



Government of **Western Australia**  
Department of **Commerce**  
**Consumer Protection**

# Real Estate and Business Agents' Trust Account Handbook

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## Introduction

The *Real Estate and Business Agents Act 1978* (the Act) and the Real Estate and Business Agents (General) Regulations 1979 (the Regulations) require the strict maintenance of a formal set of trust account records, which show at any time the state of a real estate and business agent's trust account.

This booklet is designed to assist agents to establish and maintain a trust account recording system that complies with the Act. The booklet is not a comprehensive accounting text for agents and familiarity with the content of this booklet is **not sufficient** to satisfy the requirement that agents have a sound working knowledge of the Act.

The *Real Estate News* and *Real Estate Industry e-Bulletins* are used to inform the industry of Department of Commerce and Consumer Protection policy and best practice, and may be used to convey information about the Department's auditing requirements.

Archived issues of the *Real Estate News* and e-Bulletins are available in the website's publication section. Visit [www.commerce.wa.gov.au/publications](http://www.commerce.wa.gov.au/publications)

## Residential Tenancies Act amendments

Please note, amendments to the *Residential Tenancies Act 1987* are expected to be implemented in 2013. Once implemented **all** new security bonds must be lodged with the Bond Administrator. Any existing tenancy bond trust accounts held by agents must be transferred over to the Bond Administrator within eighteen months of the changes taking effect.

## Using this booklet

- Part one answers general questions about trust accounting.
- Part two examines the documents and records that constitute the trust accounting system.
- Part three discusses the agent's duties and responsibilities relating to trust account audits.
- Part four looks at recommended practices for reducing theft and fraud within a real estate and business agency.

## Additional copies

Additional copies of this booklet can be obtained by downloading from [www.commerce.wa.gov.au/consumer-protection/auditors](http://www.commerce.wa.gov.au/consumer-protection/auditors) or by calling the Consumer Protection Advice Line on **1300 30 40 54**.

## Part 1. Trust accounting

### 1:1 What is trust money?

Trust money is money received or held by an agent or any member of an agent's staff on behalf of another person in relation to a real estate or business sales transaction or property management transaction. Deposits on sales, tenancy bonds, rents and pre-paid advertising are all examples of trust money.

The Commissioner for Consumer Protection (the Commissioner) recommends that money received by a licensed agent in the course of strata management work be paid into a trust account. Money held on behalf of property owners for variable outgoings (such as repairs and maintenance funds) should also be held in a trust account.

Money received in the course of other business (ie money received by the agent not in the course of a 'transaction' as defined in section 4(1) of the Act) conducted by an agent is not money received in the course of acting as a real estate agent, and is not considered to be trust money under the Act. Such money does not, therefore, fall within the trust accounting requirements of the Act. Funds of this type, however, may be included as part of an agent's trust account where it is best practice to do so.

The Consumer Protection Division of the Department of Commerce (Consumer Protection) strongly recommends that if an agent has any doubts about how to treat any money, they should act on the side of caution and treat it as trust money.

It is essential to remember the trust account money belongs to other people. Removing money from the trust account for a reason other than one that is lawful and appropriate is a criminal offence.

Trust money must be kept separate from the agent's general business money at all times. A separate set of accounting records must be kept for each trust account.

*Refer: section 67 of the Act (definitions)*

### 1:2 What is meant by trust accounting?

Trust accounting is the general term used to cover the accounting records and practices required under the Act to enable agents to properly account for trust money in their possession.

Every agent who holds a current triennial certificate must maintain one or more trust account/s.

All trust money must be held in a trust account in the agent's name in a prescribed financial institution. Prescribed financial institutions include all banks and societies.

*Refer: section 68 of the Act*

### 1:3 Why are there special requirements within the Act for the control of trust money?

Agents hold large amounts of money on behalf of clients. The trust money accounting system aims to ensure that all trust money held by agents can be accurately accounted for at all times. Trust account and auditing requirements increase public confidence in the services of agents.

### 1:4 What happens to the interest on trust accounts?

Financial institutions that hold agents' general trust accounts are required under the Act to pay a portion of the interest on these funds to Consumer Protection.

The interest earned on trust accounts serves to fund a range of services provided by Consumer Protection for industry members and consumers including education, advice, conciliation and investigations of real estate issues.

In the case of tenancy bond trust accounts, financial institutions that hold these accounts are required under the *Residential Tenancies Act 1987* to pay the interest on the funds to the Rental Accommodation Account administered by the Bond Administrator at the Department of Commerce. Accrued interest assists in the administration of the *Residential Tenancies Act 1987* and in providing educational or advisory services to tenants.

## 1:5 Types of trust accounts

### General trust accounts

The Act requires that a licensed agent holding a current triennial certificate must maintain one or more trust account/s. All moneys held for a person in relation to a real estate or business transaction, such as sales, property management, and strata management, must be paid into a specially titled trust account. Variable outgoings accounts are also trust accounts, and are required to be treated as such.

Agents holding tenancy bond accounts must ensure that the money is kept separate in a tenancy bond trust account. Therefore, agents who handle sales, as well as maintain a rent roll and hold tenancy bonds, are required to have a **minimum** of two trust accounts (ie a general trust account and a tenancy bond trust account).

Agents may choose to open separate trust accounts for such areas as sales, property management, variable outgoings and strata management. However, the use of multiple trust accounts will increase bank fees and may increase the likelihood of errors.

### REBA tenancy bond trust accounts

The *Residential Tenancies Act 1987* has specific requirements concerning the payment of tenancy bonds into trust accounts. Under clause 2 of Part A of Schedule 1 to the *Residential Tenancies Act 1987*, a tenancy bond received by an agent must be paid into a specially titled REBA Tenancy Bond Trust Account, **or** deposited with the Bond Administrator at the Department of Commerce. This is to be done as soon as practicable after the agent's receipt of the bond. In this case, 'as soon as practicable' means by close of business the next business day.

Please note, amendments to the *Residential Tenancies Act 1987* are expected to be implemented in 2013. Once implemented **all** new security bonds must be lodged with the Bond Administrator. Any existing tenancy bond trust accounts held by agents must be transferred over to the Bond Administrator within eighteen months of the changes taking effect.

All audit and accounting requirements of the Act and the Regulations apply to trust accounts opened under the *Residential Tenancies Act 1987*.

*Refer: Residential Tenancies Act 1987 Schedule 1  
Real Estate and Business Agents Act 1978 section 68*

### Interest bearing trust accounts

Section 68A(1) of the Act and regulation 6E(1) of the Regulations allows agents to open separate interest bearing trust accounts for individuals if a request is received

in writing from the person paying the money, provided that the following are met:

- the deposit exceeds \$20,000; **or**
- the transaction will not be settled within 60 days.

Interest earned on interest bearing trust accounts is payable to the person requesting the account.

Generally, property management transactions do not fall within the above criteria. However, commercial bonds may be deposited into an interest bearing trust account as these are often held by agents for more than sixty days.

In all cases, requests from clients to open an interest bearing trust account must be made in writing and agents must comply with such requests where the aforementioned criteria are met. The request must be held in an agent's files for the information of the agent's auditor.

## 1:6 Titling of trust accounts

The titling of trust accounts enables easy identification of real estate trust accounts for agents, auditors, financial institutions and Consumer Protection.

Examples of the titling of various categories of trust accounts are provided below.

### Titling of general trust accounts (sales and rent)

Agents are required to include the following information in the title of a general trust account:

- Licensed entity name and business name as recorded on the triennial certificate;
- REBA Trust a/c (the word 'account' can be abbreviated or in full); and
- 'TC' followed by the triennial certificate number (up to five digits).

**Example:** ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate  
REBA Trust a/c TC 12345

Where there is more than one general trust account (eg sales and rent), the account identifier should appear after the words REBA Trust a/c.

