

A Guide to Real Estate Trust Accounting

Estate Agents Council



DEPARTMENT
OF JUSTICE



Foreword

Estate agents across Victoria have an enormous responsibility to their clients and the community in the way that they manage trust funds. It is crucial that Victorian consumers are totally confident that the large sums of money they give to estate agents during real estate transactions are kept safely in trust.

The Estate Agents Act 1980 requires estate agents to be able at all times to account for all funds they hold in trust.

That is why Consumer Affairs Victoria (CAV) has assisted the Estate Agents Council in the production, update and distribution of *A Guide to Real Estate Trust Fund Accounting*.

The Guide provides estate agents with vital information about when and how to open a trust account and lists the approved financial institutions, which are required by law to pay interest to the Victorian Property Fund. Detailed instructions are included in the Guide on accounting procedures for keeping and maintaining records and completing monthly reconciliation statements. Explanations are also provided about the requirements for use of an approved auditor, completing annual audits, handling unclaimed funds and drawing commissions from funds.

It is important to note that, under the Estate Agents Act 1980, CAV can inspect estate agents trust account records and that there are now expanded civil remedies that can be applied in cases of non-compliance.

I am confident that this user-friendly guide gives all Victorian estate agents the information they need to maintain high standards in trust fund accounting and compliance with the law.

These high standards build continued credibility in the real estate industry among industry participants and consumers – so it makes perfect business sense for agents to put the instructions provided in *A Guide to Real Estate Trust Fund Accounting* into practice immediately.

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Director

Consumer Affairs Victoria

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Introduction

This Guide has been reviewed to take into account the amendments introduced in December 2004 to the *Estate Agents Act* (1980) (the Act) and the Estate Agents (General, Accounts and Audit) Regulations 1997 (the Regulations).

The Act and the Regulations require the strict maintenance of a formal set of trust account records which show at any time the state of an estate agent's trust account.

The purpose of this Guide is to assist estate agents to establish and maintain a trust account recording system that complies with the Act and the Regulations. The Guide is not a comprehensive accounting text for estate agents or and familiarity with the content of this Guide is **not sufficient** to satisfy the requirements that estate agents have a sound working knowledge of the Act and the Regulations.

The estate agent's trust account recording system should be set up in consultation with the auditor appointed by the estate agent. Before purchasing a computerised trust accounting system an estate agent should first consult the auditor to ensure the system is able to meet the requirements of the Act and Regulations.

Using this guide

Part 1 answers general questions about trust accounting. Part 2 examines the documents and records that must be maintained by the estate agent and which constitute the trust accounting system. Part 3 discusses the estate agent's duties and responsibilities relating to trust account audits and Part 4 looks at the powers of the Minister to freeze trust accounts in certain circumstances and of the Director, Consumer Affairs Victoria relating to inspections of an estate agent's trust account records.

Additional copies

Additional copies of this Guide may be down-loaded from www.eac.vic.gov.au or www.consumer.vic.gov.au

June 2005

Chapter one

Trust accounts – some general questions

1

What is trust money?

Money received or held by an estate agent, an agent's representative or any member of an estate agent's staff on behalf of any other person in the course of an estate agent's business **as an estate agent** is trust money under the *Estate Agents Act 1980* and must be recorded in the estate agent's trust accounting records and paid into the estate agent's trust account with an authorised financial institution. Deposits on sales, residential bonds paid in cash, rents and prepaid advertising are all examples of trust money.

The phrase **as an estate agent** is very important.

Other money received in the course of other businesses conducted by an estate agent, such as agencies for stock and station companies, insurance companies, bank and building societies, is not money received in the course of acting as an estate agent and thus is not trust money under the Act. Such money does not fall within the trust accounting requirements of the Act.

Consumer Affairs Victoria strongly recommends that if an estate agent has any doubts about how to treat any money, the estate agent should err on the side of caution and treat it as trust money.

Refer: Sections 4, 59(1), 60(4) and 63(1) and Regulation 5

Note: Unless stated otherwise all references to sections are to the Estate Agents Act 1980 and references to Regulations are to the Estate Agents (General, Accounts and Audit) Regulations 1997. This legislation may be down-loaded from www.dms.dpc.vic.gov.au or purchased from Information Victoria, 356 Collins Street Melbourne Tel: 1300 366 356. Unless stated otherwise, the address to notify the Director, Consumer Affairs Victoria in writing is Compliance & Enforcement Branch, GPO Box 123A, Melbourne 3001.


What is meant by trust accounting?

