

I certify that this is a copy of the authorised version of this Statutory Rule as at 1 April 2017, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 April 2017.

Robyn Webb
Chief Parliamentary Counsel
Dated 11 July 2019

TASMANIA

PROPERTY AGENTS AND LAND TRANSACTIONS REGULATIONS 2017

STATUTORY RULES 2017, No. 16

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PROPERTY AGENTS AND LAND TRANSACTIONS REGULATIONS 2017

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Property Agents and Land Transactions Act 2016*.

Dated 21 March 2017.

C. WARNER
Governor

By Her Excellency's Command,

GUY BARNETT
Minister for Building and Construction

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Property Agents and Land Transactions Regulations 2017*.

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Part 1 – Preliminary

2. Commencement

These regulations take effect on the day on which the provisions of the *Property Agents and Land Transactions Act 2016* commence.

3. Interpretation

(1) In these regulations –

Act means the *Property Agents and Land Transactions Act 2016*;

ledger account means an account required under regulation 20(1) to be kept in the trust account ledger in respect of a person, property or transaction;

licensed conveyancer means a conveyancer licensed under the *Conveyancing Act 2004*;

personal representative, of a deceased person, means the executor or administrator of the estate of the deceased person;

reconcile has the meaning given by regulation 21(2);

reconciliation record means the record of the reconciliation of a trust account made under regulation 21;

schedule of invested trust money means a schedule required to be prepared under regulation 22(1);

trust account cash book means a cash book required to be kept under regulation 15(1);

trust account deposit record means a record required to be kept under regulation 11(1) after trust money is deposited;

trust account general journal means the journal of trust money transfers required to be kept under regulation 18(1);

trust account ledger means a ledger required to be kept under regulation 19;

trust account receipt means a receipt required to be issued under regulation 9(2);

trust account records means the records and accounts required to be kept under regulation 5 whether kept on paper or electronically.

- (2) In these regulations, a person ceases to carry on the business of a property agent if that person's property agent licence is no longer valid.

4. Records to be in English

A person required to keep a record or account under these regulations must ensure that the record or account is in English.

Penalty: Fine not exceeding 50 penalty units.

PART 2 – TRUST ACCOUNT RECORDS

Division 1 – Preliminary

5. Trust account records to be kept

- (1) This regulation applies to a property agent who is –
 - (a) a real estate agent named in Part 1(1) of the Register; or
 - (b) a property manager named in Part 2(1) of the Register; or
 - (c) a general auctioneer named in Part 3(1) of the Register.
- (2) A property agent who receives trust money must keep the following records and accounts relating to the trust money in a secure place:
 - (a) at least one duplicate of each trust account receipt;
 - (b) at least one duplicate of each trust account deposit record;
 - (c) records relating to trust account payments made under Division 5;
 - (d) a trust account cash book;
 - (e) a trust account ledger;
 - (f) a trust account general journal;

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- (g) the statements issued by an approved institution in respect of trust accounts;
 - (h) reconciliation records;
 - (i) if trust money has been invested, a schedule of invested trust money;
 - (j) any other records or accounts that the Board thinks fit;
 - (k) records or accounts that are specified by the Board as necessary to support the records kept under the above paragraphs.

Penalty: Fine not exceeding 50 penalty units.

6. Supervision of trust accounts

- (1) A property agent who receives trust money must –
 - (a) supervise the keeping of the trust account records relating to trust money received by the property agent; and
 - (b) ensure that the reconciliation records and schedule of ledger accounts are accurate; and
 - (c) within 2 days after the making of a reconciliation record, endorse the record with –
 - (i) a statement that the record is complete and accurate; and

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(ii) his or her signature.

Penalty: Fine not exceeding 50 penalty units.

- (2) If the property agent is a corporation, the property agent responsible for the management of the corporation is the property agent who must comply with subregulation (1).

7. Offence

A property agent must not knowingly –

- (a) include false or misleading information in trust account records; or
- (b) create false or misleading trust account records.

Penalty: Fine not exceeding 50 penalty units.

Division 2 – Trust money

8. Control of trust money

- (1) A property agent who has trust money in a trust account must retain the money in the account until the money is paid –
- (a) to the person entitled to it; or
 - (b) to the legal practitioner or licensed conveyancer of the person entitled to it; or
 - (c) in accordance with the written directions of the person entitled to the money or his

or her legal practitioner or licensed conveyancer.

Penalty: Fine not exceeding 50 penalty units.

- (2) When a person ceases to carry on the business of a property agent, or a person who is a property agent dies, but the person holds trust money in a trust account, the person or the personal representative of the deceased person must, with the written approval of the parties to the transaction to which the money relates, immediately disburse the trust money –
- (a) to the trust account of another property agent; or
 - (b) to the trust account of a legal practitioner, or licensed conveyancer, acting for either of the parties to the transaction.

Penalty: Fine not exceeding 50 penalty units.

