



ANALYSIS

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1989, No. 98

An Act to amend the Real Estate Agents Act 1976

[25 October 1989]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Real Estate Agents Amendment Act 1989, and shall be read together with and deemed part of the Real Estate Agents Act 1976 (hereinafter referred to as the principal Act).

(2) Sections 2 and 4 of this Act shall come into force on the 1st day of December 1989.

(3) Subject to subsection (4) of this section, this section and section 3 of this Act shall come into force on the passing of this Act.

(4) No certificate of approval issued under section 54D of the principal Act (as inserted by section 3 of this Act) shall have any effect until the 1st day of December 1989.

2. Supervision of business—(1) The principal Act is hereby amended by repealing section 54, and substituting the following section:

“54. (1) A licensee or, if the licensee is a company, an officer of the company who is eligible to hold a licence shall be in effective control of the principal place of business of a real estate agent.

“(2) Every branch office of a real estate agent (as specified in the agent’s licence) shall be under the effective control of a person approved by the Board, in accordance with sections 54B to 54D of this Act, as a branch manager.

“(3) A licensee may at any time, by notice in writing given to the Registrar, change the address of his or her principal place of business to that of any of his or her branch offices, and shall forward a copy of any such notice to the Institute within 7 days after the notice is given to the Registrar.

“(4) For the purposes of this section, the Board may, on application made in writing in that behalf by either the licensee or the Institute, determine which place of business of that licensee is his or her principal place of business.

“(5) Every real estate agent commits an offence against this Act who, for any continuous period of more than 4 weeks, allows any person other than one specified in subsection (1) or (as the case may require) subsection (2) of this section to be in effective control of his or her principal place of business or any branch office.”

(2) Section 14 of the Real Estate Agents Amendment Act 1982 is hereby consequentially repealed.

3. New sections (relating to approval of branch managers) inserted—The principal Act is hereby amended by inserting, after section 54A (as inserted by section 15 of the Real Estate Agents Amendment Act 1982), the following sections:

“54B. **Application for approval of branch manager**—
(1) An application for the approval of a branch manager may be made to the Board at any time by a licensee or an applicant for a licence on behalf of any person who intends to become a branch manager.

“(2) The applicant shall, as soon as practicable after making application to the Board, send a copy of the application to the Institute.

“(3) The application shall not be heard or considered by the Board until the expiration of 14 days after the date of the receipt of the copy of the application by the Institute.

“(4) The Institute shall be entitled to appear before and be heard by the Board in respect of the application.

“54C. **Criteria for approval as branch manager**—On an application under section 54B of this Act, a person may be approved as a branch manager if—

“(a) That person is—

- “(i) Eligible under this Act to hold a licence; and
 - “(ii) The holder of a certificate of approval to act as a salesman issued under section 46 of this Act; or
- “(b) That person—
- “(i) Has attained the age of 20 years; and
 - “(ii) Is the holder of a certificate of approval to act as a salesman issued under section 46 of this Act; and
 - “(iii) Has passed the examinations for the time being prescribed by the Institute for persons intending to become branch managers; and
 - “(iv) Has had, during the preceding 5 years, at least 3 years’ practical experience working full-time or primarily and predominantly in real estate agency work; or

“(c) That person—

- “(i) Has attained the age of 20 years; and
- “(ii) Is the holder of a certificate of approval to act as a salesman issued under section 46 of this Act; and
- “(iii) Is recognised by the Board as having been, at any time within the period of 5 years immediately preceding the date of the commencement of section 3 of the Real Estate Agents Amendment Act 1989, the person in effective control of a branch office; and
- “(iv) Has had, during the preceding 5 years, at least 3 years’ practical experience working full-time or primarily and predominantly in real estate agency work; or

“(d) That person—

- “(i) Holds the position of branch manager for a stock and station agent licensee; and
- “(ii) In that position, supervises any salesman employed or engaged primarily or predominantly in work relating to the sale of rural land; and
- “(iii) Is an associate member of the Institute.