**Examples:** ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate  
REBA Trust a/c - sales TC 12345  
ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate  
REBA Trust a/c - rental TC 12345

### Titling of tenancy bond trust accounts

If an agent still holds a tenancy bond trust account that has not yet been transferred over to the Bond Administrator it must be a separate account.

Agents are required to include the following information when titling tenancy bond trust accounts:

- Licensed entity name and business name as recorded on the triennial certificate;
- REBA Tenancy Bond Trust a/c; and
- 'TC' followed by the triennial certificate number.



**Example:** ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate  
REBA Tenancy Bond Trust a/c TC 12345

### **Titling of interest bearing trust accounts**

Agents are required to include the following information in the titling of an interest bearing trust account:

- entity name and business name as recorded on the triennial certificate in trust for the person making the request;
- REBA Trust a/c - IB; and
- 'TC' followed by the triennial certificate number.

**Example:** ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate  
in trust for John Smith REBA Trust a/c - IB TC 12345

*Refer: regulation 6D of the Regulations*

### **Quotation of Tax File Number (TFN)**

When opening an interest bearing account in trust for a client, the client's tax file number should be quoted to avoid tax being withheld at the top marginal rate.

## **1:7 Receiving and depositing trust money**

All trust money must be deposited into a trust account with an approved financial institution as soon as is practicable after it is received.

Tenancy bonds must be deposited with either the Bond Administrator or an approved financial institution as soon as is practicable after the agent's receipt of the bond. Please note, once amendments to the *Residential Tenancies Act 1987* are implemented **all** new security bonds must be lodged with the Bond Administrator. Any existing tenancy bond trust accounts agents hold must be transferred over to the Bond Administrator within eighteen months of the changes taking effect.

Commercial bonds, where held, should be provided for within the lease document. The lease should specify where the bond is held (ie within the agent's trust account or within a separate interest bearing trust account).

*Refer: section 68(1) of the Act and Schedule 1 of the Residential Tenancies Act 1987*

## **1:8 Opening, closing and amending trust accounts**

Whenever a general trust account or tenancy bond trust account is opened, closed or amended, an agent must advise Consumer Protection in writing as soon as practicable.

The notification should provide the name and number of the trust account and the name and address of the prescribed financial institution with which the trust account is maintained. The date on which the change was made should also be included.

Consumer Protection does not need to be advised about the opening, closing or amending of interest bearing trust accounts.

*Refer: section 68C of the Act*

### 1:9 What trust documents and records must be maintained?

It is essential that hard copies of the following records can be produced at the request of the agent's auditor or a Consumer Protector investigator/compliance officer.

Trust documents and records that must be maintained include:

- a record of money received for, or on behalf of, any other person;
- trust receipt books register;
- duplicates of every completed trust account deposit form;
- trust account journals;
- trust ledgers;
- trust cheque books register;
- records of trust money payments;
- statement of trust money;
- register of securities;
- trust account reconciliation statements; and
- any other books, accounts or records kept by an agent relating to trust money.

It is also recommended that back-up copies of computer records are retained offsite. This measure will ensure access is available to the records in the event of error, falsification of records by an employee or physical damage to the system. A useful system is to maintain a set of discs offsite with a disc labelled for each working day (eg Monday, Tuesday etc). The disc labelled for that particular day is taken to work to back up records at the end of the day.

The set of discs are then rotated the following week. With this system in place, all discs except the one labelled for that day are kept offsite.

*Refer: section 77(1) of the Act*

### 1:10 How long must trust records be retained?

An agent must keep a record of the money received for, or on behalf of, any other person. All trust records and documents are required to be retained for a **minimum period of six years** from the date on which the money was received. Where an agent acts as trustee for a superannuation fund, records must be maintained for a **minimum period of 10 years**.

*Refer: section 69(1)(b) of the Act and regulation 6H of the Regulations*

### 1:11 What use is made of the documents and records?

Documents and records enable the tracking of trust money held by an agent at any time, to verify that the money has been dealt with as required under the Act and the Regulations. Verification is by an annual audit of the records required. As well as the annual audit, the Commissioner may order an inspection of trust account records or an interim audit of an agent's trust accounts at any time.

An audit is an examination of the accounts held by an agent by an independent person. Unless the Commissioner approves otherwise, the audit must be conducted by a registered company auditor. An agent must maintain all documents and records relating to a trust account in a manner that enables them to be conveniently and properly audited by the agency's auditor.

Other duties of agents relating to audits are discussed in part three.

*Refer: section 68(6) of the Act*

### **1:12 When can payment of commission and expenses be deducted from trust money?**

In relation to a sales transaction, an agent only becomes entitled to draw commission after settlement of the property, or where the failure to settle is the fault of the agent's principal (the vendor).

In addition, an agent is only entitled to a fee if all of the following requirements have been met:

- the agent is licensed and held a current triennial certificate when the services were provided [section 60(1)(a)];
- the agent has a valid appointment to act in writing signed by the person for whom the services are being provided [section 60(1)(b)];
- the appointment to act complies with the requirements of section 60(2) of the Act and regulation 6BA of the Regulations; and
- the client is provided with a true copy of the appointment to act immediately after they sign [section 60(2)(c)].

If one or more of the above requirements are not met, then an agent can only obtain the commission if they have the vendor's authority to do so. If the agent does not have the vendor's authority, then the dispute is a civil matter between the parties.

When an agent is requested to transfer the purchaser's deposit to the settlement agent or solicitor, the agent generally retains a portion of the deposit to cover the commission payable and other approved costs. The agent may only retain the money if the appointment signed by the vendor allows the agent to deduct commission and approved expenses from the deposit. The portion of the deposit that comprises the agent's fee should not be paid out from the trust account until settlement has taken place.

*Refer: sections 60 and 61 of the Act*

### **1:13 What must an agent do on becoming aware that a trust account is overdrawn**

The Act requires financial institutions to inform the Commissioner whenever a trust account is overdrawn.

The Act also requires an agent to notify the Commissioner, as soon as practicable, of becoming aware that a trust account is overdrawn, regardless of the amount involved. The notification must include the name and number of the trust account and the amount by which the trust account is overdrawn.

Generally, when any shortfall or deficiency is identified in the agent's trust account, the agent should, as a standard practice, immediately remedy the shortfall by

transferring funds from the trading account or, where this is not possible, from personal funds or by using money placed at the agent's disposal by a third party. Such shortfalls could be due to accounting errors, which may have been made either by the agent or the agent's bank, or may potentially be due to funds having been misappropriated by unknown parties.

Once the shortfall has been rectified, the agent can consider remedying whatever has led to the shortfall and then reimburse the trading account, personal funds or third party as appropriate.

For further advice in remedying any shortfall in the trust account, it is suggested that the agent should, in the first instance, seek advice from their statutory appointed auditor, followed by Consumer Protection.

Refer to section 4:9 about what to do in the event of fraud or theft from the trust account.

Further comments in respect of trust account practice are made under section 2:1 Principles of trust account practice in this publication.

*Refer: section 68C(3) of the Act*

#### **1:14 Aspects of computerised trust accounting**

The requirements of the Act and Regulations apply to all trust accounting systems.

Before an agent signs a contract to purchase or lease a computer system, they should check whether the software included is capable of producing trust records that comply with the requirements of the Act. This is particularly important as not all software packages meet the requirements of Western Australian legislation.

If an agent is not familiar with computerised systems, and is considering purchasing a system, the appraisal and selection of a system should be discussed with the agent's auditor. The auditor can advise on the records that must be generated and maintained.

As a safeguard, prior to purchasing a computer system, some agents have requested the supplier cover any costs involved in altering software to ensure compliance with Western Australian legislation.

