reasonable cause;
- (i) falsifies a contract or other document concerning a trade;
- (j) induces or attempts to induce a party to a contract concerning a trade to breach that contract; or
- (k) is convicted of an offence against the *Criminal Code* that is related to the qualifications, functions or duties of an agent or salesperson.

#### Cancellation or suspension of licence of agent

**19.** The superintendent may suspend or cancel the licence of an agent where

- (a) the funds in the trust account of the agent are less than the amount for which the agent is accountable;
- (b) the agent has misappropriated funds held in trust;
- (c) the agent fails to maintain proper records at his or her business office;
- (d) the agent fails to produce documents on the request or demand of a person making an inspection or investigation under this Act; or
- (e) a salesperson of the agent does anything referred to in paragraphs 18(a) to (j), or is convicted of an offence referred to in paragraph 18(k).

Salesperson not to trade

**20.** No salesperson shall trade where the licence of the agent who employs that salesperson is suspended or cancelled.

Notice of intention

**21.** (1) Where the superintendent intends to suspend or cancel a licence, the superintendent shall give written notice to the agent or salesperson.

Content of notice

(2) A notice given under subsection (1) must state the reasons for the suspension or cancellation of the licence, and inform the agent or salesperson that he or she is entitled to a hearing before the superintendent if he or she applies within 30 days after service of the notice.

No application for hearing

(3) The superintendent may suspend or cancel a licence where the agent or salesperson does not apply for a hearing within 30 days after service of the notice.

Notice of hearing

**22.** Where an agent or salesperson applies for a hearing under section 21, the superintendent shall appoint a time and place for the hearing and give written notice to the agent or salesperson.

Examination of evidence

**23.** (1) The superintendent shall, on request, afford the agent or salesperson an opportunity to examine in advance of the hearing reports or documentary evidence that relate to the subject of the hearing.

Conduct of hearing

(2) The agent or salesperson may be represented by counsel at the hearing and may present evidence and cross-examine witnesses.

Written reasons

**24.** After a hearing, the superintendent shall give the agent or salesperson written reasons for his or her decision.

Appeal

**25.** The agent or salesperson may, within 30 days after receiving written notice of the decision of the superintendent, appeal to the Nunavut Court of Justice in accordance with section 38. S.Nu. 2011,c.10,s.30(2).

Interim suspension

**26.** (1) The superintendent may, where he or she considers it necessary, impose an interim suspension on a licence which shall have effect until the interim suspension is vacated by the superintendent or until the licence of an agent or salesperson is cancelled or suspended.

### Notice of interim suspension

(2) An interim suspension takes effect on the agent or salesperson being given written notice of the interim suspension.

## FORFEITURE OF BOND

### Forfeiture of bond

**27.** (1) Where a judgment arising out of a trade is obtained against an agent or a salesperson of that agent and is not satisfied within 30 days after the date that the judgment becomes final, the bond submitted by that agent is forfeited on the superintendent providing written notice to the surety stating that the bond is forfeited.

### Surety to pay

(2) Where a bond is forfeited and the superintendent has provided written notice to the surety stating that payment is required, the surety shall, within 60 days after the notice is given, pay to the superintendent

- (a) the amount of the judgment referred to in subsection (1); and
- (b) the amount of any other judgment arising out of a trade obtained against the agent who provided the bond, or against a salesperson of that agent, where the judgment
  - (i) becomes final within two years after the date the bond was forfeited, and
  - (ii) remains unsatisfied for 30 days after the judgement becomes final.

### Money retained in trust

(3) Where the superintendent receives money under subsection (2), the superintendent shall hold that money in trust for those persons who obtained judgments referred to in subsection (2).

### Money paid out

**28.** Where money is held in trust under subsection 27(3), the superintendent may, after two years and 60 days after the date that the bond was forfeited, pay out the money

- (a) to fully satisfy the judgments referred to in subsection 27(2); or
- (b) on a *pro rata* basis, where the money held in trust is insufficient to satisfy all the judgments.

### Further judgments

**29.** Where the total amount paid to the superintendent under subsection 27(2) is less than the face value of the bond forfeited, the surety shall, within 60 days after the superintendent providing written notice to the surety stating that payment is required, pay to the superintendent the amount of a judgment arising out of a trade where

- (a) the action which resulted in the judgment was taken against the agent who provided the bond or against a salesperson of that agent within two years of the date on which the bond was forfeited; and

- (b) the judgment became final more than two years after the date on which the bond was forfeited, and remained unsatisfied for 30 days after the judgment became final.

