Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**
Consumer Protection

2018 CPD Program

Trust Accounts Reconciliation

for

Settlement Agents

Student Manual

Acknowledgment

This educational material was prepared by the Australian Institute of Conveyancers Western Australia (AICWA) and Sue Morris for the Department of Mines, Industry Regulation and Safety, Consumer Protection Division (Consumer Protection). It is a significantly revised version of previous material developed to satisfy the prescribed educational activity requirements of the Compulsory Professional Development Program (CPD) for Settlement Agents.

This material should not be taken to be legal advice or to pre-empt government policy.

Any person in doubt as to their legal rights and obligations should seek the advice of a suitably qualified legal practitioner. Consumer Protection can be contacted for general information and advice by telephoning 1300 304 054 or by sending an email to consumer@dmirs.wa.gov.au.

Contents

1. Introduction

The aim of this session is to build understanding and explore the legislative compliance requirements associated with managing and reconciling the trust accounts of real estate settlement agencies.

The session is designed to satisfy the continuing professional development requirements of settlement agents. It may be considered to be a refresher for experienced professionals and a reminder to newly qualified settlement agents of their trust account functions and duties.

Much of the information in this session is taken from Consumer Protection's, Trust account handbook for settlement agents (March 2018) (SA Handbook). You will need access to a copy of the SA Handbook as you work through the activities in this Student Manual – you will also find it is a useful tool in the workplace too.

The session includes a stock take quiz on legislative requirements to consolidate understanding and fill any information gaps. The session highlights the need for proper 'supervision and control' of employees and explores recent internal and external trust account fraud attempts. The last part of the session is hands-on manual trust account reconciliation. While not too many settlement agencies operate manual trust account systems these days, the exercise is included so you may better understand - and supervise - the tasks being undertaken by the computerised system you work with.

The proper reconciliation of a trust account will help meet the compliance requirements of the *Settlement Agents Act 1981* (SA Act), the *Settlement Agents Regulations* 1982 (SA Regulations) and *Settlement Agents Code of Conduct 2016* (Code of Conduct) and A Guide to Auditing Settlement Agents' Trust Accounts (SA Guide)

In addition to this workbook, all attendees will need a copy of:

1) **SA Handbook (March 2018)**; and
2) **Trust Account manual reconciliation worksheets**.

Activity 1.1 – Stock take quiz – legislation matters

The following quiz is designed to get you thinking about 'trust accounts' and to help you do a quick 'stock take'. It has been included to consolidate what you already know and to explore the things you may be aware of but find hard to put into words.

We will do the quiz in two stages – the <u>first five question</u> focus on legislative matters.

In the space provided, jot down your thoughts in response to the first five questions only. We will then - as a full group - brainstorm answers to these five legislative questions before we move on to the second part of the quiz.

1. What important things do you know about trust accounts?
   See if you can come up with at least three (3) relevant points.

2. When can money be put into an interest bearing trust account?

   a.

   b.

   c.

3. What four (4) elements must be included in the title of a general trust account?

   a.

   b.

   c.

   d.

4. How would the titling differ for an interest bearing trust account?

   a.

   b.

5. Section 49(1) of the SA Act, requires monies to be banked as soon as practicable.

   What has been determined to be practicable in respect to banking trust monies?

Activity 1.2 – Stock take quiz – documents and records

In the first part of the quiz, the focus was on the overall legislative requirements affecting trust account management. In the second part of the quiz, the focus is on the required documentation and records.

6. What records must be kept in relation to trust accounts? *See if you can come up with at least five (5).*
7. There are a number of specific audit requirements: a. What is the normal audit period? b. When does an agent have to arrange an annual audit report? c. When can an agent submit a statutory declaration instead of arranging an annual audit report?

d. What is the audit period for a new business?

e. What is the audit period for when an agent's triennial certificate ceases to have effect? (e.g. when the triennial certificate expires and is not renewed, when the agent surrenders their licence, when the licence is cancelled by Consumer Protection).

f. What is the time frame for getting the audit report to Consumer Protection?

g. How long must trust account records be retained?

