

Authorised Version No. 002
Estate Agents (General, Accounts and Audit)
Regulations 2008

S.R. No. 39/2008

Authorised Version incorporating amendments as at
7 June 2011

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PART 1—INTRODUCTORY

1 Objective

The objective of these Regulations is to facilitate the operation of the Act by, among other matters, prescribing the procedures for the keeping of trust accounts and the auditing of those accounts, and prescribing forms.

2 Authorising provision

These Regulations are made under section 99 of the **Estate Agents Act 1980**.

3 Revocation

The regulations set out in Schedule 1 are **revoked**.

4 Definitions

In these Regulations—

authorised financial institution has the same meaning as in section 60(6) of the Act and is referred to in these Regulations as "AFI";

BSB number (Bank State Branch Number) means the number assigned to identify a particular branch of a particular AFI;

deficiency in a trust account or trust ledger account means a shortage in a trust account or trust ledger account that is caused when the whole or any part of an amount that is

required to be kept in a trust account or trust ledger account is—

- (a) not paid into that account; or
- (b) withdrawn from that account;

licensed working director means a working director who is also a licensed estate agent;

permanent form means the form for the keeping of accounting records, files and other records set out in section 63(2) of the Act;

practising accountant means a person who—

- (a) is registered as a company auditor by the Australian Securities and Investments Commission; or
- (b) is a Member of CPA Australia or the Institute of Chartered Accountants in Australia; or
- (c) has attained the status of Member or Fellow of either the National Institute of Accountants or the Association of Taxation and Management Accountants; or
- (d) has attained the status of Fellow of the National Tax & Accountants' Association Limited;

principal means a person who engages the services of an estate agent to undertake estate agency work on that person's behalf;

the Act means the **Estate Agents Act 1980**;

trust money means money received or held by an estate agent while acting as an estate agent (whether by the estate agent or by an employee or agent's representative) on behalf of any person or as a stakeholder or in trust pending the completion of any transaction;

trust record includes the following documents—

- (a) register of trust receipts;
 - (b) original or duplicate of every trust receipt required to be kept by the Act;
 - (c) duplicates of every completed trust account deposit form;
 - (d) AFI's statement relating to trust accounts;
 - (e) record of trust money payments including cheque butts, records of electronic fund transfers or other permanent record;
 - (f) register of trust cheques;
 - (g) trust account cash journals;
 - (h) trust transfer journals;
 - (i) trust ledger accounts;
 - (j) monthly trust account reconciliation statements;
 - (k) register of securities;
 - (l) any other books, accounts or records kept by an estate agent relating to trust money.
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PART 2—NOTIFICATION OBLIGATIONS AND FORMS

5 Notification of ineligibility

- (1) An estate agent must immediately notify the Authority in writing if—
- (a) he or she becomes an insolvent under administration or an externally administered body corporate; or
 - (b) he or she becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (c) he or she is convicted of, or has found proven against him or her, any offence involving fraud, dishonesty, drug trafficking or violence which is punishable by imprisonment for 3 months or more; or
 - (d) in relation to him or her any claim has been allowed against the Victorian Property Fund under Part VII of the Act or any corresponding fund established under any corresponding previous enactment; or
 - (e) he or she is made the subject of an order by any regulatory body in or outside Victoria disqualifying him or her from acting as an estate agent or agent's representative (or an equivalent occupation under the jurisdiction of the regulatory body).

Penalty: 5 penalty units.

- (2) The officer in effective control of the estate agency business of a corporation must immediately notify the Authority in writing if—
- (a) the corporation becomes an insolvent under administration or an externally administered body corporate; or

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- (b) in relation to the corporation any claim has been allowed against the Victorian Property Fund under Part VII of the Act or any corresponding fund established under any corresponding previous enactment; or
 - (c) the corporation is convicted of, or has found proven against it, an offence involving fraud, dishonesty, drug trafficking or violence that, if it was a natural person, would be punishable by imprisonment for 3 months or more; or
 - (d) the corporation is made the subject of an order by any regulatory body in or outside Victoria disqualifying the corporation from acting as an estate agent (or an equivalent occupation under the jurisdiction of the regulatory body).

Penalty: 5 penalty units.

- (3) The officer in effective control of the estate agency business of a corporation must immediately notify the Authority in writing upon becoming aware that—
 - (a) a director of that corporation has become an insolvent under administration or an externally administered body corporate; or
 - (b) a director of that corporation has become a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (c) a director of that corporation has been convicted of, or has found proven against him or her, any offence involving fraud, dishonesty, drug trafficking or violence which is punishable by imprisonment for 3 months or more; or

- (d) in relation to a director of that corporation any claim has been allowed against the Victorian Property Fund under Part VII of the Act or any corresponding fund established under any corresponding previous enactment; or
- (e) a director of that corporation has been made the subject of an order by any regulatory body in or outside Victoria disqualifying the person from acting as an estate agent (or an equivalent occupation under the jurisdiction of the regulatory body).

Penalty: 5 penalty units.

- (4) An agent's representative must immediately notify the Authority in writing if—
 - (a) he or she becomes an insolvent under administration; or
 - (b) he or she becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (c) he or she is convicted of, or has found proven against him or her, any offence involving fraud, dishonesty, drug trafficking or violence which is punishable by imprisonment for 3 months or more; or
 - (d) in relation to him or her any claim has been allowed against the Victoria Property Fund under Part VII of the Act or any corresponding fund established under any corresponding previous enactment; or

(e) he or she is made the subject of an order by any regulatory body in or outside Victoria disqualifying him or her from acting as an agent's representative (or an equivalent occupation under the jurisdiction of the regulatory body).

Penalty: 5 penalty units.