Division 3 – Trust account receipts

9. Trust account receipts to be issued

- (1) In this regulation –

coded deposit book means a deposit book that is issued –

- (a) by an approved institution; and

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- (b) with an identifying code that links the deposit book to a tenant or property.
- (2) A property agent must issue a receipt for any trust money received for or on behalf of a party to negotiations in which the property agent is involved.

Penalty: Fine not exceeding 50 penalty units.
- (3) Unless requested to do so, a property agent does not need to issue a trust account receipt if the property agent receives the trust money by –
 - (a) electronic funds transfer; or
 - (b) deposit into the trust account, if a coded deposit book is given to the person paying the money; or
 - (c) another means of direct deposit into the trust account.
- (4) However, if a trust account receipt is not required to be issued on the receipt of trust money, the property agent must –
 - (a) assign a unique reference number to the money received; and
 - (b) in each place a trust account receipt number is required to be recorded, record the unique reference number in place of the trust account receipt number.
- (5) If the property agent carries on business at more than one location, the property agent must ensure

that trust account receipts can be issued at all locations where the property agent carries on business.

Penalty: Fine not exceeding 50 penalty units.

- (6) If an interim receipt is issued in respect of trust money, the interim receipt number must be recorded on any trust account receipt issued in respect of that trust money.

Penalty: Fine not exceeding 50 penalty units.

10. Form of trust account receipt

- (1) A trust account receipt is to –

(a) have printed on it –

(i) the property agent’s name or the business name under which the property agent carries on business; and

(ii) the ABN or ACN for the property agent or business named; and

(iii) the receipt number; and

(iv) the words “trust account”; and

(b) state –

(i) the date on which the trust money was received; and

(ii) the name of the person on whose behalf the money was paid; and

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- (iii) the transaction to which the money relates; and
 - (iv) the form in which the money was received; and
 - (v) the amount of money received; and
- (c) be signed by –
 - (i) the property agent; or
 - (ii) a person approved by the property agent to act for or on behalf of the property agent.
- (2) A property agent must ensure that trust account receipts are –
 - (a) consecutively numbered; and
 - (b) printed with those numbers by a machine.

Penalty: Fine not exceeding 50 penalty units.

- (3) A property agent must make at least one duplicate of each trust account receipt.

Penalty: Fine not exceeding 50 penalty units.

Division 4 – Trust account deposit records

11. Record of trust account deposit to be kept

- (1) A property agent must keep a record of all deposits of trust money into a trust account.

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Penalty: Fine not exceeding 50 penalty units.

- (2) The trust account deposit record is to –
- (a) have printed on it –
 - (i) the property agent’s name or the business name under which the property agent carries on business; and
 - (ii) the words “trust account”; and
 - (b) state –
 - (i) the date on which the money was deposited into the trust account; and
 - (ii) the account number of the trust account; and
 - (iii) if the money was in the form of a cheque, the name of the drawer of the cheque; and
 - (c) be signed by –
 - (i) the property agent; or
 - (ii) a person approved by the property agent to act for or on behalf of the property agent.
- (3) A property agent must make at least one duplicate of each trust account deposit record.

Penalty: Fine not exceeding 50 penalty units.

Division 5 – Trust account payments

12. Trust account payments

A property agent must not make a payment of trust money except by –

- (a) a trust account cheque; or
- (b) if the parties to the transaction to which the trust money relates agree, electronic funds transfer.

Penalty: Fine not exceeding 50 penalty units.

13. Trust account cheques

(1) A trust account cheque is to –

- (a) have printed on it –
 - (i) the property agent’s name or the business name under which the property agent carries on business; and
 - (ii) the ABN or ACN of the property agent or business named; and
 - (iii) the words “trust account”; and
 - (iv) the serial number of the cheque; and
- (b) state –

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- (i) the name of the person to whom the payment is made; and
 - (ii) the date on which the cheque is written; and
 - (iii) the amount of the payment; and
- (c) be signed by –
- (i) the person in charge of the business; or
 - (ii) a person acting for or on behalf of the person in charge of the business with the approval of the person in charge.
- (2) A property agent must ensure that trust account cheques are –
- (a) consecutively numbered; and
 - (b) printed with those numbers by a machine; and
 - (c) marked “Not Negotiable”; and
 - (d) not made out payable to “Cash”.

Penalty: Fine not exceeding 50 penalty units.

14. Payments by electronic funds transfer

A property agent who makes a payment of trust money by electronic funds transfer must ensure that –

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- (a) a written authority authorising the payment has been given by the person on whose behalf the payment has been made; and
- (b) the transfer is authorised by –
 - (i) the person in charge of the business premises at which the payment is made; or
 - (ii) a person acting for or on behalf of the person in charge of those business premises with the approval of the person in charge.

Division 6 – Trust account cash book

15. Trust account cash books

- (1) A property agent must keep a cash book in respect of each trust account established and maintained by the property agent.

Penalty: Fine not exceeding 50 penalty units.

- (2) The trust account cash book is to record receipt and payment particulars in the order in which the money is received or paid.

