Conveyancers (Professional Conduct and Trust Account and General) Regulations 2008
S.R. No. 49/2008

TABLE OF PROVISIONS

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PART 1—PRELIMINARY</td>
<td>1</td>
</tr>
<tr>
<td>1 Objectives</td>
<td>1</td>
</tr>
<tr>
<td>2 Authorising provisions</td>
<td>1</td>
</tr>
<tr>
<td>3 Commencement</td>
<td>2</td>
</tr>
<tr>
<td>4 Definitions</td>
<td>2</td>
</tr>
<tr>
<td>PART 2—RULES OF PROFESSIONAL CONDUCT</td>
<td>3</td>
</tr>
<tr>
<td>5 Rules of professional conduct</td>
<td>3</td>
</tr>
<tr>
<td>PART 3—TRUST ACCOUNTS</td>
<td>4</td>
</tr>
<tr>
<td>Division 1—Introduction</td>
<td>4</td>
</tr>
<tr>
<td>6 Authorised employee</td>
<td>4</td>
</tr>
<tr>
<td>Division 2—Computerised accounting system</td>
<td>4</td>
</tr>
<tr>
<td>7 Application of Division</td>
<td>4</td>
</tr>
<tr>
<td>8 Chronological record of information to be made</td>
<td>4</td>
</tr>
<tr>
<td>9 Requirements regarding computerised accounting system</td>
<td>5</td>
</tr>
<tr>
<td>10 Back-ups</td>
<td>6</td>
</tr>
<tr>
<td>Division 3—General trust accounts</td>
<td>6</td>
</tr>
<tr>
<td>11 Establishment and maintenance of general trust account</td>
<td>6</td>
</tr>
<tr>
<td>12 Receipting of trust money</td>
<td>7</td>
</tr>
<tr>
<td>13 Deposit records for trust money</td>
<td>8</td>
</tr>
<tr>
<td>14 Payment by cheque</td>
<td>9</td>
</tr>
<tr>
<td>15 Payment by electronic funds transfer</td>
<td>11</td>
</tr>
<tr>
<td>16 Recording transactions in trust account cash books</td>
<td>12</td>
</tr>
<tr>
<td>17 Trust account receipts cash book</td>
<td>12</td>
</tr>
<tr>
<td>18 Trust account payments cash book</td>
<td>13</td>
</tr>
<tr>
<td>19 Recording transactions in trust ledger accounts</td>
<td>15</td>
</tr>
<tr>
<td>20 Journal transfers</td>
<td>17</td>
</tr>
</tbody>
</table>
Regulation Page

21 Reconciliation of trust records 18
22 Trust ledger account in name of conveyancing business or licensee 19

Division 4—Controlled money 20
23 Requirements for controlled money accounts 20
24 Maintenance of controlled money accounts 20
25 Receipt of controlled money 21
26 Withdrawal of controlled money must be authorised 23
27 Register of controlled money 24

Division 5—Transit money 26
28 Information to be recorded about transit money 26

Division 6—Trust money generally 26
29 Trust account statements 26
30 Trust account statements for institutional clients 28
31 Withdrawing trust money for costs 28
32 Duration for keeping of trust records 30

Division 7—Miscellaneous 31
33 Exemption 31

PART 4—GENERAL 32
34 Statutory declaration on ceasing to hold trust money 32
35 Claims against the Fund 32
36 Disallowance of a claim against the Fund 32
37 Embargo notice 32

SCHEDULES 33

SCHEDULE 1—Rules of professional conduct 33
1 Honesty, fairness and professionalism 33
2 Skill, care and diligence 33
3 Fiduciary obligations 33
4 To only undertake work within competence 33
5 To perform work promptly 33
6 To act in the client's best interests and according to the client's instructions 34
7 To regularly communicate with client 34
8 To confirm client's oral instructions in writing 34
9 Conflicts of interest 34
10 Acting for more than one party to a transaction 34
11 Confidentiality 35
12 Noting of instructions, enquiries and telephone conversations 35
<table>
<thead>
<tr>
<th>Regulation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 Referral to service provider</td>
<td>36</td>
</tr>
<tr>
<td>14 Soliciting through false or misleading</td>
<td>37</td>
</tr>
<tr>
<td>advertisements or communications</td>
<td></td>
</tr>
<tr>
<td>15 Termination of licensee's services</td>
<td>37</td>
</tr>
<tr>
<td>16 Transfer of conveyancing work</td>
<td>38</td>
</tr>
<tr>
<td>17 Transfer of conveyancing business</td>
<td>38</td>
</tr>
<tr>
<td>18 Conducting another business</td>
<td>39</td>
</tr>
<tr>
<td>19 Independence of licensee advising on loan</td>
<td>40</td>
</tr>
<tr>
<td>or security documents</td>
<td></td>
</tr>
<tr>
<td>20 Advising proposed signatories on loan</td>
<td>40</td>
</tr>
<tr>
<td>or security documents</td>
<td></td>
</tr>
</tbody>
</table>

**SCHEDULE 2**

Form 1—Statutory Declaration on ceasing to hold Trust Money 44

Form 2—Notice of disallowance of claim for compensation from the Victorian Property Fund 45

Form 3—Embargo Notice 46
The objectives of these Regulations are to prescribe—

(a) the rules of professional conduct for conveyancers; and

(b) procedures for the keeping of general trust accounts and trust ledger accounts, controlled money accounts, transit money and other trust records; and

(c) general matters.