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

All trust money must be held in a trust account in the estate agent's name. The estate agent is required to open and maintain a trust account in the name of the estate agent or the entity (eg corporation) which holds the real estate licence at a financial institution approved to hold deposits of trust money. The estate agent must advise the financial institution that the trust account must be established in accordance with s60 of the Act with interest paid into the Victorian Property Fund. The list of authorised financial institutions as at date of this printing is set out on page 27. A current list of authorised financial institutions is available from Consumer Affairs Victoria, www.consumer.vic.gov.au. (Trust Accounts and Audits link). Each estate agent who receives trust money must maintain at least one trust account.

Under the *Residential Tenancies Act 1997*, all residential bonds (security deposits) are required to be lodged with the Residential Tenancies Bond Authority (RTBA). The estate agent must complete a bond lodgement form which is to be signed by the estate agent and the tenant. The tenant should pay the bond to the estate agent in the form of a cheque or money order payable to the estate agent or to the RTBA. This payment is then remitted to the RTBA. The RTBA cannot accept bonds paid by cash. If an estate agent receives a bond from a tenant in cash the estate agent must deposit the cash in the estate agent's trust account and pay a trust account cheque to the RTBA for the bond.

Security deposits collected by estate agents in respect of commercial or industrial properties (non-retail) should be held in the estate agent's trust account unless the lease specifies another arrangement agreed to by the parties to the lease.



Security deposits collected by estate agents in respect of retail premises, are now exempt from having to be held in a trust account: Section 59(8)(c) *Estate Agents Act* 1980. These security deposits are regulated under S24(1) of the *Retail Leases Act* 2003. Refer to Small Business Commissioner's website: www.sbc.vic.gov.au

Many estate agents choose to have multiple trust accounts (eg sales, rent, etc). All the audit and accounting requirements of the Act and Regulations apply to each trust account. A separate set of books must be kept for each trust account.

Refer: Sections 59 and 60 and Practice Note No 6 issued June 1998.

Why are there special requirements within the act for the control of trust money?

Estate agents hold a significant position of trust within the community. They hold large sums of clients' money. The trust money accounting system aims to ensure that all trust money held by estate agents for each client and in respect of each transaction for that client can be accurately accounted for at all times.

Receiving and depositing trust money

An estate agent must appoint an auditor before receiving or holding any trust money.

If an auditor so appointed resigns, dies or otherwise becomes unable to perform his or her duties, the estate agent must appoint a new auditor within 1 month of becoming aware of that fact.

All trust money must be deposited in a trust account in the name of the estate agent in an authorised financial institution before the end of the next business day after it is received. The only exception is where there are no trading bank facilities within 16 kilometres of an estate agent's office, in which case money must be deposited within 3 business days.

Once a trust account has been opened an estate agent must advise the Director, Consumer Affairs Victoria in writing within 14 days of its establishment. Conversely, the Director, Consumer Affairs Victoria must be notified with 14 days of the closure of any trust account. (www.consumer.vic.gov.au. - Forms - Notice of Opening/Closing a Trust Account). Note that where a cheque is received by an estate agent from a tenant for the amount of bond payable to the RTBA or a cheque is received by an estate from a person made payable to another person in prescribed circumstances, the provisions of Section 59 do not apply.

Refer: Sections 59(1), 59(7),59(8) and Regulation 41

What trust documents and records must be maintained?

Trust documents and records that must be maintained are–

- duplicates of every trust receipt;
- register of trust receipt forms;
- duplicates of every completed trust account deposit form;
- trust account journals;
- trust account transfer journal;

- trust ledgers;
- register of trust cheque forms;
- records of trust money payments; cheque butts, EFT payment details
- register of securities;
- trust account reconciliation statements and
- any other books, accounts or records kept by an estate agent relating to trust money, eg sales and rental files.

If an estate agent has a computerised accounting system it is recommended that a hard copy of all of the above documents be printed at the end of each month.

Refer: Regulations 22, 23, 24, 25, 26, 27, 28, 29 and 31

What happens to unclaimed trust money?

Funds held in trust by an estate agent who cannot identify the present address of the person entitled to the payment of the money are unclaimed trust money. The *Unclaimed Moneys Act 1962* governs this situation. Each March the estate agent must enter all unclaimed money in a register. All entries of \$100 or more must be advertised in the Victorian Government Gazette. After a further 12 months, all unpaid money, whether advertised or not, must be paid to the Registrar of Unclaimed Moneys. For further information, refer to the State Revenue Office on www.sro.vic.gov.au under the heading 'Unclaimed Moneys'.

