



*Agents Financial Administration Act 2014*

# **Agents Financial Administration Regulation 2014**

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Queensland

# Agents Financial Administration Regulation 2014

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# Agents Financial Administration Regulation 2014

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Agents Financial Administration Regulation 2014*.

### 2 Commencement

This regulation commences on 1 December 2014.

## Part 2 Administration of trust accounts

### Division 1 Trust account records

#### 3 Principal agent must keep particular books, accounts and records

- (1) A principal agent must keep the following books, accounts and records—
  - (a) a register of trust account receipt forms;
  - (b) consecutively numbered trust account receipt forms in duplicate;
  - (c) trust account deposit forms in duplicate;
  - (d) a trust account cash book;
  - (e) a trust account ledger;

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- (f) a trust account journal with journal pages or entries consecutively numbered;
- (g) full and accurate accounts of amounts paid or received for a sale or transaction.

Maximum penalty—10 penalty units.

- (2) The books, accounts and records mentioned in subsection (1) must be kept in a way that can be properly audited.

Maximum penalty—10 penalty units.

#### **4 Using software to keep books, accounts and records**

- (1) This section applies if a principal agent uses a computerised accounting system (the *system*) in connection with keeping books, accounts and records mentioned in section 3(1).
- (2) The principal agent must ensure that—
  - (a) the system does not allow the deletion of a trust ledger account unless—
    - (i) the account has a zero balance; and
    - (ii) a record of the account, as it was immediately before its deletion, is kept; and
  - (b) an amendment of the particulars of a transaction recorded on the system is made by a separate transaction recorded on the system; and
  - (c) any record of information produced by the system is produced in chronological sequence.

Maximum penalty—10 penalty units.

- (3) Also, the principal agent may use the system only if the system is capable of keeping in chronological sequence, a record of any change to the following information—
  - (a) the name and address of a person for whom trust money is held;
  - (b) the description of a matter being conducted by the principal agent;

- (c) the amount of trust money held for a person by the principal agent;
  - (d) the financial institution account number of a trust account.
- (4) The principal agent must, within 5 business days after the end of the month, make a hard copy of the following information—
- (a) if the agent uses the system to keep a trust ledger account—the balance of the trust ledger account;
  - (b) if the agent uses the system to prepare a trust account cash book reconciliation—the reconciliation completed under section 17(1)(a);
  - (c) if the agent uses the system to reconcile a trust account financial institution statement balance with the trust account cash book balance—the reconciliation completed under section 17(1)(b).

Maximum penalty—10 penalty units.

- (5) If the principal agent uses the system to keep a trust account ledger, the principal agent must immediately before a trust ledger account or investment ledger account is deleted from the system—
- (a) make a hard copy of the ledger account; and
  - (b) keep the hard copy in the principal agent's records.

Maximum penalty—10 penalty units.

## **5 Entries in books, accounts and records**

A principal agent must not enter in any book, account or record kept under the Act any particular that is not a particular relating to the agent carrying on a business as an agent.

Maximum penalty—10 penalty units.

## **Division 2                    Trust account receipts and deposits**

### **6            Register of trust account receipt forms**

A register of trust account receipt forms must—

- (a) contain a record of the receipt number of each receipt form held by the principal agent; and
- (b) be updated within 2 business days of a trust account receipt form being brought into use for the operation of a trust account.

### **7            Heading on trust account receipt forms**

(1) Each trust account receipt form must be—

- (a) clearly headed ‘Agents Financial Administration Act 2014 Trust Account Receipt’; and
- (b) consecutively and uniquely numbered.

(2) A duplicate trust account receipt form must also be headed ‘Office Copy’ or ‘Duplicate Copy’.

### **8            Obligation to complete a trust account receipt form**

A principal agent must complete a trust account receipt form—

- (a) if a principal agent receives trust money by direct deposit or electronic funds transfer—on the day the principal agent becomes aware of the receipt of the trust money; or
- (b) otherwise—immediately on receiving the trust money.

Maximum penalty—10 penalty units.

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**9 Completed trust account receipt form to contain particular information**

- (1) Each trust account receipt form must contain the following particulars—
- (a) the name of the principal agent on whose behalf the receipt is completed;
  - (b) the agent's licence number;
  - (c) the date—
    - (i) the trust money was received; and
    - (ii) the receipt is completed;
  - (d) the name of the person completing the receipt form and, if the receipt form is from a receipt book or is a hard copy of a computer entry, the person's signature.
  - (e) the name of the person for whom the receipt is completed;
  - (f) the name of, or other means of identifying, the person on whose behalf the trust money is received;  
*Example of a way by which the name of a person can be identified—*
    - using a code to identify the person, for example, S4 stands for N. Smith
  - (g) a brief description of the matter for which the trust money is received;
  - (h) the amount of trust money received, expressed in figures;
  - (i) how the trust money was received, for example, in cash, by cheque, by direct deposit or by electronic funds transfer;
  - (j) if the trust money received is rent—
    - (i) the address of the rented premises; and
    - (ii) the day up to which the rent is paid;

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- (k) if the trust money received is payment from a prospective buyer for an option to purchase a used motor vehicle for sale on consignment, the vehicle's—
  - (i) make; and
  - (ii) body model; and
  - (iii) colour; and
  - (iv) engine number or, if the vehicle is a caravan, the chassis number; and
  - (v) identification number; and
  - (vi) registration number; and
  - (vii) built date.
- (2) In this section—

*built date* has the meaning given under the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 1, section 3(3).