16. Receipt records in trust account cash books

A property agent must ensure that the following details in respect of each trust account receipt are recorded in the trust account cash book:

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- (a) the date on which the money is received;
- (b) the name of the person on whose behalf the money is being paid;
- (c) the amount of money received;
- (d) the reason the money was received;
- (e) the folio reference of the ledger account to which the money was credited;
- (f) if the money was not received by electronic funds transfer or any other direct deposit, the number of the trust account receipt issued for the money;
- (g) if the money was received by electronic funds transfer or any other direct deposit, the unique reference number assigned to the trust money under regulation 9(4).

Penalty: Fine not exceeding 50 penalty units.

17. Payment records in trust account cash books

A property agent must ensure that the following details in respect of each payment of trust money out of the trust account are recorded in the trust account cash book:

- (a) the date on which the payment was made;
- (b) the name of the person to whom the payment was made;

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- (c) the amount of money paid;
- (d) the reason the money was paid;
- (e) the folio reference of the ledger account from which the payment was debited;
- (f) if the payment was made by cheque, the number of the cheque;
- (g) if the payment was made by electronic funds transfer, the reference number issued by the authorised deposit-taking institution, or a relevant journal or reference number, in respect of the payment.

Penalty: Fine not exceeding 50 penalty units.

Division 7 – Trust account journals

18. Trust account general journal

- (1) A property agent must keep a journal that records the following details in respect of each transfer of trust money from one ledger account to another made by the property agent:
 - (a) the date of the transfer;
 - (b) the amount of money transferred;
 - (c) the purpose of the transfer;
 - (d) the ledger account from which the money was transferred;

- (e) the ledger account to which the money was transferred.

Penalty: Fine not exceeding 50 penalty units.

- (2) Entries in a trust account general journal must be made in the sequence in which the transfers are undertaken.

Division 8 – Trust account ledgers

19. Trust account ledger

A property agent must keep a ledger in respect of the trust money held by the property agent.

Penalty: Fine not exceeding 50 penalty units.

20. Ledger accounts

- (1) The trust account ledger is to contain a separate account for each person, property or transaction in respect of which the property agent holds trust money.
- (2) For each ledger account, a property agent must –
 - (a) clearly identify the person, property or transaction for which the ledger account is kept; and
 - (b) if the ledger account is identified by the person or property, record a description of the transaction for which the ledger account is kept; and

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- (c) at all times, have sufficient information to enable calculation of the amount of the trust money held by the property agent in respect of which the ledger account is kept.

Penalty: Fine not exceeding 50 penalty units.

- (3) Despite subregulation (1), a general auctioneer, or real estate agent, conducting a chattel auction is not required to keep a ledger account for each party to the auction if –
 - (a) the auctioneer or agent keeps a ledger account in respect of the auction as a whole; and
 - (b) the transactions in the ledger account are clearly identifiable as transactions that relate to the auction; and
 - (c) the ledger account in respect of each auction is balanced independently from other ledger accounts.

Division 9 – Reconciliations

21. Monthly reconciliations

- (1) A property agent must reconcile the property agent's trust account at least once in each calendar month.

Penalty: Fine not exceeding 50 penalty units.

- (2) A property agent must reconcile a trust account by –

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- (a) calculating the balance of the trust account cash books; and
- (b) preparing a schedule to reconcile the balance of the trust account cash books calculated under paragraph (a) with the balance of the trust account –
 - (i) as specified in the statements issued by the approved institution; and
 - (ii) taking into account unrepresented payments, deposits in transit and other adjustments; and
- (c) preparing a schedule of the property agent's ledger accounts that –
 - (i) records the name of each client, property or transaction for whom the property agent holds trust money; and
 - (ii) states the amount of money held in each ledger account; and
 - (iii) results in a total amount held in the trust account that is equal to the balances referred to in paragraphs (a) and (b) when the amounts specified in the schedule are tallied.

Penalty: Fine not exceeding 50 penalty units.

Division 10 – Schedule of invested trust money

22. Schedule of invested trust money

- (1) If a property agent has invested trust money under regulation 29, the property agent must prepare a schedule of the invested trust money each time the property agent reconciles the trust account under regulation 21.

Penalty: Fine not exceeding 50 penalty units.

- (2) The schedule of invested trust money is to contain –
- (a) the names in which the trust money has been invested; and
 - (b) a statement of how the trust money has been invested for and on behalf of the parties to the transaction; and
 - (c) the amount of trust money that has been invested and, if the trust money has been invested with more than one person or in more than one manner, the amount of trust money invested with each such person or in each such manner.
- (3) The property agent must keep the schedules of invested trust money with the reconciliation records and schedule of ledger accounts reconciled under regulation 21.

Penalty: Fine not exceeding 50 penalty units.

Division 11 – Preparation and keeping of trust account records

23. Where trust account records are to be kept

- (1) A property agent must keep all the trust account records for the property agent's business at –
 - (a) the property agent's authorised place of business; or
 - (b) such other place as the Board may approve.

Penalty: Fine not exceeding 50 penalty units.