Where an estate agent receives a payment of money by electronic funds transfer and the estate agent cannot identify (1) the person who made the payment or (2) the person who is entitled to receive the payment, the estate agent is required to deposit the unidentified money into the estate agent's trust account by the end of the next business day after the estate agent becomes aware of such a payment. If the source or the person who is entitled to receive the payment has not been identified at the end of twelve months, the estate agent will be required to treat the money in accordance with the *Unclaimed Moneys Act 1962*.

Refer: Section 59A


How long must documents and trust records be retained?

An estate agent must retain documents and trust records for 7 years. All files relating to any transaction where an estate agent has received or is entitled to receive any commission, or where trust money has been received, must also be retained for 7 years.

Refer: Section 63(3) and Regulations 17 and 32

What use is made of the documents and records?

Documents and records enable the tracking of any and all trust money held by an estate agent at any time to verify that the money has been dealt with as required under the Act and the Regulations. The verification takes, at least, the form of an annual audit of the required records. As well as the annual audit, the Director, Consumer Affairs Victoria may at any time inspect or order an audit of an estate agent's trust accounts.



The audit is an official examination of accounts and is conducted by an approved auditor, as defined in s4 of the Act. The auditor appointed by the estate agent must be one who is not engaged in keeping or entering up the trust records of the estate agent and does not have custody or control of those records. An estate agent must have all documents and records in a suitable form and ready to be made available to the auditor at all times. Relevant records and documents must be kept at each office at which an estate agent carries on business.

Other duties of estate agents relating to audits are discussed in Part VI of the Act.

Refer: Sections 4, 63(1), 64(1), 64(1A), 64(6), 64A(1), 66 and 70

When can payment of commission and expenses be deducted from trust money?

In order to be entitled to draw commission and expenses in respect of the sale of real estate, a number of requirements must have been fulfilled. The estate agent must hold a written authority or engagement from the client which complies with s49A of the Act. The authority must contain, inter alia, details of the commission and outgoings which were agreed between the parties. The estate agent must retain appropriate documentation to demonstrate that the estate agent is entitled to release the funds from the trust account. For instance—

- the written authority signed by the vendor and
- confirmation from the parties' solicitor or conveyancer that settlement has been effected; or
- a valid statement under Section 27 of the Sale of land Act 1962

Whilst s24 of the *Sale of Land Act* requires that deposit money be retained in trust until settlement, s27, if complied with, allows the deposit to be released before settlement.

The vendor's solicitor usually co-ordinates the completion of requirements under s27 of the *Sale of Land Act*. When title requirements have been met, the vendor's solicitor usually forwards to the estate agent a valid and completed s27 statement which has been signed and dated by all parties. On receipt of such statement the estate agent can release the deposit money to the vendor. The estate agent is entitled to deduct money for commission and expenses when releasing the deposit.

When an estate agent is requested to transfer the deposit to the vendor's solicitor or to another agent under s24 of the *Sale of Land Act*, the estate agent is entitled to retain a portion of the deposit to cover the commission payable and other approved costs if the authority signed by the vendor entitles the estate agent to deduct commission and approved expenses from the deposit. Any retained portion of the deposit is still held by the estate agent as a stakeholder and must not be disbursed until after settlement or receipt of a valid, completed s27 statement.

Refer: Sections 48A-E, Section 49A, Section 50, Regulation 17 & Sale of Land Act 1962 Sections 24, 25, 26 and 27

What must an estate agent do on becoming aware of a trust account deficiency?

An estate agent must notify the Director, Consumer Affairs Victoria and the estate agent's auditor on becoming aware of a deficiency in either the trust account or the trust account ledger. The notification must include the date on which the deficiency occurred, the amount involved, the reason it occurred and full details of any action taken to correct it.

Refer: Regulations 47 and 48

Chapter 2

Trust documents and records

2

Trust documents and records

The role of trust documents and records and the prescribed requirements are described in this section. In some cases a model that meets the requirements is shown but it should be understood that models are given as examples only. The information that must be recorded is laid down by legislation but the way information is presented is not.

It is impossible to summarise good trust account bookkeeping practice in a few lines but the following basic elements give a foundation on which to build–

- documents are completed immediately;
- transactions are recorded in the strict chronological order in which they occurred by the end of the next business day;
- trust money is banked by the end of the next business day, unless the Act allows otherwise and in the form in which it was received;
- records are kept of transactions for which there is no documentary evidence (trust account transfer journal);
- monthly reconciliation statements are completed accurately and on time;
- no commission on sales or money due for expenses are deducted from the trust money until after settlement or until all the requirements of s27 of the *Sale of Land Act* have been completed and the s27 release has been signed by all parties;
- estate agents with computerised accounting systems print all records and documents as at the end of each month.