## 10 Dealing with trust account receipt forms

The principal agent must ensure—

- (a) a trust account receipt form contains the particulars mentioned in section 9; and
- (b) a trust account receipt form is used only for the receipt of—
  - (i) trust money; or
  - (ii) an amount consisting of trust money and other money that cannot be divided; and
- (c) if requested by the person from whom the trust money was received—a trust account receipt form is given to the person promptly; and
- (d) a completed and legible duplicate trust account receipt form is kept in the principal agent's records; and
- (e) if the principal agent cancels a trust account receipt form, the form—

- (i) is kept in the principal agent's records; and
- (ii) contains a brief description of why the form was cancelled.

Maximum penalty—10 penalty units.

## **11 Completed trust account deposit forms to contain particular information**

A principal agent must ensure that each trust account deposit form contains the following particulars—

- (a) the name and account number of the trust account into which the trust money is deposited;
- (b) the amount and date of the deposit;
- (c) the signature of the depositor;
- (d) if the deposit includes a cheque—
  - (i) the name of the drawer of the cheque; and
  - (ii) the name and branch of the financial institution against which the cheque is drawn.

Maximum penalty—10 penalty units.

## **12 Depositing trust money**

If trust money is deposited into a principal agent's trust account, the principal agent must—

- (a) if the deposit is made by electronic funds transfer—
  - (i) obtain, at least once each week, a transaction report statement from the financial institution into which the trust money is paid showing deposits made into the trust account; and
  - (ii) ensure the statement is kept in the principal agent's records; and
- (b) otherwise—ensure a copy of the trust account deposit form is kept in the principal agent's records.

Maximum penalty—10 penalty units.

## **Division 3            Trust account payments**

### **13        Payments by cheque**

- (1) This section applies if the principal agent draws a cheque against a trust account kept by the principal agent under the Act.
- (2) The principal agent must ensure the following particulars are written on the cheque butt or another document—
  - (a) the date the cheque is drawn;
  - (b) the name of the person to whom the cheque is payable;
  - (c) the name of the person on whose behalf the cheque is drawn;
  - (d) a brief description of the matter for which the cheque is drawn;
  - (e) the amount for which the cheque is drawn.

Maximum penalty—10 penalty units.

- (3) A principal agent must keep each cheque butt or other document containing the particulars mentioned in subsection (2) in the principal agent's records.

*Example of other document—*

a cheque requisition form

Maximum penalty—10 penalty units.

### **14        Payments by electronic funds transfer**

- (1) This section applies if the principal agent pays trust money by electronic funds transfer.
- (2) The principal agent must keep a transaction report statement from the financial institution at which the trust account is held containing the following particulars—

- 
- (a) the date of the payment;
  - (b) the amount of the payment;
  - (c) the account name and number to which the trust money was paid.

Maximum penalty—10 penalty units.

- (3) A principal agent must keep each transaction report statement containing the particulars mentioned in subsection (2) in the agent's records.

Maximum penalty—10 penalty units.

## **Division 4                      Trust account cash books**

### **15            Trust account cash book—trust money received**

- (1) This section applies if the principal agent receives trust money from a person.
- (2) The principal agent must, within 2 business days after trust money is received, or if the trust money is received by electronic funds transfer, on the day the principal agent becomes aware of the receipt of the trust money, enter the following particulars in the trust account cash book—
  - (a) the date the trust money is received;
  - (b) if a trust account receipt is completed on a date that is different from the date mentioned in paragraph (a), the date the receipt is completed;
  - (c) the name of the person from whom the trust money is received;
  - (d) the name of, or other means of identifying, the person on whose behalf the trust money is received;

*Example of a way by which the name of a person can be identified—*

using a code to identify the person, for example, S4 stands for N. Smith

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- (e) a brief description of the matter for which the trust money is received;
- (f) the amount received;
- (g) the trust account receipt number;
- (h) the date the trust money is paid into the agent's trust account maintained at the financial institution where the general trust account is kept.

Maximum penalty—10 penalty units.

- (3) The entries containing the particulars mentioned in subsection (2) must be recorded in the order in which the receipts are made out.

Maximum penalty—10 penalty units.

