

**REAL ESTATE (BROKERS AND SALESMEN)  
LICENSING ORDINANCE 2004**

**(Ordinance 22 of 2004)**

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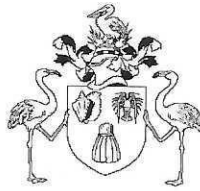
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**TURKS AND CAICOS ISLANDS**

**REAL ESTATE (BROKERS AND SALESMEN)  
LICENSING ORDINANCE 2004**

**(Ordinance 22 of 2004)**

*Assent..... October 15, 2004*

*Publication in Gazette ..... October 26, 2004*

*Commencement..... October 26, 2004*

**AN ORDINANCE** TO REGULATE AND MAKE PROVISION FOR THE LICENSING OF REAL ESTATE BROKERS AND SALESMEN AND FOR CONNECTED PURPOSES.

**ENACTED** by the Legislature of the Turks and Caicos Islands.

**1.** This Ordinance may be cited as the Real Estate (Brokers and Salesmen) Licensing Ordinance 2004.

Citation

**2.** In this Ordinance -

Interpretation

“bank” means a bank licensed under the Banking Ordinance;

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“broker” means a company, partnership or an individual who, for another or others, for compensation, gain or reward or hope or promise thereof, either alone or through one or more officials or salesmen, trades in real estate or an individual who holds himself out as such;

“Belonger” has the same meaning as in the Immigration Ordinance;

“Belonger business” has the same meaning as in the Business Licensing Ordinance;

“Business Licensing Committee” means the Business Licensing Committee established under section 4A of the Business Licensing Ordinance;

“licence” means licence under this Ordinance;

“Minister” means the Minister responsible for Finance;

“official” means president, vice-president, secretary, treasurer, managing director, general manager, department manager, branch office manager and each person acting in a similar capacity whether so designated or not;

“real estate” means land in the Islands, including land covered by water and any building erected on land and any estate, interest, right or easement in or over any land or building in the Islands;

“trade” means –

- (i) a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise;
- (ii) any offer or attempt to list real estate for the purpose of such disposition or transaction referred to in subparagraph (i); and
- (iii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of such a disposition, acquisition, transaction, offer or attempt,

and the verb “trade” has a corresponding meaning.

Application of  
Ordinance

**3. This Ordinance does not apply to –**

- (a) an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by the provisions of an Ordinance or under the order of a court, or to an administrator of an estate or any executive or trustee selling under the terms of a will, settlement or trust; or
- (b) an auctioneer where the trade is made in the course of and as part of his duties as an auctioneer; or
- (c) a person who –
  - (i) acquires real estate in his own name; or
  - (ii) disposes of real estate owned by him or in which he has a substantial interest; or
  - (iii) acts as an attorney for another under a valid power of attorney for the purpose of negotiating or executing contracts, transfers or conveyance in respect of an interest in real estate; or
  - (iv) is a person practising as a counsel and attorney, he furnishes to any person legal advice and services ancillary thereto in connection with real estate business within the scope of his profession as such or within such narrower limits as may be prescribed by regulations under this Ordinance; or
  - (v) is an officer of the court acting under or in pursuance of a judgment or order of any court of competent jurisdiction; or
  - (vi) is a public officer acting in the course of his official duties; or

- (d) an agreement to sell real estate between a licensed broker and an international broker to trade in the Islands once the trade is conducted by the licensed broker.

## PART II

### LICENCES

4. (1) No person shall –

Trading in real estate

- (a) trade in real estate unless he is licensed as a broker or as a salesman of a licensed broker; or
- (b) act as an official of or on behalf of a partnership or company in connection with a trade in real estate by the partnership or company, unless he or the partnership or company is licensed as a broker; or
- (c) act as a salesman of or on behalf of a partnership or company in connection with a trade in real estate by the partnership or company unless –
  - (i) he is licensed as a salesman of the partnership or company; and
  - (ii) the partnership or company is licensed as a broker.

(2) A change in the membership of a partnership shall be deemed to create a new partnership and to extinguish an existing licence.

(3) Subject to section 33, no person who is not the holder of a subsisting licence under this Ordinance shall act or directly or indirectly hold himself out as a broker or salesman in the Islands.

5. (1) A salesman may only be licensed where he is a Belonger and the salesman of a broker.