Register of trust account receipt forms

In a register of trust account receipt forms details are recorded of all receipt books printed and received into the office and of their distribution to various branch offices, estate agents and employees, including agents' representatives. If a receipt is no longer held by an estate agent or employee, including agents' representatives, as recorded in the register, it must have been issued and the money received must be accounted for. The register should be kept at the estate agent's principal office together with any stock of unissued receipts. The signing of the register by persons holding the receipt forms is good practice.

The register of trust account receipt forms must show–

- the numbers of the estate agent's forms (it is sufficient to record the first and the last number of a sequence of numbers);
- the date a batch of forms is received from the printer;
- the name of the employee or agent's representative to whom a form is given;
- the date the form is handed to the employee or agent's representative and
- the date forms are returned.

Refer: Section 63(5)(b) and Regulation 22

Register of trust account cheque forms

In this register are recorded the details of all blank cheque forms received and particulars relating to the issue and use of all cheques. If a cheque form is no longer held by an estate agent, agent's representative or other employee as recorded in the register, there should be a record of a payment to account for its use. As with the register of trust account receipt forms, the inclusion of signatures is not mandatory but is good practice.

The register of trust account cheque forms must show–

- the serial numbers of all cheques (it is sufficient to record the first and last number of a sequence of numbers) and
- details of the issue and use of trust cheque forms given to, or held by, an estate agent.

Refer: Regulation 28

Register of securities

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

Documents that must be recorded in the securities register are–

- all securities for money, the title to which is transferable by delivery, held by the estate agent on behalf of another person;
- all securities and documents of title held by an estate agent on behalf of another person–
 - in the estate agent's own name, or
 - in joint names with another estate agent, or
 - under the estate agent's control, or
 - under joint control with another estate agent or estate agents and
- all receipts for the deposit of money with any person made by an estate agent on behalf of another person–
 - in the estate agent's own name, or
 - in joint names with another estate agent, or
 - under the estate agent's control, or
 - under joint control with another estate agent or estate agent.

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 date of delivery of the security, document of title, or receipt by the estate 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: Regulation 31

Trust receipts

Trust receipts must be in duplicate and have the words “Trust Account” printed on them and numbered sequentially or marked or numbered by some method approved by the Director, Consumer Affairs Victoria.

When a payment is received, the original trust receipt must be handed to the person making payment at the time of payment and the duplicate, marked *duplicate*, must be retained. Section 63 of the Act removes:

- the requirement to *keep* a duplicate copy of a receipt for a *cash* payment if an *electronic record* of the payment was made as soon as practicable after the payment was received.
- the requirement to *issue* a receipt for a payment by cheque or electronic funds transfer if an electronic record of the payment was made as soon as practicable after the payment was received and the person making the payment does not request a receipt.
- the requirement to *retain* a receipt or duplicate copy of a receipt in relation to a payment made by cheque or electronic funds transfer (EFT) if an electronic record of the payment was made as soon as was practicable after payment was received.

All duplicates and retained receipts must be made available to the auditor at every audit or when the auditor reasonably requests.

All trust receipts must show the following information–

- the date the money was received;
- the approved name under which the licensed estate agent conducts business and the address of the estate agency office where the trust receipt book is kept;
- the signature of the person who issued it (regardless of whether it is hand written or computer generated);
- the name of the person paying the money;
- the name of the person on behalf of whom the money is received;
- the amount and form of the money received (cheque, cash, money order or EFT) and
- a description of the transaction (rent, deposit on sale, bonds)

Refer: Section 63 and Regulation 23

There is currently no prescribed form as to the information to be recorded on the “electronic record of the payment”. Prudent practice suggests that the “electronic record of payment” should record the same information as the receipt required under Regulation 23 because the client may request a receipt after the payment is processed. Your auditor may be able to advise in this matter.

A general purpose trust receipt format is shown below which meets the requirements under the Regulations. For practical reasons most estate agents prefer to keep separate receipt books for each trust account or for various

	Trust Account Receipt No:00001 .../ .../
Sunrise Real Estate Pty Ltd Licensed Estate Agent 16 Horizon Street, Melbourne 3000	
Received from _____ of _____ Insert address	
the sum of _____ for _____	
Signed _____ <div style="text-align: center; margin-top: 10px;"> for and on behalf of Sunrise Real Estate Pty Ltd </div> <div style="text-align: right; margin-top: 10px;"> Cheque \$ Cash \$ Money Order \$ EFT \$ </div>	

types of trust money–

- rents;
- bonds and
- other trust money such as deposits on sales.