## **16 Trust account cash book—trust money paid**

- (1) This section applies if the principal agent pays trust money to a person.
- (2) If the principal agents pays trust money by cheque, the agent must, within 2 business days after the payment, enter the following particulars in the trust account cash book—
  - (a) the date the cheque is written;
  - (b) the amount paid;
  - (c) the cheque number;
  - (d) the name of the person to whom the payment is made;
  - (e) the name of, or other means of identifying, the person on whose behalf the payment is made;

*Example of a way by which the name of a person can be identified—*

using a code to identify the person, for example, S4 stands for N. Smith

- (f) a brief description of the matter for which the money is paid;
- (g) details identifying the ledger account to be debited.

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- (3) If the principal agent pays trust money by electronic funds transfer, the agent must, within 2 business days after the payment, enter the following particulars in the trust account cash book—
- (a) the date the money is paid;
  - (b) the amount paid;
  - (c) the electronic funds transfer number;
  - (d) the name of the holder of the account to which the amount is paid;
  - (e) the identifying number of the financial institution and account number of the account to which the amount is paid;
  - (f) the name of, or other means of identifying, the person on whose behalf the payment is made;
- Example of a way by which the name of a person can be identified—*
- using a code to identify the person, for example, S4 stands for N. Smith
- (g) a brief description of the matter for which the money is paid;
  - (h) details identifying the ledger account to be debited.
- Maximum penalty—10 penalty units.

## 17 Trust account cash book reconciliation

- (1) A principal agent must, within 5 business days after the end of each month—
- (a) reconcile the trust account cash book balance as at the end of the month with the trust account ledger balances that show—
    - (i) each trust account creditor's name; and
    - (ii) the amount held on behalf of the creditor as at the end of the month; and

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- (b) reconcile the financial institution's statement balance for the principal agent's trust account as at the end of the month with the trust account cash book balance as at the end of the month.

Maximum penalty—10 penalty units.

- (2) The principal agent must keep each reconciliation completed under this section in the principal agent's records.

Maximum penalty—10 penalty units.

## **18 Trust account cash book reconciliation details**

- (1) A reconciliation under section 17(1)(b) must contain the following details—

- (a) the balance as at the end of the month shown on the financial institution's statement for the principal agent's trust account;
- (b) the amount of trust money on hand as at the end of the month and the date the money was received;
- (c) for each outstanding deposit as at the end of the month—
  - (i) the amount of the outstanding deposit; and
  - (ii) the date the outstanding deposit was received; and
  - (iii) the date the amount was deposited;
- (d) details, including the amount, of any electronic funds transfer deposits recorded on the financial institution statement but not entered in the trust account cash book as at the end of the month;
- (e) details of any outstanding cheques, including, for each cheque—
  - (i) the cheque number; and
  - (ii) the amount of the cheque; and
  - (iii) the date of the cheque;

- 
- (f) the balance of the trust account as at the end of the month shown in the trust account cash book.
- (2) For a reconciliation under section 17(1)(b), the principal agent must reconcile the trust account cash book balance as at the end of the month with the amount obtained by—
- (a) adding the balance mentioned in subsection (1)(a), the amount mentioned in subsection (1)(b) and the amounts mentioned in subsection 1(c)(i); and
  - (b) deducting the amounts mentioned in subsection (1)(d) and (e)(ii) from the amount obtained under paragraph (a).

## **Division 5                    Trust account ledgers**

### **19            Separate ledger account**

A principal agent must keep a separate ledger account in the trust account ledger for each person on whose behalf the principal agent receives trust money.

Maximum penalty—10 penalty units.

### **20            Particulars to be included in ledger account**

- (1) A principal agent must ensure that each trust ledger account contains the following particulars—
- (a) the name of the person on whose behalf the trust money is received or paid;
  - (b) a brief description of the matter for which the trust money is received or paid.

Maximum penalty—10 penalty units.

- (2) Also, a principal agent must ensure that each trust ledger account contains the following particulars for each entry in the ledger account—
- (a) the date the trust money is received or paid;

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- (b) the name of the person from whom the trust money is received or to whom the trust money is paid;
- (c) a brief description of the matter for which the trust money is received or paid;
- (d) the amount received or paid;
- (e) if the entry is for trust money received—the receipt number;
- (f) if the entry is for trust money paid—the cheque number or electronic funds transfer number;
- (g) the balance of the trust ledger account after each entry;
- (h) if trust money is transferred to the trust ledger account from another trust ledger account under section 22—the trust account journal reference number or folio reference number recorded against the journal entry by which the transfer is posted.

Maximum penalty—10 penalty units.

## **21 Trust account cash book entries to be posted to ledger account**

A principal agent must, within 2 business days after the day trust money is received or paid, ensure that each entry in the trust account cash book is posted to the trust ledger account for the person on whose behalf the trust money is received or paid.