- (2) Despite subregulation (1), if a property agent carries on business at more than one location, the trust account records for each place of business may be kept at the respective locations if the Board approves.
- (3) The approval of the Board under subregulation (1) or (2) is to be provided to the property agent in writing.

24. Records may be prepared and stored electronically

- (1) Subject to subregulation (3), a property agent may prepare and store trust account records in writing or electronically.
- (2) If trust account records are prepared and stored electronically, the property agent must –

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- (a) at least once in each calendar month, separate the electronic trust account records into individual accounts for each month; and
- (b) have a means of retrieving the electronic records; and
- (c) record, in writing, details of how the electronic records may be retrieved.

Penalty: Fine not exceeding 50 penalty units.

- (3) The Board, by written notice, may require a property agent to store specified trust account records in writing for such period as is specified in the notice.
- (4) A property agent must comply with a notice under subregulation (3).

Penalty: Fine not exceeding 50 penalty units.

Division 12 – Retention and disposal of trust account records

25. Retention and disposal of trust account records

- (1) A property agent must retain the property agent's trust account records for a period of not less than 6 years.

Penalty: Fine not exceeding 50 penalty units.

- (2) Subregulation (1) does not apply to paper copies of trust account records that are kept electronically for a period of not less than 6 years.

- (3) A property agent must not remove the property agent's trust account records from the State without the written approval of the Board.

Penalty: Fine not exceeding 50 penalty units.

- (4) A property agent who disposes of trust account records must do so by –
- (a) burning, shredding, pulping or burying them; or
 - (b) disposing of them in any other way authorised by the Board.

Penalty: Fine not exceeding 50 penalty units.

26. Disposal of records where property agent no longer carrying on business

- (1) A person who ceases to carry on the business of a property agent, or the personal representative of a deceased property agent, as soon as practicable after the cessation of the business or the death, must –
- (a) give the trust account records held by the person or personal representative –
 - (i) if the records relate to an active matter and trust account money held in respect of the matter has been disbursed to another property agent under regulation 8(2)(a), to the property agent holding the trust money for the matter; or

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- (ii) if the records relate to an active matter and trust account money held in respect of the matter has been disbursed under regulation 8(2)(b), to a property agent; or
 - (iii) if the records relate to an active matter and no trust account money is held in respect of the matter, to a property agent; or
 - (iv) if the records relate to a closed matter but the records cannot be disposed of under regulation 25, to a property agent or to the Board; or
- (b) if the records relate to a closed matter and the records can be disposed of under regulation 25, dispose of those records in accordance with that regulation.

Penalty: Fine not exceeding 50 penalty units.

- (2) A property agent who receives trust account records under subregulation (1) for an active matter must notify the client in writing that –
- (a) the property agent is holding the records; and
 - (b) the client must authorise, in writing, a new property agent to act on the client's behalf in the matter.

- (3) A trust account record that is given to a property agent under subregulation (1) is taken to be a trust account record kept by the property agent.

Division 13 – Miscellaneous

27. Notice of trust account

- (1) Within 7 days after opening a trust account, a property agent must give the Board written notice of –
- (a) the name of the approved institution where the trust account was opened; and
 - (b) the branch of the approved institution; and
 - (c) the name and number of the account.

Penalty: Fine not exceeding 50 penalty units.

- (2) Within 7 days after closing a trust account, a property agent or a person who ceases to carry on the business of a property agent, must give the Board written notice of the closure of the account by reference to the name and number of the account.

28. Trust account reports

- (1) In this regulation –

reporting period means –

- (a) the period of 6 months ending on 30 June each year; or

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- (b) the period of 6 months ending on 31 December each year;

trust account report means a written report required to be completed under subregulation (2)(a) or (3)(c).

- (2) If a property agent keeps a trust account at any time during the reporting period, the property agent must –
- (a) complete a written report on the trust account in accordance with this regulation; and
 - (b) give the report to the Board within one month after the end of the reporting period to which the report relates.

Penalty: Fine not exceeding 50 penalty units.

- (3) If, during a reporting period, a person –
- (a) keeps a trust account at any time; and
 - (b) ceases to carry on the business of a property agent –

that person must –

- (c) complete a written report on the trust account in accordance with this regulation; and
- (d) give the report to the Board within one month after the person ceases to carry on the business of a property agent.

Penalty: Fine not exceeding 50 penalty units.

- (4) A trust account report must include the following information:
- (a) a statement by the person making the report that the person made all possible enquiries to ensure that the information provided is true and correct;
 - (b) a statement as to whether the trust account was reconciled in accordance with regulation 21 for each month during the reporting period in which the trust account was kept;
 - (c) a statement as to whether a schedule of invested trust money was prepared, if required, in accordance with regulation 22 during the reporting period;
 - (d) a statement as to whether the trust account was overdrawn or had any overdrawn balances, or had any unexplained credit balances or debit transactions, at any time during the reporting period;
 - (e) a statement as to whether the person making the report drew any commission from, or made any other payment out of, the trust account without the written authority of the parties to the transaction to which the trust money relates;
 - (f) a statement as to whether the trust account was kept at an approved

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institution reported to the Board under regulation 27(1).