Refer: Sections 63(3), 63(3B) and 63(4) and Regulation 23

Trust account deposit forms

An estate agent must make and retain a copy of every completed trust account deposit form.

Trust account deposit forms must show–

- the date of payment into the authorised financial institution;
- the name and number of the estate agent’s trust account and
- where 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 deposit books issued by banks satisfy these requirements. However, some banks issue deposit books with a butt which does not have a carbonised copy. This does not comply with the requirements.

As all money paid into the trust bank account must be matched by a trust account receipt, it is useful to note on the copy of the bank deposit form, the serial numbers of the receipts which were issued in respect of the money banked. This practice assists in bookkeeping and will also be a help when the auditor checks details of receipts issued against money banked, for example:

Bank Deposit Form

East Branch office receipts: 1642 - 1649	\$6471.00
West Branch office receipts: 1974 - 1976	267.48
Total deposit	\$6738.48

Refer: Regulation 24

Trust account cheques

All withdrawals made from the trust account must be in the form of trust cheques or electronic funds transfer (EFT) or in such other form as approved by the Director, Consumer Affairs Victoria. An estate agent must retain the cheque butts which must show specified information. All cheques must be marked “Not Negotiable” and must not be made payable to cash.

It is imperative that before any amount is drawn on a trust ledger account a check is made on the balance of the ledger account to be debited to ensure there are sufficient funds to cover the withdrawal. **Never, at any time, should a trust ledger account have a debit balance. Also ensure that cheques deposited to the trust account and credited to a ledger account have been cleared by the bank before drawing on them.**

Most computer systems have in place a debit barring safeguard to ensure that such overdrawings cannot occur. However, there are computer systems which deliberately allow some of their ledger accounts to be without this safeguard. If this applies to your system, it is recommended that such ledger accounts not be used, to ensure overdrawings do not occur.

The cheque butt, EFT or other record must show–

- the date of the cheque;
- the name of the person to whom the payment is to be made;
- where the cheque is written for the purpose of purchasing a bank cheque, the name of the person to whom the bank cheque will be payable (if known);
- the trust ledger account to which the payment is to be debited;
- a notation or code indicating brief particulars of the nature of the transaction and the purpose for which the payment is made;
- the amount of the payment and
- the serial number of the cheque.

An example of the *minimum* information that should be shown on a cheque butt or on a computer print-out follows:

Minimum Cheque Butt Information

Date	☞	25/2/2004
Payment to	☞	George White & Assoc
Trust Ledger Account and Folio No	☞	W Jackson (Vendor) Folio 2W
Reason for payment	☞	Deposit on sale of 16 Eliza St Paid to vendor’s solicitor.
Amount	☞	\$10,000.00
Cheque Serial Number	☞	767110

Refer: Section 59(1)(c) and Regulations 29 and 30

Trust account cash journals

All receipts and payments of trust account money are summarised in the trust account cash journals. The journals are then 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 and payments to enable adequate details of the transactions to be posted into the trust account ledger.

A cash journal has 2 sections, one for cash receipts and one for cash payments.

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 it. The original copy of any cancelled receipt must be retained for inspection by the estate agent's auditor.

In most computerised systems journals and ledgers are updated simultaneously as transactions are first recorded.

Suggested information to be recorded in the cash receipts journal—

- date;
- receipt number;
- from whom money was received;
- why money was received;
- trust ledger reference;
- amount received and
- the 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) and the record of EFT payments.

Suggested information to be recorded in the cash payments journal—

- date;
- cheque number; EFT reference number
- name of person to whom payment was made;
- reason for payment;
- trust ledger reference;
- amount of payment and
- a subtotal of payments to specified persons on each date.

Refer: Regulation 25

Trust account ledgers

The trust account ledger is the centrepiece of the trust accounting system. The ledger summarises all of an estate agent's trust account transactions on an individual basis and must show all receipts, payments and transfers for each transaction and for each person on behalf of whom the estate agent holds trust money.

A trust ledger account must be opened for each person on behalf of whom an estate agent holds trust money and for each transaction that involves trust money. If an estate agent handles sales and a rent roll and chooses to run a separate trust account system for sales and for rental the following ledgers would be maintained–

- a trust account (rents) ledger with an account for each landlord/property; and
- a trust account (sales) ledger with an account for each vendor/purchaser.

Where security deposits are held by estate agents in respect of commercial premises a trust account record would be maintained for each security deposit.

