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Bill 145

An Act to amend the Real Estate and Business Brokers Act, 2002

The Hon. L. Thompson
Minister of Government and Consumer Services

Government Bill

1st Reading November 19, 2019
2nd Reading November 25, 2019
3rd Reading
Royal Assent

*(Reprinted as amended by the Standing Committee on General Government
and as reported to the Legislative Assembly February 20, 2020)*

(The provisions in this Bill will be renumbered after 3rd Reading)



This reprint of the Bill is marked to indicate the changes that were made in Committee.

The changes are indicated by underlines for new text and a ~~striethrough~~ for deleted text.

EXPLANATORY NOTE

The Bill makes various amendments to the *Real Estate and Business Brokers Act, 2002*. The amendments include the following:

1. The Act is renamed the *Trust in Real Estate Services Act, 2002*.
2. The Act currently prohibits trading in real estate without registering under the Act, subject to various exemptions. The Bill creates a new exemption in respect of personal real estate corporations and prescribed members of such corporations. This exemption is subject to prescribed conditions.
3. Section 10 of the Act currently states that an applicant that meets prescribed requirements is entitled to registration or renewal of registration by the registrar unless specified conditions apply. This provision is amended to provide that the applicant is entitled to registration or renewal of registration by the registrar if, in the registrar's opinion, specified conditions have been met. The list of matters that the registrar takes into consideration with respect to the applicant and interested persons is expanded to include their past financial position, past conduct and any contraventions of the code of ethics under the Act. The registrar must also be satisfied that granting the registration or renewal is not contrary to the public interest.
4. The Act currently provides for the establishment of a discipline committee and an appeals committee. The Bill abolishes the appeals committee and provides for appeals from decisions of the discipline committee to instead be handled by the Licence Appeal Tribunal.
5. The discipline committee's jurisdiction is broadened beyond the code of ethics under the Act to include determining whether a registrant has contravened any provisions of the Act itself or other regulations under the Act. The discipline committee is also given authority to make orders applying conditions to, suspending or revoking a registration.
6. A new Part is added to the Act to authorize an assessor to order payment of an administrative penalty against a person if the assessor is satisfied that the person has contravened or is contravening a prescribed provision of the Act or the regulations or a condition of registration, if the person is a registrant. Provisions of the new Part address such matters as the purpose of the penalties, limits on the amount of the penalties, appeals of orders and enforcement.

Other amendments address such matters as the registrar's authority to request information from registrants and additional regulation-making authority. Consequential amendments are also made to other Acts.

An Act to amend the Real Estate and Business Brokers Act, 2002

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 The short title of the *Real Estate and Business Brokers Act, 2002* is repealed and the following substituted:

Trust in Real Estate Services Act, 2002

2 (1) Subsection 1 (1) of the Act is amended by adding the following definitions:

“administrative penalty” means an administrative penalty imposed under section 43.2 or, if an order under that section is confirmed or varied under section 43.3, the administrative penalty as confirmed or varied under section 43.3; (“pénalité administrative”)

“assessor” means an assessor appointed under subsection 43.1 (2) who is authorized to impose an administrative penalty or the registrar acting as an assessor; (“évaluateur”)

(2) Subsection 1 (1) of the Act is amended by adding the following definition:

“personal real estate corporation” means a corporation that meets the prescribed criteria; (“société immobilière personnelle”)

(3) The definition of “real estate” in subsection 1 (1) of the Act is repealed and the following substituted:

“real estate” does not include such matters as may be prescribed but includes,

- (a) leasehold interests,
- (b) businesses, and
- (c) fixtures, stock-in-trade and goods connected with the operation of a business; (“bien immobilier”)

(4) Subsection 1 (1) of the Act is amended by adding the following definition:

“self-represented party” means a party that meets the prescribed criteria; (“partie non représentée”)

(5) The definition of “year” in subsection 1 (1) of the Act is repealed.

3 Subsection 3 (3) of the Act is repealed and the following substituted:

Deputy registrar, duties

(3) A deputy registrar shall perform such duties as are assigned by the registrar and shall act as the registrar in the registrar’s absence.

4 (1) Subsection 5 (1) of the Act is amended by adding “Subject to such conditions as may be prescribed” at the beginning.

(2) Clause 5 (1) (k) of the Act is amended by striking out “in respect of any class of trades in real estate” at the end.

(3) Clauses 5 (1.1) (a) and (b) of the Act are repealed and the following substituted:

- (a) a bank or authorized foreign bank as defined in section 2 of the *Bank Act* (Canada);
- (b) a loan or trust corporation;

(4) Section 5 of the Act is amended by adding the following subsection:

Personal real estate corporation

(3) Subject to such conditions as may be prescribed, despite section 4, registration shall not be required in respect of a personal real estate corporation and prescribed members of such a corporation.