#### Payment to superintendent

**30.** (1) Where the superintendent receives money under section 29, the superintendent shall hold that money in trust for those persons who obtained judgments referred to in section 29.

#### Money paid out

(2) Where money is held in trust under subsection (1) and the superintendent is satisfied that the actions referred to in section 29 have been concluded and that all the money payable to the superintendent has been paid, the superintendent may pay out the money held

- (a) to fully satisfy the judgments referred to in section 29; or
- (b) on a *pro rata* basis where the money held in trust is insufficient to satisfy all the judgments.

#### Liability of surety

**31.** The total liability of a surety under a bond shall not exceed the face value of the bond.

## INSPECTION AND INVESTIGATION

#### Inspection

**32.** (1) The superintendent or a person designated by the superintendent may, at any reasonable time, inspect any of the documents of an agent to determine whether

- (a) the funds in the trust account of the agent are in the amount for which the agent is accountable;
- (b) the agent maintains proper records at his or her business office; and
- (c) the agent and the salespersons of the agent are complying with this Act and the regulations.

#### Entry on business premises

(2) A person making an inspection under subsection (1) may enter and examine the business premises of an agent.

#### Production of documents

(3) An agent shall produce any document requested by a person making an inspection under subsection (1).

### Definition of "investigation"

**33.** (1) In this section and sections 34 and 35, "investigation" means an investigation conducted under subsection (2).

### Investigation

(2) The superintendent or a person designated by the superintendent may conduct an investigation, where the superintendent believes on reasonable grounds that

- (a) an agent or salesperson has
  - (i) done anything referred to in paragraphs 18(a) to (j),
  - (ii) committed an offence against the *Criminal Code* that is related to the qualifications, functions or duties of an agent or salesperson, or
  - (iii) acted as an agent or salesperson while unlicensed; or
- (b) an agent has
  - (i) in his or her trust account, funds that are less than the amount for which the agent is responsible,
  - (ii) misappropriated funds held in trust, or
  - (iii) failed to maintain proper business records at his or her business office.

### Powers on investigation

**34.** (1) The superintendent or a person designated by the superintendent may, for the purposes of an investigation,

- (a) demand in writing that a person produce any document; and
- (b) enter and examine, at any reasonable time, the business premises of an agent or salesperson.

### Obstruction of investigation

(2) No person shall, during an investigation, obstruct the superintendent or a person designated by the superintendent.

### Destruction of documents

(3) No person shall conceal or destroy a document relating to an investigation.

### Documents

**35.** (1) Where, in an investigation, the superintendent or a person designated by the superintendent enters the business premises of an agent or salesperson, he or she may demand access to any document and may seize and remove any document.

### Seizure

(2) Where a document is seized, the superintendent shall, on request, provide a copy of the document to the person who had custody of the document immediately before the seizure.



## Production of documents on demand

**36.** A person who receives a demand for a document under paragraph 34(1)(a) or subsection 35(1) shall produce the document.

## APPOINTMENT OF RECEIVER

## Appointment of receiver

**37.** (1) The superintendent may apply to the Nunavut Court of Justice for the appointment of a receiver, receiver manager or trustee to hold or manage all or part of the property of that agent or salesperson where the superintendent

- (a) has suspended or cancelled the licence of an agent or salesperson;
- (b) believes on reasonable grounds that trust funds in a trust account of an agent are less than the amount for which the agent is accountable; or
- (c) believes on reasonable grounds that criminal proceedings that will be or have been instituted against an agent or a salesperson are related to the qualifications, functions or duties of an agent or salesperson.

## Security of funds

(2) Where the conditions in subsection (1) exist, the superintendent may in writing order

- (a) a person having on deposit or under his or her control any funds or securities of an agent or salesperson to hold those funds or securities;
- (b) an agent or salesperson to refrain from withdrawing funds or securities referred to in paragraph (a) from any person who has them on deposit or under his or her control; or
- (c) an agent or salesperson to hold any funds or securities of clients or other persons that the agent or salesperson has in his or her possession or under his or her control in trust for
  - (i) a receiver, receiver manager or trustee appointed under subsection (1), or
  - (ii) a receiver, receiver manager, liquidator, trustee or custodian appointed under an Act of Nunavut, an Act of the Parliament of Canada or an order of a court.

