



Proactive Visit Checklist

Settlement Agents

Department of Commerce

Consumer Protection

.....t/a.....

Conducted by:

Date: .../...../201.....

References relate to the *Settlement Agents Act 1981*, Settlement Agents Regulations 1982 and Settlement Agent's Code of Conduct. BP "Best Practice". Other references indicated in each item.

No	Item	Ref. #	Report
1	Licensing/records		
	Check complaint database prior to visit to ascertain any deficiencies in operations.	BP	
	Obtain register of personnel from database prior to visit and check Licensee/BFC correct.	s28 & 29	
	Examine employment records to ascertain current auditor and directors correct.	s29, 36 & 54	
	Check that agent has a current certificate of fidelity and professional indemnity insurance in respect of the triennial certificate and review value of settlements to check adequacy of cover.	s35	
	Check for changes in Particulars (s.36).	s36	
2	Front Office		
	Check display of license, triennial certificate and Business Name Registration Certificate and their currency.	s42	
3	General		
	Check register of files opened.	BP	
	Check if outside clerk employed by the agency.	Rules 13 & 17	
	Check the supervision and control of licensed and unlicensed personnel.	Rules 13 & 17	
	Check that correspondence from agent identifies the licensee, where agency is conducted under a business entity.	s42	
	Check notices at offices, particulars on correspondence and documents.	s42	
	Check agent has access to relevant Acts, Regs, Code, Conveyancing Guide, Manuals, SASB News etc.	Rule 4	
	Check allocation of files to staff with relevant experience as a conveyancer.	Rules 13 & 17	
	Confirm agent's procedures to identify client.	Rule 10	
4	Register of Valuables		
	Receipts issued for Duplicate Certificate of Title?	BP	
	Check register of title particulars (hardcopy/electronic).	BP	
	Does agent have a secure, fireproof container?	BP	

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	Check how documents are returned to clients (eg titles, marriage certificates, trust documents).	BP	
5	Trust Accounts		
	<p>Check that the trust account/s is/are reconciled on a monthly basis.</p> <p>Check that agent has available copy of Trust account handbook & Audit Guidelines (available on website).</p> <p>Check system of accounting – manual or computer software program.</p> <p>Check that the trust account/s is/are designated as prescribed.</p> <p>Check bank statements to verify that bank fees etc. are not debited to the trust account.</p> <p>Check all ledgers to see how long balances are held in trusts and the reasons why.</p> <p>Check reconciliation reports including unrepresented cheques.</p> <p>Check if separate interest bearing trust accounts opened (check clients written request).</p> <p>Check that any separate interest bearing trust accounts are included in monthly reconciliation reports with current balances.</p> <p>Check that the cheque particulars include the same account designation details as bank statements</p>	<p>s49(6) (d)</p> <p>BP</p> <p>BP</p> <p>Reg.6B</p> <p>s49(4)</p> <p>Rule 18</p> <p>Rule 18</p> <p>s49A</p> <p>s49(6) (d)</p> <p>Corps Act</p>	
6	Receipts		
	Check that trust account receipts comply with s.50 and Regulation 6E.	s50 & Reg.6E	
7	Daily Banking		
	<p>Check a sample of receipts to verify banking by the next business day.</p> <p>Does the agency use internet banking?</p> <p>If so what security controls are in place for passwords?</p>	<p>s49(1)</p> <p>BP</p> <p>BP</p>	
8	Stamp Duty		
	Check method of remitting stamp duty on transactions when self-assessment of stamp duty has occurred. <i>Duties Act 2008</i>		
9	Control of Trust Cheques		
	<p>Check control of issue and signing of trust cheques.</p> <p>How are bank cheques ordered?</p> <p>Who signs the cheque request?</p> <p>(Cheque requests should be signed in accordance with the bank authority for signing cheques i.e. the licensee or any two designated signatories etc.)</p>	<p>BP</p> <p>BP</p> <p>BP</p>	

