



Government of
Western Australia

A guide to auditing real estate and business agents' trust accounts

This booklet contains general information that was current at the time of publication. If you have specific inquiries about matters relating to your situation then you are strongly urged to seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on this publication.

This publication was produced by the Real Estate and Business Agents Supervisory Board.

This publication is available in other formats on request to assist people with special needs.

Table of contents

1. Introduction.....	1
2. Role as auditor of trust accounts	2
Appointment of an auditor of trust accounts	2
Costs of audits.....	2
Delivery of audit reports.....	2
Conflict of interest.....	2
3. Scope of audit of trust accounts.....	4
Contents of the audit report.....	4
Important items to be considered in the scope of the audit.....	5
Licence and triennial certificate of the agent	5
Level of fees	5
Drawing of commission and fees.....	6
The authority for the agent to perform the service.....	6
Charging actual disbursements in accordance with the principal's authority	6
Key legislative provisions	7
4. Trust accounting requirements.....	8
The trust account.....	8
Tenancy bond trust accounts.....	8
Variable outgoings trust account	8
Interest bearing trust accounts established for individual clients	8
Auditing considerations	9
Titling of trust accounts.....	9
General trust accounts	9
Tenancy bond trust accounts.....	10
Principal's separate interest bearing trust account.....	10
5. Problem areas identified by REBA	11
Auditors not identifying the licensed entity correctly.....	11
Auditors not identifying and reporting trust account titles correctly	11
Auditors not checking trust account reconciliations.....	11
Management letter not being submitted with the audit report	11
Documentation of audit reports not being submitted using the format approved by the Board	11
Auditors giving insufficient information on qualified audits	11
Failure of the agent to report when a trust account is overdrawn	12
Principal's trust ledger account.....	12
Banking of trust money.....	12
Importance of statutory declarations	12
Use of buffer funds	12
6. Example of an audit checklist	13
Audit checklist.....	13

7. Frequently asked questions	21
8. Appendix A: Format of audit reports	24
Questions to be completed before the audit report is submitted to the Board	28
Example of an auditor’s covering letter for an audit report	29
Example of declaration by auditor	30
Example of statutory declaration by person in <i>bona fide</i> control	31
Example of statutory declaration by auditor	32
Example of statement of trust account money held.....	33
9. Appendix B: Extracts of relevant legislation	35
<i>Real Estate and Business Agents Act 1978</i>	35
Real Estate and Business Agents (General) Regulations 1979	44
Code of Conduct for Agents and Sales Representatives	46
<i>Corporations Act 2001</i> (Cwlth) - Section 1280	47
10. Glossary	49
11. Index	52

1. Introduction

Under section 70 of the *Real Estate and Business Agents Act 1978* (the Act), all real estate and business agents who hold a current triennial certificate must have their trust accounts audited according to requirements set out by the Real Estate and Business Agents Supervisory Board (the Board) and in accordance with accepted auditing practice. Consequently, the Board has released this revised version to guide auditors when they examine and report on the trust accounts held by real estate and business agents. Auditors need to read this publication in conjunction with the *Australian Auditing Standards*. Wherever the word 'agent/s' is used in these guidelines, it is referring to both real estate agents and business agents.

The Board believes that by following these guidelines when auditing trust accounts, it will help auditors to produce high quality reports in the required format. To make the audit process easier, templates for the main documents that are to be lodged with the Board are provided in **Appendix A** and can be downloaded from the REBA website at www.reba.wa.gov.au. The Board will not accept audit reports based on other formats.

Wherever the term 'trust accounts' is used in this publication, it refers to trust accounts opened, maintained and closed by agents. Trust accounts are defined as being those accounts where money is received or held by an agent or any member of an agency's staff on behalf of another person in relation to a real estate or business sales transaction or a property management transaction.

Agents who maintain trust accounts must comply with the following:

- *Real Estate and Business Agents Act 1978*;
- Real Estate and Business Agents (General) Regulations 1979 (the Regulations);
- Code of Conduct for Agents and Sales Representatives (the Code of Conduct); and
- *Residential Tenancies Act 1987*.

When auditing an agent's trust accounts, auditors should ensure that they have a current copy of each of the above statutes. **Appendix B** contains the full text of the relevant sections, current at the time of publication.

For the latest information please refer to the REBA website at www.reba.wa.gov.au.

2. Role as auditor of trust accounts

Appointment of an auditor of trust accounts

Under section 72 of the Act, a person cannot audit an agent's trust accounts unless registered as an auditor under Part 9.2 of the *Corporations Act 2001 (Cwlth)*. The Australian Securities and Investments Commission (ASIC) provides an online list of registered auditors at www.asic.gov.au. The Board has the power to approve the appointment of a person with different qualifications in a district where there is no person registered as an auditor.

Section 73(3) of the Act provides that the appointment of an auditor of a real estate or business agency is continuous, unless the Board approves the change of auditor. This means that an appointed auditor will be responsible for undertaking all audit functions required under the Act. Under section 75(a) of the Act, the Board can suspend or cancel an auditor's appointment to audit an agent's trust accounts if it believes just cause exists. In some circumstances, the Board may prosecute an auditor.

Costs of audits

Auditors agreeing to be appointed as the auditor of an agent agree to conduct all of the agent's annual audits and any termination audit, regardless of the capacity of the agent to meet the costs of such audits. Therefore, when approached by an agent to be their statutorily appointed auditor, auditors are advised to exercise due diligence as to the agent's financial viability to meet audit fees.

Delivery of audit reports

The statutory reporting requirements for auditors are set out in sections 70, 72 and 79–81 of the Act. Section 70 of the Act requires that auditors deliver their audit report to the Board within three months after the end of the audit period. Unless determined otherwise, audit reports must be lodged by 31 March of each year. The audit report is to include a copy of any management letter an auditor has provided to the agent. At any time during the year, the Board may require auditors to provide additional information or to carry out a further audit.

In cases where an agent does not renew their triennial certificate, their auditor is required to provide a termination audit report to the Board within five months of the cessation of the triennial certificate. The auditor is required to inform the Board, by way of a final clearance letter, when the balance of the agent's terminated trust account/s has a nil balance.

Conflict of interest

Section 72(3) of the Act requires auditors to disclose to the Board any factors that may be construed as a conflict of interest. Such factors include close relationships between auditors and the agent based on blood, marriage or de facto arrangements. The Board's policy titled *Independence of Auditors* contains the following definitions:

De facto relationship means a relationship as defined in section 13A of the *Interpretation Act 1984*. This includes a relationship between two people of the same or opposite gender. An auditor who enters into a de facto relationship with their agent must disclose that relationship to the Board.

Close relationship by blood means where the auditor is related to the agent by birth. For example, if an auditor is a parent, sibling, half brother or half sister, daughter or son, cousin, aunt or uncle, nephew or niece, of the agent, then this would constitute a close relationship by blood.

Close relationship by marriage means where the auditor and agent are married to each other, or, where either party marries a person related to the other party by blood (as defined above). For example, if the auditor married the agent's brother or sister, then this would require disclosure.

Only in exceptional circumstances will the Board consider allowing an auditor related to an agent by blood, marriage or de facto relationship to audit that agent's trust accounts. For example where the agent and an auditor are in remote locations and the agent cannot find a suitably qualified auditor locally who is independent from the agent. Even in such situations, the Board will examine the circumstances carefully before making a decision on whether to allow the auditor to audit the agent's trust accounts. Each situation is treated on a case by case basis.

Section 72 of the Act also requires an auditor to disclose to the Board any business dealings that they may have with the agent. There are a number of types of business dealings that would likely constitute a conflict of interest.

Some examples of conflict of interest include:

- acting as the agent's general accountant;
- performing any type of taxation service for the agent;
- preparing any form of financial documentation (for example, Business Activity Statements) for the agent;
- supplying any form of general financial advisory service to the agent;
- having a financial interest in property in which the agent also has a financial interest;
- being a business partner of the agent, regardless of whether the business interest is related to real estate or not;
- being an employee of the agent, whether employed as a licensed person, clerk or servant of the agent;
- being a tenant of a property owned or managed by the agent;
- being a partner, clerk or servant of a company in which the agent has a financial interest; and
- * being a partner, clerk or servant of a company or individual that provides a general accounting and/or taxation service to the agent.

Before being appointed as the auditor of an agent's trust accounts, an auditor should contact the Board for a determination of whether there is a relationship that could disqualify them from being appointed. An auditor is under a duty to decline an invitation to audit an agent's trust accounts if there is a possibility of a conflict of interest. Not doing so can result in an auditor being subject to significant penalties. It is the auditor who must declare to the Board any dealings or relationship they may have with the agent, not just at the time of appointment, but every time an audit report is submitted.

3. Scope of audit of trust accounts

The appointed auditor of an agent's trust accounts is required to provide the Board with the following reports by 31 March of each year:

- audit report (including any management letter);
- statement regarding qualification and relationship with the agent; and
- declaration by the agent verifying the statement of trust money.

While the Board recognises that auditors may use sampling techniques when auditing trust accounts, the Board is aware that there are some inherent risks in using such an approach. If a sample technique is used, then the Board expects that a range of transactions that are indicative of an agent's business will be examined.

When auditing an agent's trust accounts, it is essential for the auditor to be aware of:

- the nature of the agent's business;
- the workings of trust accounts;
- the reporting requirements and statutory obligations placed on trust accounts and on the agent; and
- the legislation governing agents in respect of the matters being audited.

The purpose of the audit is to ascertain whether the agent has complied with their legislative responsibilities. In such audits, materiality does not apply. This means every irregularity must be reported.

When performing an audit, the agent is required to provide the auditor with all relevant information and documents held by them (sections 77 and 78 of the Act). This also applies to relevant documentation held by the agent's financial institution.

Should an auditor identify a breach of legislation or evidence of criminal activity during an audit, they must inform the Board and report the matter to the Police as soon as is practicable. To assist the Board in its investigation and in any proceedings which may eventuate, appropriate **supporting documentary evidence** of any breaches of legislation or evidence of criminal activity must be retained by the auditor. For this reason, an auditor should make **notes** throughout the audit and retain copies of all working papers.

Contents of the audit report

The auditor should report on whether the agent has complied with the requirements of section 68 of the Act. Section 68(6) deals with record keeping related to money paid into trust accounts, and requires agents to ensure that trust accounts are correctly balanced at the end of each month. Agents are also required to keep their trust accounts in such a manner that they can be conveniently and properly audited.

Section 79 of the Act is relevant to the contents of the audit report. This section requires the auditor to include in their audit report a statement relating to the maintenance and format of the trust accounts. The auditor must notify the Board of any matter that they believe should be brought to its notice. Under section 81 of the Act, an auditor must fully set out any evidence of the agent behaving dishonestly or breaching the law in relation to trust accounts.

Section 80 of the Act requires the agent to prepare a statement of trust money on the last day of the accounting period. The accounting period is between 1 January and

Auditing real estate and business agents' trust accounts

31 December each year, unless otherwise determined by the Board. This statement needs to contain particulars of all trust money, negotiable or bearer securities, and deposit receipts held on that date. The statement made by the agent is required to be verified by a statutory declaration from the person in *bona fide* control.

The auditor must examine the statement prepared by the agent and provide a certificate as to its accuracy. When submitting the audit report to the Board, a copy of the declaration and a certified copy of the statement of trust money held in the name of the agent must be attached.

The agent is required to provide full details of the trust accounts to the auditor, including:

- details of the name/s, account number/s and financial institution name and branch name where the trust account/s are maintained (this also applies to a principal's separate interest bearing trust accounts and tenancy bond trust accounts); and
- the correctly reconciled balance held in each trust account at the end of the accounting period.

Important items to be considered in the scope of the audit

When auditing an agent's trust accounts, the auditor needs to include in the scope of the audit the following items, as they form an integral part of real estate or business broking transactions:

- details of the licence and triennial certificate status of the agent;
- level of fees paid to the agent;
- drawing of commission and fees after a transaction has occurred;
- the authority for the agent to perform the service; and
- details of disbursements in accordance with the principal's authority.