2 Authorising provisions

These Regulations are made under section 188 of the Conveyancers Act 2006.
3 Commencement

These Regulations come into operation on the day on which section 188 of the Conveyancers Act 2006 comes into operation.

4 Definitions

In these Regulations—

authorised employee of a licensee means an employee authorised by the licensee under regulation 6;

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

direct deposit means a deposit made by transferring money directly from one account into another without the use of a cheque or cash;

law practice has the same meaning as in the Legal Profession Act 2004;

matter description means a brief phrase or expression assigned by a conveyancing business to describe a matter;

matter reference means a number or other reference assigned by a conveyancing business to identify a matter;

the Act means the Conveyancers Act 2006.
PART 2—RULES OF PROFESSIONAL CONDUCT

5 Rules of professional conduct

The rules set out in Schedule 1 are prescribed for the purposes of section 45 of the Act as rules of conduct to be observed by a licensee in the course of the conduct of a conveyancing business or the performance of functions under a licence.
PART 3—TRUST ACCOUNTS

Division 1—Introduction

6 Authorised employee

(1) A licensee, by instrument, may authorise an employee of the licensee to be an authorised employee for the purposes of these Regulations.

(2) The instrument in subregulation (1) must be signed by the licensee and the employee.

Division 2—Computerised accounting system

7 Application of Division

This Division applies where a licensee keeps trust records (including records relating to controlled money) by means of a computerised accounting system.

8 Chronological record of information to be made

The licensee must keep a record in permanent form, compiled in chronological sequence, of the creation, amendment or deletion of information in the computerised accounting system in relation to the following—

(a) client name;
(b) client address;
(c) matter reference;
(d) matter description;
(e) ledger account number—

disclosing the details before and after the creation, amendment or deletion of the information.
9 Requirements regarding computerised accounting system

(1) The licensee must ensure that the computerised accounting system is not capable of accepting the entry of a transaction resulting in a debit balance to a trust ledger account, unless a contemporaneous record of the transaction is made in a manner that enables the production, in permanent form, of a separate chronological report of all occurrences of that kind.

(2) The licensee 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) when the account is deleted, a copy of the account is retained in a permanent form.

(3) The licensee must ensure that any entry in a record produced in a permanent form appears in chronological sequence.

(4) The licensee must ensure that each page of each printed record (where necessary) is numbered sequentially.

(5) The licensee 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.

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

The licensee 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 licensee; and

(c) a complete set of 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.

Division 3—General trust accounts

11 Establishment and maintenance of general trust account

(1) This regulation applies for the purposes of section 66(2) of the Act.

(2) A general trust account satisfies the requirements of this regulation if—

(a) the account is established in Victoria with an approved ADI as soon as practicable after trust money to which section 66(1) of the Act applies is received by the licensee; and

(b) the account is maintained in Victoria; and

(c) the name of the account includes—

(i) the name of the licensee; and

(ii) the expression "conveyancing business trust account" or "conveyancing business trust a/c".
(3) Subregulation (2)(c) does not apply to an account established in Victoria before the commencement of this regulation.

(4) Subregulation (2)(c)(ii) does not require the repetition of the words "conveyancing business" if those words form part of the name of the licensee.

12 Receipting of trust money

(1) This regulation applies if a licensee receives trust money that is required to be paid into a general trust account.

(2) After receiving the trust money, the licensee must make out a receipt.

(3) The receipt must be made out as soon as practicable—

(a) after the trust money is received; or

(b) in the case of trust money received by direct deposit—after the licensee receives or gains access to a notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.

(4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded electronically in the trust account receipts cash book.

(5) For the purposes of subregulation (4), the required particulars are as follows—

(a) the date the receipt is made out and, if different, the date the money was received;

(b) the receipt number;

(c) the amount of money received;
Part 3—Trust Accounts

Conveyancers (Professional Conduct and Trust Account and General) Regulations 2008
S.R. No. 49/2008

Part 3—Trust Accounts

(r. 13)

(d) the form in which the money was received;
(e) the name of the person from whom the money was received;
(f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;
(g) particulars sufficient to identify the purpose for which the money was received;
(h) the name of the licensee's conveyancing business, or the business name under which the licensee performs conveyancing work, and the expression "trust account" or "trust a/c";
(i) the name of the person who made out the receipt.

(6) The original receipt is to be delivered, on request, to the person from whom the trust money was received.

(7) Receipts must be consecutively numbered and issued in consecutive sequence.