Trust ledger accounts must satisfy the following criteria irrespective of whether they are produced manually or by computer–

- They must show a continuous running balance in order to disclose each person's entitlements at any time (past or present). 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 accounts will fail to show the true position as required.
- They must be written **at least** every second day.
- Where records are maintained by computer the accounts must be readily convertible into printed form. The ability to produce a visual image on a screen is not sufficient.

All trust ledger accounts must contain enough detail so that the nature of the transactions can be clearly understood.

Each trust ledger account must contain at least the following–

- the name and address of an estate agent’s principal;
- 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;
- the cheque number, receipt number or transfer journal folio number which matches the movement of money and
- the balance after each entry.

Refer: Sections 63(1) and 63(2) and Regulation 27

Sample Trust Ledger Account Layout

Client Name					
Address					
Name of other party					
Description of Transaction					
Date	Particulars	Journal Ref Cheque No Receipt No. EFT No.	Debit	Credit	Balance

Trust ledger buffer accounts

Some estate agents choose to maintain a separate trust ledger account in their own name with their own funds in the mistaken belief that this account may be used to absorb any “inadvertent” deficiencies.

There is nothing to recommend the use of buffer accounts. The practice does not prevent the occurrence of a deficiency in an individual’s trust ledger account, nor does it relieve the estate agent of the duty to report the deficiency under Regulation 47(1)(b).

For example:

Event in chronological order	Trust ledger account entry
A deposit is made to a trust account institution.	The relevant trust ledger account in the at a financial trust account ledger is credited
The estate agent draws amounts against deposit.	The relevant trust ledger account in the the proceeds of the trust account ledger is debited.
Financial institution advises paying bank dishonours cheque	The relevant trust ledger account in the trust account ledger is debited. In the absence of any other cleared funds - this account will fall into a debit balance - a deficiency occurs.
Cleared funds transferred	The relevant trust ledger account in the trust account ledger is credited. The account returns to a credit balance - the deficiency is repaired.

The Act requires that this deficiency be reported, even if a transfer of cleared funds immediately repairs the deficiency from a buffer account or any other source.

Refer: Section 90 and Regulation 47

Most “inadvertent” deficiencies can be avoided by adopting the following practices–

- Give financial institutions written instructions that charges are not to be debited to the trust account but to a separate general account. These charges may then be recovered from clients to the extent to which they can be attributed to specific transactions. If the financial institution makes charges to the trust account, contrary to these instructions, then that is their error and they should then be required to correct the error. There is no deficiency in the trust ledger or client trust ledger account and no entry is required to be made in the estate agent’s books. The item is carried as a bank reconciliation item until the bank amends their records.
- Check that there are sufficient cleared funds in your trust ledger account before drawing against it. Where it is known funds are required immediately, arrange special clearances. Otherwise, wait at least the customary clearance days to pass before drawing cheques against the client’s account (but be aware that on occasion financial institutions may take many days to dishonour cheques deposited).

In special circumstances and for well-known and favoured clients, estate agents may choose to advance their own personal funds to clients in anticipation of clearance of funds deposited in trust for clients. The advance is recovered as soon as the client’s funds are cleared. This practice is adopted at the estate agent’s risk and is not recommended.

Trust account transfer journal

An estate agent may wish to transfer funds between various trust ledger accounts within the trust ledger, for instance, 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 them. Rather the transfer can be achieved through appropriate trust ledger account entries and recorded in the trust account transfer journal.

The trust account transfer journal must include the following information–

- the date of transfer;
- the name of the trust ledger account from which the money is transferred;
- the name of the trust ledger account to which the 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. Explanatory notes for each journal entry should be included. As receipt and payment transactions are supported by signed trust documents (receipt forms and cheque butts), the estate agent should sign transfer journal entries as evidence of the estate agent's authorisation of the entry. Transfer journal entries equate to both a payment and a receipt of trust money and thus must be fully recorded. A suggested layout for the journal is:

Trust Account Transfer Journal

Date	Particulars	Ledger Ref	Transfer From \$	Transfer To \$
4/8/2000	S. James	J1	10,000.00	
4/8/2000	R. Williams	W3		10,000.00
	Money from sale of 21 Albert Rd, Brunswick transferred for deposit on 32 Toorak Rd, Armadale <i>R. Wright</i>			

Refer: Regulation 26

Trust account reconciliation statement

A trust account reconciliation statement must be completed each month. This statement shows the balances of the trust account cash journal and the trust account reconciliation statement and the total of the trust account ledgers. The purpose of the exercise is to match all 3 totals after taking into account any reconciling items.

The trust account reconciliation must be–

- for the period ending the last day of the month;
- completed within 14 days after the end of the preceding month;
- verified and signed by the estate agent or if the estate agent is a corporation, the Officer in Effective Control or a working director and
- retained to be presented to the auditor for any audit.