8. What are the key tasks of an Auditor?

See if you can come up with at least three (3) relevant points.

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9. How can a newly licensed agent notify Consumer Protection of the details of their nominated auditor for their trust account(s)?

10. How can an agent change auditor for their trust account(s)?

11. Does an auditor need to have specific qualifications?

12. What are the requirements for fees and disbursements?

See if you can come up with at least four (4) relevant points.

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13. What are the requirements and procedures to be followed if a trust account is overdrawn?

14. What are the requirements and procedures to be followed when an agent opens or closes a trust account?

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2. Policies, procedures and supervision of Trust Accounts

Well written, and practical policy and procedure manuals are a valuable resource to a business. Some key functions of good policy and procedure manuals are:

- To allow new staff members to have something to refer to if they are not sure on the correct procedure or have forgotten something.
- Existing staff members can use it as a training tool when training new staff.
- Aids risk management and minimisation of error, theft and fraud
- It is a tool for supervision when conducting performance management reviews with staff.
- Provides a basis for entrenching best practice and seeking continuous improvement.
- Provides useful evidence to your auditor about the systems and continuous improvement approach in place.

The SA Handbook is a very useful tool to assist when preparing agency policies. It provides a sound basis for ensuring staff are informed as to trust accounting matters, and gives a useful framework for identifying that proper 'control and supervision' is in place.

A number of key areas that should be included in the trust accounts section of a Policy and Procedure Manual are outlined below.

2.1. Receipting

Procedures for electronic funds, handwritten receipts, cross referencing interim receipts, un-presented deposits, cancelled receipts, how receipting errors are to be handled, items to be included on a receipt, and the process to ensure funds have cleared.

2.2. Cheques:

The policy requirement that cheques are not pre-signed, dealing with dishonoured cheques, stop payments and cancelling cheques. Processes for dealing with un-presented cheques, stale cheques, and ensuring funds are cleared before cheques are issued which draw against those funds; and how issuing errors are to be handled along with the importance of checking the balance sheet against the settlement statement prior to issuing cheques.

2.3. Banking:

Policies for daily banking need to be clear and to include the requirement and process for informing the person in *bona fide* control if there are workload and staff availability issues that may put the banking of deposits at risk (e.g. planned and unplanned leave). Processes for checking the totals on deposit slips align with receipts; and processes for the prompt checking of the bank statement against bank deposit slips. Policy and procedures also need to ensure the person in *bona fide* control is advised promptly of any errors or omissions.

2.4. Reconciliation

Daily and monthly procedures for issuing and reconciling cheques and receipts, conducting the end of month reconciliation and completing it within ten (10) business days of the last day of the month, and ensuring it is signed by the person in *bona fide* control to verify the accuracy of the monthly reconciliation. The manual should also provide rules regarding any adjustments which may have been made or may be required. An explanatory log for the auditor should be kept to record any issues or alterations involving the trust account (a year is a long time between audits and issues may not be clearly remembered).

2.5. Administrative issues:

Policy and procedures need to set out where cash is to be stored; where cheques are stored; how to deal with cheque payments if the person in *bona fide* control is absent; who are the signatories to the trust account; how and when stationery is ordered; computer backup and password protocols; rules and protocols for maintaining antivirus protection and up-to-date software; security procedures for the bank's electronic verification devices; and the requirements that the lawfully due settlement fees are transferred from the trust account to a business operating account at least weekly.

2.6. Supervision:

While the above should not be considered to be a complete and definitive list, in conjunction with the SA Handbook*,* these items should be of assistance in checking to ensure your agency has appropriately documented policies and procedures.

It should be noted that a well-written policy and procedure manual is only of value if it is actually used to inform on and direct workplace practices. It also needs to be reviewed and regularly updated.