5 Subsection 7 (2) of the Act is repealed and the following substituted:

Branch offices

(2) Every branch office of a brokerage shall be under the supervision of a broker and each such office having more than one salesperson shall be under the direct management, in accordance with the regulations, of a registrant who meets such requirements as may be prescribed.

6 The Act is amended by adding the following section:

Specialist certification

8 No registrant shall hold himself, herself or itself out as a specialist in trading in any type of real estate unless,

- (a) the trading in that type of real estate is an area of specialization established under the regulations;
- (b) the registrant has obtained such education and satisfied such other criteria as may be required under the regulations in order to be certified in that area of specialization; and
- (c) the registrant is certified, in accordance with the process established in respect of that area of specialization and that type of registrant under the regulations, as a specialist in trading in that area of specialization.

7 Section 9 of the Act is amended by striking out “commission or other”.

8 (1) Subsection 10 (1) of the Act is repealed and the following substituted:

Registration

(1) An applicant is entitled to registration or renewal of registration by the registrar if, in the registrar’s opinion,

- (a) the applicant is not a corporation and,
 - (i) having regard to the past and present financial position of the applicant and of all interested persons in respect of the applicant, the applicant can reasonably be expected to be financially responsible in the conduct of business,
 - (ii) the past and present conduct of the applicant and of all interested persons in respect of the applicant affords reasonable grounds for belief that the applicant will carry on business in accordance with law and with integrity and honesty, and
 - (iii) neither the applicant nor an employee or agent of the applicant has made any false statement in an application for registration or for renewal of registration;
- (b) the applicant is a corporation and,
 - (i) having regard to its past and present financial position and the past and present financial position of all interested persons in respect of the corporation, the applicant can reasonably be expected to be financially responsible in the conduct of its business,
 - (ii) having regard to the past and present financial position of its officers and directors and of all interested persons in respect of its officers and directors, the applicant can reasonably be expected to be financially responsible in the conduct of its business,
 - (iii) the past and present conduct of its officers and directors, of all interested persons in respect of its officers and directors and of all interested persons in respect of the corporation affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty, and
 - (iv) no officer or director of the corporation has made any false statement in an application for registration or for renewal of registration;
- (c) neither the applicant nor any interested person in respect of the applicant has carried on or is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations;
- (d) the applicant is not in breach of a condition of the registration;
- (e) the applicant meets any requirements, including any requirements to obtain education, as may be specified under the regulations;
- (f) the applicant has complied with any request made by the registrar under subsection (1.1); and
- (g) granting the registration or the renewal, as the case may be, would not be contrary to the public interest.

(2) Subsection 10 (1.1) of the Act is amended by striking out “in the form and within the time period specified by the registrar” in the portion before clause (a).

(3) Clause 10 (1.1) (a) of the Act is amended by adding “or to apply conditions to the registration” at the end.

(4) Subsection 10 (2) of the Act is amended by striking out “as are ordered by the Tribunal” and substituting “as are ordered by the discipline committee or the Tribunal”.

9 (1) Clause 12 (1) (a) of the Act is repealed and the following substituted:

- (a) designate a broker who is employed by the brokerage and meets any prescribed requirements as the broker of record and notify the registrar of the broker's identity; and

(2) Subsection 12 (3) of the Act is repealed and the following substituted:

Sole proprietor

- (3) A brokerage that is a sole proprietorship, whether or not it employs brokers other than the sole proprietor, shall,
 - (a) ensure that the sole proprietor meets any prescribed requirements for being designated as the broker of record; and
 - (b) designate the sole proprietor as the broker of record.

10 Subsection 15 (3) of the Act is repealed and the following substituted:

Expiry of order

- (3) If a hearing is requested under section 14, the order expires 15 days after the written request for a hearing is received by the Tribunal but the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period.

11 The heading to Part V of the Act is amended by striking out "Inspection".

12 Sections 19, 20 and 21 of the Act are repealed and the following substituted:

Complaints

- 19 (1) The registrar may,

- (a) receive complaints concerning conduct that may be in contravention of this Act or the regulations;
- (b) make written requests to registrants for information regarding complaints; and
- (c) attempt to mediate or resolve complaints, as appropriate, concerning any conduct that comes to the registrar's attention that may be in contravention of this Act or the regulations.

Request for information

- (2) A request under clause (1) (b) shall indicate the nature of the complaint.

Duty to comply

- (3) A registrant who receives a written request under clause (1) (b) shall provide the requested information to the registrar.