6 Statement under section 51(1A)

An estate agent or auctioneer who gives a statement under section 51(1A) of the Act must do so in the form of Form 1 in Schedule 2.

Penalty: 5 penalty units.

7 Statement to be given on the sale of a small business

- (1) The statement required by section 52(1) of the Act with respect to the sale of a small business must be in the form of Form 2 in Schedule 2.
- (2) The Business Operating Report in Section D of Form 2 must—
 - (a) show the required information for the last 2 accounting periods, unless the vendor has not owned the business for that long; and
 - (b) be certified in the terms set out in Item 2 of Section D of Form 2 by a practising accountant.
- (3) Subject to subregulation (4), an accounting period for the purposes of subregulation (2) is—
 - (a) a financial year; or
 - (b) a continuous period of 12 months.
- (4) If a particular accounting period was changed for book-keeping purposes that period may be treated as an accounting period for the purposes of subregulation (2).

8 Embargo notice

An embargo notice issued by an inspector under section 70O of the Act must be in the form of Form 3 in Schedule 2.

PART 3—TRUST ACCOUNTS

Division 1—General trust accounting

9 Establishment of trust account

- (1) A trust account established at an AFI under section 59(3) of the Act must include in the name of the account—
 - (a) the name under which the estate agent is licensed to carry on business as an estate agent; and
 - (b) the expression "estate agency business statutory trust account" or "estate agency business statutory trust a/c".
- (2) Subregulation (1) does not apply to an account established in Victoria before the commencement of this regulation.
- (3) Subregulation (1)(b) does not require the repetition of the words "estate agency business" if those words form part of the name of the estate agency business.

10 Estate agent's use of trust money

An estate agent who holds trust money and who withdraws from trust money an amount in satisfaction of a claim for commission, fees, costs or disbursements that the agent has against the person on whose behalf the money is held or for the making of any other payment authorised by law must—

- (a) before withdrawing the money, obtain the person's written authority to do so; and

- (b) enter in the trust record details of the transaction and full and accurate particulars of the amount withdrawn.

Penalty: 20 penalty units.

11 Estate agent's notification of trust account deficiency

- (1) An estate agent must notify the agent's auditor and the Director within 3 business days of becoming aware of any deficiency in his, her or its—

- (a) trust account; or
- (b) trust ledger account.

Penalty: 10 penalty units.

- (2) The estate agent must include in the notification of the deficiency details of—

- (a) the date on which it occurred; and
- (b) the amount; and
- (c) the reason why it occurred; and
- (d) full particulars of any action taken to restore it.

Penalty: 5 penalty units.

- (3) Subregulation (1) does not apply if—

- (a) the deficiency was caused solely by an error by an authorised deposit-taking institution or by inadvertence; and
- (b) the deficiency is rectified within 2 business days of the estate agent becoming aware of the deficiency.

- (4) A notification under subregulation (1) is not admissible as evidence in any proceedings under section 90(1) of the Act.

12 Register of trust receipts

- (1) An estate agent who in accordance with section 63 of the Act uses pre-printed trust receipts must keep a register of those receipts which records—
 - (a) the number printed on each receipt; and
 - (b) the date a batch of receipts is received from the printer; and
 - (c) the name of any employee or agent's representative to whom receipts are given; and
 - (d) the date receipts are handed to an employee or agent's representative; and
 - (e) the date receipts are returned by an employee or agent's representative.

Penalty: 5 penalty units.

- (2) For the purposes of subregulation (1), it is sufficient to record the number of the first and last trust account receipts where they are part of a sequence of numbers.

13 Trust receipts

- (1) An estate agent must ensure that the estate agent's trust receipts are issued in the numerical sequence of the series to which they belong.

Penalty: 5 penalty units.

- (2) An estate agent must record the following particulars on each trust receipt—
 - (a) the name under which the estate agent carries on business as an estate agent;
 - (b) the number of the receipt;
 - (c) the date the receipt is made out and, if different, the date on which the trust money is received;

- (d) the amount of the money received;
- (e) the form in which the money was received including in cash or by cheque or by electronic funds transfer or otherwise;
- (f) the name of the person from whom the money was received;
- (g) the name and reference number or other identification of the person on whose behalf the money was received;
- (h) particulars sufficient to identify the purpose for which the money was received;
- (i) the name of the person who made out the receipt.

Penalty: 10 penalty units.

- (3) An electronic record of a payment received by an estate agent must record the particulars set out in subregulation (2)(b) to (i) and must be in the form of an entry in the estate agent's trust account cash receipts journal.

Penalty: 10 penalty units.

- (4) Where an estate agent is required under sections 63(3) and 63(4) of the Act to give a receipt for a payment received and the receipt is cancelled or not delivered, the estate agent must retain the original receipt.

Penalty: 5 penalty units.

14 Approval of alternative arrangement for duplicate receipts under section 63(3) of the Act

- (1) This section applies to an estate agent who under section 63(3) of the Act proposes to use a record for the receipt of trust money which does not involve the agent keeping a duplicate copy of the receipt.

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- (2) An estate agent must apply in writing to the Director for approval to use the alternative record for the receipt of trust money set out in the application.
 - (3) Within 28 days of receiving an application for approval under subregulation (2), the Director must notify the estate agent in writing whether or not the application is approved, and whether or not the approval, if any, is given with or without variation.
 - (4) An approval applies only to the estate agent who applied for and received the approval.
 - (5) If the Director becomes dissatisfied with a record he or she has approved, the Director may give to the estate agent a written notice—
 - (a) stating that the approval is revoked; or
 - (b) requiring the estate agent to make specified variations to the approved record within 28 days of the notice being given.
 - (6) If a notice is given under subregulation (5)(a), the approval ceases 28 days after the notice is given.
 - (7) If a notice is given under subregulation (5)(b) and the variations are not made, then the approval ceases 28 days after the notice is given.
 - (8) The Director may at any time require an estate agent to obtain and give to the Director a report from the agent's auditor about whether the form of record being used complies with the record approved by the Director and the agent must provide a report if required to do so.