The person in *bona fide* control needs to ensure staff understand and adhere to the trust account legislative requirements. Rules 15 and 16 in the Code of Conduct make it clear that the person in *bona fide* control is responsible for the actions of employees, and has appropriate supervision and control strategies in place.

A well-written policy and procedure manual is a good start, but this needs to be combined with appropriate performance and professional development processes. It is imperative that these processes ensure that the person in *bona fide* control and all employees understand the requirements placed on them in that manual, together with the duties and obligations imposed on settlement agents by the SA Act, Regulations and Code of Conduct, and that training gaps are identified, and appropriate professional development plans developed, monitored and reviewed.

3. *Fraud and Theft*

3.1. Internal:

The person in *bona fide* control has legal responsibility for the protection of trust account money.

Strategies to minimise internal risks

As part of the 'supervision and control' process, the person in *bona fide* control should have appropriate monitoring and review processes in place.

One way to do this is through an internal audit process that looks at a structured selection of settlement files. The sample should be structured so that an appropriate cross section of files is 'internally audited' for each conveyancer / and clerk.

Consumer Protection has created a *Proactive Visit Checklist* that makes an excellent starting point. Agency specific policy and procedures should also be included in the internal audit process and check list. The sections of the *Proactive Visit Checklist* relevant to trust accounts are included at the back of this Student Manual as Appendix 1.

The key 'internal audit' areas relevant to trust accounts include:

- a valid appointment to act has been signed, initialled and dated by all parties;
- fees are correct and expenditure has been authorised;
- the settlement statement is in line with the trust ledger and balance sheet;
- checking for unauthorised adjustments and disbursements;
- supporting documents;
- unaccounted for or missing receipts;
- outstanding or incomplete accounting records;
- long term un-presented cheques; and
- balances held on ledgers

In addition, it is imperative that the person in *bona fide* control:

- involves themselves in bank reconciliations;
- maintains control over cheque books and receipt books;
- understands the computer system; and
- follows up on outstanding cheques and client balances.

If the person in *bona fide* control or any other employee becomes aware that money has been stolen from the trust account, it is imperative that the person in *bona fide* control ensures that they:

- notify the Commissioner, advising the date on which the theft occurred, the amount involved, the reason for it and any action taken to correct it;
- contact the auditor to conduct a special trust account audit with a view to quantifying the amount of the misappropriation and identifying the culprit;
- notify the police of the misappropriation of trust money and that a special audit is being conducted;
- replace the misappropriated amount into the trust account immediately; and
- alert the agency's professional indemnity insurer.

Note: if the person in *bona fide* control is not a sole trader it is also imperative that they make sure that the partners and directors of the firm or body corporate that is the Licensee are informed. It may also be useful to notify the bank.

Settlement agent fined $5,000

The Commissioner for Consumer Protection took disciplinary action against a Settlement Agent, who admitted to 12 breaches of the SA Act and the SA Code of Conduct following the settlement of a Mosman Park unit in January 2009. The settlement agent involved was fined $5,000 and ordered to pay costs of $500.

The charges included:

- failure to obtain written consent from both of the joint owners of the property;
- failure to pay funds received from one client into a trust account as soon as practicable; and
- failure to apply part of the funds from the settlement to the person authorised to receive them.

Settlement Agent cautioned over misuse of trust account

In 2014, a settlement agent was cautioned by the State Administrative Tribunal over the misuse of his trust account. The agent was cautioned for failing to use the trust account only for transactions related to settlement and not for any other business. As there was no misappropriation of funds from the trust account, a fine was not imposed, rather the agent was ordered to pay costs of $8,828.

Settlement Agent to pay $150,000 after raiding trust account

A settlement agent was found to have failed to pay stamp duty she had collected from the settlement of five properties between February and April 2010.

The agent was fined a total of $9,000 on the 18 March 2014 after pleading guilty to five charges of breaching the *SA Act*.