Registrar's powers

- 20 If the registrar is of the opinion, whether as a result of a complaint or otherwise, that a registrant has contravened any provision of this Act or the regulations, the registrar may do any of the following, as the registrar considers appropriate:

1. Give the registrant a written warning, stating that if the registrant continues with the activity that led to the alleged contravention, action may be taken against the registrant.
2. Require the broker or salesperson to obtain additional education.
3. Refer the matter, in whole or in part, to the discipline committee.
4. Take an action under section 13, subject to section 14.
5. Take further action in accordance with this Act.

Discipline proceedings

- 21 (1) The discipline committee established under this Act is continued for the purposes of hearing and determining, in accordance with the prescribed procedures, whether a registrant has contravened any provision of this Act or the regulations.

Appointment of members

- (2) The board of the administrative authority or, if there is no designated administrative authority, the Minister, shall appoint the members of the discipline committee and, in making the appointments, shall ensure that the prescribed requirements for the composition of the committee are met.

Result of determination

- (3) If the discipline committee makes a determination under subsection (1) that a registrant has contravened a provision of this Act or the regulations, it may, by order, do any of the following, as the committee considers appropriate:

1. Require the broker or salesperson to obtain additional education.
2. In accordance with such terms as may be specified by the committee, require the brokerage to fund, or to both arrange for and fund, the obtaining of additional education by brokers and salespersons employed by the brokerage.

3. Despite subsection 12 (1) of the *Safety and Consumer Statutes Administration Act, 1996*, impose such fine as the committee considers appropriate, subject to subsection (4), to be paid by the registrant to the administrative authority or to the Minister of Finance if there is no designated administrative authority.
4. Suspend or postpone the obligation to satisfy a requirement mentioned in paragraph 1, 2 or 3 for such period and upon such terms as the committee designates.
5. Apply conditions to a registration.
6. Suspend a registration,
 - i. for a definite period,
 - ii. until conditions specified by the committee are met to the satisfaction of the registrar, or
 - iii. for a definite period and, after that, until conditions specified by the committee are met to the satisfaction of the registrar.
7. Revoke a registration if, in the committee's opinion, the registrant is not entitled to registration under section 10.
8. Despite section 17.1 of the *Statutory Powers Procedure Act*, fix and impose costs to be paid by the registrant to the administrative authority or to the Minister of Finance if there is no designated administrative authority.

Maximum fine

- (4) The maximum amount of the fine mentioned in paragraph 3 of subsection (3) is,
- (a) \$50,000, or such lesser amount as may be prescribed, if the registrant is a broker or a salesperson; or
 - (b) \$100,000, or such lesser amount as may be prescribed, if the registrant is a brokerage.

Costs

(5) For the purposes of paragraph 8 of subsection (3), the committee shall fix and impose costs in such manner as the committee considers appropriate, subject to any prescribed requirements.

Appeal

(6) A party to the discipline proceeding may appeal the final order of the discipline committee to the Tribunal.

Immediate effect

(6.1) Subject to subsection (6.2), an order under paragraph 5, 6 or 7 of subsection (3) takes effect immediately even if the order has been appealed under subsection (6).

Exception

(6.2) An order mentioned in subsection (6.1) does not take effect immediately if the discipline committee has,

- (a) specified a different effective date in the order; or
- (b) granted a stay of the order until the disposition of the appeal.

Time for appeal

(7) An appeal under subsection (6) shall be commenced within 30 days after the discipline committee sends notice under section 18 of the *Statutory Powers Procedure Act* of the order being appealed.

Parties

(8) The parties to an appeal are the appellant, the other persons who were parties to the proceeding before the discipline committee, and any other person added as a party by the Tribunal.

Power of the Tribunal

(9) The Tribunal may by order overturn, affirm or modify the order of the discipline committee and may order anything mentioned in subsection (3).

Immediate effect

(10) Even if a registrant appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Payment of fine

- (11) The registrant shall pay any fine imposed under subsection (3),
- (a) on or before the day specified in the order of the discipline committee or, if the fine is the subject of an appeal, on or before the day specified in the order of the Tribunal; or
 - (b) on or before the 60th day after the date of the last order made in respect of the fine, if no day is specified in that order.

Additional education

(12) If a registrant is required by an order to do anything under paragraph 1 or 2 of subsection (3) respecting additional education, the registrant shall satisfy the requirement,

- (a) within the time period specified in the order of the discipline committee or, if the requirement respecting additional education is the subject of an appeal, within the time period specified in the order of the Tribunal; or
- (b) at the first reasonable opportunity after the last order made respecting additional education, if no time period is specified in that order.