Penalty: 5 penalty units.

15 Approval of alternative numbering of receipts under section 63(3B) of the Act

- (1) This section applies to an estate agent who under section 63(3B) of the Act proposes to use receipts or duplicate copies or other records of those receipts that are not sequentially numbered.
- (2) An estate agent must apply in writing to the Director for approval to use the alternative method of numbering or marking as set out in the application.
- (3) Within 28 days of receiving an application for approval under subregulation (2), the Director must notify the estate agent in writing whether or not the application is approved, and whether or not the approval, if any, is given with or without variation.
- (4) An approval applies only to the estate agent who applied for and received the approval.
- (5) If the Director becomes dissatisfied with a method he or she has approved, the Director may give to the estate agent a written notice—
 - (a) stating that the approval is revoked; or
 - (b) requiring the estate agent to make specified variations to the approved method within 28 days of the notice being given.
- (6) If a notice is given under subregulation (5)(a), the approval ceases 28 days after the notice is given.
- (7) If a notice is given under subregulation (5)(b) and the variations are not made, then the approval ceases 28 days after the notice is given.

- (8) The Director may at any time require an estate agent to obtain and give to the Director a report from the agent's auditor about whether the method of numbering receipts being used complies with the method approved by the Director and the agent must provide a report if required to do so.

Penalty: 5 penalty units.

16 Trust account deposit forms

- (1) An estate agent who deposits trust money into an AFI, other than a deposit made directly by electronic means, must for each deposit of trust money received, make and give to their AFI a completed trust account deposit form at the time the deposit is made.

Penalty: 5 penalty units.

- (2) For the purposes of subregulation (1), a trust account deposit form must record—
- (a) the date of the deposit; and
 - (b) the name and number of the agent's trust account; and
 - (c) the amount of the deposit; and
 - (d) whether the deposit consists of cheques or cash and the total amount of all cheques and the total amount of cash received; and
 - (e) if the deposit includes cheques—
 - (i) the name of the drawer of the cheque; and
 - (ii) the name and branch (or the BSB number) of the AFI against which the cheque is drawn; and
 - (iii) the amount of the cheque.

Penalty: 10 penalty units.

- (3) An estate agent must make and retain a duplicate copy of each completed trust account deposit form.

Penalty: 10 penalty units.

17 Register of trust cheques

- (1) An estate agent who makes a payment from a trust account by cheque must keep a register of trust cheques which records—

- (a) the serial number of each cheque; and
- (b) the date a batch of cheques is received from the AFI; and
- (c) the name of any employee or agent's representative to whom cheques are given; and
- (d) the date cheques are handed to an employee or agent's representative; and
- (e) the date cheques are returned by an employee or agent's representative.

Penalty: 5 penalty units.

- (2) For the purposes of subregulation (1) it is sufficient to record the number of the first and last trust cheques where they are part of a sequence of numbers.

18 Record of trust money payments by cheque

- (1) If an estate agent makes a payment of trust money from a trust account by cheque, the cheque must—
- (a) be machine numbered in sequence; and
 - (b) be marked "not negotiable"; and
 - (c) not be payable to cash; and

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- (d) contain the name under which the estate agent conducts business and the words "trust account".

Penalty: 5 penalty units.

- (2) An estate agent must ensure that cheques are drawn in the numerical order of the series in which they belong and that for each cheque a cheque butt or other printed record is kept of the following particulars—
- (a) the date of the cheque;
 - (b) the serial number of the cheque;
 - (c) the name of the person to whom the payment is to be made or, in the case of a cheque made payable to an AFI, the name or BSB of the AFI and the name of the person receiving the benefit of the payment;
 - (d) the name and reference number or other identification of the person on whose behalf the cheque was drawn;
 - (e) details identifying the account in the trust ledger to which the cheque is to be debited;
 - (f) particulars sufficient to identify the purpose for which the cheque was drawn;
 - (g) the amount of the cheque.

Penalty: 10 penalty units.

- (3) It is sufficient compliance with the record keeping requirements of subregulation (2) if at the time the cheque is issued the particulars set out in subregulation (2) are recorded by computer program in the trust account cash payments journal.

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- (4) A cheque must be signed by—
- (a) the estate agent who carries on business as an estate agent, or if the estate agent is a corporation, the officer in effective control; or
 - (b) if the estate agent or officer in effective control referred to in paragraph (a) is not available, an employee who is a signatory to the trust account of the estate agency business kept at an AFI under section 59(3) of the Act.

Penalty: 10 penalty units.

- (5) Records relating to payments made by cheque must be kept in the order in which the cheques were issued.

Penalty: 5 penalty units.

19 Record of trust money payments by electronic funds transfer

- (1) An estate agent must ensure that for each payment of trust money from a trust account by electronic funds transfer a record is kept in a permanent form of the following particulars—
- (a) the date of the transfer;
 - (b) the amount transferred;
 - (c) the name of the person to whom the payment is to be made or, in the case of a payment to an AFI, the name or BSB of the AFI and the name of the person receiving the benefit of the payment;
 - (d) the reference number or other particulars sufficient to identify the transfer;
 - (e) the name and number of the account, including the BSB number, to which the amount was transferred;

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- (f) the name and reference number or other identification of the person on whose behalf the transfer was made;
 - (g) details identifying the account in the trust ledger to which the payment is to be debited;
 - (h) particulars sufficient to identify the purpose for which the payment was made.

Penalty: 10 penalty units.