Licence and triennial certificate of the agent

A real estate or business agent licence can be granted to a natural person (individual), a firm (partnership) or a body corporate (company). The entity is referred to as the 'licensed agent' in the audit report. However, in order to trade as a real estate or business agent, a licensee must hold a current triennial certificate.

The person in *bona fide* control of an agency, as well as the managers of any branches it may have, must be licensed and hold a current triennial certificate. If there is a change in the person in *bona fide* control or in the directorship of a company, the agent must notify the Board as soon as practicable.

If there is a change in the partnership of a firm, the licence ceases to have effect and the firm is no longer able to continue trading and needs to apply for a new licence from the Board. If the auditor finds any irregularities relating to the agent's licence or triennial certificate, then the auditor needs to let the Board know immediately as the agent may be unlawfully trading without a licence or without a current triennial certificate.

Level of fees

The level of fees that an agent can charge is no longer regulated in Western Australia. The fee that an agent can receive is limited to that agreed in writing between the agent and their principal. While the level of fees is primarily a matter between the agent and the agent's principal, under section 61(3c) of the Act, the agent cannot charge an unjust fee.

During the audit process, the auditor should examine a sample of different types of transactions from start to finish to ensure the agent has received the correct fees. Types of transactions undertaken by agents include residential property sales, business sales, leasing, residential property management and strata management. The auditor must report the matter to the Board if the agent has no appointment to act from the principal or has charged fees in excess of the authority of the principal.

Drawing of commission and fees

Usually, the agent is not entitled to receive fees for a real estate or business sales transaction until settlement has occurred. When sampling these transactions, it is necessary to check that the agent has not pre-drawn their commission. (Note: The appointment to act may provide that where there is failure to settle the transaction due to the fault of the agent's principal, the agent is entitled to receive their fees.) Auditors should contact the Board for clarification regarding these matters.

The agent is not entitled to receive any fees for residential, commercial or strata management transactions until these services are performed in accordance with the appointment to act of their principal. If the agent has drawn their fees before settlement, or if a management or service fee is charged contrary to the appointment, the auditor must inform the Board.

If the agent is obtaining vendor-paid advertising, the appointment to act should specify how and when moneys are to be collected (refer to article 15(2) of the Code of Conduct). It is important that the agent deposits money received for advertising into a trust account. Advertising money held should not be withdrawn from the trust account until the expense has been incurred.

6

The authority for the agent to perform the service

The agent is required to have an appointment to act to perform a real estate, business or strata management transaction. This covers any property or business sale/purchase, residential, commercial or strata management property transaction.

If the agent does not have a valid appointment to act from their principal to perform a service, then the agent is not entitled to receive any remuneration for services performed. The auditor must advise the Board of any such instances.

Charging actual disbursements in accordance with the principal's authority

The agent is required to have an appointment to act to charge disbursements to the principal and must have incurred those costs before they can be charged. For example, in property management transactions, an agent's computer system may debit the landlord for conducting a property inspection each quarter, even though the service may not have been performed. Unless an auditor sees a property inspection report for the property then the auditor may incorrectly assume the service was performed.

As the agent is a holder of trust money, government statutory charges (such as GST) may be recovered from the agent's principal as a disbursement. An authority from the agent's principal is required to recover these charges. The auditor must report situations to the Board where an agent does not have an appointment to act, or has one, but charges in excess of the actual expenditure incurred.

Key legislative provisions

Listed below are key legislative provisions of which auditors need to be aware, when auditing trust accounts. (See **Appendix B** for the full text of these extracts of legislation.)

<p>Section 26 of the Act Real estate and business agents to be licensed.</p>	<p>Section 70 of the Act Duty of agent to have trust accounts audited.</p>	<p>Section 80 of the Act Statement of money etc held by agent for or on behalf of other persons.</p>
<p>Section 61 of the Act Remuneration of agents.</p>	<p>Section 71 of the Act Variation of date of audit.</p>	<p>Section 81 of the Act Auditor's report where agent has not complied with Act, etc.</p>
<p>Section 68 of the Act Trust accounts.</p>	<p>Section 72 of the Act Qualification and approval of auditors.</p>	<p>Section 84 of the Act Penalty for breach.</p>
<p>Section 68A of the Act Person may request separate trust account.</p>	<p>Section 73 of the Act Appointment of auditor.</p>	<p>Section 87 of the Act Accounts of firm or body corporate or agent with branch office.</p>
<p>Section 68B of the Act Payment of interest on trust accounts.</p>	<p>Section 77 of the Act Duties of agents with respect to audit.</p>	<p>Article 14 of the Code of Conduct Agent not to demand unjust fees.</p>
<p>Section 68C of the Act REBA to be given certain information in relation to trust accounts.</p>	<p>Section 78 of the Act Duty of banker with respect to audit.</p>	<p>Article 15 of the Code of Conduct Principal must agree to pay for agent's expenses.</p>
<p>Section 69 of the Act Receipts and accounting to principal.</p>	<p>Section 79 of the Act Contents of audit report.</p>	<p>Regulation 6D of the Regulations Trust accounts must be correctly designated.</p>

4. Trust accounting requirements

An auditor will be exposed to four general types of trust accounts used in the real estate and business broking industries. They are: general trust accounts, tenancy bond trust accounts, variable outgoings trust accounts and interest bearing trust accounts for individual clients. Whatever the type of trust account audited, the money in those accounts is not to be used for security or other purposes.

The trust account

The 'trust account' is often referred to as the general trust account. The Act provides for an agent to maintain more than one trust account and accordingly, some agents maintain separate trust accounts for different real estate activity such as sales and property management. Interest from such accounts is paid to the Board.

Tenancy bond trust accounts

All tenancy bond trust accounts maintained by an agent are required to be audited. This should cover both the 'REBA tenancy bond trust account' as well as the tenancy bonds deposited with an authorised financial institution prior to 1 July 1996 and which are still in operation.

For tenancy bonds lodged after 1 July 1996, an agent can maintain residential tenancy bonds in a tenancy bond trust account or deposit bonds with the Bond Administrator.

The Board requires agency records to be reconciled with the Bond Administrator every three months. Auditors do this by obtaining a schedule from the Bond Administrator and reconciling the schedule against the agency's records. The Bond Administrator can be contacted on 9282 0829.

8

If an agent maintains its own tenancy bond trust account then, as with other trust accounts, it must be correctly balanced at the end of each month.

Commercial bonds are not to be deposited in REBA tenancy bond trust accounts. They can be deposited in one of the REBA general trust accounts, or a REBA interest bearing account if the tenant requests this in writing.

Variable outgoings trust account

Auditors are required to audit trust accounts that are maintained by the agent to pay various expenses incurred. Variable outgoings trust accounts are widely used in the areas of strata management and commercial tenancy.

Interest bearing trust accounts established for individual clients

Section 68A of the Act allows agents to open separate interest bearing trust accounts for individuals if a request is received in writing from the person paying the money. Before an agent can comply with a request for an individual interest bearing trust account, the transaction must either involve more than \$20,000 **or**, that the transaction will not be settled within 60 days (regulation 6E(1) of the Regulations).

Under regulation 6D(3) of the Regulations, the title of an individual interest bearing trust account should include the words 'REBA Trust Account – IB'. The 'IB' component of the designation denotes that the account is interest bearing. Interest paid on the account should be credited to the person who requested the creation of the account.

Auditing considerations

In administering trust accounts, agents need to keep their accounts up-to-date, correctly titled and have them audited when required. Section 68(1) of the Act requires every agent who holds a triennial certificate to maintain one or more trust accounts.

An agent must not allow a trust account to be overdrawn, either at the bank, in the agent's records or in a principal's trust ledger account. The auditor is required to mention such instances in their audit report to the Board. Agents and the relevant financial institution have five days in which to report to the Board if a bank trust account is overdrawn. They need to report the name and number of the trust account, and the amount by which the trust account is overdrawn. The agent must also provide a written explanation as to why the trust account was overdrawn.

The auditor must notify the Board if an agent is found to have:

- opened a separate interest bearing trust account without having a request in writing from the person paying the money; or
- opened a separate interest bearing trust account and the money received is less than \$20,000 or that settlement has/will occur in less than 60 days.

Titling of trust accounts

Regulation 6D of the Regulations requires an agent to title their trust accounts in a prescribed manner. The auditor will need to check whether the agent has correctly titled their trust accounts. To assist auditors, examples are given below on how different types of trust accounts should be titled.

General trust accounts

The titles of these accounts need to:

- contain the name of the holder of the triennial certificate, and any business name of that holder as recorded by the Board; and
- be followed by the description 'REBA Trust Account'; followed by the letters 'TC' and the agent's triennial certificate number (up to five digits).

Shown below are examples of titles for typical general trust accounts:

Sole trader

Mary Smith T/A XYZ Real Estate (ABN 12 345 678 912*)
REBA Trust a/c TC 54321

Partnership

Mary Smith and Bill Jones T/A XYZ Real Estate (ABN 12 345 678 912*)
REBA Trust a/c TC 54321

Body corporate

ABC Pty Ltd (ABN 12 345 678 912*) T/A XYZ Real Estate
REBA Trust a/c TC 54321

* If applicable.

Should an agent have more than one type of trust account (for example sales, rental etc) the account identifier should appear after the words 'REBA Trust Account'. Shown below are examples of typical account titles for an agent maintaining more than one trust account:

ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate
REBA Trust a/c – sales TC12345
ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate
REBA Trust a/c – rental TC12345

Tenancy bond trust accounts

The titles of these accounts need to:

- contain the name of the holder of the triennial certificate, and any business name of that holder as recorded by the Board; and
- be followed by the description 'REBA Tenancy Bond Trust Account'; followed by the letters 'TC' and the agent's triennial certificate number (up to five digits).

Shown below is an example of a title for a typical tenancy bond trust account:

ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate
REBA Tenancy Bond Trust a/c TC12345

Principal's separate interest bearing trust account

The titles of these accounts need to:

- contain the name of the holder of the triennial certificate, and any business name of that holder as recorded by the Board;
- be followed by the words 'in trust for' with the name of the person who requested the separate account; and
- be followed by the description 'REBA Trust Account – IB'; and followed by the letters 'TC' and the agent's triennial certificate number (up to five digits).

Shown below is an example of a title for a typical separate interest bearing trust account:

ABC Pty Ltd (ABN 12 345 678 912) T/A XYZ Real Estate in trust for Joe Smith
REBA Trust a/c – IB TC12345

5. Problem areas identified by REBA

The Board has identified a number of problem areas in audit reports, of which auditors need to be aware to ensure that audit reports meet the requirements of the Act and are prepared in accordance with the audit guidelines. Auditors must report all cases of non compliance to the Board.

Auditors not identifying the licensed entity correctly

The agent (and, if applicable, person in *bona fide* control, and licensed director or partner) must have a licence and current triennial certificate and be trading in accordance with that certificate.

Auditors not identifying and reporting trust account titles correctly

Auditors must check that trust accounts are correctly titled in accordance with Regulation 6D (see extracts at Appendix B and refer to the previous section '*Titling of trust accounts*' for examples). Furthermore, the full trust account titles should always be included in the audit report. (See Appendix A for a guide to how this should appear in '*Example of statement of trust account money held*'.)

The auditor should ensure that the agent has included their triennial certificate number in the titles of the trust accounts. These identifying details are used by the Board in its audit program of interest received from financial institutions. Auditors should qualify their audit report if the trust account is not correctly titled.

Auditors not checking trust account reconciliations

Some auditors do not check whether the agent has correctly balanced the trust accounts at the end of each month in accordance with section 68(6) of the Act. The auditors must check that the trust account reconciliations are correctly completed, signed and dated by the person in *bona fide* control of the business. Reference in trust account reconciliations to 'unreconciled bank deposits' may indicate a deficiency in the trust account funds at the bank and such instances must be reported to the Board.

Management letter not being submitted with the audit report

The Board requires the auditor to attach to the audit report a copy of any management letter provided to the agent. A copy of the management letter is important as it indicates any weaknesses or suggestions for improvement of the system in place. It also indicates the quality and detail of the audit undertaken.