Public access

(13) Decisions of the discipline committee shall be made available to the public in such manner as may be prescribed.

13 The Act is amended by adding the following Part:

**PART V.1
INSPECTIONS AND INVESTIGATIONS**

Inspectors**Registrar is inspector**

21.1 (1) The registrar is, by virtue of the registrar's office, an inspector.

Appointment of inspectors

(2) The registrar shall appoint persons to be inspectors for the purposes of conducting inspections under this Act.

Certificate of appointment

(3) The registrar shall issue to every appointed inspector a certificate of appointment bearing the registrar's signature or a facsimile of it.

Proof of appointment

(4) Every appointed inspector who is conducting an inspection under this Act shall, upon request, produce the certificate of appointment as an inspector.

Powers and duties

(5) An inspector shall have the powers and duties set out in this Act and such other powers and duties as may be prescribed.

Inspections

21.2 (1) An inspector may, without a warrant or court order, conduct inspections for the purpose of,

- (a) ensuring compliance with this Act and the regulations; or
- (b) ensuring a registrant remains entitled to registration.

Power to enter premises

(2) As part of an inspection, an inspector may, without a warrant or court order, enter and inspect, at any reasonable time, the business premises of a registrant, other than any part of the premises used as a dwelling.

Expert help

(3) An inspector conducting an inspection may be accompanied by one or more persons with special, expert or professional knowledge, and any other persons as necessary, as the inspector considers advisable.

Powers on inspection

(4) An inspector conducting an inspection may,

- (a) examine records or anything else that is relevant to the inspection;
- (b) demand the production of a record or any other thing that is relevant to the inspection;
- (c) on issuing a written receipt for it, remove for review and copying a record or any other thing that is relevant to the inspection;
- (d) in order to produce a record in readable form, use any data storage, information processing or retrieval devices or systems that are normally used in carrying on business;
- (e) take photographs, video recordings or other visual or audio recordings that are relevant to the inspection; and
- (f) inquire into all financial transactions, records and other matters that are relevant to the inspection.

Limitation re photographs and recordings

(5) A photograph or recording made under clause (4) (e) must be made in a manner that does not intercept any private communication and that accords with reasonable expectations of privacy.

Written demand

(6) A demand that a record or any other thing be produced for inspection must be in writing and must state the nature of the record or thing required and when the record or thing is to be produced.

Obligation to produce and assist

(7) If an inspector demands that a record or other thing be produced for inspection, the person having custody of the record or other thing shall produce it for the inspector within the time provided for in the demand, and shall, upon the inspector's demand,

- (a) provide whatever assistance is reasonably necessary to produce a record or other thing in a readable form, including using any data storage, processing or retrieval device or system; and
- (b) provide whatever assistance is reasonably necessary to interpret a record or other thing for the inspector.

Return of things

(8) A record or other thing that has been removed for review and copying,

- (a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and for the inspector; and
- (b) shall be returned to the person within a reasonable time.

No use of force

(9) An inspector shall not use force to enter and inspect premises under this section.

No obstruction

(10) No person shall obstruct an inspector conducting an inspection or a person accompanying the inspector under subsection (3) or withhold from the inspector or other person or conceal, alter or destroy any record or other thing that is relevant to the inspection.

Admissibility of copies

(11) A copy of a record or other thing that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

14 (1) The French version of section 23 of the Act is amended by striking out "réceptacle" wherever it appears and substituting in each case "contenant".

(2) Clauses 23 (2) (b), (c) and (d) of the Act are repealed and the following substituted:

- (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
- (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
- (d) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form; and
- (e) to use any investigative technique or procedure or do anything described in the warrant.

(3) Subsections 23 (10) and (11) of the Act are repealed and the following substituted:

Compliance

(10) If an investigator under clause (2) (c) requires a person to produce evidence or information or to provide assistance, the person shall produce the evidence or information or provide the assistance, as the case may be.

Copies of seized items

(11) An investigator who seizes any thing under this section or section 23.1 may make a copy of it.

15 The Act is amended by adding the following section:

Report when things seized

24.1 (1) An investigator who seizes any thing under the authority of section 23, 23.1 or 24 shall bring it before a justice of the peace or, if that is not reasonably possible, shall report the seizure to a justice of the peace.

Procedure

(2) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized under the authority of section 23, 23.1 or 24 of this Act, reading the reference in subsection 160 (1) of that Act to a document that a person is about to examine or seize under a search warrant as a reference to a thing that an investigator is about to examine or seize under the authority of section 23, 23.1 or 24 of this Act.

16 (1) Clause 25 (1) (c) of the Act is amended by striking out “customer” and substituting “self-represented party”.

