



Trust account vigilance needed

The Department of Commerce (the Department) calls on agents to be vigilant in keeping a close eye on the operation of the agency's trust account in light of two recent cases. The two unrelated cases resulted in fines caused by failing to keep full and accurate trust account records.

On 26 March 2015, a property management company, South Coast Realty (WA) Pty Ltd trading as Rental Solutions, and its licensee, Kim Edward Turner, have been fined a total of \$4,000 by the State Administrative Tribunal (SAT) over the misuse of the agency's trust account. The company admitted it failed to keep full and accurate trust account records and failed to exercise due skill, care and diligence in the maintenance of the trust account during the 2012 audit year. Mr Turner admitted that he failed to properly supervise the business.

In a separate case on 10 April 2015, real estate agency, Urban WA Real Estate Pty Ltd, and its licensee, Robyn Angela Horsman, were fined a total of \$3,000 and were ordered to pay total costs of \$750 by the SAT over errors in accounting for the agency's trust account. The company admitted it failed to keep full and accurate trust account records and failed to exercise due skill, care and diligence in the maintenance of the trust account during the 2012 and 2013 audit years. Ms Horsman admitted that she failed to properly supervise the internal procedures relating to the operation of the trust account during that period.

It is essential that trust accounts are operated according to the law to ensure the security and accountability of the funds as well as maintaining the public's confidence in the industry.

The *Real Estate and Business Agents Act 1978* (REBA Act) requires agents to keep full and accurate accounts of all money received, held or paid out on behalf of another person as well as correctly balancing the accounts at the end of each month.

A reconciliation of the balances of the trust account cash journal, the bank statement and the trust account ledgers should be undertaken at the close of business on the last day of the month to produce a statement which the person in bona fide control or a director signs and dates to certify the trust account balance.

Agents should take all reasonable avenues to identify the payer of an unidentified deposit. There may be factors about a payment which can assist in its identification such as partial address in reference, the payment amount being the same as a regular payment amount or a client ledger with a similar amount which has not been paid. The agent could even request the bank to trace the payment to identify the payer.

The REBA Act prohibits real estate agents from withdrawing funds held in their trust account on behalf of a person unlawfully. Funds can only be withdrawn for the transaction for which they are being held or if authorised by the person lawfully entitled to the money.

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The Code of Conduct for Agents and Sales Representatives 2011 (the Code) requires real estate agents who are in *bona fide* control of a licensed agency business to adequately supervise the business. This includes ensuring that employees of the business understand and observe the requirements of the REBA Act and the Code. The Code also requires real estate agents and sales representatives to exercise appropriate skill, care and diligence in the discharge of their duties.

Information on the obligations of real estate agents and sales representatives is available on the Consumer Protection [website](#) or enquiries can be made by email: consumer@commerce.wa.gov.au or by calling **1300 30 40 54**.

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