Documentation of audit reports not being submitted using the format approved by the Board

Under section 70(2) of the Act, the Board may determine the requirements on how trust accounts are to be audited, including the format of audit reports. Some of the declarations made by the auditor and the agent are to be in the form of a statutory declaration. An auditor is required to submit the audit reports to the Board using the approved format. Approved templates are provided in **Appendix A** and can be downloaded from the REBA website at www.reba.wa.gov.au.

Auditors giving insufficient information on qualified audits

The Board requires auditors to provide the Board with detailed information whenever a qualified audit report is submitted. The auditor must also retain any documentary evidence in the working papers to support their opinion. Qualified audit reports can indicate a lack of internal controls on the part of the agent or the possibility of a defalcation.

Failure of the agent to report when a trust account is overdrawn

Under section 68C(3) of the Act, agents are to advise the Board in writing as soon as practicable, deemed to be within five working days, if a trust account at the bank is overdrawn. Some agents have not done so when their trust accounts were overdrawn at the bank due to bank errors. As a probity check, the auditor is to include in their audit report details of every instance of debit balances occurring in the agent's trust accounts. The audit report should include details of any trust account money that is overdrawn from the bank.

Principal's trust ledger account

The auditor is required to report any debit balance identified in a principal's trust ledger account.

Banking of trust money

Under section 68(1) of the Act, agents are required to deposit money into a trust account as soon as practicable. The Board has determined that to comply with this requirement money is to be deposited by the close of business of the next working day. When conducting an audit, it is important to verify banking times and report any delays.

Importance of statutory declarations

Many agents appear to have a poor understanding of the importance of a statutory declaration in relation to audit reports. Under section 80 of the Act, an agent is to prepare a statement of trust money on the last day of the accounting period. The agent is to verify the statement by a statutory declaration. This document is to be attached to a certified copy of statement of trust money and sent to the Board.

Use of buffer funds

The trust ledger is the most important component of the trust accounting system. The ledger summarises all of an agent's trust account transactions. The trust ledger contains a ledger account for each client showing the details and amounts of money held by the agent on behalf of their clients.

The Board is aware that the practice of some agents has been to maintain a surplus amount within the trust ledger to absorb any inadvertent deficiencies that may arise from dishonoured bank cheques and bank charges. This is known as a 'buffer fund'. A buffer fund sometimes includes undrawn commissions.

The Board does not approve of buffer funds being held, as it is a barrier to appropriate trust account management. The use of a buffer fund effectively absorbs any deficiency and disguises overdrawn trust accounts and reduces the likelihood that poor trust account management practices and other errors will be identified. Extra funds must not be kept in the trust account.

6. Example of an audit checklist

This checklist will assist auditors when auditing trust accounts opened, maintained or closed by agents. The checklist deals with general matters and matters relating to trust accounts.

Important note: This checklist includes a range of matters that auditors should consider when auditing an agent's trust accounts. Do not regard the checklist as a replacement for the auditing requirements contained in the *Australian Auditing Standards*.

Audit checklist

PART ONE - GENERAL MATTERS		
Item	Checks to be conducted	
Licence of the agent Section 60(1)(a)	<input type="checkbox"/>	The agent is licensed and the holder of a current triennial certificate.
	<input type="checkbox"/>	Identify the people who comprise the business.
	<input type="checkbox"/>	Identify the branch manager of any branch offices maintained.
Register of files Section 68(6)	<input type="checkbox"/>	Check that records are properly maintained and can be conveniently and properly audited. A register of files is important to assist in the auditing function and in the orderly management of files.)
Summary of receipts and disbursements attached to each file Section 68(6)	<input type="checkbox"/>	Check that full and accurate records of receipts and payments are maintained. (A summary of receipts and disbursements on each file assists in the auditing function. The agent is also able to ensure that any expenses incurred are recouped. The balance outstanding on the file summary should reconcile to the amount held in trust for the principal.)
Drawing of fees, commission and timing	<input type="checkbox"/>	Check that the agent is entitled to receive payment of their commission or fees (that is settlement has occurred or the service has been performed).
Remuneration of agent Section 61	<input type="checkbox"/>	Check that fees charged are in accordance with the fees agreed between the principal and the agent.
	<input type="checkbox"/>	Check that actual costs only are recouped for postage and petty expenses such as telephone calls, faxes, incurred GST and debit tax.

Supports for expenses	<input type="checkbox"/>	Check that documentation is maintained on the client's file for any fees charged (for example rates and taxes, title searches, faxes and phone calls).
Valid appointment to act Section 60	<input type="checkbox"/>	The agent has a valid appointment to act in writing signed by the person for whom the services are being provided. (Section 60(1)(b))
	<input type="checkbox"/>	The appointment clearly identifies the property; for example address of property, title details. (Section 60(2)(a)(ii))
	<input type="checkbox"/>	A true copy of the appointment to act has been given to the signatory. (Section 60(2)(c))
	<input type="checkbox"/>	The appointment must contain a statement explaining commission charges are not pursuant to any scales fixed by law and are to be agreed upon between the parties. This statement must be placed immediately before any statement outlining any agreed commission charges. (Regulation 6BA(2))
	<input type="checkbox"/>	Where the agreed commission or reward to be paid to the agent is expressed in percentage terms, the basis on which the percentage is to be calculated is to be set out clearly (for example 3 per cent or \$3,000). (Regulation 6BA(1)(a))
	<input type="checkbox"/>	Where the calculation of remuneration depends on the use of certain services (for example property management services) the appointment shall provide an explanation of the charges (for example gross rent, gross collections, letting fee) for those services. (Regulation 6BA(1)(c))
	<input type="checkbox"/>	Where the agreed commission, reward or other valuable consideration in a sale transaction is expressed in hourly, weekly or periodic rates, the maximum sum payable is also specified in monetary terms (for example \$500 per week to a maximum of \$3,000). (Regulation 6BA(1)(b)(ii))
<input type="checkbox"/>	Where any expenses are to be recovered by the agent, they must specify the nature of those expenses and clearly set out the method by which those expenses will be calculated. (Regulation 6BA(1)(d))	

Valid appointment to act continued	<input type="checkbox"/>	The appointment to act must contain a statement in plain language to the effect that the principal may seek assistance from the Board if he/she has a dispute with the agent in relation to fees. (Regulation 6BA(3))
	<input type="checkbox"/>	The appointment to act is signed by the principal (vendor/landlord) and any agreed commission, reward, or other valuable consideration, and any advertising or general expenses, is initialled by the principal. (Articles 14 & 15 of the Code of Conduct)
Security of documents	<input type="checkbox"/>	Ensure the agent maintains adequate security over documents and data. (How secure are the agent's records from fire, theft, etc? Does the agent do regular computer back-ups and where are the back-ups kept?)

PART TWO - TRUST ACCOUNTING

Item	Checks to be conducted	
Title of trust account	<input type="checkbox"/>	Check that the trust accounts are titled in accordance with the Act and the Regulations.
	<input type="checkbox"/>	Check that any separate interest bearing trust accounts are titled in accordance with the Act and Regulations and meet the criteria prescribed to open the account.
Receipt journals and payment journals	<input type="checkbox"/>	Check that all receipts and payments are posted to the journals.
	<input type="checkbox"/>	Check that appropriate details are recorded. Also check that those details are correct.
	<input type="checkbox"/>	Check that all receipts and payments are posted to the receipts and payments journals by the next working day.
Transfer journal	<input type="checkbox"/>	Check backdated entries.
	<input type="checkbox"/>	Check transfers between the principal's ledger accounts.
	<input type="checkbox"/>	Check that journals have proper narrations.

Agent's records of money held by the Bond Administrator or financial institution	<input type="checkbox"/>	Check to ensure that the agent's records of money held by the Department of Commerce's Bond Administrator is correct. (A schedule can be obtained from the Bond Administrator to check the agent's records.)
	<input type="checkbox"/>	Check for bond money lodged with financial institutions prior to 1 July 1996 along with bonds held in tenancy accounts post 1996.
Variable outgoings trust account	<input type="checkbox"/>	Check to ensure that this account is maintained in accordance with the Act.
Housekeeping	<input type="checkbox"/>	Check that outstanding credit balances in the principal's accounts are followed up
	<input type="checkbox"/>	<p>Check that unpresented cheques have been followed up on a regular basis. Make sure that at the end of each month any unpresented cheque holders have been contacted and reminded to deposit their cheque. Any lost cheques should be cancelled and re-issued.</p> <p>Under the <i>Unclaimed Money Act 1990</i> any money that does not belong to an agency, that is equal to or greater than \$100 and which has been held for six years is defined as unclaimed money and must be transferred to the Department of Treasury and Finance (DTF).</p> <p>Moneys less than \$100 can be lodged with DTF on a voluntary basis. Moneys may also be transferred to DTF on a voluntary basis after they have been held for two years.</p> <p>More information on how to transfer unclaimed moneys can be found at the DTF website: www.money.dtf.wa.gov.au</p>
Banking / trust deposit forms	<input type="checkbox"/>	Check that receipts are banked by the next working day.
	<input type="checkbox"/>	Check that money received is banked in the same form as received (for example, that cash is not substituted by a cheque).
	<input type="checkbox"/>	Check that daily receipts reconcile to the daily banking deposit.
	<input type="checkbox"/>	Check daily bankings to the bank statement.

Banking / trust deposit forms continued	<input type="checkbox"/>	Identify and report deposits from agent's own funds/ staff (for example cheques issued from the agent's general account).
	<input type="checkbox"/>	Check for trust accounts that have been closed during the audit year.
	<input type="checkbox"/>	Check for unusual items.
Accounting controls	<input type="checkbox"/>	Check that the licensee or the person in <i>bona fide</i> control of the agency understands the accounting systems and the controls in place.
Trust ledger accounts	<input type="checkbox"/>	Check all ledger accounts with unusual transactions patterns.
	<input type="checkbox"/>	Check accounts in the name of the agent.
	<input type="checkbox"/>	Check ledger accounts for debit balances, obtain an explanation and report to the Board.
	<input type="checkbox"/>	Check that transactions are posted in chronological order.
	<input type="checkbox"/>	Check buffer/holding miscellaneous/suspense and commission accounts.
	<input type="checkbox"/>	Check payments made to the agent that do not relate to commission.
Trust receipts	<input type="checkbox"/>	Receipt details are to include the name of the holder of the triennial certificate, and any business name of that holder as recorded by the Board.
	<input type="checkbox"/>	Check that receipts are banked by the next working day.
	<input type="checkbox"/>	Check receipts to the bank deposit book/record.
	<input type="checkbox"/>	Check that receipts are entered in the books of account by the next working day.
	<input type="checkbox"/>	Check receipts to the general ledger and principal's ledger.
	<input type="checkbox"/>	Check the sequence of receipt numbers issued. Sight any cancelled receipts.
	<input type="checkbox"/>	Check for backdated or post dated receipts and any alterations.

Trust receipts continued	<input type="checkbox"/>	Check that there are adequate narrations on receipts to identify the payment.
	<input type="checkbox"/>	Ensure the agent maintains adequate control over receipts and the issuing of receipts. For example, the use of a register of trust account receipt forms. (What controls are there over the issue of receipts? Who issues receipts and are they stored securely?)
	<input type="checkbox"/>	Check for unusual deposits/receipts.
	<input type="checkbox"/>	If an interim receipt is issued then verify that an official receipt is subsequently issued.
Cheques or payments	<input type="checkbox"/>	Verify that the cheque particulars include the same title details as the trust account.
	<input type="checkbox"/>	Verify that cheques are entered in the books of account by the next working day.
	<input type="checkbox"/>	Check disbursements entered into the principal's trust ledger account to the bank account in the trust ledger.
	<input type="checkbox"/>	Verify that when cheques were drawn there were sufficient funds in the principal's trust ledger account to meet the payment.
	<input type="checkbox"/>	Check disbursements to the principal's ledger and general ledger.
	<input type="checkbox"/>	Verify cheque details to the bank statement.
	<input type="checkbox"/>	Ensure the agent maintains adequate control over cheques. (What controls are there over the issue of cheques? Who issues cheques and are the cheques stored securely?)
	<input type="checkbox"/>	Check that the person in <i>bona fide</i> control signs all cheques or alternatively that there are adequate internal controls in place.
	<input type="checkbox"/>	Check that there is appropriate supporting documentation for the issue of the cheque.
	<input type="checkbox"/>	Check the sequence of cheque numbers issued. Sight any cancelled cheques.