(2) Subsection 25 (2) of the Act is amended by striking out “clients or customers of a registrant or former registrant” in the portion before clause (a) and substituting “clients of a registrant or former registrant or the protection of self-represented parties dealing with a registrant or former registrant”.

(3) Clauses 25 (3.1) (a) and (b) of the Act are repealed and the following substituted:

- (a) a bank or authorized foreign bank as defined in section 2 of the *Bank Act* (Canada);
- (b) a loan or trust corporation; or

(4) Clause 25 (9) (a) of the Act is amended by striking out “clients or customers of the applicant” and substituting “clients of the applicant, self-represented parties dealing with the applicant”.

17 (1) The French version of subclause 25.1 (1) (a) (ii) of the Act is amended by striking out “réceptacle” and substituting “contenant”.

(2) Subclauses 25.1 (1) (b) (i) and (ii) of the Act are repealed and the following substituted:

- (i) in the course of conducting business for which registration is required under this Act, the person who is the subject of the allegation referred to in clause (a) has received money or assets from clients or self-represented parties, and
- (ii) the interests of those clients or self-represented parties require protection.

(3) Subclause 25.1 (2) (b) (ii) of the Act is amended by striking out “customer” and substituting “self-represented party”.

18 (1) Subclauses 27 (1) (a) (i) and (ii) of the Act are repealed and the following substituted:

- (i) a bank or authorized foreign bank as defined in section 2 of the *Bank Act* (Canada);
- (ii) a loan or trust corporation; or

(2) Subsection 27 (5) of the Act is amended by striking out “one year” in the portion before clause (a) and substituting “two years”.

19 Subsections 28 (1) and (2) of the Act are repealed and the following substituted:

Notice of changes to registrar

- (1) Every registrant shall, within five days after the event, provide notice to the registrar of,
- (a) any change in the registrant’s address for service;
 - (b) in the case of a corporation or partnership, any change in the officers or directors;
 - (c) any change in the information that was included in a registrant’s application for registration; and
 - (d) any change to such other information as may be prescribed.

20 Clause 30 (c) of the Act is repealed and the following substituted:

- (c) pay any remuneration to a person referred to in clause (a) or (b), except if otherwise provided for in the regulations and in accordance with the regulations.

21 Subsection 31 (2) of the Act is repealed and the following substituted:

Same

(2) Except if the regulations provide otherwise and subject to the regulations, no broker or salesperson is entitled to or shall accept any remuneration for trading in real estate from any person except the brokerage which employs the broker or salesperson.

22 (1) Subsection 33 (1) of the Act is repealed and the following substituted:

Prohibition re: breaking contract

(1) No registrant shall attempt to induce or induce any party to an agreement in respect of a trade in real estate to break the agreement for the purpose of entering into another such agreement.

(2) Subsection 33 (3) of the Act is amended by striking out “commission or other”.

23 (1) Subsection 35.1 (2) of the Act is repealed and the following substituted:

Records

(2) A brokerage acting on behalf of a seller shall, in accordance with the regulations, retain copies of all written offers that it receives to purchase real estate or copies of all other prescribed documents related to those offers.

(2) Subsection 35.1 (5) of the Act is repealed and the following substituted:

Disclosure by registrar

(5) Subject to subsection (5.1), the registrar shall determine the number of written offers that the brokerage has received to purchase the real estate and shall disclose the number of the offers as soon as practicable, or within the period of time that is prescribed, to the person who requested the inquiry under subsection (3).

Same

(5.1) Except in such circumstances as may be prescribed, the registrar shall not disclose the substance of any of the offers or the identity of the person making any of the offers.

24 (1) Subsection 36 (1) of the Act is amended by striking out “commission or other”.

(2) Subsection 36 (1.1) of the Act is repealed.

(3) Subsection 36 (2) of the Act is amended by striking out “commission” and substituting “remuneration”.

(4) Subsection 36 (3) of the Act is repealed and the following substituted:

Prohibition

(3) No registrant shall request or enter into an arrangement for the payment of any remuneration based on the difference between the price at which real estate is listed for sale or rental and the actual sale price or rental price, as the case may be, of the real estate, nor is a registrant entitled to retain any remuneration computed upon any such basis.

25 Clause 40 (1) (c) of the Act is amended by striking out “a code of ethics established by the Minister under section 50” at the end and substituting “a prescribed code of ethics”.

26 The Act is amended by adding the following Part:

**PART VI.1
ADMINISTRATIVE PENALTIES**

Registrar is assessor

43.1 (1) The registrar is, by virtue of the registrar’s office, an assessor.