Licensing of salesman

(2) Each application for a licence of a salesman or a renewal thereof shall be made to the Business Licensing Committee in the prescribed form and shall have attached thereto –

- (a) a recommendation of the applicant, made by or on behalf of a licensed broker; and
- (b) a declaration that the applicant, if granted a licence, is to act as a salesman employed by and representing the broker making the declaration or on whose behalf the declaration is made.

(3) The licence shall be inscribed with the name of the broker as principal of the licensee.

(4) Upon a salesman ceasing to be employed with a licensed agent the licence of the salesman shall become void.

Licensing of broker

6. (1) An individual is qualified to be licensed as a broker if he is a Belonger and he maintains an office in the Islands satisfactory to the Business Licensing Committee from which he conducts his real estate business. .

(2) No person shall be licensed as a broker unless the Business Licensing Committee is satisfied after investigation that the person is qualified to be licensed as a broker at the time of his application.

Application by  
firm or company

7. (1) A partnership or company provided that the said partnership or company is 100% Belonger owned—

- (a) may apply for and obtain a licence in the name of the partnership or company; and
- (b) shall designate one individual who shall act as its or their representative.

(2) If a licence is granted, when it is issued it shall —

- (a) be in the name of the partnership or company; and
- (b) state thereon the name of the individual who is authorised to act as an broker on behalf of the partnership or company.

(3) Any associate, partner or employee of a broker, and any officer, member or employee of a partnership or company licensed as a broker may apply for and obtain a licence authorizing the holder thereof to act as a salesman.

Powers of  
Business  
Licensing  
Committee

8. (1) When an application for a licence or renewal of a licence is received and the prescribed fee is paid, the Business Licensing Committee, if satisfied that the applicant is suitable to be licensed, and is not for any reasons objectionable, may issue to the applicant a licence authorising the holder during the term thereof to carry on the business of a broker or act as a salesman in the Islands.

(2) If the Business Licensing Committee is for any reason of the opinion that the applicant should not be granted a licence, it may refuse a licence to the applicant.

(3) The Business Licensing Committee may suspend or cancel a licence where in its opinion such action is in the public interest.

(4) Before suspending or cancelling or refusing a licence the Business Licensing Committee shall provide an opportunity for a hearing.

(5) A licence —

- (a) expires on the 30<sup>th</sup> day of September of each year; and
- (b) may be renewed on application to the Business Licensing Committee on payment of the prescribed fee,

unless the licence has been previously cancelled or suspended by the Business Licensing Committee.

9. (1) The provisions of the Business Licensing Ordinance, with respect to renewal, refusal to grant, suspension and revocation of a licence and appeals from a decision to refuse the grant of or to suspend or revoke a licence, shall apply *mutatis mutandis* to applications under this Ordinance.

Renewal,  
suspension,  
revocation,  
appeal etc.

10. An application for a licence or a renewal of a licence shall be made in writing in the prescribed form to the Business Licensing Committee, and shall be accompanied by such fee as may be prescribed.

Application for  
licence

11. (1) An applicant for a licence or a renewal of a licence shall state in the application an address for service in the Islands.

Address of  
service

(2) Notice under this Ordinance or the regulations are sufficiently served for all purposes if delivered or sent by registered post to the latest address for service stated as required by subsection (1).

12. The Business Licensing Committee at any time may require –

Information  
required by the  
Business  
Licensing  
Committee

- (a) that further information or material be submitted by an applicant or a licensed person within a specified time limit; and
- (b) if it so desires, verification by affidavit or otherwise of any information or material then or previously submitted.

13. (1) A licensed broker shall immediately notify the Business Licensing Committee in writing of –

Notice of  
changes

- (a) a change in the address for service;
- (b) a change in the partners in the case of a partnership; and
- (c) the commencement and termination of employment of each salesman.

(2) A licensee who ceases to carry on the business of a real estate broker shall immediately notify the Business Licensing Committee in writing and shall return his licence with the notice.

### PART III

#### INVESTIGATION AND ACTION

14. The Minister or a person authorised by him or the Business Licensing Committee may –

Investigation

- (a) on complaint of a person interested, or when the Business Licensing Committee deems it necessary without complaint, investigate and inquire into -
  - (i) any matter concerning the due administration of this Ordinance; or
  - (ii) the circumstances surrounding a transaction or matter or thing done by a broker or salesman whether licensed or not licensed.
- (b) for the purpose of such an investigation, inquire into and examine any business or employment to which this Ordinance applies of the person in respect of whom the investigation is being made; and examine and inquire into -
  - (i) books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payment to, by, on behalf of, in relation to or connected with the person in respect of whom the investigation is being made; and
  - (ii) property, assets or things owned acquired or alienated in whole or in part by such person or by a person acting on behalf of or as agent for such person.