Cheques or payments continued	<input type="checkbox"/>	Ensure cheques recorded on the principal's files are issued for the same amount.
	<input type="checkbox"/>	Check payee on duplicate cheque or computer records to the principal's files.
	<input type="checkbox"/>	Check for unusual type payments.
	<input type="checkbox"/>	Check payment where narration is inadequate.
	<input type="checkbox"/>	Check post-dated and backdated cheques.
	<input type="checkbox"/>	Check for alterations made to cheques.
	<input type="checkbox"/>	Verify unpresented cheques. (Outstanding cheques should not be older than 12 months. Follow-up action should be taken by the agent. See the 'Housekeeping' checklist item for more information.)
Reconciliations	<input type="checkbox"/>	Check that the trust account is reconciled on a monthly basis to the last business day of the month. (It is the Board's policy that reconciliations are to be performed within 10 working days of month end. The reconciliation is to include the bank account, cash book, and the trust ledger accounts.)
	<input type="checkbox"/>	Check that the person in <i>bona fide</i> control verifies and signs the trust reconciliation.
	<input type="checkbox"/>	Check if a 'Confirmation Letter' is required. A 'Confirmation Letter' is not required if the auditor has sighted the original bank statement for the end of the year and the reported balance of the trust account is in order. The auditor is to ensure that all trust accounts are included in the audit report provided to the Board. This is to include trust accounts that have been closed during the year.
	<input type="checkbox"/>	Check outstanding balances on the principal's trust ledgers. (Follow-up action should be taken by the agent.)
	<input type="checkbox"/>	Check that adjustments are not continuously carried forward in the reconciliations. (This indicates a problem in the trust account. If there is a shortfall there may have been a defalcation or if there is an outstanding surplus this can lead to a future defalcation.)

Reconciliations continued	<input type="checkbox"/>	Check any adjusting entries or balancing items.
	<input type="checkbox"/>	Check bank statements for continuity, for unusual entries, and whether they show a debit balance at any time during the year.
	<input type="checkbox"/>	Verify cheques issued to the bank statement.
	<input type="checkbox"/>	Check direct debits and credits.
	<input type="checkbox"/>	Check for consistency in bank statement balance.
	<input type="checkbox"/>	Check for consistency in total receipts received during the month.
	<input type="checkbox"/>	Check that the financial institution has not credited interest to the bank trust account.
	<input type="checkbox"/>	Check that no bank or government charges have been debited to the bank trust account.

7. Frequently asked questions

Listed below are some common questions asked by auditors of trust accounts.

What is the procedure if an agent wants to change their auditor?

Agents appoint their trust account auditor at the time of applying for a licence. This appointment is continuous unless an agent obtains written approval from the Board to change their auditor. Agents wishing to change their auditor must apply to the Board in writing giving reasons for the need to change. The agent must also obtain agreement from their current auditor to relinquish their statutory responsibility and the consent of the nominated replacement auditor. The Board will consider each application on its merits. A change of auditor request form that meets the Board's requirements when completed can be downloaded from the REBA website at www.reba.wa.gov.au. For more information refer to section 3:5 in the trust accounting companion manual.

What is the format of a termination audit?

The format is the same as the annual audit, however, the auditor should refer to it as a termination audit and record the audit period.

If the termination audit is due and there is still money held in the trust account, what should an auditor do?

The auditor must deliver the termination audit report to the Board within five months of the agent's licence ceasing to have effect. The trust account is not required to have a nil balance for the termination audit report to be prepared. The auditor is to record any money held in the trust account as at the date of completing the report. When the trust account has a nil balance, the auditor must send a letter of clearance to the Board.

If a termination audit is conducted, what should happen to any trust funds not disbursed by the finalisation date?

The auditor should ensure that money is paid by the agent to the rightful recipients as soon as possible. Unclaimed money may be dealt with under the *Unclaimed Money Act 1990* immediately when a business ceases to trade.

Can an agent maintain additional funds to act as a 'buffer' in the trust account?

In no circumstances should extra funds be kept in the trust account. A buffer fund cannot be used to offset bank fees or for any other reason. Agents should clear their commission or fees account to their general account at least weekly. The Board strongly recommends against the practice of retaining commissions and management fees in the trust account for an extended period of time.

Can an agent offset a debit balance in a client trust ledger account against a credit balance in another ledger account?

Each client's trust ledger account is maintained as a trust account and should not go into debit balance. A debit balance in a client trust ledger account cannot be offset against a credit balance in another ledger account (for example the agent's fee account).

Does an auditor have to notify the Board if they believe that a conflict of interest has arisen between themselves and the agent?

In all such cases the Board must be notified. It will then make a decision as to whether the agent needs to seek a replacement auditor.

What are the components of a valid reconciliation?

There are three components of a valid trust account reconciliation, which are:

- bank statement balance;
- trust account balance; and
- total of client balances in the trust ledger.

The bank statement balance is the starting point and when the reconciliation is completed, the balance shown as the trust account balance should be equivalent to the total funds held in the trust ledger.

When should a reconciliation be done?

Trust accounts must be correctly reconciled at the end of each month. The Board's policy is that reconciliations should be performed within 10 working days of month end.

Is an agent required to sign their trust account reconciliation?

Yes. The Board regards the agent as the appropriate person to sign. They are responsible for the reconciliation being done and for its content.

Should cheques and receipts be numbered sequentially?

Yes. The agent should keep details of cheques and receipts with their monthly reconciliations or in an audit file to ensure that an auditor can verify the sequence.

What happens if the business structure of an agency changes (that is a sole trader becoming a partnership or corporate body, or the business of a corporate body is taken over by another corporate body)

If the entity changes, then a new licence and triennial certificate needs to be obtained from the Board. The agent is required to finalise all existing trust accounts and open new accounts in the name of the new entity. The agent will also need to arrange a termination audit of the trust account of the old entity.

Is an audit required when a business changes its name?

An additional audit is not required if a business changes its name but the entity remains the same. However, all bank accounts must be re-titled to reflect the new business name.

What should an auditor do if fraud or theft from a trust account is indicated?

The auditor should immediately notify the Board of the circumstances of the missing money and also notify the Police.

What are the most common forms of misappropriation encountered by auditors of trust accounts?

The Board has identified the following common methods used to misappropriate trust money:

- kiting (whereby an overstatement of cash in a particular bank account is created by cash transfers between bank accounts);
- ghost accounts (keeping another set of books outside the trust account);
- manipulating of the balance of trust accounts; and
- pre-drawn commissions.

What does it mean ‘as soon as practicable’ in relation to banking of trust money?

Section 68(1) of the Act requires agents to deposit money into a trust account as soon as practicable. The Board has determined that in most cases the money is to be deposited by close of business the next working day. The auditor is to verify banking times and report any delays.

Are strata management accounts required to be audited?

Yes. Where strata management services are provided by a licensed real estate agent as part of the agency’s business, section 68(1) of the Act requires that the agency pays any money received in relation to strata management into the agency’s trust account. Therefore, these funds will also be part of an audit.

When an agent banks trust money, can the agent replace cash received for a real estate transaction with a cheque?

No. Money received in a real estate transaction is required to be banked in the same form as it is received. For example, an agent cannot replace cash from a daily banking with a trust cheque or a personal cheque to provide a cash refund of a tenant’s bond.

Can an agent pay accounts of behalf of their clients by credit card?

No. The Board has determined that agents cannot pay creditors of their clients by credit card and then reimburse themselves from the trust account. It is the Board’s view that the recouping of the money from the client would be an unauthorised withdrawal from the trust account and the agent would therefore breach section 68(4) of the Act.

The Board advised the industry with respect to the use of credit cards by agents in the *REBA News*, Edition 31, Spring 2002. Agents were warned against the practice of using credit cards to pay the creditors of their clients with the aim of obtaining loyalty points or some other personal benefit. The Board considers this practice could potentially breach the Act.

Should every agent who holds a triennial certificate have a trust account?

Yes, except where a condition has been placed on the triennial certificate, ‘the holder shall notify the Board not less than 21 days prior to commencing business’ (section 34 of the Act).

If trust accounts existed during the course of the calendar year, a final audit is still required.

Should trust accounts that have been closed during the year, be included in the audit?

Yes, trust accounts closed during the year should be audited at the end of the year.

Should branch offices have their own trust accounts?

No, unless the Board has given notice that a separate audit of the branch accounts is required (section 74 of the Act). However, they may be included in the annual audit submitted by a licensed agent.

Is an audit required where part of an agency’s business is sold, for example a rent roll?

Best practice is that an audit is conducted prior to handing over the business records to the purchaser. Although not required under the Act, when part of an agency’s business is sold, it is recommended that an audit be conducted of that part of the business before the business records are handed over to the purchaser.

8. Appendix A: Format of audit reports

As mentioned in the introduction to this guide, the Board can determine requirements on how trust accounts are to be audited (section 70(2) of the Act). This includes the nature of audit reports. The following pages show the templates/formats of audit reports that auditors should use. They can also be downloaded from the REBA website at www.reba.wa.gov.au.

The templates consist of:

- a covering letter from auditor to the Registrar of the Board for an audit report;
- a declaration by auditor (section 72 matters);
- a statutory declaration by person in *bona fide* control (verifying statement of balances held);
- a statutory declaration by auditor (section 79 matters); and
- a statement of trust account money held (Annexure A).

Owing to legal implications, the prescribed audit formats need to be supported by a statutory declaration where required. Under the *Oaths, Affidavits and Statutory Declarations Act 2005*, the following persons are authorised to witness statutory declarations:

Name of profession	Definition
Academic staff member	A member of the academic staff of an institution established under any of the following Acts: <ul style="list-style-type: none">• <i>Curtin University of Technology Act 1966</i>• <i>Edith Cowan University Act 1984</i>• <i>Murdoch University Act 1973</i>• <i>University of Notre Dame Australia Act 1989</i>• <i>University of Western Australia Act 1911</i>• <i>Vocational Education and Training Act 1996</i>
Accountant	A member of any of the following bodies: <ul style="list-style-type: none">• Association of Taxation and Management Accountants• CPA Australia• The Institute of Chartered Accountants in Australia• National Institute of Accountants• National Tax & Accountants' Association
Architect	A person who is registered under the <i>Architects Act 2004</i> .
Australian Consular Officer	An Australian Consular Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.

Name of profession	Definition
Australian Diplomatic Officer	An Australian Diplomatic Officer within the meaning of the <i>Consular Fees Act 1955</i> of the Commonwealth.
Bailiff	A bailiff appointed under the <i>Civil Judgements Enforcement Act 2004</i> .
Bank manager	A person appointed to be in charge of the head office or any branch office or an authorised deposit-taking institution carrying on business in the State under the <i>Banking Act 1959</i> of the Commonwealth.
Chartered secretary	A member of Chartered Secretaries Australia Limited.
Chemist	A pharmaceutical chemist within the meaning of the <i>Pharmacy Act 1964</i> .
Chiropractor	A chiropractor within the meaning of the <i>Chiropractors Act 1964</i> .
Company auditor or liquidator	A person registered as an auditor or a liquidator under the <i>Corporations Act 2001</i> of the Commonwealth.
Court officer	A judge, master, magistrate, registrar or clerk, of the chief executive officer, of any court of the State or the Commonwealth.
Defence force officer	A member of the Australian Defence Force who is: <ul style="list-style-type: none"> • an officer within the meaning of the <i>Defence Force Discipline Act 1982</i> of the Commonwealth; • a non-commissioned officer within the meaning of that Act with five or more years of continuous service; or • a warrant officer within the meaning of that Act.
Dentist	A dentist within the meaning of the <i>Dental Act 1939</i> .
Doctor	A medical practitioner as defined in the <i>Medical Practitioners Act 2008</i> section 4.
Electorate officer of a member of State Parliament	A person appointed under the <i>Parliamentary and Electorate Staff (Employment) Act 1992</i> section 4(1)(b)(i) or (2)(b)(i).
Engineer	A member of the Institution of Engineers, Australia, other than at the grade of student.