Appointment of assessors

(2) The registrar shall appoint in writing persons to be assessors who are authorized to make an order under section 43.2 imposing an administrative penalty.

Order for administrative penalty

43.2 (1) An assessor may, by order, impose an administrative penalty against a person in accordance with this section and the regulations if the assessor is satisfied that the person has contravened or is contravening,

- (a) a prescribed provision of this Act or the regulations; or
- (b) a condition of registration, if the person is a registrant.

To whom payable

(2) An administrative penalty is payable to the administrative authority or, if there is no designated administrative authority, to the Minister of Finance, and is a debt due to the person to whom it is payable.

Purpose

(3) An administrative penalty may be imposed under this section for one or more of the following purposes:

- 1. To promote compliance with this Act and the regulations.
- 2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or the regulations.

Amount

(4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations, but the amount of the penalty shall not exceed \$25,000.

Form of order

(5) An order made under subsection (1) imposing an administrative penalty against a person shall be in the form that the registrar determines.

Service of order

(6) The order shall be served on the person against whom the administrative penalty is imposed in the manner that the registrar determines.

Absolute liability

(7) An order made under subsection (1) imposing an administrative penalty against a person applies even if,

- (a) the person took all reasonable steps to prevent the contravention on which the order is based; or
- (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

No effect on offences

(8) For greater certainty, nothing in subsection (7) affects the prosecution of an offence.

Other measures

(9) Subject to section 43.4, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a person provided by this Act or the regulations, including the application of conditions to a registration, the suspension, immediate suspension or revocation of a registration or the refusal to renew a registration.

Limitation

(10) An assessor shall not make an order under subsection (1) more than two years after the day the assessor became aware of the person's contravention on which the order is based.

No hearing required

(11) Subject to the regulations ~~made by the Minister~~, an assessor is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (1) against the person.

Non-application of other Act

(12) The *Statutory Powers Procedure Act* does not apply to an order of an assessor made under subsection (1).

Appeal

43.3 (1) In this section,

“appeal body” means the prescribed person or, if no person is prescribed, the Tribunal.

Same

(2) The person against whom an order made under subsection 43.2 (1) imposes an administrative penalty may appeal the order to the appeal body by delivering a written notice of appeal to the appeal body within 15 days after receiving the order.

If no appeal

(3) If the person does not appeal the order in accordance with subsection (2), the order is confirmed.

Hearing

(4) If the person appeals the order in accordance with subsection (2), the appeal body shall hold a hearing and may, by order, confirm, revoke or vary the assessor's order and the appeal body may attach conditions to its order.

Parties

(5) The assessor, the appellant and the other persons that the appeal body specifies are parties to the appeal.

Non-application of other Act

(6) If the appeal body is not the Tribunal, the *Statutory Powers Procedure Act* does not apply to an appeal under subsection (2).

Immediate effect

(7) Even if the appellant appeals an order of the appeal body, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

Effect of paying penalty

43.4 If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the person cannot be

charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the person in respect of the same contravention on which the order is based.

Enforcement

43.5 (1) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

Date of order

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

Liens and charges

(3) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the director may, by order, create a lien against the property of the person that is liable to pay the penalty.

Application of s. 43

(4) Subsections 43 (2) to (6) apply to the lien, with necessary modifications, as if it were a lien created by the director under subsection 43 (1) and references to the fine shall be read as references to the administrative penalty.

27 Section 48 of the Act is repealed and the following substituted:

Information to be made available to the public

48 The registrar shall make available to the public, in the prescribed form and manner,

- (a) the names of registrants and other prescribed persons; and
- (b) other information, as may be prescribed, in respect of registrants and other prescribed persons.

28 The Act is amended by adding the following section:

Information to the registrar

48.1 (1) The registrar may, subject to the regulations, request information from registrants or a group of registrants for the purposes of this Act and may specify the form in which the information is to be given and the time within which it must be given.

Same

(2) Without limiting the authority of the registrar to request information from registrants under subsection (1), the registrar may, subject to the regulations, request that a registrant give,

- (a) any information with respect to a trade in real estate that may be required by the registrar for the purposes of this Act; and
- (b) information in the form of verification, by affidavit or otherwise, of any information requested.

29 The Act is amended by adding the following section:

Time and form for giving information

48.2 Every registrant shall give the information that the registrar requests under this Act or that is otherwise required to be given to the registrar under this Act,

- (a) within the time and in the form specified under this Act or the regulations; or
- (b) if not specified under this Act or the regulations, within the time and in the form specified by the registrar.