Consumer Protection does not approve of or endorse any computer system or software. Any claims by suppliers that Consumer Protection has given its approval should be disregarded.

While the day-to-day upkeep of trust account records may be delegated to office staff in many agencies, the person in *bona fide* control of the agency is responsible for all trust account records. For this reason, it is essential that the person in *bona fide* control of the agency is fully conversant with the computer system installed. Full use should be made of the checks and controls that are integrated into the system. Consumer Protection suggests that agents purchase systems that will automatically generate a daily report so that trust account records are monitored frequently for discrepancies and errors. The person in *bona fide* control of the agency should personally check the daily report and immediately deal with any problems identified.

## Part 2. Trust documents and records

The role of trust documents and records, as well as the prescribed requirements, are described in this section. In some cases, examples that meet the requirements of the Act are shown. However, it should be understood that the examples only serve as guides.

### 2:1 Principles of trust account practice

It is impossible to summarise good trust account bookkeeping practice in a few sentences. However, the following basic principles provide an outline:

- documents are completed immediately;
- records are written up by the end of the next business day;
- trust money is banked by close of business of the next business day, (unless the Act allows otherwise) in the same form it was received (eg cash received must be banked as cash);
- records of all transactions are kept and transactions with no documentary evidence are recorded in the transfer journal;
- monthly reconciliation statements are completed accurately and on time;
- no moneys are deducted from trust money until after settlement (ie commission on sales, money for expenses ), with the exception of authorised prepaid vendor advertising;
- every client has a separate ledger account and each individual ledger account should never go into debit;
- agents with computerised accounting systems maintain records in a manner that can be conveniently and properly audited (auditors can advise on which documents must be provided in hard copy); and
- back-up computer records are kept offsite.

### 2:2 Register of securities

A register of securities lists details of all securities for money and documents that are held by an agent in trust, either in the agent's own name only, in conjunction with other persons and/or agents, or in a form that is transferable by delivery.

Documents that need to be recorded in the register of securities include:

- All securities for money, the title to which are transferable by delivery, held by the agent on behalf of another person.
- All securities and documents of title held by an agent on behalf of another person:
  - in the agent's own name;
  - in joint names with another agent;
  - under the agent's control; or
  - under joint control with another agent or agents.

- All receipts for the deposit of money with any person made by an agent on behalf of another person:
  - in the agent's own name;
  - in joint names with another agent;
  - under the agent's control; or
  - under joint control with another agent or agents.

Information that must be recorded for each document is:

- the date the security, document of title or receipt was received;
- a description of the security, document of title or receipt;
- the value or amount of the security or money deposited;
- the name of the person for whom the security, document of title or receipt is held;
- the delivery date of the security, document of title, or receipt by the agent to another person, and the name of the person to whom it is given; and
- the reason why the security, document of title or receipt is being held.

*Refer: section 80 of the Act*

## 2:3 Trust receipts

### Trust receipt process

When trust accounts are kept manually and a payment is made in person, a receipt must be provided to the person at the time of payment. A duplicate (marked 'duplicate') must also be retained. If a computer system is being used, the agent must issue a printed receipt and keep a record of the transaction. If a payment is made by cheque through the mail, the receipt should be provided as soon as possible. A receipt does not have to be issued if the money is received by electronic transfer, however, a record of the money received must be kept.

*Refer: section 69(1)(b) of the Act*

### Features of trust receipts

All trust receipts need to show the following information:

- the heading 'Trust Account Receipt';
- the name of the holder of the triennial certificate, and any business name of that holder, that is recorded in the register;
- a number or letter, or a combination of both, in consecutive order to allow the receipt to be uniquely identified;
- the date the money was received;
- the name of the person paying the money;
- the amount of money received;
- a brief description of the purpose of the payment; and
- if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

*Refer: regulation 6G of the Regulations*

When payment is made electronically, an agent must ensure that a record is kept to allow the receipt of the money to be uniquely identified, by including:

- a number or letter, or a combination of both, in consecutive order that allows the record to be uniquely identified;
- the date the money was received;
- the name of the person paying the money;
- the amount of the money received; and
- a description of the purpose of the payment.

*Refer: regulations 6G(b)(c)(d)(e) and (f) and 6H(3) of the Regulations*

The example below demonstrates a general purpose trust receipt format that meets the requirements under the Regulations.

**Example: General purpose trust account receipt**

Trust Account Receipt	
ELLIOT ENTERPRISES PTY LTD ABN 12 345 678 912 T/A SUN REAL ESTATE	
Licensed Real Estate and Business Agent 16 Horizon Street, Perth 6000	Trust Account Receipt No: 00001 ...../...../.....
Received from .....	
Address .....	
the sum of .....	
for .....	
.....	
.....	
.....	
for and on behalf of <b>Elliot Enterprises Pty Ltd ABN 12 345 678 912</b>	
Signed .....	
(name of signatory).....	
	Cheque \$.....
	Cash \$.....
	Total \$.....

All receipts should be posted to the cash receipts journal by the next working day with the receipt details recorded.

## Receipts for rent and tenancy bonds

Additional receipt requirements apply under the *Residential Tenancies Act 1987* for receipts for rent and tenancy bonds. Where rent is paid directly by a tenant into an owner's account at a bank, building society or other similar body, a receipt is not required (section 33). However, in all other cases a rent receipt must be provided within three business days from the rent being paid.

An agent can choose to use one receipt format for both general trust account receipts and rent receipts, however, in order to meet the requirements of the *Residential Tenancies Act 1987* a receipt for rent must show the following details:

- the date on which the rent was received;
- the name of the person paying the rent;
- the amount paid;
- the period of the tenancy in respect of which it is paid; and
- the premises in respect of which the rent is paid.

In addition, when a tenancy bond is paid by a tenant, under the *Residential Tenancies Act 1987* a receipt that identifies the date the bond was received, the name of the person/s paying the bond, the amount paid and the premises for which it was paid, must be given regardless of the circumstances.

Prescribed records of the rent and tenancy bond money received should also be kept by the owner or agent. Bond money must be lodged using the prescribed form for the lodgement of security bond money.

*Refer: Residential Tenancies Regulations 1989 Schedule 4*

### 2:4 Interim receipts

The use of interim receipts is not a desirable practice and is discouraged by Consumer Protection. However, there are certain circumstances when an interim receipt may need to be issued (eg when representatives receive funds while out of the office, or when the agent's printer is not working). In these situations, a duplicate of the interim receipt should be filed in the records and the interim receipt should be immediately followed by a formal trust receipt, which is cross-referenced to the interim receipt.

When using a manual system to issue interim receipts, cross-referencing information should be included in the trust ledger. If a computer system is used, the formal trust receipt should be cross-referenced against the interim receipt in the computer system.

When agents have distributed interim receipts, the receipts should be reviewed on a weekly basis to ensure the formal trust receipt has been issued.

### 2:5 Trust deposit forms

Agents should make and retain a copy of every completed trust account deposit form.

Trust account deposit forms should show:

- the date of payment into the authorised financial institution;
- the name and number of the agent's trust account; and



- if the money is paid by cheque, the name of the drawer and the name and branch of the financial institution against which the cheque was drawn.

Most standard bank deposit books issued by trading banks will include this information.

Since all money paid into the trust bank account must be matched by a trust account receipt, it is useful for agencies with more than one branch to note the serial numbers of the receipts on the copy of the bank deposit form, which were issued in respect of the money banked. This practice assists in bookkeeping, and will aid the auditor when checking details of receipts issued against money banked.

**Example: Bank deposit form**

East Branch office receipts: 1642-1649	\$6,471.00
West Branch office receipts: 1974-1976	\$267.48
Total deposit	\$6,738.48

**2:6 Trust account withdrawals**

As a matter of best practice, all withdrawals made from the trust account should be made by electronic transfer or a trust cheque. Where a trust cheque is used, an agent must retain the cheque butts and ensure such cheque butts contain all relevant information.