The estate agent should consult their trust account auditor for advice on how to verify the trust account reconciliation statement.

When preparing the end of financial year reconciliation for their auditor the estate agent should ensure that sufficient detail is included in the report in order that the estate agent can properly complete the Statutory Declaration pursuant to s64(1) of the Act.

A total ledger balance is shown in the trust account reconciliation statement and a list giving greater detail is attached to the statement and filed with it. The list may show the balance for each trust ledger account with an identifying ledger account number or client code number. The account balances must be in the same sequence as they appear in the trust account ledger and be totalled. A computer printout which quotes account numbers is satisfactory.

A sample trust account reconciliation statement follows:

A. N. AGENT & CO PTY LTD

Trust Account Reconciliation Statement at 31 August 2003

1 Trust Cash Journal	\$	\$
Balance brought forward from 31 July 2000	67,500.00	
Add: total receipts for August	52,000.00	119,500.00
Deduct: total payments for August		48,000.00
Balance as at 31 August 2000		71,500.00
2 Financial Institution Trust Account Statement (FIS)		
Balance as per bank statement 31 August 2000	78,000.00	
Add: deposits not credited on FIS	Nil	78,000.00
Deduct: unpresented cheques 357	2,500.00	
358	4,000.00	6,500.00
Total Trust Money at 31 August 2000		71,500.00
3 Trust Ledger Balances		
Total of attached listing of ledger balances as at 31 August 2000		71,500.00
<i>I verify that the Trust Account Reconciliation Statement is accurate.</i>		
<i>R Wright</i>	<i>Date</i>	
Working Director / Estate Agent / OHEC		

Refer. Section 63(1)(c) and Regulations 35, 36 and 37

Recording withdrawals of commission

When commission is due to the estate agent a trust account cheque must be drawn to transfer the funds from the client's account to the estate agent.

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, provided that transfer journal entries or cash payments journal entries are made listing each commission withdrawal and the ledger account to which it relates.

Chapter three

Trust account audits

3

What are the annual duties of estate agents regarding trust account audits?

Every individual or corporation who carried on the business of an estate agent during the whole or any part of the previous financial year must cause his accounts of trust money for the whole or the part of that financial year to be audited within three (3) months after 30 June in each year.

The Director, Consumer Affairs Victoria can substitute a date other than the 30 June if an application is made in writing.

All estate agents who receive or hold trust account money during the financial year must cause the trust accounts to be audited by an approved auditor and the auditor must deliver the report to the agent concerned and send a copy to the Director, Consumer Affairs Victoria within 3 months of the end of the financial year and advise the agent concerned in writing of the date on which he has done so.

The Director, Consumer Affairs Victoria may require the estate agent to produce a Statutory Declaration confirming that in the course of a financial year the estate agent neither received nor held any money for or on behalf of another person.

Refer: Sections 63(5), 64, 65 and 69

What are an estate agent's duties in appointing an auditor?

Before an estate agent can receive or hold any trust account money the estate agent must appoint an "approved" auditor.

To audit an estate agent's trust account a person must be a member of CPA Australia, the National Institute of Accountants or The Institute of Chartered Accountants of Australia and have met the requirements of one of these bodies to practice as a public accountant and have obtained a relevant tertiary qualification.

Refer: Sections 4 and 66 and Regulations 41 and 44

What are an estate agent's responsibilities to the auditor?

The estate agent must prepare and sign a statement, to be presented to the auditor, that shows details of all money and negotiable or bearer securities held as at the last day of the financial period that is to be audited. The estate agent must provide the statement to the auditor within one month after the last day of the period to which the audit relates.

After examining this statement, the auditor will return the statement to the estate agent together with the audit report. The estate agent must retain the statement together with the signed copy of the report for a period of seven (7) years and provide them to the auditor at the next audit, along with all trust account reconciliation statements or other trust documents that the auditor requests.

If an estate agent becomes aware of a deficiency in either the trust bank account or the trust account ledger the estate agent must notify the auditor and Director, Consumer Affairs Victoria immediately.

Refer: Sections 64(3), 64(6), 64(10), 64(12), 64(13) and 64(14) and Regulations 38 and 47

What are the duties of an auditor?

An auditor must audit trust accounts in accordance with generally accepted auditing standards and practice. (down-load *Handbook for Auditors* at www.eac.vic.gov.au)

In order to do this the auditor must be satisfied that the trust records are kept in accordance with the requirements of the Act and the Regulations.