No	Item	Ref. #	Report
	<p>Are cheque requests retained? (Bank cheque requests should be retained in accordance with trust accounting requirements)</p>	BP	
10	Conveyancing Files - Acting for Seller		
	<p>Contract Date?</p> <p>Check that agent has a valid appointment to act s.43 (2); and prescribed conflict of interest disclosure (Form 2) used where applicable.</p> <p>Check appointment to act is endorsed with agent's acceptance and copy provided to client.</p> <p>Check that Seller on the Title also Seller on the Offer and Acceptance. If not, what enquiries were done to establish reasons for the difference?</p> <p>Check when file was opened.</p> <p>Check when title searches were undertaken.</p> <p>Check company searches are undertaken as required.</p> <p>Check when first letter issued to client.</p> <p>Check seller is aware of need to discharge mortgage (if applicable).</p> <p>Check work commenced in a timely manner.</p> <p>Check no free title searches to real estate agent or others.</p> <p>Check client not charged for real estate agent copy.</p> <p>What contact was made with other parties (e.g. where a tenant is to remain - what information was requested & were copies provided to buyer)?</p>	<p>Rule 16</p> <p>s43 (2)</p> <p>Rule 6A</p> <p>Rule 16</p> <p>BP</p> <p>Rule 10</p> <p>Rule 10(a)</p> <p>Rule 10(a)</p> <p>Rule 18</p> <p>Rule 16</p> <p>Rule 18</p> <p>s44(8)</p> <p>s49(3)</p> <p>Rule 16</p>	
11	Business Settlements		
	<p>Company searches made?</p> <p>Company charges checked and ASIC Form 312 obtained?</p> <p>Sellers Disclosure Statement and Deed of Restraint obtained / provided?</p> <p>Lease reassignment obtained from lessor's agent if relevant?</p> <p>Stock-take completed if relevant and any required adjustments agreed and made?</p>	<p>Rule 10(a)</p> <p>Rule 16</p> <p>Rule 16, BP</p> <p>Rule 16</p> <p>Rule 16</p>	

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	Post-settlement retentions addressed (paid out) within time specified in contract.	Rule 18	
12	Acting for Buyer		
	<p>Finance Approval Date?</p> <p>Subject to Finance contracts – was re-financing checked where applicable?</p> <p>Not subject to finance – was source of funds ascertained?</p> <p>Enquiries</p> <p>Check which searches were undertaken and when?</p> <p>Check buyer is reminded of his/her right to a final inspection.</p> <p>Check deposit was paid by the due date.</p> <p>Check date EAS issued.</p> <p>Check Section 43 (strata) certificate if applicable.</p> <p>Check if sewer plan obtained from Water Authority.</p> <p>Check if copy of superseded title was provided to buyer to confirm the property being purchased.</p> <p>Check if contract relates to Nominees, Trustees, Superannuation funds (Docs obtained to confirm signing party).</p> <p>Check any Housing Indemnity Insurance issues.</p> <p>Check copy of title, sewer plan, s43 Cert & Land Purchase Enquiry provided to buyer.</p>	<p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 10</p> <p>JFGC</p> <p>Rule 16</p> <p>Rule 10</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p> <p>Rule 16</p>	
13	Acting for both parties		
	<p>Check correct election and disclosures on appointment to act.</p> <p>Check finance approval date – received on time?</p> <p>Check for any conflict of interest issues (e.g. delay in finance approval, deposit paid on time, settlement delays, and existence of file notes to identify where a conflict has occurred – does agent obtain "variation to contract").</p> <p>Any penalty interest charged?</p> <p>Settlement date (on time or varied by consent)?</p>	<p>s46(3) & Rule 7</p> <p>Rule 9 & 16</p> <p>Rule 9</p> <p>Rules 9,16, JFGC</p> <p>Rules 9 & 16</p>	
14	General		
	Check agent's authority to recover specified disbursements.	Form 1	

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	<p>Check method of establishment of disbursements.</p> <p>Check that actual disbursements only, are recovered: faxes, telephone, postage, courier services etc.</p>	<p>BP</p> <p>BP</p>	
	<p>Check date of initial settlement statement, how many were issued/how accurate they are.</p> <p>Check adjustments of rates, taxes etc if held over to a date after settlement.</p> <p>Check if adequate funds held.</p> <p>Check that amounts held actually paid over and refunds made.</p> <p>Check that there is a summary of receipts and disbursements attached to each file.</p> <p>Check acceptance/waiver of special conditions.</p> <p>If so, is agent recommending independent legal advice.</p> <p>Check agent's overall file management by examining a random sample of files:</p> <p>Documents held together with fastener, in sequential order.</p> <p>Finance condition satisfied/waived.</p> <p>Critical dates noted on cover sheet.</p> <p>Confirmation of payment of deposit.</p> <p>Searches made, copies retained: Initial/Check/Post Settlement</p> <p>Check training requirements of Agency.</p> <p>Check CPD completed by licensee (BFC).</p>	<p>Rule 10(B)</p> <p>Rule 18</p> <p>Rule 18</p> <p>Rule 18</p> <p>s49(6)</p> <p>Rule 16</p> <p>Rule 11</p> <p>(All) Rule 16 and BP</p> <p>Rule 10(a)</p> <p>Reg.4B</p>	
15	Retentions		
	Check how often files followed up.	Rule 18	
16	Any other issues?		

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Issue Noted	Action Required	Completion Date
Proactive Officer's Signature Date:	Agent's Signature Date:	