## Appeal

(3) A person aggrieved by an order of the superintendent made under subsection (2) may, within 30 days after the order, appeal to the Nunavut Court of Justice in accordance with section 38. S.Nu. 2011,c.10,s.30(2).

## APPEAL

### Procedure on appeal

**38.** (1) An appeal under this Act shall be conducted in accordance with the procedure for appeals from tribunals set out in the *Judicature Act*.

### Powers of Nunavut Court of Justice

(2) The Nunavut Court of Justice may confirm, vary or set aside the decision or order of the superintendent.

### Order continued

(3) A decision or order of the superintendent continues to apply pending disposition of an appeal.

### Decision final

(4) A decision or order of the Nunavut Court of Justice on an appeal is final and binding on the parties. S.N.W.T. 1998,c.34,Sch.C,s.29; S.Nu. 2011,c.10,s.30(2).

## ACCOUNTS

### Books of agent

**39.** An agent shall keep proper books and accounts of a trade, and shall enter in the books and accounts in respect of each trade

- (a) a description of the nature of the trade;
- (b) a description of the real estate involved that sufficiently identifies the real estate;
- (c) the true consideration for the trade;
- (d) the names of the parties to the trade;
- (e) the amount of deposit received and a record of the disbursement of the deposit; and
- (f) the amount of commission or other remuneration for the agent and the name of the party paying the commission or remuneration.

### Trust ledger

**40.** An agent shall

- (a) keep a trust ledger with a separate record for each person on whose behalf the agent is acting in respect of a trade; and
- (b) enter in that record an account of
  - (i) money received in trust,
  - (ii) money held in trust,
  - (iii) interest on money held in trust, and
  - (iv) disbursements made from money held in trust.

Trust money

- 41.** An agent shall
- (a) immediately deposit all money received in trust into an account maintained in a bank or credit union;
  - (b) ensure that the account is kept in the name of the agent and designated as a trust account;
  - (c) keep money received or held in trust separate from money which belongs to the agent;
  - (d) only disburse money received or held in trust in accordance with the terms of the trust governing the use of that money; and
  - (e) clearly mark all cheques drawn on a trust account.

Auditor's report

- 42.** An agent shall submit to the superintendent before March 31 in each year the report of an auditor in the prescribed form and containing the prescribed information.

Retention of records

- 43.** An agent shall retain accounting records, books and accounts of a trade for a period of five years after the books, accounts or records came into existence or for a longer period that the superintendent may direct.

Deposit of trust money

- 44.** (1) All money deposited under paragraph 41(a) shall be kept on deposit in Nunavut.

Interest on trust account

- (2) An agent shall instruct the bank or credit union in which the agent maintains a trust account to remit any interest earned on the account to the Minister for deposit to the Consolidated Revenue Fund.

Arrangement regarding interest

- (3) Despite subsection (2), the agent may arrange with a purchaser or vendor to deposit money to which that purchaser or vendor is entitled in a separate trust account at interest, which interest shall be the property of that purchaser or vendor.

S.Nu. 2011,c.10,s.30(2).

## REGULATION OF TRADING

Definition of "guaranteed sale agreement"

- 45.** (1) In this section and in sections 46 to 48, "guaranteed sale agreement" means an agreement in writing under which an agent or a person acting on behalf of the agent undertakes to pay to the vendor of real estate a fixed or determinable amount of money in respect of the real estate within a fixed or determinable period of time.

### Trust account

(2) An agent who enters into a guaranteed sale agreement or has another person enter into a guaranteed sale agreement on his or her behalf shall maintain a separate trust account in a bank or credit union in Nunavut.

### Deposit

(3) Where a guaranteed sale agreement is entered into by an agent or another person on behalf of that agent, that agent shall deposit into the trust account maintained under subsection (2) not less than 5% of the total amount that may be payable under the guaranteed sale agreement. S.Nu. 2011,c.10,s.30(2).