“54D. Powers of Board in respect of application for approval of branch manager—(1) If, after considering an application made under section 54B of this Act, the Board is satisfied—

- “(a) That the Institute does not wish to appear before and be heard by the Board in respect of the application; and

“(b) That the proposed branch manager is, under the provisions of section 54c of this Act, entitled to hold, and is not disqualified from holding, a certificate of approval as a branch manager; and

“(c) That, having regard to the interests of the public, the proposed branch manager is a fit and proper person to be employed as a branch manager by a real estate agent,—

the Board shall, on payment of the prescribed fee (if any), issue to the applicant a certificate of approval.

“(2) If the Board is not so satisfied, it shall appoint a time and place for hearing the application, and shall give at least 14 days’ notice of the hearing to the applicant and the Institute.

“(3) In any case to which subsection (2) of this section applies, the person in respect of whom the application is made shall be entitled to appear and be heard as a party to the application.

“(4) If, after hearing an application, the Board is satisfied of the matters specified in paragraphs (b) and (c) of subsection (1) of this section, it shall, on payment of the prescribed fee (if any), issue to the applicant a certificate of approval.

“(5) Where the Board is not satisfied of the matters specified in paragraph (b) or paragraph (c) of subsection (1) of this section, it shall not issue a certificate of approval to the applicant unless ordered to do so by the Court.

“(6) Subject to subsection (7) of this section, a certificate of approval issued under this section shall authorise the employment or engagement of the person named in it as the branch manager of any branch office.

“(7) A certificate of approval issued under this section on the ground specified in section 54c (d) of this Act shall authorise the employment or engagement of the person named in it as the branch manager only of a branch office of a stock and station agent licensee.

“(8) The provisions of sections 47 to 51 of this Act shall apply with any necessary modifications to a certificate of approval as a branch manager granted under this section as if it were a certificate of approval as a salesman.

“54E. **On transfer of branch manager, licensee to notify Registrar and Institute**—Where a licensee transfers a branch manager from one branch office to another, the licensee shall give notice in writing to the Registrar of the transfer, and shall forward a copy of the notice to the Institute within 7 days after the notice is given to the Registrar.”

4. Consequential amendments—(1) The provisions of the principal Act specified in the first column of the Schedule to this Act are hereby amended in the manner indicated in the second column of that Schedule.

(2) Sections 43 and 44 of the principal Act are hereby repealed.

(3) Section 44A of the principal Act (as inserted by section 11 of the Real Estate Agents Amendment Act 1982) is hereby repealed.

(4) The following enactments are hereby consequentially repealed:

(a) Sections 2 (1), 9 (1), 10, 11, and 12 of the Real Estate Agents Amendment Act 1982, and so much of the Schedule to that Act as relates to section 43 of the principal Act:

(b) Section 2 of the Real Estate Agents Amendment Act 1987.

Section 4

SCHEDULE
CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

Provision	Amendment
Section 2 (1)	By inserting, after the definition of the term "Board", the following definition: "Branch manager" means a person approved by the Board under section 54 (2) of this Act to be in effective control of a branch office."
Section 9 (1)	By repealing the definition of the terms "qualified person" and "unqualified person".
Section 9A (as inserted by section 4 of the Real Estate Agents Amendment Act 1982)	By inserting, after paragraph (b), the following paragraph: "(ba) By sections 54B to 54D of this Act in respect of branch managers."
Section 15	By omitting from subsection (2) the words "or salesman", and substituting the words "salesman, or branch manager".
Section 18 (2) (c)	By inserting, after the word "salesman" in both places where it occurs, the words "or branch manager".
Section 24 (d)	By omitting the words "in effective control", and substituting the words "the branch manager".
Section 27 (2) (as substituted by section 8 (2) of the Real Estate Agents Amendment Act 1982)	By omitting the words "a qualified person", and substituting the words "entitled to hold a certificate of approval as a branch manager".
Section 27 (5A) (as inserted by section 8 (3) of the Real Estate Agents Amendment Act 1982)	By repealing paragraph (b), and substituting the following paragraph: "(b) Give the name of the person who is to be the branch manager."
Section 27 (5B) (as so inserted)	By omitting the words "a qualified person", and substituting the words "entitled to hold a certificate of approval as a branch manager".
Section 29 (4) (b)	By omitting the words "qualified person", and substituting the words "branch manager".
Section 29 (4) (d)	By omitting the words "qualified person", and substituting the words "branch manager".