To reduce the possibility of theft or fraud, it is recommended that trust account cheques are marked 'Not Negotiable' and are not made payable in cash. The bank may be requested to mark each cheque 'Not Negotiable - Account Payee Only', or a rubber stamp can be purchased to do this. Stamping all trust account cheques received from the bank will ensure no cheques are inadvertently issued without this protection. Additionally, an agent can cross out the words 'or bearer' on all trust account cheques to ensure the amount is paid to the specified person.

To ensure funds are withdrawn from the correct trust account, the cheque book should be easily identified, such as having the name of the trust account written on the front of the cheque book. It is also important to ensure the bank issues a trust account cheque book, where the drawer details for each cheque will be the same as the title of the trust account (refer to section 1:6 Titling of trust accounts).

In most circumstances, the agent or, if the agency is a body corporate, the person in *bona fide* control, should be a compulsory signatory to the trust account to ensure that adequate control is exercised over the trust accounting activities of employees in the agency. This measure will reduce the possibility of inadvertent errors and theft. In some large agencies, it may not be possible for the person in *bona fide* control to be a compulsory signatory. In this case, regular checks should be carried out on the work of the person/s responsible.

Before drawing a trust account cheque, the relevant client ledger account should be reviewed to ensure the account contains sufficient cleared funds to cover the payments made. If the moneys have been paid by cheque, allow sufficient time for the cheque to clear before drawing on the funds. Check with the bank for the appropriate clearance time.

Persons in *bona fide* control should also ensure that cheque books are stored in a secure place to restrict access to authorised persons only.

**At no time should a trust ledger account have a debit balance.**

A cheque butt or other record should show similar information to that shown on receipts, including:

- the date of the cheque;
- the name of the person to whom the payment is to be made;
- the serial number of the cheque;
- the amount of the payment; and
- a brief description identifying the nature of the transaction and the purpose for which the payment is made.

The following example shows the minimum information that should appear on a cheque butt or on a computer print out:

Date:	DD/MM/20XX
Payment to:	George White and Assoc.
Reason for payment:	Deposit on sale of 16 Eliza St
Amount:	\$10,000.00
Cheque Serial Number:	767110

## 2:7 Cash receipts journal and cash payments journal

All receipts and payments of trust money are summarised in the trust account cash journals. The journals are updated each time money is debited or withdrawn from the trust account. The journals provide a sequential and chronological record of trust account receipts and payments. If a computerised system is being used, the procedures and terminology may be different but the same essential information must be recorded.

The journals are used to update the trust account ledger and for the preparation of the monthly trust account reconciliation statement. The trust account cash journals must contain sufficient particulars of all receipts, payments and transfers to enable adequate details of the transactions to be posted into the trust account ledger.

The receipts section is prepared from the duplicates of trust account receipts. Each receipt number must be entered in strict numerical sequence. If a receipt is cancelled, the number must still be entered and the word 'cancelled' written beside the entry. The original copy of any cancelled receipts must be retained for inspection by the agent's auditor.

Recommended information to be recorded in the cash receipts journal includes the following:

- date;
- receipt number;
- from whom money was received;
- reason for payment;

- trust ledger reference;
- amount received; and
- total amount banked each day.

The cash payments section of the journal must also be entered in strict numerical sequence from information recorded on the trust account cheque butts (or duplicates).

Recommended information to be recorded in the cash payments journal include the:

- date;
- cheque number;
- name of person to whom payment was made;
- reason for payment;
- trust ledger reference;
- amount of payment; and
- subtotal of payments made to any one person on a particular date.

*Refer: section 68(6) of the Act*

## 2:8 Trust ledgers

The trust ledger is the main component of the trust accounting system. The ledger summarises all of an agent's trust account transactions. The details and amounts of money held by an agent on behalf of their clients need to be shown in the trust ledger at all times.

A client ledger account should be opened for each person on behalf of whom an agent holds trust money for and each transaction that involves trust money must be documented.

**The trust account and the individual client ledger accounts must never go into debit.**

If an agent handles sales and a rent roll and chooses to run a trust account for each operation, the agent would maintain the following ledgers:

- a rental trust account ledger with an individual client ledger account for each landlord/property;
- a tenancy bond trust account ledger with an individual client ledger account for each tenant for whom the agent holds a tenancy bond; and
- a sales trust account ledger with an individual client ledger account for each vendor/purchaser.

Client ledger accounts must satisfy the following criteria irrespective of whether they are produced manually or electronically:

- individual client ledger accounts must show a continuous running balance in order to disclose each client's entitlements at any time (it is not enough that entitlements can be calculated or obtained by reference to subsidiary records);
- all transactions must be shown in their correct chronological sequence and the date of each transaction must be shown (if this is not done, the amounts recorded in the balance column will be meaningless and the client ledger accounts will fail to show the true position as required);

- the trust client ledger accounts need to be updated by the next business day;
- where records are maintained electronically, the accounts must be readily convertible into printed form (the ability to produce a visual image on a screen is not sufficient); and
- all client ledger accounts should contain enough detail so the nature of the transactions can be clearly understood.

Each client ledger account must contain at least the following information:

- the name and address of an agent’s client;
- the names of other parties to the transaction;
- the date of each transaction;
- the names of persons from whom money was received or to whom money was paid;
- the reason for the movement of money;
- the amount of money paid or received;
- either the cheque number, receipt number or transfer journal folio number that matches the movement of money; and
- the balance after each entry.

A sample ledger layout is shown below:

Client name:		Account no:			
Address:					
Description of transaction:					
.....					
.....					
.....					
Date	Particulars	Jnl Ref	Debit	Credit	Balance

Agents sometimes maintain a surplus amount within the trust account to absorb any inadvertent deficiencies that may arise from dishonoured bank cheques or bank charges. **In no circumstances should extra funds be kept in the trust account.**

A buffer fund cannot be used to offset bank fees or for any other reason. Agents should clear their commission or fees account to their general account at least weekly. Consumer Protection strongly recommends against the practice of retaining commissions and management fees in the trust account for an extended period of time.

The removal of these excess funds from the trust account is for the benefit of all parties. If an agent maintains a buffer in a trust account, then they will not be aware when the trust account is overdrawn or if there is a shortfall in the account. This means they are less likely to identify poor trust account management practices or fraud by employees.

The person in *bona fide* control is responsible for checking each ledger account each month to detect if specific ledgers are overdrawn and to correct any errors.

*Refer: section 68(6)(a) and 68(6)(b) of the Act (relates to the correct use of trust accounts)*

## **2:9 Trust account transfer journal (general journal)**

An agent may wish to transfer funds between various client ledger accounts within the trust ledger. For example, when a client sells one property and subsequently buys another property from another client of the same estate agent. In this situation, it is not necessary to withdraw the funds from the bank trust account and redeposit the funds. Rather, the transfer can be achieved through appropriate client ledger account entries and recorded in the trust account transfer journal.

The role of the trust account transfer journal is to provide a clear audit trail between taking money from one client ledger and crediting it to another client ledger. The use of a transfer journal is not compulsory unless transfers are made.

An important element to remember in respect of transferring funds between client ledgers is that, in most cases, an authority in writing will be required from the client/s concerned.

The trust account transfer journal must include the following information:

- the date of transfer;
- the name of the trust ledger account from which money is transferred;
- the name of the trust ledger account to which money is transferred;
- a notation or code indicating the purpose for which the money is transferred; and
- the amount of money transferred.

A separate transfer journal must be maintained for each trust account.