Name of profession	Definition
Industrial organisation secretary	The secretary of an organisation of employees or employers that is registered under one of the following Acts: <ul style="list-style-type: none"> • <i>Industrial Relations Act 1979</i> • <i>Workplace Relations Act 1996</i> of the Commonwealth
Insurance broker	A member of the National Insurance Brokers Association of Australia.
Justice of the Peace	A Justice of the Peace.
Landgate officer	A person who is a member of the Authority's staff within the meaning given to that term by the <i>Land Information Authority Act 2006</i> section 3.
Lawyer	An Australian lawyer within the meaning of that term in the <i>Legal Profession Act 2008</i> section 3.
Local government CEO or deputy CEO	The chief executive officer or deputy chief executive officer of a local government.
Local government councillor	A member of the council of local government within the meaning of the <i>Local Government Act 1995</i> .
Loss adjuster	A member of the Australasian Institute of Chartered Loss Adjusters.
Marriage celebrant	An authorised celebrant within the meaning of the <i>Marriage Act 1961</i> of the Commonwealth.
Member of Parliament	A member of either the House of Parliament of the State or of the Commonwealth.
Minister of religion	A minister of religion registered under Part IV Division 1 of the <i>Marriage Act 1961</i> of the Marriage Act of the Commonwealth.
Nurse	A nurse within the meaning of the <i>Nurses Act 1992</i> .
Optometrist	A registered optometrist within the meaning of the <i>Optometrists Act 1940</i> .
Patent attorney	A registered patent attorney under the <i>Patents Act 1990</i> of the Commonwealth.
Physiotherapist	A physiotherapist within the meaning of the <i>Physiotherapists Act 1950</i> .

Name of profession	Definition
Podiatrist	A podiatrist within the meaning of the <i>Podiatrists Registration Act 1984</i> .
Police officer	A police officer.
Post office manager	The person in charge of an office established by, or conducted by an agent of, Australia Post within the meaning of the <i>Australian Postal Corporation Act 1989</i> of the Commonwealth.
Psychologist	A registered psychologist within the meaning of the <i>Psychologists Registration Act 1976</i> .
Public notary	A public notary within the meaning of the <i>Public Notaries Act 1979</i> .
Public servant (Commonwealth)	An officer of the Commonwealth public service.
Public servant (State)	A person who is employed under the <i>Public Sector Management Act 1994</i> Part 3.
Real estate agent	The holder of licence under the <i>Real Estate and Business Agents Act 1978</i> .
Settlement agent	The holder of a licence under the <i>Settlement Agents Act 1981</i> .
Sheriff or deputy sheriff	The Sheriff of Western Australia and any deputy sheriff appointed by the Sheriff of Western Australia.
Surveyor	A licensed surveyor within the meaning of the <i>Licensed Surveyors Act 1909</i> .
Teacher	A person employed as a member of the teaching staff within the meaning of the <i>School Education Act 1999</i> or as a teacher of a non-government school within the meaning of that Act.
Tribunal officer	A member, register or clerk, or the chief executive officer, of any tribunal of the State or the Commonwealth.
Veterinary surgeon	A registered veterinary surgeon within the meaning of the <i>Veterinary Surgeons Act 1960</i> .

Questions to be completed before the audit report is submitted to the Board

Any incomplete or inaccurate reports may be returned to the auditor, causing delays in lodgement. Please ensure each box is checked before the audit report is submitted.

<input type="checkbox"/>	Is the audit year correct?
<input type="checkbox"/>	Is the licensed agent's name correct?
<input type="checkbox"/>	Is the licensed agent's name identical on all documents?
<input type="checkbox"/>	Is the trading name correct?
<input type="checkbox"/>	Is the business address correct?
<input type="checkbox"/>	Has the business moved in the previous year?
<input type="checkbox"/>	Is the number on the triennial certificate correct?
<input type="checkbox"/>	Is the licence continuous and the triennial certificate current?
<input type="checkbox"/>	Are the details of the person in <i>bona fide</i> control and licensed partner/director correct?
<input type="checkbox"/>	Are the declarations in the correct format?
<input type="checkbox"/>	Are the attached declarations correctly witnessed?
<input type="checkbox"/>	Is a copy of the management letter attached?
<input type="checkbox"/>	If the agency has lodged audit reports previously, is the auditor the same used in the previous year? If the agency has changed its auditor then: <input type="checkbox"/> Has the real estate agency provided a request in writing to the Board stating the reasons for a change? <input type="checkbox"/> Has a letter from the previous auditor been sent to the Board relinquishing responsibility and stating that they are not aware of any issues that should be brought to its attention? <input type="checkbox"/> Has a letter of acceptance from the new auditor been sent to the Board?

Example of an auditor's covering letter for an audit report

Your ref:
Our ref:
Enquiries:

Date:

The Registrar
Real Estate and Business Agents Supervisory Board
Locked Bag 14
Cloisters Square
PERTH WA 6850

Dear Sir/Madam

Re: AUDIT OF TRUST ACCOUNT -
*(name of licensed agent)**

Please find enclosed documents that relate to the audited trust accounts of the above mentioned agent for the year ended *(date)*.

Enclosed are:

1. Declaration by auditor;
2. Statutory declaration by person in *bona fide* control;
3. Statutory declaration by auditor;
4. Statement of trust account money held; and
5. copy of management letter (if one has been issued).

Yours faithfully

..... *(signature)*

* Examples of the name of a licensed agent:

Sole trader: Mary Smith T/A XYZ Real Estate
Partnership: Mary Smith and Bill Jones T/A XYZ Real Estate
Corporate body: ABC Pty Ltd T/A XYZ Real Estate

Example of declaration by auditor

Declaration by auditor

Real estate and Business Agents Act 1978, Section 72(1)(3)

I, *(name of auditor)*
of
(auditor's business name and address)

do solemnly and sincerely declare:

1. That I am a registered company auditor within the meaning of Part 9.2 of the *Corporations Act 2001* (Cwlth).
2. That in accordance with the *Real Estate and Business Agents Act 1978*, I have, with the assistance of my staff, audited the trust account of
(name of licensed agent)*, with the business address being
.....
(business address) for the year ended *(date)*.
3. That I am not a real estate and business agent carrying on business as such, nor a partner, clerk or servant of the above named real estate and business agent or any other real estate and business agency actually in practice.
4. That I am not related by blood or marriage or in a de facto relationship with the above named real estate and business agent nor have I had any business dealings with that real estate and business agent during my appointment as the agent's auditor.

Declared at *(place)*
this day of 20.....

..... *(signature)*

* Examples of the name of a licensed agent:

Sole trader: Mary Smith T/A XYZ Real Estate

Partnership: Mary Smith and Bill Jones T/A XYZ Real Estate

Corporate body: ABC Pty Ltd T/A XYZ Real Estate

Example of statutory declaration by person in *bona fide* control

Verifying statement of balances held

Real estate and Business Agents Act 1978, Section 72 80(5)

I, (*name of person in bona fide control*)
of (*home address*)

sincerely declare as follows:

1. I am the person in *bona fide* control of the business carried on by
.....
(*name of licensed agent**) with the business address being
..... (*business address*).
2. That annexed hereto and marked with the letter 'A' is a statement of:
 - (i) money held on (*date*) by
(*name of licensed agent**) for or on behalf of any other persons; and
 - (ii) of negotiable or bearer securities or deposit receipts in the name of
..... (*name of licensed agent**)
which represent money drawn from the trust account and which were held by
..... (*name of licensed agent**)
on that day.
3. That the particulars shown in the annexed statement marked with the letter 'A' are true and correct in every detail therein.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* at (*place*)

on (*date*)

by (*signature of person making the declaration*)

in the presence of (*signature of authorised witness***)

.....
(*name of authorised witness and qualification as such a witness*)

* Examples of the name of a licensed agent:

Sole trader: Mary Smith T/A XYZ Real Estate

Partnership: Mary Smith and Bill Jones T/A XYZ Real Estate

Corporate body: ABC Pty Ltd T/A XYZ Real Estate

** Justice of the Peace or other authorised person.

Example of statutory declaration by auditor

Note: If the audit is qualified, full details must be provided to the Board in the audit report.

Statutory declaration by auditor

Real estate and Business Agents Act 1978, Section 70(3)(a)

I,(*insert auditor's* name*)
of
(*insert auditor's business name and address*)

auditor, sincerely declare as follows:

1. That in accordance with the *Real Estate and Business Agents Act 1978*, I have, with the assistance of my staff, audited the trust account of
.....(*name of licensed agent***)
with the business address being
.....
(*business address*) for the year ended (*date*).
2. I declare the audit of the above mentioned agent's trust account has been completed for the year ended (*date*) and I now report thereon in accordance with sections 70(2) and 79 of the *Real Estate and Business Agents Act 1978* that in my opinion:
 - (a) the trust accounts have been regularly kept and properly written up;
 - (b) the trust accounts were ready for examination at the periods appointed by me;
 - (c) the agent has complied with all my requirements as auditor;
 - (d) the trust accounts are and have been in order during the year of the audit; and
 - (e) there is no matter in relation to the trust accounts that should, in my opinion, be communicated to the Board.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005* at (*place*)
on (*date*)
by.....(*signature of person making the declaration*)
in the presence of(*signature of authorised witness****)

.....
(*name of authorised witness and qualification as such a witness*)

* An auditor must be registered as an auditor under Part 9.2 of the *Corporations Act 2001 (Cwlth)*.

** Examples of the name of a licensed agent:

Sole trader: Mary Smith T/A XYZ Real Estate

Partnership: Mary Smith and Bill Jones T/A XYZ Real Estate

Corporate body: ABC Pty Ltd T/A XYZ Real Estate

*** Justice of the Peace or other authorised person.

Example of statement of trust account money held

Annexure A

Statement of trust account money of

.....
(name of licensed agent*)

HELD **(date)**.

This is the statement marked 'A' referred to in the declaration of
 **(name of person in bona fide control of the business)**,
 being the person in *bona fide* control of the business carried on by

.....
(name of licensed agent*) declared on theday of 20.....

Cash at bank

(Insert details of all trust accounts held)

Details required:

- the name/s, account/s number/s and financial institution name and branch name where the trust account/s is, or are, maintained. (This reporting requirement applies to general trust accounts, tenancy bond trust accounts and clients' separate interest bearing trust accounts, including those which have been closed during the audit year); and
- the reconciled balance held in each trust account as at the audit date.

TYPES OF TRUST ACCOUNTS

Note: See the section 'Titling of trust accounts' in this booklet for further details.

General trust accounts

ABC Pty Ltd T/A XYZ Real Estate REBA
Trust a/c-Sales TC12345

ZYX Bank, Morley Branch
Account number 6041 11111 \$x,xxx.xx

ABC Pty Ltd T/A XYZ Real Estate
REBA Trust a/c-Property Management
TC12345

ZYX Bank, Morley Branch
Account number 6041 22222 \$x,xxx.xx

Tenancy bond trust account

ABC Pty Ltd T/A XYZ Real Estate REBA
Tenancy Bond Trust a/c TC12345

ZYX Bank, Morley Branch
Account number 6041 33333 \$x,xxx.xx

Separate Interest bearing trust account

ABC Pty Ltd T/A XYZ Real Estate
in trust for John Smith REBA Trust
Account - IB TC12345

ZYX Bank, Morley Branch
Account number 6041 44444 \$x,xxx.xx

Strata title management trust account

ABC Pty Ltd T/A XYZ Real Estate REBA
Trust Account - Strata Title Management
Trust Account TC12345

ZYX Bank, Morley Branch
Account number 6041 55555

Variable outgoings trust account

ABC Pty Ltd T/A XYZ Real Estate REBA
Trust Account - Variable Outgoings Trust
Account TC12345

ZYX Bank, Morley Branch
Account number 6041 66666

Securities

(Insert details of negotiable or bearer securities or deposit receipts held)

Certified as a correct list of balances:

..... *(signature of person in bona fide control)*

I hereby certify that in my opinion, the above is a correct statement of any trust
accounts held by

(name of licensed agent)* as at *(date)*

on behalf of other persons according to the trust accounts of the business.