- (2) It is sufficient compliance with the record keeping requirements of subregulation (1) if at the time the payment is made the particulars set out in subregulation (1) are recorded by computer program in the trust account cash payments journal.
- (3) An electronic funds transfer must be made under the direction of or with the authority of—
 - (a) the estate agent who carries on business as an estate agent, or if the estate agent is a corporation, the officer in effective control; or
 - (b) if the estate agent or officer in effective control referred to in paragraph (a) is not available, an employee who is a signatory to the trust account of the estate agency business kept at an AFI under section 59(3) of the Act.

Penalty: 10 penalty units.

- (4) Records relating to payments by electronic fund transfers must be kept in the order in which the transfers were made.

Penalty: 5 penalty units.

20 Journal references

An estate agent must ensure that any journal reference numbers are allocated in sequence and, where an estate agent uses a computerised accounting system, under the control of that program.

Penalty: 5 penalty units.

21 Trust account cash receipts journal

- (1) An estate agent must keep a trust account cash receipts journal which records all daily receipts of money into the estate agent's trust account.

Penalty: 20 penalty units.

- (2) Each entry in the cash receipts journal with respect to a receipt of trust money must include the following particulars—
 - (a) the date the receipt is made out and, if different, the date of receipt of the money;
 - (b) the receipt number;
 - (c) the form in which the money was received including cash, cheque, electronic funds transfer or otherwise;
 - (d) the name of the person from whom the money was received;
 - (e) the name and reference number or other identification of the person on whose behalf the money was received;
 - (f) particulars sufficient to identify the purpose for which the money was received;
 - (g) details identifying the ledger account to be credited;
 - (h) the amount of the money received.

Penalty: 10 penalty units.

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- (3) The particulars in relation to receipts must be recorded in the order in which the receipts are made out.

22 Trust account cash payments journal

- (1) An estate agent must keep a trust account cash payments journal which records all daily payments of money out of the estate agent's trust account.

Penalty: 20 penalty units.

- (2) Each entry in the cash payments journal with respect to a payment of trust money must include the following particulars—

- (a) if the payment is made by cheque, the particulars set out in regulation 18(2); or
(b) if the payment is by electronic funds transfer, the particulars set out in regulation 19(1).

Penalty: 10 penalty units.

- (3) The particulars in relation to payments must be recorded in the order in which the payments are made.

23 Recording transactions in the trust ledger accounts

- (1) An estate agent must keep a ledger consisting of a separate identifiable account for—

- (a) each person on behalf of whom the estate agent holds trust money; and
(b) each transaction pending the completion of which the estate agent holds trust money as a stakeholder or in trust.

Penalty: 5 penalty units.

(2) The following details must be included in the title of each ledger account—

- (a) the name and address of the agent's principal;
- (b) particulars sufficient to identify the purpose for which the money was received.

Penalty: 5 penalty units.

(3) The following particulars must be recorded in the trust ledger account in respect of each receipt of trust money—

- (a) the date the receipt is made out and, if different, the date of receipt of the money;
- (b) the receipt number;
- (c) the name of the person from whom the money was received;
- (d) the purpose for which the money was received;
- (e) the amount received.

Penalty: 10 penalty units.

(4) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money—

- (a) the date of the cheque;
- (b) the cheque number;
- (c) the name of the person to whom the money was paid;
- (d) the purpose of the receipt or payment;
- (e) the amount paid.

Penalty: 10 penalty units.

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- (5) The following particulars must be recorded in the trust ledger account in respect of each payment of trust money by electronic funds transfer—
- (a) the date of the electronic funds transfer;
 - (b) the electronic funds transfer number;
 - (c) the name of the person from whom the money was paid;
 - (d) the name and number of the account, including the BSB number, to which the money was paid;
 - (e) the purpose of the payment;
 - (f) the amount paid.

Penalty: 10 penalty units.

- (6) The following particulars must be recorded in the trust ledger account in respect of each transfer of money made by a journal entry—
- (a) the date of the funds transfer;
 - (b) the transfer journal folio number;
 - (c) the name of the other trust ledger account from which or to which the money was transferred;
 - (d) the purpose of the transfer;
 - (e) the amount transferred.

Penalty: 10 penalty units.

- (7) Transactions relating to trust money must be recorded in the trust ledger account in the order in which the transactions occur.

Penalty: 5 penalty units.

- (8) The estate agent must ensure that a trust ledger account at all times shows a continuous running balance disclosing the amount of money held.

Penalty: 10 penalty units.

24 Transfer journal

- (1) An estate agent must not transfer money between accounts in the trust account ledger unless the agent is entitled to transfer the money for that purpose.

Penalty: 10 penalty units.

- (2) An estate agent must record all transfers of trust money between accounts in the trust account ledger in a journal kept exclusively for that purpose.

Penalty: 10 penalty units.

- (3) An entry in a transfer journal must include the following particulars—

- (a) the date of the transfer;
- (b) the amount transferred to and from each ledger account;
- (c) the names of all ledger accounts to be debited or credited, including identifying references;
- (d) particulars sufficient to identify the purpose for which the money was transferred.

Penalty: 10 penalty units.

- (4) Journal pages or entries must be consecutively numbered.

Penalty: 5 penalty units.

25 Trust account reconciliation statements

- (1) An estate agent must complete and keep a trust account reconciliation statement at the end of each month which—
 - (a) ascertains the balance of the trust journals; and
 - (b) reconciles the balance of the agent's trust account at an AFI with the balance of the agent's trust cash journals; and
 - (c) reconciles the balances of the accounts of the agent's trust ledger with the balance of the agent's trust cash journal.

Penalty: 20 penalty units.