Production of documents

**15. (1)** In order to ensure that the provisions of this Ordinance and any regulations made thereunder are being complied with or for the purposes of an investigation under section 14 the Minister or a person authorised by him or the Business Licensing Committee may at reasonable times demand the production of and inspect -

- (a) all or any of the books mentioned in section 14; and
- (b) all or any documents relating to a trade in real estate effected by any agent or salesman.

(2) A person who has custody, possession or control of the books or documents referred to in subsection (1) shall produce and permit the inspection of them by the Business Licensing Committee or person authorised by the Business Licensing Committee.

(3) A person who contravenes subsection (2) by refusal or neglect to produce or permit the inspection of books or documents commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for one year or both.

(4) Where an investigation is being carried out under section 14, the Business Licensing Committee or the person making the investigation may seize and take possession of documents, books, papers, correspondence, communications or records of the person, the business or employment being investigated.



16. In addition to the powers contained in sections 14 and 15 the Business Licensing Committee or other person conducting an investigation under section 14 has all the powers of a commissioner appointed under the Commissions of Inquiry Ordinance.

General powers  
of Business  
Licensing  
Committee

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#### PART IV

##### ACCOUNTS OF BROKERS

17. (1) A broker shall keep proper books and accounts of his trades in real estate, and enter in his books and accounts in respect of each trade –

Book of broker

- (a) the nature of the trade;
- (b) a description of the real estate involved sufficient to identify it;
- (c) the true consideration for the trade;
- (d) the names of the parties to the trade;
- (e) the amount of deposits received and a record of the disbursement thereof; and
- (f) the amount of his commission or other remuneration and the name of the party paying it.

(2) Every broker shall -

- (a) maintain a ledger trust account for each person from whom moneys are received in trust in which he shall enter details of the trust moneys received and the disbursements therefrom; and
- (b) maintain an account in a bank in which he shall deposit moneys that come into his hands in trust for other persons in connection with his business, and keep such trust moneys separate and apart from moneys belonging to himself or to the partnership in the case of a partnership.

#### PART V

##### RECOVERY OF COMMISSION

18. No action shall be brought for commission or for remuneration for services in connection with a trade in real estate unless at the time of rendering the services the person bringing the action was licensed as a broker.

Unlicensed  
broker

19. No action shall be brought to charge a person by commission or otherwise for services rendered in connection with the sale of real estate unless –

Recovery of  
commission

- (a) the contract upon which recovery is sought in the action or some note or memorandum thereof is in writing signed by the party to be charged or by his agent lawfully authorized in writing; or
- (b) the person sought to be charged -
  - (i) has as a result of the services of a broker employed by him for the purpose effected a sale or lease of real estate; and
  - (ii) has duly executed a conveyance or lease signed by all necessary parties and delivered it to the purchaser.

## PART VI

### REGULATION OF TRADING

Representations  
by brokers or  
salesmen

**20. (1)** Subject to subsection (2), no broker or salesman shall make a representation that he or another person –

- (a) will re-sell or in any way guarantee or promise to re-sell real estate offered for sale by him; or
- (b) will sell any of the purchaser's real estate; or
- (c) will procure a mortgage, extension of mortgage, lease or extension of a lease.

(2) Subsection (1) does not apply in the case of a representation made under paragraph (b) or (c) of that subsection if at the time of making the representation the person making it delivers to the person to whom the representation is made a letter or photostatic copy thereof setting out the representation in clear language.

Advertising

**21. (1)** When advertising to purchase, sell, exchange, or lease any real estate whatsoever an broker or salesman shall clearly indicate -

- (a) that he is the party advertising, and
- (b) that he is a real estate broker or salesman, as the case may be.

(2) A reference to the name of a salesman in the advertisement shall clearly indicate that the real estate broker is the employer of the salesman.

Employment of  
salesman of  
another broker

**22. No broker shall –**

- (a) employ, permit or engage the salesman of another broker or an unlicensed salesman to trade in real estate; or
- (b) pay commission or other remuneration to such a salesman.