..... *(signature of auditor)* *(date)*

* Examples of the name of a licensed agent:

Sole trader: Mary Smith T/A XYZ Real Estate

Partnership: Mary Smith and Bill Jones T/A XYZ Real Estate

Corporate body: ABC Pty Ltd T/A XYZ Real Estate

9. Appendix B: Extracts of relevant legislation

Shown below is the full text of the relevant sections of the statutes, Regulations and Code of Conduct mentioned in this publication.

Real Estate and Business Agents Act 1978

Section 4(3a). Interpretation and construction

For the purposes of this Act, moneys collected by an agent for or on behalf of a strata company are deemed to be moneys collected by the agent in respect of a real estate transaction.

Section 26. Real estate and business agents to be licensed

On and after the appointed day a person shall not carry on business, or by any means hold himself or itself out, as a real estate agent, or a business agent, or both a real estate agent and a business agent, unless he or it is licensed as such under this Act and holds a current triennial certificate in respect of the licence.

Penalty: \$20,000.

Section 34. Conditions on licences and triennial certificates

- (1) A licensee shall comply with the provisions of this Act and the agents code of conduct.
- (2) The Board may grant a licence or grant or renew a triennial certificate subject to such special conditions as it thinks fit.
- (3) A licensee shall comply with any special conditions to which under subsection (2) his licence or triennial certificate is subject.

Section 60. Agent not entitled to commission etc. unless licensed and validly appointed

- (1) An agent is not entitled to receive any commission, reward, or other valuable consideration in respect of his services in that capacity unless:
 - (a) he is licensed in that capacity and he holds a current triennial certificate in respect of his licence when he renders the services; and
 - (b) he has a valid appointment to act in that capacity which is in writing signed by the person for whom the services are or are to be rendered or by some other person lawfully authorised to sign on behalf of the person for whom the services are or are to be rendered.
- (2) An appointment to act as an agent is not valid unless:
 - (a) it is contained in a document which:
 - (i) clearly sets out the services that are or are to be rendered;
 - (ii) where specific property is to be the subject of those services, clearly identifies the property;
 - (iia) clearly sets out the method by which the amount of any commission, reward or other valuable consideration to be received for those services is to be calculated; and
 - (iii) contains such other information, if any, as is prescribed;

- (b) the document is not an offer or acceptance or a contract, or a document purporting to be an offer or acceptance or a contract, binding or purporting to bind a party thereto to a transaction; and
 - (c) the person obtaining the signature to the document gives a true copy thereof to the signatory immediately after the signing thereof (the onus of proof of which is upon the person obtaining the signature).
- (3) A person shall not demand or receive any commission, reward, or other valuable consideration in contravention of subsection (1) or (2), or both.

Penalty: \$5,000.

- (4) Any commission, reward, or other valuable consideration received in contravention of subsection (1) or (2), or both, may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Section 61. Agents' commissions etc. may be regulated

- (1) The Board may, with the approval of the Minister, by notice published in the *Government Gazette* fix the maximum amount of remuneration, whether by way of commission or otherwise, that a licensee is to receive for a service rendered by the licensee in the course of and incidental to the licensee's business as an agent.
- (2) The Board may, with the approval of the Minister, by further notice published in the *Government Gazette*, amend or revoke a notice under subsection (1).
- (3) An amount fixed under subsection (1) takes effect on the date on which the notice fixing the amount is published in the *Government Gazette* or on such subsequent date as is specified in the notice.
- (a) The Board may fix an amount under subsection (1) by reference to:
 - (a) the type of transaction negotiated and its value; or
 - (b) the type of service rendered and the value of the property in respect of which the service was rendered.
 - (b) If an amount is fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to receive for that service, in the licensee's capacity as an agent, any commission, reward or other valuable consideration which exceeds that amount in value.
 - (c) If an amount is not fixed under subsection (1) in respect of a service rendered by a licensee, the licensee is not entitled to demand, receive or hold for that service, in the licensee's capacity as an agent, any commission, reward or other valuable consideration which is unjust in the circumstances.
- (4) The remuneration of an agent for services rendered by him in his capacity as agent in respect of a transaction he has negotiated is payable only on settlement of the transaction unless there is a failure to settle the transaction and that failure is due to the fault of the agent's principal.
- (5) A licensee shall not demand, receive, or hold any commission, reward, or other valuable consideration in contravention of this section.

Penalty: \$5,000.

- (6) Any commission, reward, or other valuable consideration received or held in contravention of this section may be recovered as a civil debt recoverable summarily in any court of competent jurisdiction.

Section 68. Trust accounts, use of

- (1) Every agent who holds a current triennial certificate shall maintain one or more trust accounts, designated or evidenced as such, in the prescribed manner, with an authorised financial institution and shall, as soon as practicable, pay to the credit of that account or those accounts all money received by him for or on behalf of any other person in respect of transactions.
- (2) Money so paid into any such trust account shall not be available for the payment of the debt of any other creditor of the agent, or be liable to be attached or taken in execution under the order or process of any court at the instance of any such creditors.
- (3) An agent may pay out of a trust account such of the proper charges relating to transactions as are payable by the persons on whose behalf the money are received but may do so only when those charges lawfully fall due.
- (4) Money received by an agent for or on behalf of another person in respect of a transaction shall not be withdrawn from a trust account except for the purposes of the transaction, or as otherwise authorised by this Act, or as otherwise authorised by the person or persons lawfully entitled to the money.
- (5) An agent shall pay money withdrawn from a trust account to the person or persons lawfully entitled or authorised to receive them.
- (6) An agent shall:
 - (a) keep full and accurate accounts of all money received or held by him on account of any other person and of all payments made by him of that money;
 - (b) before the end of the next business day after the day on which the money is received or paid, enter in the accounts particulars of the amount so received or paid and the person from whom it was so received or to whom it was so paid;
 - (c) keep the accounts in such manner that they can be conveniently and properly audited; and
 - (d) correctly balance the accounts at the end of each month.

Section 68A. Client may request agent to create separate trust account

- (1) A person may request that money paid by that person to an agent in respect of a transaction be deposited to the credit of a separate interest bearing trust account maintained in accordance with section 68.
- (2) A request shall be in writing.
- (3) An agent shall, subject to subsection (4), comply with a request.
- (4) Where requirements are prescribed under subsection (6), an agent shall only comply with a request if satisfied that those requirements have been met.
- (5) An agent shall ensure that all interest credited to a separate account is paid to the person who requested the deposit of money in that account.

- (6) Regulations made under section 145 may prescribe requirements to be met before a request can be complied with and, without limiting this subsection, those requirements may relate to:
- (a) the amount of money paid to the agent;
 - (b) the type of transaction in respect of which the money are paid; or
 - (c) the length of time for which the money are to be deposited.
- (7) In this section 'request' means a request under subsection (1).

[Section 68A inserted by No. 59 of 1995 s. 14.]

Section 68B. Interest on trust accounts to be paid by financial institutions

- (1) Every authorised financial institution with which a trust account is maintained shall pay to the credit of the Account interest on the balance of the trust account at the prescribed rate at such times as are prescribed.
- (2) Subsection (1) does not apply to a separate account.
- (3) Where a court convicts an authorised financial institution of an offence under subsection (1) and interest required to be paid under that subsection remains outstanding, the court may, in addition to imposing a penalty, order the institution to pay to the credit of the Account an amount equal to the amount of that interest, and any such order may be enforced as if it were a judgment of the court.
- (4) In regulations made under section 145 the prescribed rate referred to in subsection (1) may be prescribed by reference to a market rate indicator specified in the regulations.

[Section 68B inserted by No. 59 of 1995 s. 14.]

Section 68C. Trust accounts, certain information about to be given to Board

- (1) When an agent opens or closes a trust account, the agent shall, as soon as is practicable, inform the Board in writing of the opening or closure of the trust account and, in doing so, shall specify:
- (a) the name and number of the trust account; and
 - (b) the name and address of the authorised financial institution with which the trust account is or was maintained.
- (2) Subsection (1) does not apply to a separate account.
- (3) If an agent's trust account is overdrawn, both the agent and the authorised financial institution with which the trust account is maintained shall, as soon as is practicable, inform the Board in writing of:
- (a) the name and number of the trust account; and
 - (b) the amount by which the trust account is overdrawn.

[Section 68C inserted by No. 59 of 1995 s. 14.]

Section 69. Trust accounts, records of and accounting for

- (1) When an agent receives money for or on behalf of any other person, the agent shall:
 - (a) unless the money is received by electronic transfer, immediately give to the person paying the money a receipt containing such information as is prescribed; and
 - (b) keep a record of the money received.
- (2) A record under subsection (1)(b) shall be kept in the prescribed manner and contain such information as is prescribed.
- (3) The agent shall produce records kept under subsection (1)(b) to the auditor at every audit, and at such other times as the auditor may reasonably require.
- [(4) repealed]
- (5) Subsection (3) does not apply in the case of an agent if the agent's auditor certifies to the Board that he is satisfied with the system employed by the agent and that the records of money received are so kept and entered up as to enable the accounts to be properly and conveniently audited, and the Board approves of the system employed by the agent of recording the receipt of money.
- (6) On receipt of any money by an agent in respect of a transaction, he shall render to the person on whose behalf the money is received an account in writing of all such money and of the application thereof.

[Section 69 amended by No. 74 of 1980 s.7; No. 59 of 1995 s.15.]

Section 70. Trust accounts, audit of

- (1) Every agent who holds a current triennial certificate during the whole or any part of a year shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an auditor duly qualified or approved under this Part.
- (2) The auditor shall conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate and in accordance with such other requirements as are determined by the Board.
- (3) The auditor shall within three months after the end of each year —
 - (a) deliver to the Board a report of the result of the audit, verified by a statutory declaration of the auditor, in an approved form; and
 - (b) deliver a copy of the report so verified to the agent.
- (4) The agent shall retain the copy of the report and produce it on demand pursuant to section 80(3).
- (5) The Registrar may, in circumstances he considers appropriate, extend the time limit for lodging reports but when he does so he shall advise the Board accordingly and the Board may confirm or cancel the extension.
- (6) The auditor shall deliver an interim report to the Board if at any time he discovers any irregularity in the trust accounts of the agent or discovers any other matter in respect of those accounts which the auditor considers should be reported to the Board and he shall verify the interim report by statutory declaration and deliver a copy of the report so verified to the agent.

- (7) The Board may require the auditor to furnish further information or carry out a further audit at any time, and the auditor shall comply with that requirement, and the cost of so doing shall be paid by the agent if the Board so directs but otherwise shall be paid by the Board from moneys standing to the credit of the Fidelity Account.
- (8) Apart from the annual audit and any interim audit provided for in this section, where, for any reason, the triennial certificate of an agent ceases to have effect under this Act, there shall, within the period of 3 months thereafter, be a termination audit of the agent's trust account, and the termination audit shall be arranged and conducted in accordance with such provisions of this Part in respect of the annual audit as are capable of being applied to the termination audit, and the auditor shall within two months after the end of that 3 months period deliver to the Board a report of such termination audit.

[Section 70 amended by No. 29 of 1982 s. 12; No. 59 of 1995 s 42; No. 77 of 2006 s. 17.]

Section 71. Audit date may be varied by Board

- (1) Notwithstanding anything else in this Part, an agent may apply in writing to the Board to fix some date other than 31 December, as the date up to which his trust accounts are to be audited, and the Board may, in its discretion, permit the agent to substitute such other date for 31 December.
- (2) The Board may, upon giving not less than one year's notice to the agent affected, revoke any permission granted under this section.
- (3) When permission is granted under this section the Board shall fix the period in respect of which the first audit shall be made, and the permission may be given upon such conditions, with respect to the time within which the first or any subsequent audit shall be made or otherwise, as the Board may think fit.
- (4) So long as the permission remains in force, and subject to any conditions which may be imposed, section 70 shall, in relation to the agent concerned, be read as if such other date was substituted for 31 December.
- (5) When any date has been substituted for 31 December under this section, the date so substituted shall not be further changed except by permission of the Board granted in accordance with this section.

