

May 2014

SETTLEMENT

NEWS

A newsletter from the Consumer Protection
Division of the Department of Commerce

Updated trust account handbook

The trust accounting manual for settlement agents, *Settlement agents' trust account handbook*, has been updated recently, which should assist agents to familiarise themselves with the trust accounting process.

The audit period for most settlement agents runs from 1 July 2013 to 30 June 2014. All audit reports or statutory declarations are required to be lodged within three months of the end of each audit period.

Section 51(1) of the Settlement Agents Act provides that a person who carries on business as a settlement agent must cause the trust accounts to be audited by an approved auditor. The audit report must then be lodged with Consumer Protection. 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.

The Commissioner recommends agents arrange for an early audit and that auditors request records from settlement agents in good time to meet the deadline. During the auditing process, settlement agents are also advised to maintain a record of any communication with their auditor. Records should include correspondence from the agent advising the auditor their accounts are ready for auditing, the date the auditor is due to attend the agent's office and evidence of any files the agent delivers to the auditor.

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Name	Initials

ALTERNATIVE PROVIDERS OF CRIMINAL HISTORY CHECKS

The Commissioner is trialling new arrangements to make it easier for industry participants to obtain their police checks. There are now several provider options available, with varying costs and ordering choices, so settlement agents can find the most appropriate one.

For the list of acceptable providers during the trial please visit

www.commerce.wa.gov.au/CP/policechecks

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Agents



Reminder to
maintain current
contact details

licensingenquiries@commerce.wa.gov.au

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Updated trust account handbook

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If an agent wishes to change their auditor, they must complete a Change of Auditor request form and return this to Consumer Protection. Under section 54(3) of the Act, an agent must continue to employ the statutory appointed auditor unless the Commissioner approves a change in the appointment.

For more information, visit www.commerce.wa.gov.au/CP/Auditors



Compliant pool and spa fencing

A recent settlement case has highlighted the importance of adequate pool fencing.

In this case, the settlement agency's client was selling a home with an outdoor building that contained a spa. In the contract, the seller acknowledged that the building wasn't council approved, and the buyer agreed to accept the unapproved building.

It was later revealed that the spa was not adequately fenced. The seller had assumed that this information did not have to be communicated, as the fact that the building wasn't approved had already been disclosed.

Consequently, settlement could not occur until the fencing was made compliant.

Under the *Building Regulations 2012*, pool safety barriers must be in place for new and existing spas and swimming pools. Portable pools that have a capacity to contain water that is more than 300mm deep must also have a safety barrier in place. Safety barriers are not required for spa baths.

The laws are intended to protect the safety of young children by restricting their access to the area containing the spa or swimming pool.

The time taken to organise or install pool fencing could also delay settlement. Ensuring pool fencing is compliant with the law will avoid any unnecessary delays during settlement. Settlement agents should write to their clients to:

- inform them about pool enclosure requirements and the status of compliance recorded in council information;
- refer them to the relevant local council for further information;
- recommend that the client seek legal advice regarding any apparent non-compliance and its effect on the contract if the information from the council shows enclosure requirements have not been met or the seller advises the same. The settlement agent should obtain a written acknowledgement from their client that legal advice was recommended but in any event, their instructions are to continue with the settlement; and

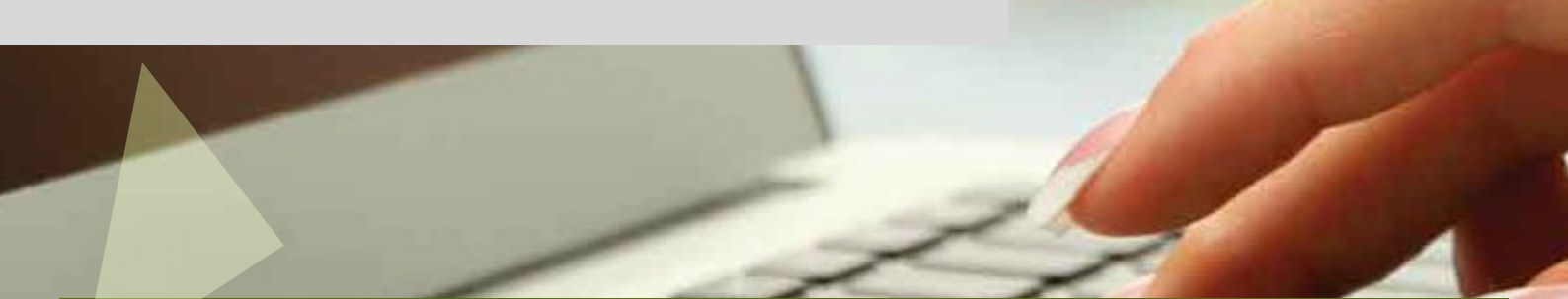
- obtain written confirmation from the seller that the swimming pool complies with the enclosure requirements and any other Building Regulations. The fact of compliance should be supported by documentation from the relevant council.