- (2) For the purposes of subregulation (1)(c) it is sufficient if the list of accounts is in the same sequence as they appear in the trust ledger and shows—
 - (a) the reference number or code identifying each account; and
 - (b) the separate balance in each account; and
 - (c) the total of the balances in all accounts.
- (3) An estate agent who carries on an estate agency business, or if the estate agent is a corporation, a licensed working director or the officer in effective control, must verify that the trust account reconciliation statement is true and accurate within 14 days after the end of the preceding month.

Penalty: 20 penalty units.

Note

Under section 70C of the Act an inspector may require an estate agent to demonstrate that the trust account reconciliation verification required under subregulation (1) has been undertaken within the required timeframe.

26 Register of securities

- (1) An estate agent who holds securities and documents of title for trust money on behalf of another person must keep a register of—
 - (a) all securities for money the title to which is transferable by delivery, held by the estate agent on behalf of another person;
 - (b) all securities and documents of title held on behalf of another person—
 - (i) by the agent in the agent's own name; or
 - (ii) by the agent in joint names with another agent; or
 - (iii) under the control of the agent; or
 - (iv) under the joint control of the agent with another agent;
 - (c) all receipts for the deposit of money with any person made on behalf of another person—
 - (i) by the agent in the agent's own name; or
 - (ii) by the agent in joint names with another agent; or
 - (iii) under the control of the agent; or
 - (iv) under the joint control of the agent with another agent.

Penalty: 10 penalty units.

- (2) The register must show—
 - (a) the date the security, document of title or receipt was received; and
 - (b) a description of the security, document of title or receipt; and

- (c) the value or amount of the security or money deposited; and
- (d) the name of the person for whom the security, document of title or receipt is held; and
- (e) the date of delivery of the security, document of title, or receipt by the agent to another person, and the name of the person to whom it is given; and
- (f) the reason why the security, document of title or receipt is being held; and
- (g) if the security, document of title or receipt is held jointly with another agent, the name under which that agent operates an estate agency business.

Penalty: 5 penalty units.

Division 2—Computerised accounting system

27 Application

This Division applies to an estate agent who keeps trust account records by means of a computerised accounting system.

28 Chronological record of information to be made

An estate agent must keep a record of the creation, amendment or deletion of information in the estate agency business's computerised accounting system in relation to the following—

- (a) principal's name;
- (b) principal's address;
- (c) principal's reference number or other identification;
- (d) description of transaction;

(e) ledger account reference number or other identification for each trust ledger account;

(f) ledger account number—

disclosing the details before and after the creation, amendment or deletion of the information.

Penalty: 20 penalty units.

29 Requirements regarding computerised accounting system controls

(1) An estate agent must ensure that the computerised account system for the estate agency business is not capable of accepting the entry of a transaction that results in a debit balance in a trust account, unless a contemporaneous record of the transaction is made in a manner that enables the production, in a permanent form, on demand, of a separate chronological report of all such occurrences.

Penalty: 20 penalty units.

(2) An estate agent must ensure that the system is not capable of deleting a trust ledger account unless—

(a) the balance of the account is zero and all outstanding cheques have been presented; and

(b) where the account is deleted, a copy of the account is retained in a permanent form.

Penalty: 20 penalty units.

(3) The estate agent must ensure that any entry in the record required under subregulation (1) appears in chronological sequence.

Penalty: 5 penalty units.

- (4) An estate agent must ensure each page of each record required under subregulation (1) is numbered sequentially under program control in a manner that enables the completeness of the records required to be conveniently verified.

Penalty: 10 penalty units.

- (5) An estate agent must ensure that the system is not capable of amending the particulars of a transaction already recorded otherwise than by a transaction separately recorded that makes the amendment.

Penalty: 10 penalty units.

- (6) The estate agent must ensure that the system requires input in every field of a data entry screen intended to receive information by this Part to be included in trust records.

Penalty: 5 penalty units.

Division 3—Records

30 Records to be retained

- (1) An estate agent who holds trust money must keep on each trust file full and accurate particulars of—
- (a) all expenses incurred by the agent; and
 - (b) all payments made out of the agent's own money; and
 - (c) commission and other charges relating to any payment made out of the money—

in relation to that file.

Penalty: 20 penalty units.

- (2) An estate agent must retain in a permanent form—
- (a) every trust record and statement which the agent is required by these Regulations to keep; and

- (b) any files where the agent has received or is entitled to receive any commission, or where trust money has been received.

Penalty: 20 penalty units.

31 Back-up of electronic records

An estate agent must ensure that—

- (a) a back-up copy of all records required by this Part is made not less frequently than once each month; and
- (b) each back-up copy is retained by the estate agent in charge of the estate agency business or the officer in effective control in charge of the estate agency business of a corporation; and
- (c) a complete set of the back-up copies is kept in a separate location so that any incident that may adversely affect the records would not also affect the back-up copy.

Penalty: 20 penalty units.

Division 4—Audit of trust accounts

32 Trust account reconciliation statements to be produced

For any audit or report under section 64, 64A or 64B of the Act, an estate agent must produce to the auditor all trust account reconciliation statements for the period to which the audit or report relates.

Penalty: 10 penalty units.

33 Production of statements required by sections 64(10) and 64(13) of the Act

An estate agent must give to the auditor the statements required by sections 64(10) and 64(13) of the Act within one month after the last day of the period to which the audit relates.

Penalty: 5 penalty units.

34 Trust account receipts—cessation of business

- (1) Except in the case of a partnership, an individual estate agent or a corporation must immediately give to the auditor any unused trust account receipts in the agent's possession if the estate agent or corporation ceases to carry on the business of an estate agent.

Penalty: 5 penalty units.

- (2) After completing the audit required under section 64B(1) of the Act, the auditor must destroy the receipts received in accordance with subregulation (1) and notify the Director of their destruction.