Transfer journal entries equate to both a payment and a receipt of trust money and therefore, must be fully recorded. Explanatory notes for each journal entry should be included. Receipt and payment transactions need to be supported by signed trust documents (receipt forms and cheque butts). The agent should also sign transfer journal entries as evidence of the agent's authorisation of the entry. To reduce the incidence of error or theft, the person in *bona fide* control must sign off all entries in the trust account transfer journal.

A suggested layout for the journal is:

			DR	CR	
Date	Particulars	Ledger Ref	Transfer from \$ c	Transfer to \$ c	
4/8/10	S. James	J1	10,000.00		
4/8/10	R. Williams Money from sale of 21 Albert Rd, Kenwick transferred for deposit on 32 Canning St, Armadales	W3	10,000.00		Signature of person in <i>bona fide</i> control.  <i>Bob Smith</i>

This journal is also used when errors require correction, such as when the incorrect name of a client has been used and the transaction needs to be cancelled.

## 2:10 Recording withdrawals of commission

When commission is due to the agent, a trust cheque must be drawn to transfer the funds from the client's ledger account to the agent, or transferred to a bank account by electronic transfer.

When commission is due from more than one client, it is not necessary to draw individual trust account cheques for each item of commission. A single trust account cheque may be prepared instead, or the funds transferred electronically.

This should only occur if the transfer journal or cash payments journal entries are made listing each commission withdrawal and the client ledger account to which it relates.

The agent must ensure that settlement has occurred before withdrawing the money for sales transactions. For both sales transactions and property management transactions, an agent should have written authority from the client to withdraw the payment from the trust account (refer to section 1:12 When can payment of commission and expenses be deducted from trust money?).

## 2:11 Balancing a trust account at the end of each month

Section 68(6)(d) of the Act requires that an agent correctly balances the accounts at the end of each month. To ensure this requirement is met, an agent should complete a trust account reconciliation statement at the close of business on the last day of each month. This statement reconciles the cash records of the business with the records of the bank. It shows the balances of the trust account cash journal, the bank trust account statement and the total of the trust account ledgers. The purpose of the exercise is to match all three totals after taking into account any reconciling items.

The monthly trust account reconciliation should:

- be verified, signed and dated by the agent or, if the agent is a body corporate, the person in *bona fide* control;
- contain all the required documentation (such as original monthly bank statement) within ten working days of the end of the month; and
- be retained for auditing purposes.

These requirements for monthly trust account reconciliations still apply during holiday periods, such as Christmas.

Regular monitoring of trust account transactions and account balances may help prevent the successful fraudulent transfer of money from a trust account, as the bank may be able to hold or reverse the transaction in time. Agents should ensure they only access their banking details in a secure environment and all devices have appropriate and up-to-date security software.

In preparing a bank reconciliation, which forms the major part of trust account reconciliation, the agent should be aware that while the bank also records cash receipts and cash payments, the bank records it from a different perspective to that of an agent. For example, cash receipts that are debits in the agent's 'cash at bank account' entries in the journal are shown as credits on the bank statement itself. Similarly, cash payments that appear as credits in the 'cash at bank account' entries in the agent's journal will be shown as debits on the bank statement.

Often, there will be discrepancies between the trust records and the bank statement. Once an agent becomes familiar with these discrepancies, they will find the process of trust account reconciliation becomes easier to administer.

The procedure for preparing a bank account reconciliation is as follows:

- Add the cash column (total) of the cash receipts journal for the particular month (eg March).
- Add the cash column (total) of the cash payments journal for the particular month.
- Read the bank statement for the particular month and check that the money deposited each day went into the bank account. These amounts will be entered as credits on the bank statement.
- Check that all the cheques drawn appear in the bank statement. These amounts will be shown as debit entries. Check also that all cheques that appear in the bank statement were in fact authorised and issued.
- Using a pencil, tick off each entry on the bank statement against the corresponding entry in the cash journals. Items that may appear in the bank statement but not the cash journal could be a direct deposit. Deal with a direct deposit by writing a receipt and dating it, ensuring the date the deposit was actually credited to the account is entered. Enter this information into the cash receipts journal and credit the appropriate client ledger account. Direct deposits effected by electronic transfer will not require the issue of a receipt. Check that all electronic transfers have been correctly recorded and accounted for.
- Deposits that are not ticked in the cash receipts journal represent outstanding deposits and will be used later in the bank reconciliation statement.

- Cheques appearing in the cash payment journal that have not been ticked are referred to as unpresented cheques and will be used in the preparation of a bank reconciliation statement.

The balance of the bank statement and trust cash at bank ledger (or balance as per trust cash journal) should be the same after making adjustments for outstanding deposits and unpresented cheques. If they do not, an error has been made and will need to be identified.

The following controls need to be conducted:

- check additions;
- check entries from receipts to the cash receipts journal;
- check entries from cheque butts into the cash payments journal;
- make sure all unpresented cheques have been added together correctly;
- make sure all outstanding deposits, including electronic transfers, have been accounted for; and
- check the bank statement for any bank charges that may have been debited to the trust bank account.

An agent should request that the bank does not debit the trust account with bank charges because this will create a deficiency. However, banks may inadvertently debit trust bank accounts with certain charges. The agent should deal with these charges by immediately contacting the bank to request the charges be reversed out of the trust account and debited to the agency's general trading account.

#### **Balance per bank statement**

This is the final balance on the bank statement and it is from this balance that the reconciliation will be made. Bank statements need to be received at least monthly. In practice, bank statements are received more frequently, even daily in some cases. Note how the bank balance is described with the term 'Cr' (credit, or in funds).

#### **Add outstanding deposits**

These are deposits that have been taken up in the trust cash receipts journal (or credit side of the cash book) but have not yet been taken up by the bank. They are easily identified because they are the deposits that remain unticked after the trust cash receipts journal/cash book and bank statement have been compared.

Where there is more than one outstanding deposit, a list must be made showing alongside each deposit the date as disclosed by the trust cash receipts journal/cash book. Outstanding deposits are added to the balance per bank statement because when these deposits are eventually taken up by the bank, they will increase the funds held in the agent's trust account.

#### **Less unpresented cheques**

Unpresented cheques are dealt with in the same manner as outstanding deposits and when listed, are identified by cheque number as well as amount. They are deducted because, when presented to the bank, they will reduce the trust funds in the agent's trust account. Unpresented cheques should be followed up after three months.



### Balance of the trust cash at the bank

If the outstanding deposits are added to the balance of the bank statement and the unrepresented cheques are deducted, the resulting figure will be a balance, which should always be a debit.

#### Example: Trust account reconciliation statement

<b>Real Agent &amp; Co Pty Ltd trust account reconciliation statement as at 31 August 2010</b>			
		\$	\$
<b>1</b>	<b>Trust cash journal</b>		
	Balance brought forward from 30 June 2010	67,500.00	
	Add: total receipts for July	52,000.00	119,500.00
	Deduct: total payments for July	48,000.00	
	<b>Balance as at 31 August 2010</b>		<b>71,500.00</b>
<b>2</b>	<b>Financial Institution trust account statement (FIS)</b>		
	Balance as per bank statement 31 July 2010	78,000.00	
	Add: deposits not credited on FIS	Nil	78,000.00
	Deduct: unrepresented cheques 357	2,500.00	
	358	4,000.00	6,500.00
	<b>Total trust money at 31 July 2010</b>		<b>71,500.00</b>
<b>3</b>	<b>Trust ledger balances</b>		
	<b>Total of attached listing of ledger balances as at 31 July 2010</b>		<b>71,500.00</b>
	Signed: <i>Bob Smith</i>		

Trust reconciliation statements, including related bank statements, must be retained as they form part of the trust account records.