### Disposition of deposit

**46.** (1) Money deposited under subsection 45(3) shall be held in trust for the vendor and shall be

- (a) paid to the vendor as part of the total amount payable under the guaranteed sale agreement;
- (b) forfeited to the vendor if the vendor is not paid in accordance with the guaranteed sale agreement; or
- (c) returned to the agent where, under the terms of the guaranteed sale agreement, there is no longer any money payable to the vendor under that guaranteed sale agreement.

### Forfeiture of deposit

(2) Where a deposit is forfeited under paragraph (1)(b),

- (a) the forfeiture does not prejudice any action that the vendor may have against the agent or other parties to the guaranteed sale agreement; and
- (b) the money forfeited may be applied toward any sum which that vendor may be entitled to receive as damages arising out of the non-performance of the guaranteed sale agreement.

### Commission not payable on purchase

**47.** Where an agent or other person who entered into a guaranteed sale agreement with a vendor purchases the real estate of the vendor under the guaranteed sale agreement, no commission is payable to that agent or other person by that vendor in respect of the trade.

### Salesperson

**48.** A salesperson shall only enter into a guaranteed sale agreement on behalf of the agent who employs that salesperson.

### Undertaking by agent

**49.** An agent may undertake to

- (a) obtain a mortgage, lease or loan,
- (b) have a term of a mortgage or lease altered, or
- (c) assume or assign a mortgage or an agreement for sale,

where the undertaking is set out in writing and a copy of the undertaking is delivered to the person to whom the undertaking is made.

#### Advertising

**50.** (1) An agent or salesperson advertising to purchase, sell, exchange or lease real estate shall clearly indicate in the advertisement

- (a) that he or she is the party advertising; and
- (b) that he or she is an agent or a salesperson, as the case may be.

#### Reference to name of salesperson

(2) A reference to the name of a salesperson in an advertisement referred to in subsection (1) must clearly indicate the name of the agent who employs the salesperson.

#### Use of name by agent

**51.** No agent shall trade in any name other than that which appears on the licence issued under this Act.

#### Disclosure of interest

**52.** No agent or salesperson shall trade

- (a) on behalf of himself or herself or on behalf of another person unless the agent or salesperson discloses in writing to the parties involved in the trade
  - (i) any direct or indirect interest that he or she or any other agent or salesperson has in the real estate as vendor or purchaser, and
  - (ii) that he or she is licensed under this Act as an agent or as a salesperson; or
- (b) on behalf of another agent or salesperson without disclosing in writing to the parties involved in the trade that he or she and the other agent or salesperson are licensed under this Act as agents or salesperson.

#### Purchase by agent or salesperson

**53.** No agent or salesperson shall either directly or indirectly acquire any interest in real estate until the agent or salesperson has disclosed in writing to the owner of the real estate complete details of any negotiations for its trade to another person.

#### Employment of salesperson of another agent

**54.** No agent shall employ the salesperson of another agent in respect of a trade, or pay a commission or other remuneration to a salesperson of another agent.

#### Payment of commission

**55.** No agent shall pay a commission or other remuneration for services rendered in respect of a trade to any person other than a salesperson employed by that agent or to another agent who is licensed under this Act or similar legislation in a jurisdiction outside Nunavut. S.Nu. 2011,c.10,s.30(2).

### Duties of salesperson

**56.** No salesperson shall

- (a) trade on behalf of an agent other than the agent who, according to the records of the superintendent, is the employer of the salesperson;
- (b) pay a commission or other fee to any person for services rendered in connection with a trade; and
- (c) accept a commission or other remuneration for a trade from any person except the agent who, according to the records of the superintendent, is the employer of the salesperson.

### Commission

**57.** (1) No person shall accept a commission or other remuneration in respect of a trade unless that person is licensed under this Act.

### Agreement for commission

(2) A commission or other remuneration payable in respect of the sale or lease of real estate shall be fixed as either an agreed amount or an agreed percentage of the sale price.

### No agreement for commission

(3) If no agreement as to the amount of or the rate of commission has been entered into, the amount of or the rate of commission is that generally prevailing in the community where the real estate is situated.

### Prohibited arrangement for commission

**58.** No agent or salesperson shall accept a commission or other remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price of the real estate.