Penalty: 5 penalty units.

35 Auditor's notification of trust account deficiency

- (1) It is a duty of an auditor who inspects an estate agent's trust accounts, other than for the purpose of auditing those accounts, to notify the estate agent and the Director within 3 business days of becoming aware of or having reasonable ground to suspect any deficiency in the agent's—

- (a) trust account; or
- (b) trust ledger account.

-
- (2) The auditor must include in the notification of the deficiency, details of—
- (a) the date on which it occurred; and
 - (b) the amount; and
 - (c) the reason why it occurred; and
 - (d) full particulars of any action taken to restore it.
- (3) Subregulation (1) does not apply if—
- (a) the deficiency was caused solely by an error by an authorised deposit-taking institution or by inadvertence; and
 - (b) the deficiency is rectified within 2 business days of the auditor becoming aware of the deficiency.

Note

An auditor is required to send a report to the Director under section 64(15) of the Act and a signed copy of that report to the agent if a loss or deficiency of trust money is discovered while auditing an estate agent's accounts, unless—

- (a) the deficiency was caused solely by an error by an authorised deposit-taking institution or inadvertence; and
 - (b) the deficiency is rectified within 2 business days of its discovery.
-

PART 4—VICTORIAN PROPERTY FUND

36 Disallowance of a claim against the Fund

The notice of the Secretary's disallowance of all or part of a claim referred to in section 81(5) of the Act must be in the form of Form 4 in Schedule 2.

Pt 5 (Heading
and reg. 36)
inserted by
S.R. No.
32/2011 reg. 3.

PART 5—INFRINGEMENT OFFENCES

Reg. 36
inserted by
S.R. No.
32/2011 reg. 3.

36 Infringement offences and infringement penalties

For the purposes of section 95A of the Act—

- (a) an offence against a provision of the Act or these Regulations that is set out in column 2 of Schedule 3 is specified as an offence in respect of which an infringement notice may be issued; and
- (b) the prescribed infringement penalty for an offence against a provision of the Act or these Regulations is the amount set out opposite the provision in column 3 of that Schedule.

SCHEDULES

SCHEDULE 1

Regulation 3

REVOKED REGULATIONS

<i>S.R. No.</i>	<i>Title</i>
126/2003	Estate Agents (General, Accounts and Audit) (Amendment) Regulations 2003
4/2004	Estate Agents (General, Accounts and Audit) (Amendment) Regulations 2004
108/2005	Estate Agents (General, Accounts and Audit) (Amendment) Regulations 2005
105/2006	Estate Agents (General, Accounts and Audit) (Amendment) Regulations 2006

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SCHEDULE 2

FORM 1

Regulation 6

**STATEMENT CONCERNING PROMISE OF FINANCE BY
AUCTIONEER OR ESTATE AGENT TO PURCHASER OR PERSON
ACTING ON BEHALF OF PURCHASER**

**Estate Agents Act 1980
Section 51**

This statement is given by
(Insert name of auctioneer/estate agent)

in relation to
(Insert address or description of real estate or business to be sold)

Seller's name

Address

Purchaser's name

Address

Details of any promise made by the auctioneer/estate agent (or by any employee or person acting on behalf of the auctioneer or estate agent) concerning the obtaining of a loan to help finance the purchase of the real estate or business:

Amount of loan \$

Rate of interest % per annum

Date by which loan is to be repaid

Amount of repayment instalments

Interval at which repayments to be made

Name of lender

The loan *is to be/*is not to be obtained by the *auctioneer/*estate agent

Any other promise which may previously have been made concerning the obtaining of a loan to help finance the purchase of the real estate or business is withdrawn.

Estate Agents (General, Accounts and Audit) Regulations 2008
S.R. No. 39/2008

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This statement is given on

Signed

Auctioneer/Estate Agent
(or person authorised in writing by Auctioneer/Estate Agent).

I,

(Insert name of person to whom notice is given)

acknowledge that I have received a copy of this statement.

Signed

**Delete if not applicable.*

FORM 2

Regulation 7

STATEMENT BY A VENDOR OF A SMALL BUSINESS

Estate Agents Act 1980
Section 52

Introduction

For the purposes of section 52 of the **Estate Agents Act 1980** a small business is a business in which the goodwill, plant, equipment and fittings being sold have a total price of \$350 000 or less.

This Statement contains 6 sections—

- Section A—Important Information for Vendor
- Section B—Important Information for Purchaser
- Section C—Business Information
- Section D—Vendor's Business Operating Report
- Section E—Vendor's Declaration
- Section F—Acknowledgement of Receipt by Purchaser

In this Statement a person who is seeking to sell a small business is referred to as a "vendor" and a person who is seeking to buy a small business is referred to a "purchaser".

SECTION A—IMPORTANT INFORMATION FOR VENDOR

1. A vendor must sign this Statement.
2. A vendor or their estate agent must give the purchaser or their representative a completed and signed copy of this Statement before the purchaser or their representative—
 - (a) signs the contract; OR
 - (b) pays the deposit—with respect to the sale of a small business.
3. The financial and accounting information in the Business Operating Report in Section D must—
 - (a) cover the trading of the business for the last two accounting periods, unless the vendor has not owned the business for that long; and

- (b) be certified by a practising accountant as being in accordance with the vendor's books of account and as being true and fair.

Item 2 in the Business Operating Report in Section D lists the people who are practising accountants for the purpose of this Statement.

4. An accounting period is a financial year; or a continuous period of 12 months or if a particular accounting period was changed for book-keeping purposes that period may be treated as an accounting period.
5. A single asterisk, (*), means strike out the item if it is not applicable.