30 Section 49 of the Act is repealed.

31 (1) Clauses 50 (1) (a) and (b) of the Act are repealed and the following substituted:

- (a) prescribing a code of ethics for registrants;
- (b) governing the composition of the discipline committee, and, subject to subsection 21 (2), governing matters relating to the appointment of the members of that committee;
- (b.1) governing the jurisdiction and procedures of the discipline committee, including prescribing requirements for the purposes of subsection 21 (5),
- (b.2) respecting the manner in which and the frequency with which decisions of the discipline committee are made available to the public;

- (b.3) governing administrative penalties that an assessor may order and all matters necessary and incidental to the administration of a system of administrative penalties, including,
- (i) specifying the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by specifying the method of calculating the amount and the criteria to be considered in determining the amount,
 - (ii) providing for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid,
 - (iii) specifying information that must be included in an order for payment of an administrative penalty,
 - (iv) governing the procedure for making an order under section 43.2 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the person against whom the order is made, and
 - (v) governing the appeal of an order for payment of an administrative penalty;
- (b.4) specifying the purposes for which the administrative authority may use the funds that it collects as administrative penalties;

(2) Subsection 50 (1.1) of the Act is amended by striking out “code of ethics established under clause (1) (a)” at the end and substituting “prescribed code of ethics”.

32 (1) Paragraphs 3 and 4 of subsection 51 (1) of the Act are repealed and the following substituted:

3. governing education that must be obtained by applicants for registration, applicants for renewal of registration and registrants, including,
 - i. requiring applicants for registration, applicants for renewal of registration and registrants to obtain education,
 - A. specified by the administrative authority, the Minister, the director or the registrar, and
 - B. provided by such organizations as may be designated by the administrative authority, the Minister, the director or the registrar, and
 - ii. requiring that a description of the education required to be obtained, as described in subparagraph i, be made available to the public;
4. governing registrants holding themselves out as specialists in trading for the purposes of section 8, which may include governing different types of registrants differently and which may include,
 - i. establishing areas of specialization,
 - ii. establishing a process for certification in respect of each area of specialization,
 - iii. requiring registrants to obtain education and satisfy other criteria, in order to,
 - A. be certified as a specialist in each area of specialization,
 - B. renew a certification in each area of specialization, and
 - C. maintain a certification in each area of specialization,
 - iv. prescribing a maximum number of areas of specialization in respect of which a registrant may be certified as a specialist,
 - v. authorizing the administrative authority or the registrar to do anything that the Lieutenant Governor in Council may do by regulation under subparagraphs i to iv, and
 - vi. restricting or prohibiting the certification of brokerages that are corporations as specialists;
5. prohibiting registrants from engaging in activities specified in the regulations, in addition to activities prohibited by this Act;

(2) Subparagraph 7 iii of subsection 51 (1) of the Act is repealed and the following substituted:

- iii. governing group insurance for brokerages, brokers or salespersons, including,
 - A. authorizing the administrative authority or, if there is no designated administrative authority, the Minister to arrange for group insurance on behalf of brokerages, brokers or salespersons,
 - B. authorizing the administrative authority or, if there is no designated administrative authority, the Minister to administer group insurance on behalf of brokerages, brokers or salespersons and to act as named insured, and
 - C. requiring brokerages, brokers or salespersons to participate in group insurance;

(3) Paragraph 8 of subsection 51 (1) of the Act is repealed and the following substituted:

8. governing the documents, records and trust accounts that must be kept by brokerages and by or on behalf of former brokerages, including the manner and location in which they are kept and the time periods for retaining such information and authorizing the registrar to specify the manner and location in which they must be kept and the time periods during which they must be kept;

(4) Paragraph 11 of subsection 51 (1) of the Act is repealed and the following substituted:

11. prescribing procedures and other matters related to complaints under section 19 and the registrar's powers under section 20;

(5) Paragraph 13 of subsection 51 (1) of the Act is repealed.**(6) Paragraph 15 of subsection 51 (1) of the Act is repealed.****(7) Paragraph 17 of subsection 51 (1) of the Act is amended by adding "in the form and manner approved by the registrar" after "registrar".****(8) Paragraph 18 of subsection 51 (1) of the Act is repealed and the following substituted:**