- (5) A trust account report is to be in a form approved by the Board, if any.
- (6) A trust account report must not be false or misleading.
- (7) The trust account report must be signed by –
 - (a) if the person making the report is a natural person who carries on business on his or her own account, that person; or
 - (b) if the person making the report is a natural person who carries on business in partnership with another property agent, a partner of the partnership; or
 - (c) if the person making the report is a body corporate, a director of the body corporate who is a real estate agent, property manager or general auctioneer.

PART 3 – INVESTING TRUST MONEY

29. Investment of trust money

A property agent must not invest trust money unless –

- (a) the parties to the transaction to which the trust money relates agree in writing to the investing of the trust money; and
- (b) the trust money is invested for and on behalf of the parties to the transaction; and
- (c) the trust money is invested in accordance with that written agreement.

Penalty: Fine not exceeding 50 penalty units.

PART 4 – AUDIT AND INSPECTION

Division 1 – Audits

30. Interpretation

In this Division, unless the contrary intention appears –

audit year means the period of 12 months ending on 30 June each year;

prescribed period, in relation to a property agent who dies or a person who ceases to carry on the business of a property agent in any audit year, means the period from immediately after the end of the previous audit year to the day in the audit year on which the person dies or ceases to carry on the business.

31. Trust account records to be audited

- (1) A property agent must cause the trust account records kept by the property agent in an audit year to be audited by an auditor within 3 months after the end of the audit year.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person who ceases to carry on the business of a property agent must cause the trust account records kept by the person in respect of the prescribed period to be audited by an auditor within 3 months after the end of the prescribed period.

Penalty: Fine not exceeding 50 penalty units.

- (3) If a property agent dies, the property agent's personal representative must cause the trust account records kept by the property agent in respect of the prescribed period to be audited by an auditor within –
- (a) 3 months after the end of the prescribed period; or
 - (b) such later period as the Board may allow.

Penalty: Fine not exceeding 50 penalty units.

- (4) The Board, at any time and at its own expense, may cause the trust account records of a property agent, a property agent who has died or a person who has ceased to carry on the business of a property agent to be audited by an auditor.
- (5) It is a defence in proceedings for an offence –
- (a) under subregulation (1) if the property agent carries on business in partnership with one or more other property agents; or
 - (b) under subregulation (2) if the person, before ceasing to carry on the business of a property agent, carried on business in partnership with one or more other property agents; or
 - (c) under subregulation (3) if the deceased property agent, before his or her death,

carried on business in partnership with
one or more other property agents –

and another property agent in the partnership has
caused the trust account records of the business
to be audited.

32. Exemptions

- (1) Regulation 31(1) does not apply in respect of trust account records kept by a property agent in an audit year if the property agent has given a declaration in an approved form to the Board stating that the property agent did not receive or hold trust money during the audit year.
- (2) Regulation 31(2) does not apply in respect of trust account records kept by a property agent who ceases to carry on the business of a property agent if the property agent has given a declaration in an approved form to the Board stating that the property agent did not receive or hold trust money during the prescribed period.
- (3) Regulation 31(3) does not apply in respect of trust account records kept by a deceased property agent prior to his or her death if the personal representative of the deceased property agent has given a declaration in an approved form stating that the deceased property agent did not receive or hold trust money during the prescribed period.
- (4) A declaration under this regulation is to be given to the Board –

- (a) in the case of a property agent carrying on the business of a property agent, within –
 - (i) 3 months after the end of the audit year; or
 - (ii) a longer period as determined by the Board; and
- (b) in the case of a person who ceases to carry on the business of a property agent, or a property agent who dies, within –
 - (i) 3 months after the end of the prescribed period; or
 - (ii) a longer period as determined by the Board.

33. Conduct of audits

- (1) This regulation applies to a property agent who –
 - (a) appoints an auditor to carry out an audit under regulation 31(1), (2) or (3); or
 - (b) is subject to an audit under regulation 31(4).
- (2) At all times during business hours, a property agent must –
 - (a) allow an auditor access to the trust account records; and

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- (b) allow the auditor to make notes and copies of, and take extracts from, any such trust account records; and
- (c) provide any information or explanation that the auditor requires to complete the audit; and
- (d) provide such assistance as the auditor reasonably requires for the purpose of the audit.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not –
 - (a) fail to comply with a reasonable request of an auditor in relation to an audit; or
 - (b) wilfully obstruct, hinder or delay the performance of an audit; or
 - (c) threaten or attempt to intimidate an auditor; or
 - (d) give, or agree or offer to give, any gift, reward or other inducement for the auditor to do or abstain from doing anything in relation to the audit; or
 - (e) knowingly give false or misleading information or documents to an auditor; or
 - (f) conceal any information or record that relates to the trust account records that are being audited.

Penalty: Fine not exceeding 50 penalty units.