WARNING TO THE VENDOR

If this Statement is incomplete or inaccurate, the purchaser may avoid the contract provided they do so within three months of signing the contract and have not already taken possession of the business. If a purchaser avoids a contract on these grounds, the vendor must repay any money paid by the purchaser under the contract. A vendor who fails to give a purchaser or their representative this Statement or gives a Statement that is incomplete, is liable for a fine of up to 10 penalty units.

SECTION B—IMPORTANT INFORMATION FOR PURCHASER

1. Section 52 of the **Estate Agents Act 1980** requires that a purchaser of a small business or their representative be given a completed and signed copy of this Statement by the vendor or their estate agent. The purpose of this Statement is to notify the purchaser of certain particulars concerning the trading and financial position of the business to be acquired.
2. The information contained in this Statement does not replace due diligence undertaken by the purchaser. It provides key financial information which will assist the purchaser to identify those matters where further information and documentation is required. At a minimum, the purchaser should ask the vendor to provide copies of—
 - the Balance Sheet and the Profit and Loss Statement for the business for the last two accounting periods;
 - the most recent Tax Assessment by the Australian Taxation Office for the business;
 - any quarterly Business Activity Statements (BAS) prepared for the business since the end of the last financial year.
3. The purchaser should consider seeking expert advice to assess and interpret the information contained in this Statement and other information provided by a vendor with respect to the business.

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4. The purchaser may also consider—
 - arranging a trial period before the settlement date during which they have the right to attend the business to observe its operation. Such a period provides an opportunity for the purchaser to gain experience with the running of the business, with the vendor's assistance. Whether or not a trial period is appropriate will depend upon the nature of the business;
 - appointing an accredited stocktaker to assess the stock at hand for the business.
5. The purchaser should ensure that the contract for the sale of the business has warranties with respect to assets, stock and the business accounts.
6. If the vendor purchased the business from a previous owner who only operated the business for a short time, the purchaser should ask the vendor to also provide a copy of the Statement by a Vendor of a Small Business with respect to the previous sale of the business.
7. Where the sale of the business is to include the sale of land, a disclosure statement with respect to the land will be given to the purchaser or their representative in accordance with section 32 of the **Sale of Land Act 1962**.

NOTICE TO THE PURCHASER

The purchaser may avoid the contract if information in this statement is inaccurate or incomplete and is entitled to a full refund of any moneys they have paid under the contract.

SECTION C—BUSINESS INFORMATION

1. Vendor

Name

Address

Phone

Email

2. Vendor's agent

Name

Address

Phone

Fax

DX

Email

3. **Business details**

(a) Name

Street address

Postal address

Phone

Fax

DX

Email

(b) Description of the business

(c) The vendor has carried on business for a period
of *years/*months/*weeks commencing on

(d) The vendor has carried on business at the present location
for *years/*months/*weeks.

(e) The business is conducted from premises that are *owned/*leased
by the vendor.

If the vendor is the owner of the premises in which the business is
being conducted, the premises *are/*are not being sold with the
business.

(f) The normal trading hours of the business are—

Monday to Friday:

Saturday:

Sunday:

(g) Members of the vendor's family or other persons *worked/*did not
work in the business and *were/*were not paid wages.

Payments made to family or other associated persons have been
included in *Item 3/*Item 7 in the Business Operating Report in
Section D.

SECTION D—VENDOR'S BUSINESS OPERATING REPORT

The figures in this Statement relate to the business being sold and are
prepared on an *accrual/*cash accounting basis.

Note: Accrual accounting is the method whereby revenue and expenses are recorded in the
period in which the entitlement to income and costs are incurred, even though they may
not have been received or paid.

Cash accounting means that revenue and expenses are recorded in the period in which
the money was received and paid.

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1. BUSINESS OPERATING REPORT

	<i>Accounting period A</i>	<i>Accounting period B</i>
(The figures for the most recent period should be in column B)	From To	From To
Number of weeks of operation		
1. TOTAL GROSS INCOME OF BUSINESS [Include in the calculation of this amount income from all sources such as goods and services provided, commission, etc.]	\$	\$
Average per week	\$	\$
2. GROSS PROFIT for the business [Total Gross Income of Business (Item 1) less the cost of goods/services provided]	\$	\$
Gross Profit [Item 2] as a % of Total Gross Income of Business [Item 1]	%	%
3. TOTAL OPERATING EXPENSES [Include in the calculation of this amount all expenses directly related to operating the business.]	\$	\$
4. NET PROFIT for the business [Item 2 less Item 3]	\$	\$
5. FINANCING and other costs applicable to the business	\$	\$
6. DEPRECIATION and AMORTISATION [On motor vehicles, plant, equipment, chattels, etc., used for business purposes. Attach depreciation schedule where items are to be transferred with the business]	\$	\$
7. PERSONAL EXPENSES and outgoings of the present vendor	\$	\$

Estate Agents (General, Accounts and Audit) Regulations 2008
S.R. No. 39/2008

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	<i>Accounting period A</i>	<i>Accounting period B</i>
8. ADJUSTED NET PROFIT to present vendor [Item 4 less (Item 5 plus Item 6 plus Item 7)]	\$	\$
FURTHER CONSIDERATIONS—ASSET QUALITY		
1. Business debts Trade debtors (owed to business) at end of accounting period B <i>Less</i> provision for doubtful debts NET DEBTORS		\$ \$ \$
2. Contingent liabilities Itemise other matters that could impact upon the owner's equity in the business as at the proposed settlement date. This includes any liability that runs with the business, for example, an adverse planning or environment ruling affecting the operating precinct of the business or a taxation dispute or other litigation concerning the business if it is a corporation.		\$ \$ \$ \$

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2. CERTIFICATION OF BUSINESS OPERATING REPORT BY PRACTISING ACCOUNTANT