### Agreement to list real estate

**59.** (1) Where an agreement to list real estate with an agent is in writing, an agent shall, as soon as is practicable, deliver a true copy of the agreement to the owner of the real estate or to the person entering into the agreement on behalf of the owner.

### Agreement void

(2) An agreement under subsection (1) is void where it

- (a) provides for more than one date on which it expires;
- (b) does not specify a date on which it expires;
- (c) does not provide for the amount of or the rate of commission payable in respect of the trade; or
- (d) does not provide for the terms or conditions on which the commission is payable in respect of the trade.

## Copy of offer or acceptance of offer

- 60.** Where an agent or salesperson receives a written offer or acceptance of an offer from a party to a trade, the agent or salesperson shall, as soon as practicable,
- (a) provide that party with a true copy of the offer or acceptance; and
  - (b) deliver a true copy of the offer or acceptance to the other party to the trade.

## TRADING IN REAL ESTATE OUTSIDE NUNAVUT

## Prospectus

- 61.** (1) No person shall trade in real estate located outside Nunavut unless
- (a) the trade takes place through an agent licensed under this Act;
  - (b) a prospectus is filed with the superintendent; and
  - (c) the superintendent has issued a certificate of acceptance in respect of that prospectus.

## Exception

- (2) Subsection (1) does not apply to
- (a) an isolated trade where the trade is not part of continued successive transactions of a like nature; or
  - (b) a trade consisting only of an advertisement placed or made from outside Nunavut.

## Representation regarding prospectus

(3) No person shall make any representation that the superintendent has rendered an opinion of the financial standing, fitness or conduct of any person in connection with the filed prospectus, or the merits of the prospectus. S.Nu. 2011,c.10,s.30(2).

## Duties of vendor and rights of purchaser

- 62.** (1) No person shall, either as a vendor or as an agent or salesperson, enter into or negotiate any contract in respect of a trade in real estate located outside Nunavut unless
- (a) a copy of the prospectus is delivered to the prospective purchaser or tenant, as the case may be; and
  - (b) the prospective purchaser or tenant acknowledges in writing that he or she has received a copy of the prospectus and has been afforded the opportunity to read it.

## Retention of acknowledgment

(2) An acknowledgment referred to in subsection (1) shall be retained by the vendor or agent and shall be available for inspection by the superintendent for a period of not less than five years. S.Nu. 2011,c.10,s.30(2).

### Rescission of contract

**63.** (1) Where a purchaser or tenant has entered into a contract in respect of a trade in real estate located outside Nunavut, the purchaser or tenant may rescind the contract by serving written notice on the vendor or agent

- (a) within 30 days after entering into the contract; or
- (b) if there has not been compliance with section 62.

### Onus

(2) In an action for rescission under paragraph (1)(b), the onus of proving compliance with section 62 rests on the vendor.

### Other remedies

(3) The right of rescission provided in this section is in addition to any other right that the purchaser or tenant may have in respect of the contract. S.Nu. 2011,c.10,s.30(2).

### Contents of prospectus

**64.** A prospectus submitted to the superintendent for filing shall meet the prescribed requirements and shall be accompanied by

- (a) an affidavit of the owner of the real estate or, if the owner is a corporation, a majority of the directors of the corporation, as to the correctness of every matter of fact stated in the prospectus;
- (b) a copy of every plan referred to in the prospectus;
- (c) a copy of every form of contract referred to in the prospectus;
- (d) any document the superintendent may require to support any proposal, estimate or statement of fact set out in the prospectus;
- (e) a performance bond, surety bond or whatever other security the superintendent requires;
- (f) any financial particulars of the owner the superintendent may require; and
- (g) the prescribed fee.

### Inquiry by superintendent

**65.** (1) The superintendent may, before issuing a certificate of acceptance, make any inquiries the superintendent considers necessary, including

- (a) obtaining reports from public authorities or other qualified persons in the jurisdiction in which the real estate is located; and
- (b) examining the real estate.

### Costs of inquiry

(2) The person filing or on whose behalf a prospectus is filed shall bear the costs of any inquiry made under subsection (1).

### Acceptance of prospectus

**66.** (1) Where it appears to the superintendent that a person has complied with this Act and the regulations, the superintendent may grant a certificate of acceptance.