She was ordered to pay $129,422 to reimburse the property industry's Fidelity Guarantee Account; $11,889 in court costs, and pay $923 to a former client. The agent surrendered her Settlement Agents licence in September 2010.

Settlement agent fined $14,000 over its involvement in failed property deals

In December 2017, a settlement agent was found to have breached the SA Act and Code of Conduct over unauthorised withdrawals from its trust account, failing to rectify deficits in its trust account and failing to immediately notify affected parties, in relation to two blocks of land which a developer had planned to subdivide to build strata apartment complexes and from 2013 onwards had sold units off-the-plan.

The developer set up a 'mezzanine financing' arrangement where investors do not directly purchase the property in the normal way, but provide a 'loan' to the developers for the same value as the unit. A sales contract for the purchase of the unit was then separately entered into by these buyers and the developer.

The settlement agent received and released a total of $1,500,000 from the sale of off-the-plan units in the first property and $2,469,000 from the sale of off-the-plan units in the second property.

The *Strata Titles Act 1985* requires that any deposit or other moneys paid by a purchaser prior to the registration of the strata/survey-strata plan are to be held by a solicitor, real estate agent or settlement agent; on trust. These moneys are not to be disbursed until the strata plan has been approved and registered by Landgate.

The settlement agent breached the Act by making payments from their trust account while the strata plans were not registered.

Further and also in respect of the same proposed develoments, the settlement agent had also found a deficiency in the trust account of $1,000 in November 2015 and failed to immediately inform the affected persons, in breach of the 2011 Code of Conduct. In March 2016, the settlement agent found a further deficiency in its trust account of $56,000 and failed to balance the account or immediately inform all affected persons.

The settlement agent was fined $14,000 for releasing moneys without authority and also had to pay $1,000 in costs.

Trust account management - Settlement News 2014

In an article in the *Settlement News* (Issue 10, July 2014), Consumer Protection outlined a range of relevant trust account management issues.

The article outlines how a Settlement Agent:

- withdrew money from the trust account on numerous occasions for purposes other than completing the settlement (contravening section 49(4) of the SA Act);
- failed to correctly balance the trust account shortfall (in breach of Rule 23 of the Code of Conduct);
- continued to pay clients' money into the deficient trust account (breaching rule 24 of the Code of Conduct);
- failed to keep full and accurate accounts of all money received and of all payments made with that money (breaching 49(6)(a) of the SA Act); and
- failed to correctly balance the trust account at the end of each month (in breach of section 49(6)(d) of the SA Act).

The case of two Perth real estate agencies

Other recent relevant examples of trust account issues include the cases of two Perth real estate agencies. The *Settlement Industry e-Bulletin* (Issue 41, 2 July 2014) explains that the Department of Commerce's, Consumer Protection Division was granted supervision orders by the State Administrative Tribunal (SAT) to take control of two Perth real estate agencies over the misuse of their trust accounts and inability to operate their businesses within the *Real Estate and Business Agents Act 1978*.

Commissioner for Consumer Protection at the time, Anne Driscoll, said that while these actions are extreme, they are justified when there are grounds to believe licensed real estate agencies have misused their client's money by failing to properly administer their trust accounts. Commenting on these cases, the Commissioner explained that:

> "*Bond and rental payments are not the property of the agent; that's why they are held in trust on behalf of the agency's clients. Failing to properly administer these funds is a serious offence with serious consequences under the law*."

3.2. External:

The increased prevalence of computer-aided crime and an awareness of the possibility of external fraud require that settlement agents are vigilant to these issues when operating their trust accounts.

Attempt to steal $20,000 from trust account

Issue 9 of *Settlement News* (May 2014) outlines an attempted fraud on a settlement agent's trust account. This case started with an unsolicited email that appeared to be a genuine communication from a bank. It appears the hacker intercepted the agency's on-line banking later that day, stole their banking details and then attempted to steal $19,800. Fortunately, the bank refunded this money.