On completion of an audit the auditor is required to–

- deliver the original audit report and a signed copy of it to the estate agent and
- send a signed copy to the Director, Consumer Affairs Victoria and advise the estate agent in writing of the date on which this was done.

The audit report must be lodged within 3 months of the end of the financial year in the form approved by the Director, Consumer Affairs Victoria (down-load Audit Report form at *Trust Accounts and Audits* - www.consumer.vic.gov.au)

If an auditor discovers that an estate agent has not complied with the requirements of the Act or the Regulations, the audit report must provide details of the facts discovered.

Refer: Sections 64(2), 64 (7), 64 (9), 64(11) and 64(15), Regulations 48 and 50

May an estate agent change auditor?

When an auditor retires from practice, ceases to be qualified to audit trust accounts, ceases employment or dies, an estate agent must appoint a new auditor within one (1) month of becoming aware of that fact.


Refer: Section 66, Regulations 41, 43 and 44

What are the audit requirements if an estate agent ceases business, for any reason, including death?

When an estate agent ceases to carry on business for any reason, the estate agent, the executor, trustee or administrator (as the case may be) must–

- notify the Director, Consumer Affairs Victoria in writing of the cessation of business within 28 days and
- cause the trust accounts to be audited within 3 months of the date of cessation of business.

Except in the case of a partnership, an individual estate agent or a corporation must immediately give the auditor any unused trust account receipt forms in the estate agent's possession. The auditor must destroy those forms and notify the Director, Consumer Affairs Victoria of their destruction.



If an estate agent dies who is not in partnership with another estate agent carrying on an estate agency business, the auditor of the deceased estate agent's trust accounts must immediately on becoming aware of the estate agent's death—

- notify the Director, Consumer Affairs Victoria and
- take charge of any unused trust account receipts forms of the estate agent and deliver those forms either to, the executor or administrator of the estate of the estate agent or to the Director, Consumer Affairs Victoria.

If an estate agent's business has ceased due to the death of the estate agent, the executor or administrator of the estate can carry on the deceased estate agent's business for 30 days after the death of the estate agent. If the executor or administrator requires more than 30 days to wind up the deceased estate agent's business, approval must be sought in writing from the Registrar, Business Licensing Authority, GPO Box 322B, Melbourne, Telephone 1300 135 452, Fax (03) 8684 0600. The Business Licensing Authority may give such approval for a period of up to 12 months from the death of the estate agent.

The Director, Consumer Affairs Victoria considers the date of cessation of business to be the date on which all trust account money has been disbursed and the trust bank account balances are nil.

The auditor must notify the Business Licensing Authority immediately on becoming aware of the death of an estate agent who was the only director of a corporation which held an estate agent's licence.

Refer: Sections 5(2), 31E, 64, 64B and 66, Regulation 40

Chapter four

Powers of the Minister for Consumer Affairs and the Director, Consumer Affairs Victoria

4

What are the minister's powers to freeze trust accounts?

If there are reasonable grounds to believe that an estate agent has not complied with the provisions of Part VI of the Act relating to trust accounts or where a claim has been made against the Victorian Property Fund, the Minister can exercise the Ministerial power to freeze an estate agent's trust account.

When freezing an account the Minister may also direct that the estate agent cease to carry on the estate agency business and can appoint a suitable person to wind up the business.

Refer: Section 89

When can an estate agent's books be inspected/audited?

An estate agent must, at all reasonable times at each office at which that estate agent carries on business as an estate agent, keep all documents, including trust accounts and records) relating to the business carried on at that office, available for inspection and audit by an inspector in a form in which they can be readily and expeditiously inspected or audited by an inspector.

An inspector from Consumer Affairs Victoria has the right to make copies of documents and may impound or retain documents for the purpose of obtaining evidence for production in possible subsequent proceedings against an estate agent.

The Director, Consumer Affairs Victoria may at any time during the financial year cause the accounts of trust money of an estate agent to be audited.

Refer: Sections 64A and 70

Chapter five

Authorised financial institutions

5

Authorised financial institutions

The following financial institutions have been declared an authorised financial institution under s61(1) of the Estate Agents Act 1980–

- Australia and New Zealand Banking Group Limited
- Bank of Cyprus Australia Pty Limited
- Bendigo Bank Limited
- Citibank Pty Limited
- Commonwealth Bank of Australia
- Hume Building Society Ltd
- Laiki Bank (Australia) Limited
- Macquarie Bank Limited
- National Australia Bank Limited
- RegionalOne Credit Union Limited
- St George Bank Limited
- Suncorp - Metway Limited
- Westpac Banking Corporation (including Bank of Melbourne)

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Estate Agents Council 2005