34. Completion of audits

- (1) An auditor performing an audit under this Part must complete the audit –
 - (a) in the case of an audit in respect of the trust account records of a property agent, within 3 months after the end of the audit year to which the audit relates; or
 - (b) in the case of an audit in respect of the trust account records of a person who ceases to carry on the business of a property agent, or a deceased property agent, within –
 - (i) 3 months after the end of the prescribed period; or
 - (ii) such longer period as the Board has allowed; or
 - (c) in the case of an audit under regulation 31(4), within the period specified by the Board for its completion.

Penalty: Fine not exceeding 50 penalty units.

- (2) It is a defence in proceedings for an offence under subregulation (1) if the auditor proves that –
 - (a) he or she requested access to the trust account records; and

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- (b) the property agent, person or personal representative did not provide access to the trust account records in sufficient time for the auditor to comply with subregulation (1).

35. Audit report

- (1) As soon as practical after completing an audit under this Part, the auditor must give to the person who appointed him or her the audit report.
- (2) The audit report is to be in a form approved by the Board and is to state, in the opinion of the auditor, whether –
 - (a) the trust account records being audited were properly drawn up and kept in accordance with the Act; and
 - (b) there is any defect or irregularity in the trust account records; and
 - (c) the amount in each trust account after being reconciled under regulation 21 and the amount of trust money invested under regulation 29 were sufficient to meet all the trust account liabilities at the end of the period being audited; and
 - (d) the auditor obtained all the information, documents, explanations and assistance that he or she required to complete the audit; and

- (e) the requirements of the Act in respect of trust money and the keeping of trust accounts have been complied with.
- (3) If the auditor finds that the requirements of the Act in respect of trust money and the keeping of accounts have not been complied with fully, the auditor must specify in the audit report the matters in respect of which the Act has not been complied with fully.

36. Irregularity report by auditor

- (1) An auditor must give a report to the Board as soon as practicable after discovering one or more of the following irregularities:
- (a) the trust account records being kept in a manner that prevents them from being properly audited;
 - (b) something that appears to the auditor to involve dishonesty or a breach of the law;
 - (c) a deficiency of trust money in the trust account or ledger account;
 - (d) a failure to pay or account for trust money;
 - (e) a failure to comply with the provisions of the Act relating to the keeping of trust accounts.

Penalty: Fine not exceeding 50 penalty units.

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- (2) A report under subregulation (1) is to –
 - (a) specify the details of each irregularity discovered by the auditor; and
 - (b) be signed by the auditor.
- (3) The auditor is to also provide a signed copy of the report under subregulation (1) to the property agent whose trust account records are being audited.

37. Audit report to be given to Board

A person who appoints an auditor to carry out an audit under this Part must give the audit report to the Board within 7 days after receiving it from the auditor.

Penalty: Fine not exceeding 20 penalty units.

Division 2 – Inspections

38. Interpretation

In this Division –

authorised officer means a person authorised by the Board under regulation 39;

record means any account or record that refers to, or relates to, trust money held by a property agent.

39. Authorised officers

The Board may authorise a person or persons to inspect the records of a property agent.

40. Inspection of records

- (1) An authorised officer may do all or any of the following to ascertain whether the provisions of the Act are being, or have been, complied with:
 - (a) enter, at a reasonable time, any premises where records are kept;
 - (b) require the person who appears to be in charge of the premises to produce for inspection any record held at the premises;
 - (c) inspect and take notes of, copies of or extracts from any such record;
 - (d) require the person who appears to be in charge of the premises to answer questions or give explanations;
 - (e) require the person who appears to be in charge of the premises to explain where records are being held.
- (2) An authorised officer may require that a record be transcribed into clearly written English if the record –
 - (a) is not in writing; or
 - (b) is not in English; or

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(c) is in such a condition as to make the record unreadable.

(3) A person must not –

(a) fail to comply with a reasonable requirement of an authorised officer in relation to an inspection; or

(b) wilfully obstruct, hinder or delay an authorised officer; or

(c) threaten or attempt to intimidate an authorised officer; or

(d) give, or agree or offer to give, any gift, reward or other inducement for the authorised officer to do or abstain from doing anything in relation to an inspection; or

(e) knowingly give false or misleading information or documents to an authorised officer; or

(f) conceal any information or record from an authorised officer.

Penalty: Fine not exceeding 50 penalty units.