**23.** No licensed broker or salesman shall pay a commission or other fee to an unlicensed person in consideration for furthering a trade in real estate.

Commission

**24.** No broker or salesman shall purchase for himself either directly or indirectly real estate listed with him for sale, nor shall he acquire any interest therein either directly, or indirectly, until he has disclosed in writing to the Business Licensing Committee and to the listing owner complete details of his negotiations for the sale of the said property to another person.

Purchase by broker

**25.** No salesman –

Duties of salesman

- (a) shall trade in real estate on behalf of a broker other than the broker who, according to the records of the Business Licensing Committee, is his employer; or
- (b) is entitled to or may accept a commission or other remuneration for trading in real estate from a person except the broker who is licensed as his employer.

**26.** No broker or salesman shall induce a party to contract for purchase and sale, or rental of real estate, to break the contract for the purpose of entering into a contract with another principal.

Breach of contract

**27. (1)** No broker or salesman –

Commission

- (a) shall request or enter into an arrangement for the payment to him of commission or other remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price thereof; or
- (b) may retain a commission or other remuneration computed on a basis referred to in paragraph (a).

(2) Commission or other remuneration payable to a broker in respect of the sale of real estate shall be on an agreed amount or percentage of the sale price.

(3) Where no agreement as to the amount of commission has been entered into, the rate of commission or other basis or amount of remuneration is that generally prevailing in the Islands.

**28. (1)** A broker or salesman immediately after the execution of agreement to list with him real estate for sale, exchange, lease or rent shall deliver to the person who has signed the agreement a true copy thereof.

Agreement to list real estate

(2) No exclusive agreement to list real estate for sale, exchange, lease or rental with a broker or salesman is valid unless it is provided therein that the agreement expires on a date specified therein.

(3) Where a broker or salesman has secured from the owner of real estate a signed acceptance of an offer to sell, purchase, exchange, lease or rent such real estate, the broker or salesman

shall deliver immediately a true copy of the acceptance to each of the parties to the contract or their legal representatives.

## PART VII

### OFFENCES

Offences and  
penalties

**29.** A person who –

- (a) contravenes a provision of this Ordinance; or
- (b) omits, refuses or neglects to fulfil, perform, observe or carry out a duty or obligation created or imposed by this Ordinance,

commits an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for six months or to both.

Burden of proof

**30.** In a prosecution under this Ordinance, where the accused pleads that at the time of the act or omission complained of he was the holder of a licence, the burden of proof is on the accused.

Commencement  
of prosecution

**31.** A prosecution under this Ordinance may be commenced within two years from the date on which the offence is alleged to have been committed, but not thereafter.

Statement of  
evidence

**32.** A statement as to the licensing or non-licensing of a person under this Ordinance, purporting to be certified by the Business Licensing Committee, shall, without proof of the officer or signature of the person certifying, be receivable in evidence so far as relevant for all purposes in any action, proceeding or prosecution.

Regulations

**33.** The Minister may make regulations –

- (a) prescribing forms for use under this Ordinance;
- (b) prescribing the practice and procedure upon an investigation under sections 14, 15 and 16;
- (c) providing for the examination of applicants for licences; and
- (d) generally for the better carrying out of the provisions of this Ordinance, and the more efficient administration thereof.

Transitional

**34. (1)** For a period of six months from the commencement of this Ordinance an individual is qualified to be licensed as a salesman if –

- (a) he is a Belonger or the holder of a certificate of permanent residence with the right to work endorsed thereon; and

- (b) he has been employed on a full time basis for a period of five years immediately preceding the date of his application for a licence by a real estate broker ; or
- (c) he has regularly practiced as a real estate salesman for a period of at least five years immediately preceding the date of his application or for such shorter period as the Business Licensing Committee may, in its absolute discretion allow.

(2) For a period of six months from the commencement of this Ordinance an individual, a partnership or a company is qualified to be licenced as a real estate broker if –

- (a) in the case of an individual he is a Belonger or the holder of a certificate of permanent resident with the right to work endorsed thereon and in the case of a partnership or company it is a Belonger business; and
- (b) has regularly practiced as a real estate broker for a period of at least five years immediately preceding the date of the application or for such shorter period as the Business Licensing Committee may in its absolute discretion allow.