### Reconciling tenancy bond moneys and trust accounts

Where an agent maintains a REBA Tenancy Bond Trust Account, this account is required to be balanced at a minimum of each quarter. However, it is strongly recommended that in order to minimise the risk of fraud or error, agents reconcile this trust account on a monthly basis. This trust account is required to be audited.

Where an agent lodges its bonds with the Bond Administrator, the agent is required to reconcile its bond records to the Bonds Administrator's records at a minimum of each quarter. However, it is strongly recommended that in order to minimise the risk of fraud or error, agents reconcile their tenancy bond records on a monthly basis. To aid in reconciliation, the Bond Administrator can email an itemised record each month listing the details of the agent's bonds, in pdf and Excel formats.

Although bonds deposited with the Bond Administrator are not reported upon separately in the audit, the auditor is required to include the verification of these moneys in their audit program.

## Part 3. Trust account audits

### 3:1 What are the annual duties of an agent regarding trust account audits?

Agents who hold a current triennial certificate must cause the trust accounts to be audited by the approved auditor and the audit report lodged with Consumer Protection (section 70(1) and (3)). If the agent has not held any trust funds during the year, then the agent is not required to have an audit and must instead lodge a statutory declaration to this effect (section 86).

All audit reports or statutory declarations (as appropriate) must be lodged within three months of the end of each calendar year. It is the auditor's responsibility to deliver the audit report to Consumer Protection.

Further information on auditing requirements can be found at [www.commerce.wa.gov.au/consumer-protection/auditors](http://www.commerce.wa.gov.au/consumer-protection/auditors)

*Refer: section 70(3) of the Act*

### 3:2 What are an agent's duties in appointing an auditor?

Before an agent can receive or hold any trust money the agent must appoint an auditor. To comply with section 72(3) of the Act, an auditor must disclose to the Commissioner any de facto relationship, close relationship by blood or marriage, or business dealing, with their nominated agent. Agents should ensure their auditor is aware of this requirement, and are encouraged to notify the Commissioner as well, if any relationship exists. Consumer Protection will consider each instance of disclosure on a case-by-case basis.

Where an auditor has a de facto relationship or relationship to an agent by blood or marriage, there is a clear conflict of interest that could endanger the auditor's independence. Where an auditor has business dealings with an agent, the Commissioner will consider the facts in each case. Generally, the Commissioner will disqualify an auditor where that auditor also acts as the agent's general accountant. In such cases, Consumer Protection may notify the agent of its intention to disqualify the auditor and give the agent the opportunity to outline the reasons why the auditor should be retained.

To audit an agent's trust account, a person must be a registered company auditor, under Part 9.2 of the *Corporations Act 2001* (Cwlth). In regional areas where no qualified company auditors are available, Consumer Protection may approve another person with appropriate qualifications as an auditor.

*Refer: section 72(2) of the Act*

### 3:3 What are an agent's responsibilities to the auditor?

As part of the audit process, the agent is required to prepare a statement for the auditor. This statement should show details of all money held, as well as deposit receipts and negotiable or bearer securities that are held in the name of the agent and represent money in the agent's trust account. The statement made by the agent must be verified by statutory declaration.

In the statement to the auditor, the agent is required to provide full details of the trust accounts held, including:

- details of the name/s, account number/s and financial institution name and branch name where the trust account/s are maintained (this reporting

requirement also applies to clients' separate interest bearing trust accounts and tenancy bond trust accounts);

- the balance held in each trust account as at the audit date; and
- any trust accounts that were closed during the audit year.

After examining this statement, the auditor will return the statement to the agent together with the audit report. A copy of the agent's declaration and statement of balance for each trust account is required to be attached to the audit report and submitted to Consumer Protection. All trust account records must be made available to the auditor at every audit or when the auditor reasonably requests.

The agent is required to provide the auditor with an annual statement and the previous year's statement, verified by statutory declaration.

*Refer: section 77, 80 and 81 of the Act*

### **3:4 What are the duties of an auditor?**

An auditor must audit trust accounts in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate. The auditor must also be satisfied that the trust records are kept in accordance with the requirements of the Act. The audit of an agent's trust accounts is a compliance audit and therefore materiality does not apply. The auditor is to report every discrepancy to Consumer Protection and, together with their working papers, should also obtain and retain copies of documentation supporting any issues of non-compliance revealed during the audit process.

On completion of an audit, the auditor is required to deliver the audit report to Consumer Protection. Generally, the audit report must be delivered to Consumer Protection by 31 March each year, ie within three months of the end of the audit period, which is from 1 January to 31 December each year. If this is not possible, the agent or the auditor must request an extension from the Commissioner. It is the auditor's duty to report any relevant issues to Consumer Protection. The auditor is also required to provide copies of any management letters issued to the agent and attach these to the audit report.

The Department's publication, *A guide to auditing real estate and business agents' trust accounts*, provides further guidance for auditors and agents on the auditing requirements of an agent's trust account. Visit [www.commerce.wa.gov.au/consumer-protection/auditors](http://www.commerce.wa.gov.au/consumer-protection/auditors)

*Refer: section 70 of the Act*

#### **How should an agent respond to an auditor's recommendations?**

An agent must promptly implement any recommendations made by the auditor where the recommendations arise from a breach of the Act or the Regulations. Consumer Protection treats any breaches of the trust account provisions very seriously.

If an agent considers an auditor's recommendations to be unfair or unreasonable, the agent may write to Consumer Protection stating their objections and requesting Consumer Protection's consideration.

### 3:5 What are an agent's duties in changing an auditor?

Under section 73(3) of the Act, an agent must continue to engage the statutory appointed auditor unless the Commissioner approves a change in the appointment.

Agents seeking to change their statutory appointed auditor must lodge an application with Consumer Protection no later than one month after the end of the year to be audited. For example, where the audit period expires on 31 December 2010, an application must be received by Consumer Protection by 31 January 2011. Applications for a change of auditor will not be accepted after this time, as it will be nearing the due date for the annual audit.

All agents seeking to change their statutory appointed auditor must provide the following documentation to Consumer Protection:

- a written request from the agent for a change of the appointed auditor, together with reasons for the change;
- a letter from the current auditor relinquishing statutory responsibility, which includes a statement to the effect that *'there is nothing they are aware of that should be brought to Consumer Protection's attention'*, or describing any impediments placed upon the conduct or scope of the audit; and
- a letter of acceptance of appointment from the proposed replacement auditor.

A change of auditor request form that meets the above requirements can be downloaded at [www.commerce.wa.gov.au/CP/Auditors](http://www.commerce.wa.gov.au/CP/Auditors) or, alternatively, the letter template on the following page may be used.

The Commissioner does not consider delays caused by a change in the appointment of auditors as an acceptable reason for granting an extension in time for the submission of the audit report.

**Example of a letter to Consumer Protection regarding a change of auditor**

Your ref:  
Our ref:  
Enquiries:

Date: \*

The Commissioner of Consumer Protection  
Department of Commerce  
Locked Bag 14  
Cloisters Square  
PERTH WA 6850

Dear Sir/Madam

Re: CHANGE OF AUDITOR - .....  
*(insert auditor's name)*

I wish to request Consumer Protection's permission to change the above appointed auditor for the following reasons:

.....; and

.....  
*(insert reasons for changing auditor)*

Enclosed are:

1. A letter from the current auditor relinquishing statutory responsibility and describing any matters of which they are aware that should be brought to Consumer Protection's attention.
2. A letter of acceptance from the proposed replacement auditor.

Yours faithfully

..... *(signature)*

\* An application to change the appointed auditor must be lodged with Consumer Protection no later than one month after the end of the year to be audited.

### 3:6 What if a real estate agency closes?

The closing of a real estate agency can be complex. Some guidelines are provided below but it is recommended that agents seek legal and accounting advice to address all of the issues involved.