PART 5 – MISCELLANEOUS

41. Qualifications

- (1) For the purposes of section 25(b)(i) of the Act, the prescribed educational qualification is –
 - (a) a Diploma of Property awarded by a registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth; or
 - (b) a qualification that the Board is satisfied is substantially equivalent to the qualification prescribed in paragraph (a).
- (2) For the purposes of section 26(b)(i) of the Act, the prescribed educational qualification is –
 - (a) a Diploma of Property awarded by a registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth; or
 - (b) a qualification that the Board is satisfied is substantially equivalent to the qualification prescribed in paragraph (a).
- (3) For the purposes of section 27(b)(i) of the Act, the prescribed educational qualification is –
 - (a) successful completion of the following units of competency within a Certificate IV in Property Services (Real Estate), awarded by a registered training

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organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth:

- (i) CPPDSM4002A – Apply knowledge of a state or territory legislative framework to complete agency work;
 - (ii) CPPDSM4004A – Conduct auction;
 - (iii) CPPDSM4006A – Establish and Manage Agency Trust accounts;
 - (iv) CPPDSM4038A – Conduct goods, chattel, or equipment clearing sale or auction; or
- (b) successful completion of an examination for general auctioneers administered by the Board; or
- (c) a qualification that the Board is satisfied is substantially equivalent to a qualification prescribed in paragraph (a) or (b).
- (4) For the purposes of section 28(a) of the Act, the prescribed educational qualification is successful completion, within the previous 2 years, of an examination for property representatives administered by the Board.

42. Obligation of partners

If a property agent carries on business in partnership with another property agent, each partner in the partnership must perform the obligations imposed by these regulations unless otherwise specified.

43. Exemption from application of Act

(1) In this regulation –

Director of Housing means the Director of Housing appointed pursuant to the *Homes Act 1935*.

(2) A person who acts as a property manager is exempt from the application of the Act if all property managed by the property manager is only leased or let for a period of 90 days or less.

(3) Two or more leases or lettings of the same property are to be treated as a single leasing or letting for the purposes of this regulation if –

(a) each leasing or letting is to the same person or persons; and

(b) any break in the occupancy of the property by that person, or those persons, is less than 7 days.

(4) A person who acts as a property manager in relation to property –

(a) that is held by the Director of Housing for and on behalf of the Crown in

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accordance with section 5 of the *Homes Act 1935*; or

- (b) which is social housing, within the meaning of the *Residential Tenancy Act 1997*; or
- (c) in respect of which a residential management agreement, within the meaning of section 16A of the *Residential Tenancy Act 1997*, is in force between the Director of Housing and another person –

is, in relation to that property, exempt from the application of the Act.

44. Fees

- (1) In this regulation and Schedule 1 –

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

- (2) The fees specified in this regulation and Schedule 1 are GST exclusive.
- (3) The fees specified in Schedule 1 are prescribed as the fees payable in respect of the matters to which they respectively relate.

45. Infringement notices

- (1) For the purposes of section 167 of the Act –

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- (a) an offence against a provision of the Act specified in column 2 of the table in Part 1 of Schedule 2 is prescribed as an offence for which an infringement notice may be issued; and
 - (b) an offence against a provision of the regulations specified in column 2 of the table in Part 2 of Schedule 2 is prescribed as an offence for which an infringement notice may be issued.
- (2) A penalty specified in column 3 of a table in Part 1 or 2 of Schedule 2 is prescribed as the penalty payable by an individual for the relevant offence specified in column 2 of the relevant table.
- (3) A penalty specified in column 4 of a table in Part 1 or 2 of Schedule 2 is prescribed as the penalty payable by a body corporate for the relevant offence specified in column 2 of the relevant table.

46. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

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SCHEDULE 1 – FEES

Regulation 44

PART 1 – GENERAL

		Fee (Fee units)
1.	Examinations	91
2.	Late provision of accounts and reports required under the regulations to be given to the Board	46

PART 2 – ANNUAL LICENCE FEE

		Fee (Fee units)
1.	Application for real estate agent licence or renewal	
	(a) in respect of a real estate agent who is carrying on a real estate agency business	273
	(b) in all other cases	91
2.	Application for property manager licence or renewal	
	(a) in respect of a property manager who is carrying on a property management business	228
	(b) in all other cases	91
3.	Application for general auctioneer licence or renewal	
	(a) if person applying is director of company which carries on general auctioneering business	273
	(b) in all other cases	91

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		Fee (Fee units)
4.	Application for property representative licence or renewal	46
5.	Late lodgement of application for renewal of licence	25% of application fee for renewal of licence

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**SCHEDULE 2 – INFRINGEMENT NOTICE OFFENCES
AND PENALTIES**

Regulation 45

PART 1 – OFFENCES UNDER THE ACT

Column 1 Item no	Column 2 Section of Act	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
1.	Section 20(5)	5	10
2.	Section 34	100	300
3.	Section 35	100	300
4.	Section 36(1)	5	10
5.	Section 36(2)	5	10
6.	Section 36(3)	5	10
7.	Section 37(1)	5	10
8.	Section 37(2)	5	10
9.	Section 37(3)	5	10
10.	Section 38(1)	50	100
11.	Section 38(2)	50	100
12.	Section 38(3)	10	20
13.	Section 38(4)	10	20
14.	Section 39(2)	5	10