Over payment scam

Settlement Industry e-Bulletin (Issue 33, 19 September 2013) explains the details of an overpayment scam where money is paid, and a small part of the overpayment is requested as a refund. Sometime later the original cheque is dishonoured, and the trust account is overdrawn by the portion that was refunded. This bulletin also reminds us to be extra vigilant when dealing with overseas clients.

Perth cyber-fraud

Real Estate Industry e-Bulletin, (Issue 23, 20 March 2013) outlines the case where a Perth Settlement agency had her banking system compromised and two BPAY transactions were fraudulently authorised: $25,000 from her trust account and $25,000 from her general account.

Fortunately, the Bank's fraud department thought that two transactions of the same amount from two different accounts was a bit unusual, they contacted the agency, and the transactions were halted.

The licensed director of the agency believes they were 'lucky not to have had their accounts totally cleared out'. The licensee has since directed employees to delete all entries stored in their BPAY list, and to enter the names manually each time.

Broome cyber-fraud

Settlement Industry e-Bulletin, (Issue 37, 1 May 2014) outlines a case where $50,000 was stolen from a Broome Real Estate Agent's trust account.

It appears the hackers gained access to the agency's computer system through an email that allowed malicious software (or malware) to be installed. The bank account details of one of the agency's clients were changed on a 'pre-entered list' of recipients who received regular payments. Three payments from the agency's trust account totalling $50,000 were re-directed away from the intended bank account. It appears the account details were later changed back to the original, in the hope that the fraud would not be detected.

The agency has since been reimbursed by its bank.

Consumer Protection offered the following anti-fraud advice for business owners in relation to this case:

- Have the latest security software (anti-virus, anti-spyware, firewall) installed on computer systems and keep the operating system up-to-date;
- Remind staff of basic electronic security measures. If suspicious emails contain an attachment, do not open them as they may contain malicious software (malware or spyware). Do not click on any links within these emails and delete them immediately;
- Be wary of unsolicited emails purporting to be from your bank as these may be phishing scams;
- Be aware that banks will never ask you to supply any of your details via email;
- Consider using security tokens or set up a mobile phone security code protocol when using e-banking and verifying all payments. Ensure the device protocols are set to the highest possible level for all staff members;
- Revise transaction limits and reduce them if they are too high. Sometimes it's safer to make smaller multiple payments than allow for one large payment to be made from your bank account;
- Type the address into the address bar when accessing online banking. Never click on an online link or 'favourite's link' to access your bank's webpage as these can be manipulated to send you to a counterfeit site. While these sites may look similar to your bank's webpage, fraudsters operate them to obtain your personal banking details and passwords; and
- Staff members should enter a payee's bank account details manually whenever they make an electronic funds transfer.

Other strategies to minimise external risks include:

- Change passwords **regularly,** keep them secure and make them difficult for people and computers to guess.
- Have secure procedures for security of bank digital tokens.
- Never use free Wi-Fi if the device links to the agency trust account.
- Never refund monies until receiving confirmation that funds have cleared.
- Never give out passwords or logins in response to an email or phone call.
- Consider security questions to verify client identity.

What to do if fraud or theft is detected

- Notify the bank.
- Advise Consumer Protection.

- Advise the auditor.
- Notify the professional indemnity insurer.
- Notify the police.

Activity 2 – Accounting terms quiz

For each of the eight (8) terms provide a brief explanation of the term and why it is important in relation to trust accounts.