Maximum penalty—10 penalty units.

## **Division 6 Trust account journals**

### **22 Transfer by journal entry**

- (1) A principal agent may transfer trust money from a trust ledger account to another trust ledger account by a journal entry.

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- (2) However, a principal agent must not transfer trust money by a journal entry unless the principal agent is entitled to pay the money from the trust ledger account for the purpose for which it is transferred.

Maximum penalty—10 penalty units.

- (3) A principal agent must ensure that a trust account journal includes the following particulars for each entry in the journal—
- (a) the date the trust money is transferred;
  - (b) the name of, or other means of identifying, the person—
    - (i) from whose trust ledger account the money is transferred; and
    - (ii) to whose trust ledger account the money is transferred;

*Example of a way by which the name of a person can be identified—*

using a code to identify the person, for example, S4 stands for N. Smith

- (c) a brief description of the matter conducted for each person mentioned in paragraph (b);
- (d) the amount transferred.

Maximum penalty—10 penalty units.

## Division 7                      Transfer of trust accounts

### 23                      Dealing with transferred trust accounts

- (1) This section applies if—
- (a) a principal agent (the *original principal agent*) enters into a partnership with another principal agent; or
  - (b) a principal agent (also an *original principal agent*) disposes of the agent's business to another principal agent by any means; or

- (c) a change occurs in the members of a partnership of principal agents (the *original partnership*).
- (2) The trust money held by an original principal agent or original partnership must be held by the original principal agent or original partnership until the person who conducts the final audit certifies that the trust money has been properly accounted for and reconciled.

Maximum penalty—10 penalty units.

- (3) Despite subsection (2), if the money is held in a trust account on a trust creditor's behalf, the money must be transferred if—
  - (a) the trust creditor authorises the transfer in writing; or
  - (b) for trust money in the form of a bond or a security deposit in relation to a tenancy agreement, the landlord and the tenant authorise the transfer in writing; or
  - (c) the matters in subsection (4) are satisfied.
- (4) For subsection (3)(c), the matters are—
  - (a) the transferee is the public trustee and the public trustee has agreed to accept the transfer; and
  - (b) the original principal agent or original partnership has taken reasonable steps to contact the person entitled to the money; and
  - (c) under the *Trusts Act 1973*, section 67—
    - (i) the original principal agent or original partnership has given a notice for the money; and
    - (ii) the date fixed in the notice given under that section has passed; and
    - (iii) the original principal agent or original partnership has no notice of any claim to the money for the purposes of that section.

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## Part 3 Fees

### 24 Fee to inspect or copy details in register of undertakings—Act, s 135(3)

For section 135(3) of the Act, the fee prescribed is \$17.55.

## Part 4 Claims against fund

### 25 Limits on recovery from fund—Act, s 113

- (1) For section 113(2) of the Act, a claimant may not recover more than \$200,000.
- (2) For section 113(4) of the Act the total amount that may be paid from the fund because of, or arising out of, a contravention mentioned in that section by a single person is \$2,000,000.

## Part 5 General

### 26 Keeping documents

- (1) This section applies subject to the *Evidence Act 1977*, section 111.
- (2) A principal agent must keep each document the agent is required to keep under the Act—
  - (a) in a secure, orderly and accessible way; and
  - (b) for at least 5 years.

Maximum penalty—10 penalty units.

## **27 Keeping documents in electronic form**

- (1) This section applies if—
  - (a) a principal agent is required to keep a document under the Act; and
  - (b) the document is stored in electronic form on a computer.
- (2) The principal agent must ensure—
  - (a) the computer system has enough capacity and backup capability to record the information required to be kept under the Act; and
  - (b) the computer system is backed-up at least once a month; and
  - (c) a computer disk or other electronic device used to store the backed-up information is kept in a location that—
    - (i) is not the principal agent's principal place of business or the principal agent's business address; and
    - (ii) is unaffected by magnetic interference or another thing that may adversely affect the stored information.

Maximum penalty—10 penalty units.

## **28 Audit report details—Act, s 40(2)(s)**

For section 40(2)(s) of the Act, the details mentioned in section 18 are prescribed.

# **Part 6 Transitional provisions**

## **29 Definition for pt 6**

In this part—

*repealed regulation* means the *Property Agents and Motor Dealers Regulation 2001*.

### **30 Books, accounts and records**

A book, account or record that was, immediately before commencement, required to be kept under section 38 of the repealed regulation is taken to be a book, account or record required to be kept under section 3.

### **31 Retained records**

- (1) This section applies if—
  - (a) under section 58 of the repealed regulation, a person was required to keep a document for a period of not less than 5 years (the *retention period*); and
  - (b) the person is a principal agent; and
  - (c) on the commencement, the retention period has not expired.
- (2) Section 58 of the repealed regulation continues to apply to the person in relation to the document.