18. governing the activities of registrants in carrying on business, including,
 - i. prescribing matters that must be disclosed, the conditions under which they must be disclosed and when they must be disclosed, including,
 - A. matters related to any holdings in brokerages other than the brokerage by which they are employed, in the case of salespersons and brokers, or
 - B. matters related to any holdings in other brokerages, in the case of brokerages,
 - ii. prescribing matters that must not be disclosed,
 - iii. setting out the manner in which trust accounts are wound down when a brokerage's registration ends,
 - iv. regulating advertising and representations or promises intended to induce a trade in real estate or authorizing the registrar to specify requirements respecting advertising and representations or promises intended to induce such a trade and requiring registrants to comply with such specified requirements;
 - v. regulating listing agreements, representation agreements and other types of agreements, including,
 - A. prescribing information required to be included or prohibited from being included in agreements,
 - ~~B. requiring forms of agreements to be approved by the registrar before being used by registrants,~~
 - ~~C. providing for a process by which the registrar may approve or require changes to a form of agreement and a process by which the registrar may revoke such an approval,~~
 - B. requiring such forms of agreements as may be specified by the regulations to be approved by the registrar before being used by registrants,
 - C. providing for a process by which the registrar may approve or require changes to such forms of agreements as may be specified by the regulations and a process by which the registrar may revoke such an approval,
 - vi. prescribing conditions that must be met before any remuneration may be charged or collected,
 - vii. respecting statements that are to be provided, which may include,
 - A. prescribing the content of the statements or authorizing the registrar to specify the content of the statements,
 - B. prescribing the manner in which the statements are to be provided or authorizing the registrar to specify the manner,
 - C. prescribing the form in which the statements are to be provided or authorizing the registrar to specify the form,
 - D. prescribing the circumstances under which statements are not required, and
 - E. prescribing the consequences of failing to provide a statement,
 - viii. setting out obligations of a brokerage, broker and salesperson that follow the acceptance of an offer to sell, purchase, exchange, lease or rent real estate;

~~(9) Subsection 51 (1) of the Act is amended by adding the following paragraphs:~~

- ~~19.4 with respect to personal real estate corporations, prescribing conditions that must be met before remuneration may be charged or collected.~~

~~19.5 prescribing provisions for the purposes of clause 43.2 (1) (a);~~

(9) Subsection 51 (1) of the Act is amended by adding the following paragraph:

19.4 with respect to personal real estate corporations, prescribing conditions that must be met before remuneration may be charged or collected;

(9.1) Subsection 51 (1) of the Act is amended by adding the following paragraph:

19.5 prescribing provisions for the purposes of clause 43.2 (1) (a);

(10) Paragraph 22 of subsection 51 (1) of the Act is repealed.

(11) Subsection 51 (1) of the Act is amended by adding the following paragraph:

23.1 prescribing and governing additional duties and powers of the registrar;

(12) Paragraph 24 of subsection 51 (1) of the Act is repealed and the following substituted:

24. providing for such transitional matters as the Lieutenant Governor in Council considers necessary for the effective implementation of the *Trust in Real Estate Services Act, 2020*;

(13) Paragraph 27 of subsection 51 (1) of the Act is amended by adding “other than a matter or thing in respect of which the Minister may make regulations under section 50” at the end.

(14) Subsection 51 (1) of the Act is amended by adding the following paragraph:

30.1 respecting any matter necessary or advisable to carry out the intent or purpose of this Act.

Collection and Debt Settlement Services Act

33 Clause 2 (1) (d) of the *Collection and Debt Settlement Services Act* is amended by striking out “*Real Estate and Business Brokers Act, 2002*” and substituting “*Trust in Real Estate Services Act, 2002*”.

Licence Appeal Tribunal Act, 1999

34 Subsection 11 (1) of the *Licence Appeal Tribunal Act, 1999* is amended by striking out “*Real Estate and Business Brokers Act, 2002*” and substituting “*Trust in Real Estate Services Act, 2002*”.

Ontario Labour Mobility Act, 2009

35 Item 57 of Table 1 to the *Ontario Labour Mobility Act, 2009* is amended by striking out “*Real Estate and Business Brokers Act, 2002*” in Column 2 and substituting “*Trust in Real Estate Services Act, 2002*”.

Residential Tenancies Act, 2006

36 Subsection 27 (2) of the *Residential Tenancies Act, 2006* is amended by striking out “*Real Estate and Business Brokers Act, 2002*” and substituting “*Trust in Real Estate Services Act, 2002*”.

Safety and Consumer Statutes Administration Act, 1996

37 (1) The Schedule to the *Safety and Consumer Statutes Administration Act, 1996* is amended by striking out the following item:

Real Estate and Business Brokers Act, 2002

(2) The Schedule to the Act is amended by adding the following item:

Trust in Real Estate Services Act, 2002

Toronto Islands Residential Community Stewardship Act, 1993

38 Paragraph 3 of subsection 14 (2) of the *Toronto Islands Residential Community Stewardship Act, 1993* is revoked and the following substituted:

3. *Trust in Real Estate Services Act, 2002.*

Commencement

39 This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

40 The short title of this Act is the *Trust in Real Estate Services Act, 2020*.