1. Interim receipt

2. Buffer funds

3. Un-presented cheque

4. Stale cheque

5. Cleared funds

6. Outstanding deposit

7. Client ledger

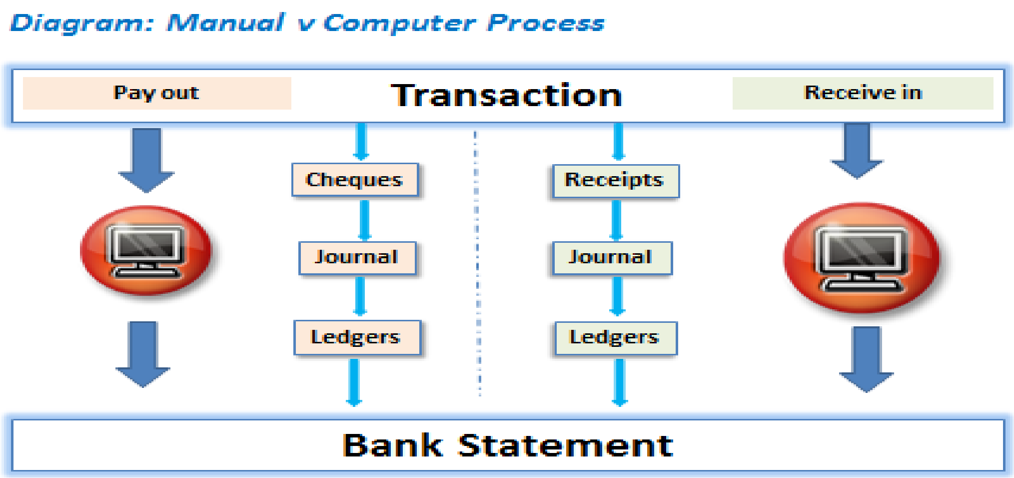
8. Transfer journal

4. *Manual accounting as it relates to computerised accounting*

The purpose of the following material is to provide a better understanding of what the trust account software package is doing when we enter a transaction. By working through a simplified manual reconciliation, you will get a 'hands on' demonstration of what the computer is doing on our behalf.

4.1. The recording process

The diagram below indicates that the manual process has three steps that take us from a payment transaction where the agency 'pays out' money from the trust account and three steps for transactions where the agency 'receives in' money. In a computer process, the three steps happen simultaneously.



The simultaneous posting to journals and ledgers is one great benefit of a computerised system. It eliminates transposition, posting errors and omissions. However, it is the automated reconciliation process when the bank statement items are entered that is the real benefit of a computerised system. This saves time, effort and frustration.

It should be noted that the transfer journals have not been included in the above process. They do not add to receipts or payments; their purpose is to move funds around the ledgers within the trust account. For example, a transfer journal might be used to move funds from a client's sale to their purchase ledger or the fees from client ledgers to the agency's fee ledger.

4.2. The balancing process

The trust account reconciliation process requires that three elements are balanced. The three elements are outlined over the page.

Diagram: Three Elements to be balanced

Cash Book		Ledgers		Bank Statement
Opening Balance (b/f)		TOTAL of balances on individual Ledgers		Bank Statement Balance
+ Receipts				- un-presented cheques
- Payments				+ un-presented deposits
TOTAL	=	**TOTAL**	=	**TOTAL**

If all clients presented their cheques and all deposits were presented by the end of month, and there were no EFTs, fees, direct debits and posting errors, the TOTALS for each of the three elements would always equal each other. Unfortunately, this is not the case in real life. It is, therefore, important to understand the need to make adjustments.

Activity 3 - Manual trust account reconciliation

With these three elements and the variances in mind, the last significant activity for the day is for you to undertake a manual trust account reconciliation exercise.

You will need to undertake the following five (5) step process:

1. **Tick off** all transactions on receipts and payments **journals** against the **bank statement** and identify any discrepancies.
2. **Resolve discrepancies.** Discrepancies must be investigated and **adjusted** as required. Any items that are recorded on the bank statement and should be showing in the cash receipts and payments journals must be **entered in the journals and then posted to the appropriate ledger.** If you find, there is something on a ledger that is not in the cash receipts or payments journals (or vice versa) you must attend to this. After all adjustments have been made the cash payments journal needs to be re-totalled and the same needs to be done for the cash receipts journal. If you locate a payment that appears on the bank statement that is unable to be positively

identified, then you should contact the bank to conduct a trace to determine the source of the payment.