Local government is responsible for monitoring compliance with the requirements that apply to swimming or spa pool barriers by:

- receiving and issuing building permits for swimming and spa pools and their associated barriers;
- arranging inspections of barriers at least once every four years; and
- issuing infringement notices or commencing legal proceedings if a barrier is found to be non-compliant.

The Building Commission has produced a publication to assist swimming pool and spa owners understand the barrier requirements for swimming and spa pools.

Click here for more information.



Agents are reminded that it is their responsibility to keep the Commissioner up-to-date with any changes to their address and contact information.



Reminder to maintain current contact details

Section 37 of the *Settlement Agents Act 1981* (the Act) also requires a settlement agent to have, at all times, a physical office in Western Australia.

Renewal reminders are sent to a person's postal address. If no postal address has been provided the information is sent to the licensee's principal place of business or residential address.

Agents who submit late renewal applications because they failed to update their contact details and did not receive a reminder notice may find their triennial certificate and/or licence has expired.

An individual who is currently the qualifying director/partner or the person in *bona fide* control of an agency may also put the

trading agency's licence at risk if they allow their licence to lapse.

You are reminded that renewal reminders are issued as a courtesy to assist industry participants. It is your responsibility to ensure that you are suitably licensed at all times while operating in your industry.

Email any changes to your details to licensingenquiries@commerce.wa.gov.au



Attempted fraud on settlement agent's trust account

A Perth settlement agent recently had **\$19,800 stolen from their trust account** after opening an unsolicited email that appeared to be a genuine communication from a bank.

Fortunately, the agent's bank refunded the misappropriated funds but this particular fraud serves as a timely reminder of the need for agents to remain vigilant and to have the appropriate and up-to-date security software on all agency computer systems.

It appears the agent's computer system became compromised after opening a hoax email purporting to be from a bank, and banking details may have been stolen when the agent conducted an online banking session later that day (the fraudster may have been able to bypass inadequate security software).

Notably, the amount stolen was a fraction of the total amount contained in the agent's trust account, suggesting the scam may be aimed at businesses that have a \$20,000 limit on their electronic transactions.

Trust account implications

Generally, when any shortfall or deficiency is identified in an agent's trust account,

the agent should as standard practice immediately remedy the shortfall by transferring funds from the trading account or, where this is not possible, from other moneys belonging to the agent.

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

It is important to note that fraudsters may attempt to access either your business or personal accounts.

What to do if you have been scammed

- Contact your bank or credit union immediately so they can investigate the suspect transaction, suspend your account and take appropriate action.
- If you have been scammed of money, report the crime to the local police.

- If you have a shortfall in your trust account, seek advice from your statutory appointed auditor, followed by Consumer Protection.
- Report ID fraud scams to ScamNet via email on scamquery@commerce.wa.gov.au or call the Consumer Protection advice line on **1300 30 40 54**.

How can I protect myself?

- Ensure all the online devices you use have up-to-date security software. This includes your personal and work systems.
- Regularly contact or read advice from your IT provider, your ISP and your banking provider.
- If you receive these emails, or any other unsolicited emails that appear to come from a company, banking institution or agency, do not follow any of the links or open any attachments in the email because this can result in unwanted downloads to your computer.
- Consider isolating the computer that is used to do your banking by limiting the number of programs accessed from it eg email. You may even wish to consider isolating this computer from your general office network.
- Remember that reputable companies and banks will never ask you to provide your personal banking details.
- **Subscribe to ScamNet Alerts** and keep up-to-date on recent scams targeting Western Australians or visit the **ScamNet website**.