If the business is licensed as a partnership or body corporate, written notification of the date of closure and surrender of the licence and triennial certificate of the business must be provided to the Commissioner. If the business is being conducted by a sole trader, written notification of the cessation of use of the business name needs to be provided to the Australian Securities and Investment Commission ([www.asic.gov.au](http://www.asic.gov.au)). The agent's triennial certificate should also be returned to the Commissioner for endorsement. As well as advising the Commissioner, the nominated auditor of the business and clients of the business should all be notified.

If the property management portfolio of the agency is being transferred or purchased by another agency/entity, the new agency must obtain a new written authority from the registered proprietor or authorised person of each property under management before any money can be transferred to the new agent's trust account.

If there is a change to the entity which owns the business and/or transfer or closure of a business, a termination audit of the agency which is ceasing to carry on business must be carried out within three months of the change occurring (the auditor must deliver a termination audit report to the Commissioner within two months after the end of the three-month period).

If funds held in the trust account cannot be disbursed within three months following the closure of the agency, they may be disbursed to another agent or solicitor's trust account provided there is written agreement from the parties who own the funds, which authorises the agent to deal with the money as instructed.

If unclaimed money remains in the trust account, they may be disbursed in accordance with the provisions of the *Unclaimed Money Act 1990* (see below).

After the trust account has reached a nil balance, the auditor must send a letter of clearance to the Commissioner.

All accounting records must be kept for not less than six years from the date the money was received.

*Refer: section 70(8) of the Act*

### 3:7 Unclaimed trust money

The agent must notify the Western Australian State Treasurer (the Treasurer) of any unclaimed money that is held in a trust account for six years or more as at 31 December each year. Under section 8 of the *Unclaimed Money Act 1990*, this money is to be notified to the Treasurer no later than 31 January in the succeeding year.

The *Unclaimed Money Act 1990* provides for voluntary payments where the money has been held for a period of not less than two years. Where an agent ceases to operate and the trust account is being finalised, the Department of Treasury (Treasury) will accept unclaimed money that has been deposited for less than two years.

Treasury requests that agents note the following points when making a payment:

- all money in that transfer must have been held, unclaimed, for at least two years (exceptional cases may apply, such as when an agent ceases to operate);
- holders of unclaimed money must provide Treasury with an annual notification detailing the unclaimed money they hold as at 31 December each year by 31 January the following year; and
- Treasury must be provided with a covering letter, a cheque for the amount being transferred and the following payment information:
  - i. name of the owner of the money (Treasury may not accept money where ownership is in dispute or unclear, eg the agent should not list both a seller and buyer as the owner);
  - ii. owner's last known address (street name and suburb/city);
  - iii. amount payable;
  - iv. date the cheque was issued; and
  - v. description of the payment.

Please note, where information is not available, an agent is to state 'unknown' on the covering letter. Agents should be aware that it is a requirement of section 68(6)(a) of the Act to keep full and accurate records of all moneys received and paid.

For further details, please refer to the unclaimed monies section of the Department of Treasury website at [www.treasury.wa.gov.au/cms/content.aspx?id=557](http://www.treasury.wa.gov.au/cms/content.aspx?id=557)

There are separate provisions under the Residential Tenancies Regulations 1989 for the disposal of unclaimed security bonds (regulation 15). If six months have elapsed since the termination of a residential tenancy agreement and the bond has not been disposed of in accordance with Schedule 1 of the *Residential Tenancies Act 1987*, then the bond holder must give notice in writing to the owner and tenant in whose names the security bond is held. If after 60 days from the date of the notice the security bond is still in the hands of the bond holder, then the bond holder should pay the amount to the Unclaimed Security Bond Account. This is an account in the Rental Accommodation Fund. Agents who require further information should contact the Bond Administrator at Consumer Protection.

## Part 4. Preventing theft and fraud

### 4:1 Early indicators of theft and fraud

Unfortunately, as in any other business, theft and fraud can occur from within a real estate agency. In the majority of cases, these acts are committed by an employee of an agency and often the person in *bona fide* control of the agency is not aware of the activities of the employee.

Commercial criminals are likely to identify and target organisations perceived as 'soft' targets. A proactive approach to prevention is essential and there are ways to make an agency a 'hard target', eg having an agency policy in place where all criminal issues are referred to the police and communicating this to new staff at induction.

It is in the interests of the agency and in particular, the person in *bona fide* control, to ensure that proper control and supervision of all staff takes place. They have legal responsibilities in relation to the protection of trust account money. The agent could even be held responsible for reimbursing money misappropriated by employees.

The person in *bona fide* control can do much to limit the possibility of theft and fraud of trust funds and other money by setting up some internal controls and early indicators, such as obtaining copies of cheques that have been presented to the bank.

An agency could have a problem if there are occurrences of one or more of the following:

- missing original supporting documents for transactions;
- altered documents;
- outstanding or incomplete account reconciliations;
- high level of debtor write-offs;
- large volume of credit notes, or unexplained credit notes;
- deteriorating financial position; or
- auditor's access to people or information is restricted.

Agents cannot rely solely on statutory appointed auditors to identify theft and fraud in their agency. The misappropriation can occur well before an annual audit is performed. The auditor also relies on the accounting work within the agency, which may have been falsified by the perpetrator. For these reasons, it is recommended that agents discuss internal control mechanisms with their statutory appointed auditor. The person in *bona fide* control can address a number of potential problems by:

- making periodic checks on the work of employees;
- involving themselves in bank reconciliations;
- maintaining control over cheque books and receipt books; and
- understanding and operating the computer system.

An independently managed whistle-blowing facility can also be an effective and relatively cheap way to encourage honest employees to report suspicions of theft or fraud to their superiors.



## 4:2 Computer systems

Theft and fraud do occur in agencies where computer systems are used. This can occur when the agent is not familiar with the system in use or does not monitor staff who have access to the system. The person in *bona fide* control needs to pay special attention to the following areas:

- creation of new ledger accounts;
- use and authorisation of transfer journals;
- procedures used to dispatch cheques;
- payment of tradespeople or other expenses; and
- ensuring there are sufficient funds to cover cheques before they are drawn.

The following are some problems that can emerge from computer systems used by agencies:

- Use of pre-coded receipts (or potential receipts) produced by the computer for every transaction prior to the receipt of money. Upon receipt of payment, the processing of the transaction automatically generates a new advance receipt. The main problem with this system is that while receipts are generated sequentially, they are not issued and accounted for sequentially.
- The order that transactions are printed within the ledger. It is possible for a debit balance to appear in the ledger that is not a 'true debit balance'. This occurs when a payment and receipt relating to a particular trust ledger account occur on the same day, and the computer prints the payment before the receipt. There are several major systems available that will not allow a payment to be processed if the client ledger reflects an overdrawn situation or there are insufficient client funds to cover the cheque.

The person in *bona fide* control should be conversant with all computer systems used to maintain records and accounting systems for trust funds. They should not rely on one or two staff members. The person in *bona fide* control is responsible for maintaining backup copies of computer records and ensuring their secure storage offsite, as these records are invaluable, particularly if there is a theft or fire at the agency's premises.

## 4:3 Bank reconciliations

The trust account is required to be balanced correctly and the accounting records held within the agency should balance with the reconciled balance held by the bank at the close of business each month. Incorrect balances from the bank statement have been used to falsify monthly reconciliations and effect a reconciliation between the cash book, bank account and client trust ledger balances.

The person in *bona fide* control needs to:

- examine daily receipts against daily banking to detect short bankings in which cash received today is used to cover up money misappropriated yesterday;
- make periodical checks of the banking and the procedure for correctly balancing the accounts;
- check for false invoices by ensuring the font and other aspects of the invoices are consistent; and

- follow-up any warnings provided by the computer system immediately.