3. **<u>Complete cash book</u> element of the bank reconciliation** by transferring payments and receipts journal totals. At this point, the total of the **cashbook should equal the ledgers,** or you need to go back and compare (tick off) the entries until you locate a discrepancy and then rectify it. Everything received and paid should be posted to ledgers; if they do not add up something has either been missed or added incorrectly. The issue will need to be rectified by amending the posting to the ledger, or amending the posting to the cash receipt, or payment journal, and re-adjusting the total.
4. **<u>Detail every client ledger</u>** that has a balance as at the close of business for the month end.
5. **<u>Reconcile bank balance</u>.** Transfer the balance from the actual bank statement to the relevant section on the bank reconciliation form. *Please note for the purposes of this exercise any posting errors will be considered to be the bank's error.* In practice if the bank was correct and a transposition error had occurred in your records you would fix up your records. (In a computerised system what was recorded on the cheque or receipt will be identical to what is recorded in the logs and ledgers as it occurs simultaneously.☺)

Subtract or add as required:

+ outstanding deposits

- un-presented cheques

± bank errors

The resulting figure will be your adjusted bank statement balance. This must be the same as your cashbook closing balance and the ledgers.

5. *Wrapping it up*

- Information was discussed on legislative requirements to refresh your knowledge of what is required.
- Attention has been drawn to the updated SA Handbook, produced by Consumer Protection, as a valuable resource for the operation of your business.
- Information was provided to assist in preparing policies and procedures for proper supervision of employees, especially in light of recent attacks on agency trust accounts.
- And that you have a renewed appreciation of your trust account computer software.

References

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www.commerce.wa.gov.au/publications/settlement-agents-newsletters

Further information and advice on scams can be found on the WA ScamNet website www.scamnet.wa.gov.au. Enquiries or scam reports can be made by email wascamnet@dmirs.wa.gov.au or phone 1300 30 40 54.

Appendix 1 – Trust Account – Proactive Compliance

The following is an extract from Consumer Protection's Proactive Visit Checklist.

The References relate as follows:

- section references 's' relate to the SA Act;
- 'Reg.' indicates a reference to the SA Regulations;
- the Rules are from the Code of Conduct; and
- BP indicates that the item is a 'Best Practice' suggestion from Consumer Protection.

Other abbreviations used include the *Corporations Act 2001* (Corp. Act) and the *Joint Form of General Conditions for the Sale of Land 2011* (JFGC).

The full checklist is available online from Consumer Protection's website:

https://www.commerce.wa.gov.au/publications/proactive-compliance-visits-settlements-agents

Description	Legislation
TRUST ACCOUNT(S)	
Has the trust account been correctly designated - cheques and bank statement(s). Have any interest bearing trust accounts (IBTAs) been opened - account correctly designated and client's written request held on file.	SA Act s.49A, 49A(1) & 49(6)(d) & SA Regs r 6B
Do trust account receipts comply with the Regulations.	SA Act s50 & SA Regs r 6E
Check a sample of receipts to verify banking by the next business day.	SA Act s.49(1)
Are the trust account(s) - including IBTAs - reconciled on a monthly basis (to the last day of the month), reviewed and certified by BFC within 10 working days.	SA Act s49(6)(d) & BP
Is the BFC proficient in performing bank reconciliations - and therefore understands the information available in the EOM trust accounting reports.	SA Code r. 12 & r. 32
Check all ledgers to see how long balances are held in trust and the reasons why. Does agent follow up on unpresented cheques and take appropriate action to deal with those monies?	SA Code r. 7 & r. 10
Check system of accounting – manual or computer system. Note accounting system name.	SA Code r. 7, r. 10 & r. 32

Appendix 2 - Recovery of disbursements

Settlement agents may often seek to recover disbursement costs incurred in the course of a settlement from their clients.

Disbursement costs can include telephone calls, facsimiles, photocopying, postage, courier fees, bank cheque fees and stationery.