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Column 1 Item no	Column 2 Section of Act	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
15.	Section 39(3)	5	10
16.	Section 40(2)	5	10
17.	Section 40(3)	5	10
18.	Section 41	50	100
19.	Section 42	50	100
20.	Section 43	50	100
21.	Section 44(6)	5	10
22.	Section 46(5)	50	100
23.	Section 47(2)	50	100
24.	Section 49(1)	50	100
25.	Section 49(2)	50	100
26.	Section 49(3)	50	100
27.	Section 49(4)	50	100
28.	Section 49(9)	50	100
29.	Section 50(1)	50	100
30.	Section 52(1)	5	10
31.	Section 52(2)	5	10
32.	Section 53(1)	5	10

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Column 1 Item no	Column 2 Section of Act	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
33.	Section 53(2)	5	10
34.	Section 54	5	10
35.	Section 55	5	10
36.	Section 56	50	100
37.	Section 57(1)	5	10
38.	Section 58(1)	5	10
39.	Section 59(1)	100	300
40.	Section 59(2)	5	10
41.	Section 60(1)	5	10
42.	Section 60(2)	5	10
43.	Section 61	50	100
44.	Section 62(1)	5	10
45.	Section 63(1)	5	10
46.	Section 63(2)	5	10
47.	Section 64	5	10
48.	Section 65	50	100
49.	Section 66	50	100
50.	Section 67(1)	50	100

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Column 1 Item no	Column 2 Section of Act	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
51.	Section 67(2)	50	100
52.	Section 69	50	100
53.	Section 70	50	100
54.	Section 71(1)	5	10
55.	Section 72(2)	50	100
56.	Section 72(4)	50	100
57.	Section 72(5)	50	100
58.	Section 76(2)	50	100
59.	Section 76(3)	50	100
60.	Section 77(2)	50	100
61.	Section 77(3)	50	100
62.	Section 78(1)	5	10
63.	Section 79	5	10
64.	Section 80(5)	50	100
65.	Section 81(2)	50	100
66.	Section 98(5)	50	100
67.	Section 107(2)	50	100
68.	Section 118(4)	5	10

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Column 1 Item no	Column 2 Section of Act	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
69.	Section 121(3)	50	100
70.	Section 122(2)	50	100
71.	Section 131(2)	50	100
72.	Section 131(5)	5	10
73.	Section 131(6)	50	100
74.	Section 132(2)	5	10
75.	Section 135(1)	50	100
76.	Section 136(2)	20	40
77.	Section 136(3)	20	40
78.	Section 137(2)	5	10
79.	Section 140(2)	50	100
80.	Section 148	100	200
81.	Section 165	100	200
82.	Section 169	50	100

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PART 2 – OFFENCES UNDER THE REGULATIONS

Column 1 Item no	Column 2 Regulation	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
1.	Regulation 4	5	10
2.	Regulation 5(2)	5	10
3.	Regulation 6 (1)	5	10
4.	Regulation 7	5	10
5.	Regulation 8(1)	5	10
6.	Regulation 8(2)	5	10
7.	Regulation 9(2)	5	10
8.	Regulation 9(5)	5	10
9.	Regulation 9(6)	5	10
10.	Regulation 10(2)	5	10
11.	Regulation 10(3)	5	10
12.	Regulation 11(1)	5	10
13.	Regulation 11(3)	5	10
14.	Regulation 12	5	10
15.	Regulation 13(2)	5	10
16.	Regulation 15(1)	5	10
17.	Regulation 16	5	10

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Column 1 Item no	Column 2 Regulation	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
18.	Regulation 17	5	10
19.	Regulation 18(1)	5	10
20.	Regulation 19	5	10
21.	Regulation 20(2)	5	10
22.	Regulation 21(1)	5	10
23.	Regulation 21(2)	5	10
24.	Regulation 22(1)	5	10
25.	Regulation 22(3)	5	10
26.	Regulation 23(1)	5	10
27.	Regulation 24(2)	5	10
28.	Regulation 24(4)	5	10
29.	Regulation 25(1)	5	10
30.	Regulation 25(3)	5	10
31.	Regulation 25(4)	5	10
32.	Regulation 26(1)	5	10
33.	Regulation 27(1)	5	10
34.	Regulation 28(2)	5	10
35.	Regulation 28(3)	5	10

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Column 1 Item no	Column 2 Regulation	Column 3 Individual (penalty units)	Column 4 Body corporate (penalty units)
36.	Regulation 29	5	10
37.	Regulation 31(1)	5	10
38.	Regulation 31(2)	5	10
39.	Regulation 31(3)	5	10
40.	Regulation 33(2)	5	10
41.	Regulation 33(3)	5	10
42.	Regulation 34(1)	5	10
43.	Regulation 36(1)	5	10
44.	Regulation 37	2	4
45.	Regulation 40(3)	5	10

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SCHEDULE 3 – LEGISLATION RESCINDED

Regulation 46

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Notified in the *Gazette* on 29 March 2017.

These regulations are administered in the Department of Justice.

NOTES

The foregoing text of the *Property Agents and Land Transactions Regulations 2017* comprises that instrument as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 April 2017 are not specifically referred to in the following table of amendments.

Citation	Serial Number	Date of commencement
<i>Property Agents and Land Transactions Regulations 2017</i>	S.R. 2017, No. 16	1.4.2017