I,
(Insert practising accountant's name)
of
(Insert practising accountant's address)

Phone

being a—*(Tick the relevant box)*

- registered company auditor with the Australian Securities and Investments Commission; OR
- Member of CPA Australia or the Institute of Chartered Accountants in Australia; OR
- Member or Fellow of either the National Institute of Accountants or the Association of Taxation and Management Accountants; OR
- Fellow of the National Tax and Accountants' Association Limited—

declare and report that the accounting and financial information set out in the Business Operating Report is in accordance with the books of account of the vendor and is true and fair to the best of my knowledge and belief, and make additional comments—

Practising Accountant's Signature

Date

SECTION E—VENDOR'S DECLARATION

The vendor declares that—

- (a) since the end of the last accounting period in Column B of the Business Operating Report—
 - (i) circumstances have arisen or practices have been adopted that *have/*have not affected the gross profit of the business; and
 - (ii) no circumstances adversely affecting, or likely to adversely affect, the conduct of the business have arisen, except the following—

- (b) the information in this Statement (including the Business Operating Report) is accurate and complete.

Vendor's Signature

Date

**SECTION F—ACKNOWLEDGEMENT OF RECEIPT BY
PURCHASER**

The purchaser acknowledges receipt of this completed Statement by the vendor of a small business.

I,

(Insert purchaser's name)

of

(Insert purchaser's address)

Purchaser's Signature

Date

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FORM 3

Regulation 8

EMBARGO NOTICE

Estate Agents Act 1980

Section 70O

- (1) The item described below has been embargoed under section 70O of the **Estate Agents Act 1980**.
- (2) Section 70O(2) provides that a person who knows that an embargo notice relates to a thing and who—
 - (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 25 penalty units.
- (3) Section 70O(3) provides that it is a defence to a prosecution for such an offence to prove that the thing or part of the thing was moved for the purpose of protecting and preserving it.
- (4) Section 70O(4) provides that despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of that section is void.

Description of embargoed item—

This notice has been—

- served on (name)
- affixed to the item described above

Signature of inspector

Name of inspector

Telephone number

Date

Time

FORM 4

Regulation 36

**NOTICE OF DISALLOWANCE OF CLAIM FOR COMPENSATION
FROM THE VICTORIAN PROPERTY FUND**

Estate Agents Act 1980
Section 81

To:

(Insert name of claimant)

of

(Insert address of claimant)

The Secretary **wholly disallows/*partly disallows* your claim for compensation from the Victorian Property Fund.

******The Secretary disallows \$ _____ of your claim.

The reasons for the **disallowance/*partial disallowance* are:

Signed

(For and on Behalf of the Secretary of the Department of Justice)

Dated

**Delete if not applicable.*

****Delete if claim wholly disallowed.**

Sch. 3

Sch. 3
inserted by
S.R. No.
32/2011 reg. 4.

SCHEDULE 3
INFRINGEMENT OFFENCES AND INFRINGEMENT
PENALTIES

Regulation 36

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item No.</i>	<i>Infringement offence</i>	<i>Prescribed infringement penalty for offence</i>
1	section 47(2)	5 penalty units
2	section 47(2A)	5 penalty units
3	section 48(2)	12 penalty units
4	section 59(7)	10 penalty units
5	section 63(3)	5 penalty units
6	section 63(3B)	5 penalty units
7	section 63(5)(b)	5 penalty units
8	regulation 12(1)	1·25 penalty units
9	regulation 13(1)	1·25 penalty units
10	regulation 13(3)	2·5 penalty units
11	regulation 16(3)	2·5 penalty units
12	regulation 17(1)	1·25 penalty units
13	regulation 18(1)	1·25 penalty units
14	regulation 18(5)	1·25 penalty units
15	regulation 19(4)	1·25 penalty units
16	regulation 20	1·25 penalty units
17	regulation 21(1)	4 penalty units
18	regulation 22(1)	4 penalty units
19	regulation 22(2)	2·5 penalty units
20	regulation 23(1)	1·25 penalty units
21	regulation 23(3)	2·5 penalty units
22	regulation 23(4)	2·5 penalty units
23	regulation 23(5)	2·5 penalty units
24	regulation 23(6)	2·5 penalty units

Estate Agents (General, Accounts and Audit) Regulations 2008
S.R. No. 39/2008

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item No.</i>	<i>Infringement offence</i>	<i>Prescribed infringement penalty for offence</i>
25	regulation 23(7)	1·25 penalty units
26	regulation 23(8)	2·5 penalty units
27	regulation 24(2)	2·5 penalty units
28	regulation 24(4)	1·25 penalty units
29	regulation 25(1)	4 penalty units
30	regulation 26(1)	2·5 penalty units
31	regulation 26(2)	1·25 penalty units
32	regulation 29(2)	4 penalty units
33	regulation 29(3)	1·25 penalty units
34	regulation 29(5)	2·5 penalty units
35	regulation 30(1)	4 penalty units

ENDNOTES

1. General Information

The Estate Agents (General, Accounts and Audit) Regulations 2008, S.R. No. 39/2008 were made on 21 May 2008 by the Governor in Council under section 99 of the **Estate Agents Act 1980**, No. 9428/1980 and came into operation on 21 May 2008.

The Estate Agents (General, Accounts and Audit) Regulations 2008 will sunset 10 years after the day of making on 21 May 2018 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Estate Agents (General, Accounts and Audit) Regulations 2008 by statutory rules, subordinate instruments and Acts.

Estate Agents (General, Accounts and Audit) Amendment (Infringements)
Regulations 2011, S.R. No. 32/2011

Date of Making: 7.6.11

Date of Commencement: 7.6.11

Endnotes

3. Explanatory Details

No entries at date of publication.