Section 72. Auditors, qualification and approval of

- (1) Subject to subsection (2), no person is qualified to act as an auditor under this Part unless he is a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth.
- (2) In districts in respect of which the Board is satisfied that no person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001* of the Commonwealth is available, such other persons with such other qualifications as are approved by the Board may act as auditors under this Part.
- (3) An auditor shall disclose to the Board any de facto relationship, close relationship by blood or marriage he has with an agent whose trust accounts he has been appointed to audit or any business dealings he has with or through such agent at any time during his appointment as auditor, and the Board may, if it thinks fit, disqualify that auditor from acting in that particular case.

[Section 72 amended by No. 10 of 1982 s. 28; No. 59 of 1995 s. 16, No. 10 of 2001 s. 220; No. 28 of 2003 s. 175.]

Section 73. Auditors, appointment of

- (1) Subject to the provisions of this Part the auditor by whom the audit of, and reports on, an agent's trust accounts are to be made shall be appointed and employed for that purpose by that agent.
- (2) An agent shall appoint his auditor at the time of applying for his licence.
- (3) Subject to this Act, an auditor's appointment under this section is continuous unless the Board approves a subsequent change in the appointment.

Section 74. Audits of business carried on at more than one place

In the event of an agent carrying on business at more than one place the Board may from time to time give such directions as it thinks fit for separate audits of the trust accounts in respect of the business carried on at each place, or for the acceptance by the auditor of the certificates of some person or persons approved by the Board with respect to the examination of the trust accounts kept at any branch office of the business.

Section 75. Board may change decisions made under this Part

The Board may, if in its opinion just cause exists for doing so:

- (a) cancel or suspend the right of any person to act as auditor under this Part; or
- (b) vary or revoke any other approval, direction, permission, or authority granted or given by it under this Part.

Section 77. Audits, agents to obey auditors' requests

- (1) For the purposes of an audit or report under this Part every agent shall, as and when the auditor requires, produce to the auditor his books and all papers, accounts, documents, and securities in his possession, custody, or power in any way relating to any money received by the agent for or on behalf of any other person and shall furnish the auditor with all such information and particulars as he reasonably requires.
- (2) The auditor may examine such books, papers, accounts, documents, and securities at any time, either during, or after the end of, the period in respect of which the audit is made.

Section 78. Audits, bankers to obey auditors' requests

Every banker of an agent shall, on request of any auditor engaged in the audit of that agent's trust accounts under this Part produce to that auditor all such books, papers, accounts, documents and securities as may be reasonably necessary for the purposes of the audit.

Section 79. Auditors' reports, contents of

Every auditor of an agent's trust accounts shall include in his report furnished pursuant to section 70 a statement as to the following matters:

- (a) whether the trust accounts of such agent have in the opinion of the auditor been kept regularly and properly written up;
- (b) whether the trust accounts of such agent have been ready for examination at the periods appointed by the auditor;

- (c) whether such agent has complied with the auditor's requirements;
- (d) whether in the opinion of the auditor such agent's trust accounts are, and have been during the period of the audit, in order or otherwise; and
- (e) any matter or thing in relation to such trust accounts which should in the opinion of the auditor be communicated to the Board.

[Section 79 amended by No. 74 of 1980 s.10; No. 59 of 1995 s.17.]

Section 80. Audits, agents to certify state of trust accounts

- (1) Every agent who holds a current triennial certificate shall prepare and certify under his hand and produce to the auditor who audits his trust accounts a statement setting forth in detail particulars of:
 - (a) money held, on the last day of the period to which the audit relates, by the agent for or on behalf of any other person; and
 - (b) negotiable or bearer securities or deposit receipts in the name of the agent which represent money drawn from the agent's trust accounts and which are held by the agent on that day.
- (2) The auditor shall examine the statement and endorse on it a certificate as to whether or not it is correct, and deliver it to the agent.
- (3) The statement so delivered shall be retained by the agent and be produced on demand to the auditor making the next succeeding audit of the agent's trust accounts together with a copy of the report of the last preceding audit of those accounts verified by statutory declaration of the then auditor.
- (4) Where an agent's accounts are being audited for the first time or, where for any other reason, no statement containing the particulars set out in subsection (1) and relating to the previous period of audit is available for the purpose of audit, the agent shall in lieu thereof make out and produce to the auditor before the making of his report, a statement containing the like particulars as to money and negotiable securities held on the first day of the period to which the audit relates.
- (5) Every statement made under this section shall be verified by the statutory declaration of the agent, or, in the case of a firm, by the statutory declaration of one of the partners, or, in the case of a body corporate, by the person in *bona fide* control of the agent's business.

Section 81. Auditors to report on deficiencies etc. in trust accounts

If an auditor in the course of auditing an agent's trust accounts discovers that the accounts are not kept in such a manner as to enable them to be properly audited, or discovers any matter which appears to him to involve dishonesty or a breach of the law on the part of the agent, or discovers loss or deficiency of trust money, or failure to pay or account for any such money, or to comply with the provisions of this Act he shall fully set out the facts so discovered by him in the report to be delivered to the Board.

Section 84. Penalty for breach of Part VI

- (1) A person who contravenes or does not observe any of the foregoing provisions of this Part commits an offence.

Penalty:

- (a) in the case of an offence against section 68B(1), \$10,000;
 - (b) in any other case, \$3,000.
- (2) If an offence against those provisions is committed by a body corporate, the body corporate itself and every director, manager, secretary or other officer of the body corporate who commits, authorises or permits the act or omission constituting the offence, commits the offence.

[Section 84 amended by No. 43 of 1994 s.11; No. 59 of 1995 s.18.]

Section 87. Audits of firms etc. operate as audits of agents who are members etc.

- (1) Where trust accounts are kept by a firm of agents an audit of those accounts under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to each agent who is a member of such firm and in relation to the agent who is in *bona fide* control of the agent's business of the firm.
- (2) Where trust accounts are kept by a body corporate an audit of those accounts under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to an agent who is a director of that body corporate and in relation to the agent who is in *bona fide* control of the agent's business of the body corporate.
- (3) Where trust accounts are kept by an agent who or which has a branch office an audit of those accounts, including the accounts of the branch office, under this Part and the certificates and report of the auditor thereof operate as regards those trust accounts as an audit certificate and report in relation to an agent who is the manager of the branch office.

Real Estate and Business Agents (General) Regulations 1979

Regulation 6D Designation of trust accounts

- (1) For the purposes of section 68 (1) of the Act, a trust account is to be designated in the manner provided for in this regulation.
- (2) The designation of a trust account, other than a separate account, is to include:
 - (a) the description “REBA trust account” or “REBA tenancy bond trust account” as appropriate;
 - (b) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register; and
 - (c) the letters “TC” followed by the triennial certificate number recorded in the register.
- (3) The designation of a separate account is to include:
 - (a) the description “REBA trust account - IB”;
 - (b) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register;
 - (c) the words “in trust for” followed by the name of the person who requested the separate account; and
 - (d) the letters “TC” followed by the triennial certificate number recorded in the register.

[Regulation 6D inserted in Gazette 25 June 1996 p.2918-19.]

Regulation 6E Prescribed requirements for separate accounts

- (1) For the purposes of section 68A (4) of the Act, where the transaction in respect of which money are paid relates to the sale of real estate or a business, an agent shall only comply with the request for a separate account if the agent is satisfied that:
 - (a) the amount of money paid to the agent exceeds \$20 000; or
 - (b) the transaction is not to be settled within 60 days.
- (2) In subregulation (1):

“business” means any commercial undertaking or enterprise in respect of any profession, trade, employment, vocation, or calling.

[Regulation 6E inserted in Gazette 25 June 1996 p.2919.]

Regulation 6F Interest payable on trust accounts

- (1) or the purposes of section 68B (1) of the Act, interest on the balance of a trust account is to be paid —
 - (a) at the rate that is 70% of the relevant bank accepted bills rate calculated on a daily basis; and
 - (b) within five working days of the end of each month.

(2) In subregulation (1) (a):

“relevant bank accepted bills rate” means the 30 day bank accepted bills rate as published in Table F.1 of the “Reserve Bank of Australia Bulletin” for the month that is two months before the month in respect of which the interest is to be paid. (For example, the relevant bank accepted bills rate for May is the 30 day bank accepted bills rate for March.)

[Regulation 6F inserted in Gazette 25 June 1996 p.2919.]

Note: Auditors can view the Reserve Bank of Australia Bulletin through the web site of the Reserve Bank of Australia at www.rba.gov.au.

Regulation 6G Content of receipts

A receipt given under section 69 (1) (a) of the Act shall contain the following information:

- (aa) the heading “Trust Account Receipt”;
- (a) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register;
- (b) a number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
- (c) the date on which the money is received;
- (d) the name of the person paying the money;
- (e) the amount of money received;
- (f) a brief description of the purpose of the payment; and
- (g) if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

[Regulation 6G inserted in Gazette 25 June 1996 p.2919; amended in Gazette 17 Nov 2006 p. 4760.]

Regulation 6H Records under section 69(1)(b)

- (1) record shall be:
 - (a) kept in written form;
 - (b) kept for a period of not less than 6 years from the date on which the money was received; and
 - (c) readily accessible.
- (2) Where a receipt has been given for money received, a record shall contain the information contained in the receipt and may take the form of a duplicate copy of the receipt.
- (3) Where money has been received by electronic transfer, a record shall contain the information specified in regulation 6G (b), (c), (d), (e) and (f) and, for that purpose, the reference in regulation 6G (b) to “receipt” is to be read as a reference to “record”.

[Regulation 6H inserted in Gazette 25 June 1996 p.2919-20.]

Code of Conduct for Agents and Sales Representatives

Article 14

An agent must not demand, retain or receive a commission, reward or other valuable consideration for a service which is:

- (a) greater than the amount agreed in writing with the principal; or
- (b) unjust in the circumstances; or
- (c) not initialled on the agreement by the principal.

Article 15

- (1) If an agent is entitled to seek reimbursement from his or her principal of any expense which the agent has incurred the agent shall promptly supply to the principal all relevant information and material which the principal may reasonably require in order to be satisfied as to the amount of the expense and that the expense was properly incurred by the agent.
- (2) An agent shall not seek or retain reimbursement of an expense which the agent has incurred in respect of advertising, sign boards, printed material and promotions unless:
 - (a) the principal has agreed in writing to pay the expense;
 - (b) the agreement specifies a maximum amount which the agent may seek or retain by way of reimbursement; and
 - (c) the maximum amount is stated on the agreement and has been initialled by the principal.

Corporations Act 2001 (Cwlth) - Section 1280

Registration of auditors

- (2) Subject to this section, where an application for registration as an auditor is made under section 1279, ASIC must grant the application and register the applicant as an auditor if:
- (a) the applicant satisfies subsection (2A) or (2B); and
 - (b) ASIC is satisfied that the applicant has either:
 - (i) satisfied all the components of an auditing competency standard approved by ASIC under section 1280A; or
 - (ii) had such practical experience in auditing as is prescribed; and
 - (c) ASIC is satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor; but otherwise ASIC must refuse the application.
- (2A) The applicant satisfies this subsection if the applicant:
- (a) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia; and
 - (b) has, in the course of obtaining that degree, diploma or certificate, passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to ASIC to represent a course of study:
 - (i) in accountancy (including auditing) of not less than 3 years duration; and
 - (ii) in commercial law (including company law) or not less than 2 years duration; and
 - (c) has satisfactorily completed a course in auditing prescribed by them regulations for the purposes of this paragraph.
- (2B) The applicant satisfies this subsection if the applicant has other qualifications and experience that, in ASIC's opinion, are equivalent to the requirements mentioned in subsection (2A).
- (3) ASIC must not register as an auditor a person who is disqualified from managing corporations under Part 2D.6.
- (4) Subject to subsection (8), ASIC, may refuse to register as an auditor a person who is not resident in Australia.
- (5) Where ASIC grants an application by a person for registration as an auditor, ASIC must cause to be issued to the person a certificate by ASIC stating that the person has been registered as an auditor and specifying the day on which the application was granted.
- (7) A registration under this section is taken to have taken effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:
- (a) the registration is cancelled by ASIC or the Board; or
 - (b) the person who is registered dies.