Where such disbursements are being recovered, the Commissioner for Consumer Protection considers it best practice for settlement agents to keep an individual record on the client's file to verify the actual expenses incurred and claimed.

Agents should always bear in mind that the recovery of disbursement expenses is based on cost recovery only. As labour costs are part of the settlement fee, they are not to be included in calculating disbursement charges, and there should be no mark-up over cost. For example, the agent's labour in photocopying cannot be charged as a disbursement.

Agents sometimes have difficulties working out recovery costs for photocopying.

A suggested method to calculate photocopy costs is for the agent to calculate the cost of a single sheet of paper plus the operational cost per copy (how much the photocopier costs to copy one sheet of paper).

First, the operating cost of the photocopier must be determined, which is done by adding the average cost of leasing or renting a photocopier per month (if the agent owns the photocopier, the average can be determined by spreading the cost over the 'life' of the photocopier, usually three to five years), plus the monthly average maintenance charge.

To work out the operational cost per copy, the operating cost of the photocopier is then divided by the total number of copies per month (the usual operational cost per page is between two and three cents.)

The following calculation can be used to work out the net [photocopying] cost per period:

$$\text{Net cost per period} = \frac{\text{Cost of paper per month + Operational cost*}}{\text{Number of copies per month}}$$

[the Operational cost of the photocopier is determined by adding the average cost of the photocopier per month to the average cost of the photocopiers maintenance per month.]*

Settlement agents who have been keeping individual disbursement sheets for a sufficient period of time may use that information to work out a flat charge to all clients for disbursements. However, the charge must still be able to be justified on the basis of cost recovery and must be based on a minimum cost of recovery.

To do this, calculate the lowest number of each type of disbursement for a basic settlement for both seller and buyer.

For example, the lowest number of phone calls in a basic settlement would be used as a basis for developing a flat charge for all settlements where disbursements are involved.

Agents cannot use the average because this would result in some clients being overcharged, which is prohibited by the SA Act.

Agents using a flat charge method should complete individual disbursement sheets for a period of time at regular intervals to ensure that the charge remains accurate and is, therefore, able to be justified.

The Commissioner for Consumer Protection takes the view that, where an agent charges an amount for disbursements greater than the actual cost incurred, the excess amount could be considered to be remuneration. If total remuneration exceeds the scheduled fee, the agent could be in breach of the SA Act.

Appendix 3 – Unclaimed monies

The *Unclaimed Money Act 1990* (the Act) provides for the following:

(i) Amounts that have been held for six years **must** be dealt with under the Act.

(ii) Amounts may be dealt with voluntarily after they have been held for two years.

(iii) Unclaimed monies may be dealt with before the two-year period in certain circumstances e.g. when a business ceases to trade, the holder of the unclaimed money dies etc.

Real estate and settlement agents should ensure monies are paid to the correct recipient as soon as possible. The retention of unclaimed trust monies creates an audit risk to the agent. Agents should establish office procedures to ensure outstanding cheques in trust balances are followed-up, and cheques in lieu issued.

A cheque becomes stale after 15 months. Agents should place a stop payment on a cheque prior to issuing a cheque in lieu. If they don't, and both the original cheque and the cheque in lieu are presented against the trust account, the agent faces the risk of a trust accounting breach.

Agents wishing to lodge unclaimed monies should write to:

Administrator, Unclaimed Money

Department of Treasury

Locked Bag 11, Cloisters Square

PERTH WA 6850

Telephone: (08) 6551 2600

Email: unclaimed.money@treasury.wa.gov.au

Copies of the act can be obtained from State Law Publisher website www.treasury.wa.gov.au/unclaimedmoney

The following details should be provided together with a cheque for the unclaimed monies, made out to Department of Treasury.

1. Name of Person
2. Amount
3. Last known address of recipient
4. Details of what monies were for (e.g. Bond)

Further information regarding unclaimed monies is available in the following Consumer Protection publications:

- A guide to auditing settlement agents' trust accounts
- SA Handbook