Regular monitoring of trust account transactions and account balances may help prevent the successful fraudulent transfer of money from a trust account, as the bank may be able to hold or reverse the transaction in time. Agents should ensure they only access their banking details in a secure environment and all devices have appropriate and up-to-date security software.

#### **4:4 Transfer journal**

All adjustments and variations between the cash book and bank statement should be verified by the person in *bona fide* control.

#### **4:5 Receipt books**

The person in *bona fide* control must maintain strict control of all receipt books, particularly those that are not in use. This will make it difficult for any person to issue a receipt improperly and subsequently misappropriate a client's money. Sequence check deposits against receipts each month and establish receipt cancellation procedures.

#### **4:6 Agency management**

The employee who manages the accounts should not be responsible for banking the money. In larger offices, duties should be rotated between employees so that their activities are monitored by others in the agency. The person in *bona fide* control must ensure that duties are rotated between employees on a periodical basis to avoid one person having sole responsibility of the computer system. Where this is unavoidable, the work of the employee who has sole responsibility for the computer system should be reviewed on a regular basis.

Where possible, the person receiving trust funds and issuing receipts should not be the same person who is charged with the preparation and banking of trust funds. The person in *bona fide* control should prohibit the use of IOUs by employees and establish procedures on recovering outstanding money, paying close attention to the division of duties between employees handling queries from clients and those involved in cash transactions. As part of the policies of the agency, the person in *bona fide* control should instruct new employees that misappropriated funds will be reported to the police immediately and internal control systems, including obtaining copies of cheques that have been presented to the bank, are in place.

#### **4:7 Cash payments or cheque payments**

All payments from the trust account should be made by cheque or authorised electronic transfer. All drawn cheques should have a supporting invoice or documentation. The person in *bona fide* control needs to ensure cheques are crossed 'account payee only - not negotiable' or that 'bearer only' is replaced with 'order'.

The person in *bona fide* control should be a compulsory signatory to the trust account. If not, then a system to review cheques issued on the trust account should be put in place. The person in *bona fide* control should restrict access to the trust account cheque book. Printouts of the cheques issued should be obtained to ensure cheque numbers are consecutive (sometimes theft occurs when an employee issues or takes cheques from the bottom of the cheque book).

If the agency operates more than one trust account, and therefore has more than one cheque book, each cheque book should be readily identifiable to its

corresponding account. The person in *bona fide* control should attain copies of presented cheques on a periodic basis to ensure that no cheques have been forged.

#### **4:8 Trust account management**

Trust accounts should not be treated as the agency's general bank account. Trust funds need to be paid out to the rightful owner as soon as possible after the completion of a transaction. Commissions on sales are to be paid into the agency's general account as soon as settlement has occurred. Disbursements should not be made from the trust account containing unclaimed commissions. Rather, agents need to draw commissions from the trust account after settlement and pay them into the agency's account from which disbursements can be made.

Where landlords are overseas or interstate, arrangements should be made to transfer any funds owed to the landlord's bank account. If large amounts of money are allowed to accrue in a trust account, the risk and scale of the potential theft is increased. Therefore, transaction payments and receipts should be checked daily and trust cheques should not be used to pay general agency costs.

#### **4:9 What must an agent do on becoming aware of fraud or theft?**

If an agent becomes aware that money has been stolen from the trust account, the agent must:

- notify the Commissioner, advising the date on which the theft occurred, the amount involved, how the theft occurred and any action taken to rectify the loss;
- contact the auditor to conduct a special trust audit to attempt to quantify the amount of the misappropriation and possibly identify the culprit;
- notify the Police of the misappropriation of trust money and that a special audit is being conducted;
- if possible, replace the misappropriated amount immediately;
- alert the professional indemnity insurer; and
- inform the franchisor, if operating under a franchise agreement.

Refer to section 1:13 about what to do on becoming aware that a trust account is overdrawn.

## Glossary

### account

Refers to Consumer Protection Interest Account established under section 125(1) of the Act.

### Act (the)

The *Real Estate and Business Agents Act 1978*.

### agent

A person who is a real estate agent or a business agent, or both a real estate agent and a business agent.

### approved

Approved by Consumer Protection.

### auditor

A person appointed under the Act to audit the trust accounts of an agent.

### authorised financial institution

A bank, society, or any other body that is prescribed or belongs to a class of bodies prescribed by the Act.

### bank

Defined in section 5 of the *Banking Act 1959* of the Commonwealth, or a bank constituted by or under law of the State.

### bank account

An account kept with a bank, society or other similar body.

### business agent

A person whose business either alone or as part of or in connection with any other business, is to act as an agent for consideration in money or money's worth, as commission, reward, or remuneration, in respect of a business transaction as defined by this section, but does not include a person whose business is to act by reason that:

- a) he/she is appointed by a court as a receiver or receiver and manager of the business of another; or
- b) he/she is an official receiver of trustee within the meaning of the *Bankruptcy Act 1966*, of the Commonwealth or any Act in amendment or substitution of that Act.

### business day

A day that is not a Saturday, Sunday, or public holiday.

### business transaction

Means:

- a) a sale, exchange or other disposal and a purchase, exchange or other acquisition of a business and any share or interest in a business or the goodwill, thereof; and
- b) includes any sale, exchange or other disposal and any purchase, exchange and other acquisition of goods, chattels or other property relating to a business transaction of the kind specified in paragraph (a); and
- c) also includes an option to enter into a business transaction; but
- d) does not include the sale, exchange or acquisition of a share in the capital of a body corporate carrying on a business or an option in respect thereof.

### Commissioner

The Commissioner of Consumer Protection. The Commissioner requests information and makes whatever investigations and inquiries as seems proper to the Commissioner and is assisted in their role by staff at Consumer Protection.

### Consumer Protection

The Consumer Protection division of the Department of Commerce.

### licensed agent

A person who holds a real estate licence and current triennial certificate under the Act.

### licensee

A natural person, firm or body corporate licensed under the Act.

### person in bona fide control

Sometimes described as agent in *bona fide* control, refers to a licensed person in a real estate business who is responsible for the administration of real estate transactions and the supervision of persons involved in those transactions.

### **principal**

The term 'principal' in the real estate industry refers to the client of the agent. The term does not refer to business owners of directors as is the case for most other industries.

### **real estate agent**

A person whose business, either alone or as part of and in connection with any other business, is to act as an agent for consideration in money or money's worth, as commission, reward or remuneration, in respect of a real estate transaction as defined by the Act, but does not include a person whose business is to act by reason that:

- a) he/she is appointed by a court as a receiver or receiver and manager of the business or another person; or
- b) he/she is an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth or any Act in amendment or substitution of that Act.

### **real estate transaction**

Means:

- a) a sale, exchange or other disposal and a purchase, exchange or other acquisition of real estate and any exclusive right whether deriving from the ownership of a share or interest in a body corporate or partnership, or otherwise, to the use of or occupation of real estate including the leasing, and letting, and the acquisition under lease or letting of tenancy or occupation of real estate; and
- b) includes any sale, exchange or other disposal and any purchase, exchange or other acquisition of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a); and
- c) includes the collection of rents or other payments for use of occupation; and
- d) also includes an option to enter a real estate transaction.

### **REBA**

Real Estate and Business Agents

### **TC**

Denotes triennial certificate. Used in titles of trust accounts followed by the certificate number of the agent.

### **transaction**

A real estate transaction or a business transaction.

### **Treasury**

Department of Treasury.

### **triennial certificate**

A certificate granted under the Act to a licensee to carry on a business as agent.

### **trust account**

Accounts where money is received or held by an agent for or on behalf of another person in relation to a real estate or business sales transaction or property management transaction.

### **working day**

A day that is not a Saturday, Sunday or public holiday.

### **year**

A period of 12 months ending on 31 December.

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