- (8) ASIC must not refuse to register a person as an auditor unless ASIC has given the person an opportunity to appear at a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter.
- (9) Where ASIC refuses an application by a person for registration as an auditor, ASIC must, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons for it.

10. Glossary

account

Means the Board Interest Account established under section 125(1) of the Act.

Act (the)

The *Real Estate and Business Agents Act 1978*.

agent

A person who is a real estate agent or a business agent, or both a real estate agent and a business agent.

approved

Means approved by REBA.

auditor

A person appointed under the Act to audit the trust accounts of an agent.

authorised financial institution

Means a bank, a society, or any other body that is prescribed or that belongs to a class of bodies that is prescribed by the Act.

bank

A bank as defined in section 5 of the *Banking Act 1959* of the Commonwealth, or a bank constituted by or under a law of the State.

bank account

An account kept with a bank, society or other similar body.

banker

The manager, or other officer, for the time being in charge of the office of a bank, society or other body in which any account of an agent is kept.

Board (the)

The Real Estate and Business Agents Supervisory Board.

business agent

A person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money's worth, as commission, reward, or remuneration, in respect of a business transaction as defined by this section, but does not include a person whose business is to so act by reason that:

- (a) he/she is appointed by a court as a receiver or receiver and manager of the business of another; or
- (b) he/she is an official receiver or trustee within the meaning of the *Bankruptcy Act 1966*, of the Commonwealth or any Act in amendment or substitution of that Act.

business day

A day that is not a Saturday, Sunday, or public holiday.

business transaction

Means:

- (a) a sale, exchange or other disposal and a purchase, exchange or other acquisition of a business and any share or interest in a business or the goodwill thereof; and
- (b) includes any sale, exchange, or other disposal and any purchase, exchange, and other acquisition of goods, chattels or other property relating to a business transaction of the kind specified in paragraph (a); and
- (c) also includes an option to enter into a business transaction; but
- (d) does not include the sale, exchange, or other disposal or a purchase, exchange, or other acquisition of a share in the capital of a body corporate carrying on a business or an option in respect thereof.

Code of Conduct (the)

The code of conduct prescribed and published under section 101 of the Act, that is the Code of Conduct for Agents and Sales Representatives.

Commerce (formerly DOCEP)

The Department of Commerce.

defalcation by a licensee

Includes criminal or fraudulent conduct:

- (a) of a licensee;
- (b) of any one or more of the servants or agents of the licensee;
- (c) of a person who is a partner in the business of the licensee; or
- (d) where the licensee is a firm and a body corporate is a partner in the firm or where the licensee is a body corporate, of any one or more of the directors, officers, servants, or agents of the body corporate, in the course of the business of the licensee and from which arises pecuniary loss or loss of property to any other person.

licensed agent

A real estate agent is a person who holds a real estate licence and current triennial certificate under the Act.

licensee

Means a natural person, firm or body corporate licensed under the Act.

person in bona fide control

Sometimes described as agent in *bona fide* control. A licensed person in a real estate business who is responsible for the administration of real estate transactions and the supervision of persons involved in those transactions.

principal

The term 'principal' in the real estate industry refers to the client of the agent. The term does not refer to business owners or directors as is the case for most other industries.

real estate agent

Means:

A person whose business, either alone or as part of an or in connection with any other business, is to act as an agent for consideration in money or money's worth, as commission, reward or remuneration, in respect of a real estate transaction as defined by the Act, but does not include a person whose business is to so act by reason that -

- (a) he/she is appointed by a court as a receiver or receiver and manager of the business of another person; or
- (b) he/she is an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* of the Commonwealth or any Act in amendment or substitution of that Act.

real estate transaction

Means:

- (a) a sale, exchange, or other disposal and a purchase, exchange, or other acquisition of real estate and any exclusive right whether deriving from the ownership of a share or interest in a body corporate or partnership, or otherwise, to the use or occupation of real estate including the leasing, and letting, and the acquisition under lease or letting of tenancy or occupation of real estate; and
- (b) includes any sale, exchange, or other disposal and any purchase, exchange, or other acquisition of goods, chattels or other property relating to a real estate transaction of a kind specified in paragraph (a); and
- (c) includes the collection of rents or other payments for use or occupation; and
- (d) also includes an option to enter into a real estate transaction.

REBA

The Real Estate and Business Agents Supervisory Board.

TC

Denotes triennial certificate. Used in titles of trust accounts followed by the certificate number of the agent.

transaction

A real estate transaction or a business transaction.

triennial certificate

A certificate granted under the Act to a licensee to carry on business as an agent.

trust account

Accounts where money is received or held by an agent for or on behalf of another person in relation to a real estate or business sales transaction or property management transaction.

working day

A day that is not a Saturday, Sunday or public holiday.

year

A period of 12 months ending on 31 December.

11. Index

- accounting period 4
- adjustments 19, 20
- advertising expenses 6
 - in checklist 15
- Australian Auditing Standards* 1, 13
- audit
 - checklists 13–20, 28
 - contents 4
 - costs 2
 - deadline 2, 4
 - notes 4
 - qualified 11, 32
 - statement 4, 5, 33
 - termination 2, 21, 22
- auditing considerations 9
- authority 6
- appointment to act 6
 - in checklist 14, 15

- backdated cheques 19
- backdated receipts 17
- buffer funds 12
 - in checklist 17
- bond administrator 8
 - in checklist 16
- banking of trust money 12, 23
- banking / trust deposit forms 16, 17
- branch manager 5, 13
- branch office 7, 13, 23

- cancelled cheques 18
- cancelled receipts 17
- cash 16, 22, 23
- change of auditor 2
 - request form and procedure 21
- change of business name 22
- change of entity 5, 22
- cheques or payments 18
- clearing to general account 21
- commission, (includes 'fees' and 'remuneration')
 - accounts 17
 - audit fees 2
 - clearing to general account 21
 - deregulation of fees 5
 - drawing of 5, 6
 - entitlement to remuneration 6
 - excessive fees 6
 - in checklist 13, 14, 15, 17
 - level of fees 5
 - pre-drawn 6, 22
 - undrawn 12
- confirmation letter 19
- conflict of interest 2
 - business dealings 3
 - disclosure 2
 - examples 3
 - notification 21
- contents of the audit report 4
- copy of appointment to act 14
- copy of management letter 2, 11, 28, 29
- covering letter template 29
- credit card 23

- daily banking 16, 23
- declaration by auditor template 30
- Department of Commerce 16
- Department of Treasury and Finance of Western Australia 16
- de facto relationship 2
 - in declaration by auditor 30
 - exception 3
- deposit 12
 - 'as soon as practicable' 23
 - commercial bonds 8
 - in checklist 16, 17, 18
 - in statutory declaration 31
 - tenancy bonds 8
 - unreconciled 11
- deposit receipts 5, 22, 31, 34
- deregulation of fees 5
- disbursements
 - auditing 6
 - in checklist 13, 18
- DTF (see 'Department of Treasury and Finance of Western Australia')

- end of month
 - in checklist 16
 - reconciliations 4, 8, 11, 22
- evidence of breach 4, 11
- excessive fees 6
- expenses
 - advertising 6
 - agent's 7
 - auditing 8
 - in checklist 13, 14, 15

- fees (see 'commission')
- format of audit reports 11
 - templates 24, 29–34
 - termination audit 21
- fraud or fraudulent conduct 22
- general trust accounts 8
 - commercial bonds 8
 - in checklist 15
 - in statement of trust account money held 33
 - titling 9
- ghost accounts 22
- GST
 - disbursements 6
 - in checklist 13
- Independence of auditors 2
- holding accounts 17
- interest
 - in checklist 20
 - on general trust accounts 8
 - on interest bearing trust accounts 8
- interest bearing trust accounts 8
 - commercial bonds 8
 - in checklist 15
 - in statement of trust account money held 33
 - notification requirement 9
 - titling 10
- journals 15
- kiting 22
- legislation 1
 - breach 4
 - extracts 35–47
 - key provisions 7
- licence of an agent 5
 - change 5, 22
 - end 21
 - identification of 11
 - in checklist 13, 28
- list of registered auditors 2
- management letter 2, 4, 11
 - in checklist 28
 - in cover letter template 29
- materiality 4
- misappropriation 22
- miscellaneous accounts 17
- numbering cheques and receipts 17, 18, 22
- off-setting of accounts 21
- outstanding balances 19
- outstanding cheques 19
- outstanding credit balances 16
- overdrawn trust accounts 9
- payment journals 15
- periodic rates 14
- person in *bona fide* control
 - change 5
 - hold a licence 5, 11
 - in checklist 17, 18, 19, 28
 - in statement of trust account money held 33
 - reconciliations 11
 - statutory declaration 5, 31
- postage and petty expenses 13
- pre-drawn commission 6, 22
- problem areas 11
- property inspection 6
- qualified audits 11, 32
- receipt journals 15
- receipts
 - deposit receipts 5, 22, 31, 34
 - in checklist 13, 15, 16, 17, 18, 20
- records
 - agent 9
 - business 23
 - in checklist 13, 15, 16, 19
 - payments 13
 - receipts 13
 - reconciling with Bond Administrator 8
- reconciliations 11, 22
 - in checklist 19
- register of files 13
- reimbursements 23, 46
- remuneration (see 'commission')

- sampling techniques 4, 6
- securities 5, 31, 34
- security of documents 15
- sold business 23
- statement of trust account money held 33
- statutory declaration 5, 11
 - authorised witnesses 24
 - importance 12
 - template for auditor 32
 - template for person in *bona fide* control 31
- strata management / title
 - audit need 23
 - authority 6
 - fees 6
 - in statement of trust account money held 34
 - variable outgoings trust account 8
- suspense accounts 17

- TC (see 'triennial certificate number')
- templates 24, 29–34
- tenancy bond trust accounts 8
 - commercial bonds 8
 - in statement of trust account money held 33
 - titling 10
- termination audits
 - change of entity 22
 - cost 2
 - deadline 2
 - disbursement of trust funds 21
 - format 21
- theft 22
- titling of trust accounts 9
 - general trust accounts 9
 - in checklist 15, 18
 - in statement of trust account money held 33
 - interest bearing trust accounts 10
 - need to qualify 11
 - tenancy bond trust accounts 10
- transfer journal 15
- triennial certificate 5
 - change 22
 - end 21
 - holder's need for trust account 9, 23
 - in checklist 13, 17, 28
 - non-renewal 2
- triennial certificate number (TC)
 - identification of 11
 - in statement of trust account money held 33
 - titling 9, 10
 - trust accounts (see also listings under specific trust account types)
 - closed 17, 19, 23, 33
 - debit balance 12, 17, 20, 21
 - details 5
 - overdrawn 9
 - reconciliations 11, 22
 - records 9
 - titling (see titling of trust accounts)
- trust ledger account 9
 - buffer funds 12
 - debit balance 12, 17
 - in checklist 17, 18, 19
 - off-setting of accounts 21
 - reconciliation 22
- trust receipts 17

- unclaimed money 16, 21
- undrawn commission 12
- unpresented cheques 16, 19

- variable outgoings trust account 8
 - in checklist 16
 - in statement of trust account money held 34
- vendor-paid advertising 6

- witnesses 24

Notes

Real Estate and Business Agents Supervisory Board

The Forrest Centre, Level 6, 219 St Georges Terrace
Perth, Western Australia 6000 (weekdays 8.30am - 5.00pm)

Real Estate and Settlement Advice Line: 1300 30 40 64
(for the cost of a local call statewide)

Post: Locked Bag 14, Cloisters Square WA 6850
Admin: 08 9282 0843 Facsimile: 08 9282 0869

Email: contactus@reba.wa.gov.au
Website: www.reba.wa.gov.au

National Relay Service 13 36 77

Quality of service feedback line: 1800 30 40 59

Translating and Interpreting Service: 13 14 50
(ask for a connection to 1300 30 40 64)