### Refusal of prospectus

(2) The superintendent shall not grant a certificate of acceptance where it appears that the prospectus

- (a) contains any statement, promise or forecast that is false or misleading, or has the effect of concealing material facts;
- (b) does not make adequate provisions for the protection of deposits or other funds of purchasers, or for the assurance of title or whatever other interest is contracted for; or
- (c) fails to comply with section 64.

### Order to cease trading

**67.** Where it appears to the superintendent, subsequent to the filing of a prospectus and the granting of a certificate of acceptance, that any of the conditions referred to in subsection 66(2) exist or that the public interest needs to be protected, the superintendent may, after giving the person on whose behalf the prospectus was filed an opportunity to be heard,

- (a) cancel the certificate of acceptance; and
- (b) order that all trading in the real estate to which the prospectus refers cease.

### Amended or new prospectus

**68.** A person who files a prospectus shall provide written notice to the superintendent and shall file an amended prospectus within 20 days after the occurrence of a change respecting any of the matters set out in the prospectus

- (a) that has the effect of rendering a statement in the prospectus false or misleading; or
- (b) that brings into being a fact or circumstance that should have been disclosed in the prospectus if the fact or circumstance had existed at the time of filing.

### Expiry of prospectus

**69.** A prospectus expires one year after the date on which the superintendent grants a certificate of acceptance in respect of that prospectus.

## ADMINISTRATION

### Superintendent

**70.** The Minister may appoint a superintendent of real estate.

### Service of notice

**71.** (1) Where this Act requires that written notice be provided to a person, the notice must be served personally or mailed or sent by electronic transmission to the address of the person.

Notice by mail

(2) Where a notice is mailed, service of the notice shall be deemed to be effective 14 days after the date of mailing.

Liability

**72.** (1) The superintendent and other persons employed in the administration of this Act are not liable for loss or damage caused by anything done or not done by them in good faith in the performance of their duties or in the exercise of their powers.

Government not liable

(2) The Government of Nunavut is not liable for loss or damage caused by anything done or not done in good faith by any of the persons referred to in subsection (1) in the performance of their duties or in the exercise of their powers. S.Nu. 2011,c.10,s.30(2).

## OFFENCES AND PUNISHMENT

False statement

**73.** No person shall make a false statement in any application, notice, report or prospectus submitted to the superintendent under this Act or the regulations.

Offences and punishment

**74.** (1) Every person who contravenes section 61, 62 or 68 is guilty of an offence and liable on summary conviction

- (a) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both; or
- (b) in the case of a corporation, to a fine not exceeding \$25,000.

General offence

(2) Every person who contravenes any provision of this Act or the regulations for which no specific punishment is provided is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a period not exceeding six months or to both.

Return of commission

**75.** In addition to any other punishment imposed, a person who is convicted of trading without being licensed as an agent or salesperson, or of employing a salesperson who is not licensed, shall return a commission or other remuneration paid by any person on whose behalf the agent or salesperson acted while unlicensed.

Burden of proof

**76.** Where, in a prosecution under this Act, the accused pleads that a valid licence was in effect at the time of the act or omission complained of, the burden of proof of the existence of a valid licence is on the accused.

**Limitation period**

**77.** A prosecution for an offence under this Act may not be commenced after two years after the time when the subject-matter of the prosecution arose.

**REGULATIONS****Regulations**

**78.** The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing the fees payable on application for a licence or on an application for the renewal of a licence;
- (b) prescribing the form of applications for a licence or for the renewal of a licence;
- (c) prescribing the form of licences for agents and salespersons;
- (d) prescribing the education, training and examination qualifications required of agents and salespersons;
- (e) prescribing exemptions from the education, training and examination qualifications required of agents and salespersons and fixing the date when those exemptions cease to have effect;
- (f) prescribing classes of persons who may be exempted from the education, training and examination qualifications required of agents and salespersons;
- (g) prescribing the amount of bonds to be furnished under this Act and the conditions applicable to those bonds;
- (h) prescribing the practice and procedure for an investigation under this Act;
- (i) prescribing the form of the report of an auditor required to be filed under section 42 and the information to be contained in the report;
- (j) prescribing the information to be contained in a prospectus required to be filed under paragraph 61(1)(b) and the fee for filing the prospectus; and
- (k) respecting any matter that the Commissioner considers necessary for carrying out the purposes and provisions of this Act.