Maintain trust account security – check balances daily

Agencies need to be alert when maintaining the security of trust accounts. There have been instances of hackers withdrawing funds from trust accounts, as demonstrated in the previous article about a settlement agent having close to \$20,000 stolen from their trust account.

Theft can also occur from within a settlement agency. In the majority of cases, these acts are committed by an employee of an agency and often the person in *bona fide* control is not aware of the activities of the perpetrator.

The Act and its associated regulations, the *Settlement Agents Regulations 1982* (the Regulations) and the Settlement Agents Code of Conduct 1982 (the Code), require strict maintenance of trust account records.

The trust accounting system aims to ensure that all money held by agents can be accurately accounted for at all times.

The person in *bona fide* control has 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 help limit the possibility of theft and fraud of trust funds, and other money, by putting in place some internal controls and early indicators.

Agents cannot rely solely on statutory appointed auditors to identify theft and fraud in their agency. A misappropriation may occur well before an annual audit is performed.

It is recommended that agents discuss internal control mechanisms with their auditor. Some common measures that can be carried out by the person in *bona fide* control include:

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

To ensure that the requirements of section 49(6)(d) of the Act are met, an agent should complete a trust account reconciliation within 10 working days after the close of business of each month. This statement should reconcile the balances of the trust account cash book, the bank trust account statement and the total of the client's trust account ledgers as at the last business day of the month. The Department is aware that some agents choose to reconcile the trust account more frequently.

To help ensure the integrity of the trust account, the Department recommends agents protect the system from viruses by installing and keeping up-to-date the

operating system, a reliable anti-virus package, a firewall on your PC and security patches for your browser.

More information on maintaining trust accounts can be found in the *Settlement Agents' Trust Account Handbook*. Visit www.commerce.wa.gov.au/CP/Auditors



Contact details

Since the department's restructure on 1 July 2011, various functions previously performed by Board staff have been split to different directorates of consumer protection. In order for your enquiry to be handled efficiently, please note the following:

- If your enquiry relates to your licence or registration, license or registration application or the structure of your business, please contact Licensing on **1300 30 40 64, Option 2**.
- If you need to inform the Commissioner of a change to your details, please email **licensingenquiries@commerce.wa.gov.au**. Please include your licence/ registration number.
- If you have an enquiry, including any relating to a proactive visit, please contact Proactive Compliance on **(08) 9282-0874** or email **proactivecompliance@commerce.wa.gov.au**
- If you have a trust account or auditing enquiry, please call **(08) 9282-0926** or email **audits@commerce.wa.gov.au**
- If your enquiry relates to CPD (contact trainers directly for bookings) please call **(08) 6364-3120** or email **cpd@commerce.wa.gov.au**
- For newsletter or e-Bulletin subscription enquiries, email **pinews@commerce.wa.gov.au**
- Consumer Protection's general contacts should be used for all other issues. You can telephone **1300 30 40 54** or email **consumer@commerce.wa.gov.au**

E-Bulletins

The Department regularly publishes Settlement e-Bulletins which provide agents and other interested parties with industry related news and up-to-date information on the Department's policy developments.

Recent e-Bulletins have included articles relating to Landgate's property interest reports, fake testimonials and another attempted property scam involving a fraudulent cheque from Nigeria.

Our e-Bulletin archive can be found on the **Department's website**.

If you would like to subscribe to our e-Bulletins, update your email address or if you have any queries, please email **pinews@commerce.wa.gov.au**

Website

Consumer Protection's website is an integral tool in providing education and advisory services to industry participants and the public.

The website has a dedicated section for settlement agents, which covers a range of subjects including Compulsory Professional Development, proactive compliance and licensing information. The website also contains a wide range of application forms.

Consumer Protection is committed to the continuing development and improvement of the website and welcomes feedback from the industry. Comments can be sent to **pinews@commerce.wa.gov.au**

The website is located at **www.commerce.wa.gov.au/ConsumerProtection**