SCHEDULE—*continued*

CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 29 (4) (as amended by section 9 (1) of the Real Estate Agents Amendment Act 1982)	By repealing paragraph (da).
Section 29 (4) (e) ..	By inserting, after the words “any salesman”, the words “or branch manager”.
Section 37 (1)	By omitting the words “person in effective control of such branch office as approved by the Board pursuant to section 24 (d) of this Act”, and substituting the words “branch manager of such branch office”.
Section 45	By repealing subsection (2), and substituting the following subsection: “(2) The application shall be made in the prescribed form.”
Section 46 (as substituted by section 3 (1) of the Real Estate Agents Amendment Act 1987)	By omitting from paragraph (b) the word “; and”, and by repealing paragraph (c). By omitting from subsection (4), and also from subsection (5), the words “and paragraph (c)”.
Section 50 (2) (as amended by section 12 of the Real Estate Agents Amendment Act 1982)	By omitting the words “and shall at the same time advise the Registrar in writing whether or not the salesman was a qualified person for the purposes of section 43 (1) of this Act”.
Section 54A (as inserted by section 15 of the Real Estate Agents Amendment Act 1982)	By omitting from subsection (1) the words “qualified person”, and substituting the words “branch manager”. By repealing paragraph (b) of subsection (2), and substituting the following paragraph: “(b) Each salesman will be under the effective supervision of the licensee or a branch manager who is at the approved place of business of the applicant nearest to the place at or from which the salesman will be working.”
Section 70 (1) (h) ..	By omitting the words “qualified persons or salesmen”, and substituting the words “salesmen or branch managers”. By omitting the words “qualified persons, or salesmen”, and substituting the words “salesmen, or branch managers”.

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—*continued*

Provision	Amendment
Section 70 (1) (m) ..	By inserting, after the word “salesmen”, the words “and branch managers”.
Section 94 (1) (ca) (as inserted by section 19 of the Real Estate Agents Amendment Act 1982)	By omitting the words “qualified person in control”, and substituting the words “branch manager”.
Section 98 (as substituted by section 21 of the Real Estate Agents Amendment Act 1982)	By omitting from subsection (1) the words “or salesman”, and substituting the words “salesman, or branch manager”. By omitting from subsection (2), and also from subsection (3), and also from subsection (4), and also from subsection (5), the words “or salesman”, and substituting in each case the words “salesman, or branch manager”. By inserting in subsection (4) (c), after the words “the salesman”, the words “or branch manager”.
Section 99	By inserting in subsection (2) and also in subsection (3), after the word “salesman” in each case, the words “or branch manager”.
Section 100 (2) ..	By inserting, after the words “or salesman”, the words “or branch manager”.
Section 102	By inserting in subsection (2), after the words “or the salesman”, the words “or the branch manager”. By inserting in paragraph (a) of that subsection, after the words “or the salesman”, the words “or the branch manager”.
Section 105	By inserting in paragraph (a), and also in paragraph (b), after the words “or salesman” in each case, the words “or branch manager”.
Section 107	By inserting, after the word “salesman” in both places where it occurs, the words “or branch manager”.
Section 108	By inserting, after the word “salesman”, the words “or branch manager”.
Section 112 (2) ..	By omitting the words “or salesman”, and substituting the words “salesman, or branch manager”.
Section 118 (1) ..	By inserting, after the words “or salesman”, the words “or branch manager”.

SCHEDULE—continued

CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT—continued

Provision	Amendment
Section 120	By inserting, after the words “or salesman”, the words “or branch manager”.
Section 121 (2)	By adding to paragraph (d) the word “; or”, and by adding the following paragraph: “(e) In the case of a branch manager, at the branch office.”

This Act is administered in the Department of Justice.