(8) If a receipt is cancelled or not delivered, the original receipt must be retained.

13 Deposit records for trust money

(1) This regulation applies if a licensee receives trust money that is required to be paid into a general trust account and the money is not paid into a general trust account by direct deposit.

(2) A deposit record, containing the required particulars, must be produced to the approved ADI at the time the deposit is made.
(3) The deposit record, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the deposit is made out those particulars are recorded electronically in the trust account deposits book.

(4) The duplicate deposit record must be kept for each deposit to the general trust account and must be kept in a deposit book or be otherwise securely filed in the order in which the deposits were made.

(5) For the purposes of subregulations (2) and (3) the required particulars are as follows—

(a) the date of the deposit;
(b) the amount of the deposit;
(c) whether the deposit consists of cheques, notes or coins (and the amount of each);
(d) for each cheque—

   (i) the name of the drawer of the cheque;
   (ii) the name and branch (or BSB number) of the ADI on which the cheque is drawn;
   (iii) the amount of the cheque.

14 Payment by cheque

(1) This regulation applies to the withdrawal of trust money from a general trust account by cheque.

(2) A cheque—

   (a) must be made payable to or to the order of a specified person or persons and not to bearer or cash; and
   (b) must be crossed "not negotiable"; and
(c) must include—

(i) the name of the licensee's conveyancing business; and

(ii) the expression "conveyancing business" or "conveyancing business trust a/c".

(3) A cheque must be signed—

(a) by the licensee; or

(b) if the licensee is not available, by an authorised employee of the licensee.

(4) A paper copy record of the required particulars (which may be in the form of a cheque butt) must be kept of each payment made by cheque, whether by way of making a carbon copy or otherwise, unless at the time the cheque is issued those particulars are recorded electronically in the trust account payments cash book.

(5) For the purposes of subregulation (4), the required particulars are as follows—

(a) the date and number of the cheque;

(b) the amount ordered to be paid by 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 ADI, the name or BSB of the ADI and the name of the person receiving the benefit of the payment;

(d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

(e) details clearly identifying the ledger account to be debited;

(f) particulars sufficient to identify the purpose for which the payment was made.
(6) Records relating to payments by cheque (including cheque requisitions) must be kept in the order in which the cheques were issued.

(7) Subregulation (2)(c) does not apply to an account established in Victoria before the commencement of this regulation.

(8) Subregulation (2)(c)(ii) does not require the repetition of the words "conveyancing business" if those words form part of the name or business name of the licensee's conveyancing business.

15 Payment by electronic funds transfer

(1) This regulation applies to the withdrawal of trust money from a general trust account by electronic funds transfer.

(2) An electronic funds transfer must be under the direction of or with the authority of—

(a) the licensee; or

(b) if the licensee is not available, by an authorised employee of the licensee.

(3) A paper record of the required particulars must be kept of each payment, unless at the time the electronic funds transfer is effected those particulars are recorded by computer program in the trust account payments cash book.

(4) For the purposes of subregulation (3), the required particulars are as follows—

(a) the date and number of the transaction;

(b) the amount transferred;

(c) the name and number of the account to which the amount was transferred and relevant BSB number;
Part 3—Trust Accounts

Conveyancers (Professional Conduct and Trust Account and General) Regulations 2008
S.R. No. 49/2008

16 Recording transactions in trust account cash books

A licensee who maintains a general trust account must keep the following trust account cash books—

(a) a trust account receipts cash book in accordance with regulation 17; and

(b) a trust account payments cash book in accordance with regulation 18.

17 Trust account receipts cash book

(1) The following particulars must be recorded in a licensee's trust account receipts cash book in respect of each receipt of trust money—

(a) the date the receipt is made out and, if different, the date the money was received;

(b) the receipt number;

(c) the amount of money received;

(d) the form in which the money was received;
(e) the name of the person from whom the money was received;

(f) details clearly identifying the name of the client in respect of whom the money was received and the matter description and matter reference;

(g) particulars sufficient to identify the purpose for which the money was received;

(h) the name of the licensee's conveyancing business, or the business name under which the licensee performs conveyancing work, and the expression "trust account" or "trust a/c";

(i) the name of the person who made out the receipt.

(2) The date and amount of each deposit in the general trust account must be recorded in the trust account receipts cash book.

(3) The particulars in respect of receipts must be recorded in the order in which the receipts are made out.

(4) The particulars in respect of a receipt must be recorded within 5 business days from and including the day the receipt was made out.

18 Trust account payments cash book

(1) The following particulars must be recorded in a licensee's trust account payments cash book in respect of each payment of trust money by cheque—

(a) the date and number of the cheque;

(b) the amount ordered to be paid by 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 ADI, the name or BSB of the ADI and the name of the person receiving the benefit of the payment;

(d) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

(e) details clearly identifying the ledger account to be debited;

(f) particulars sufficient to identify the purpose for which the payment was made.

(2) The following particulars must be recorded in a licensee's trust accounts payments cash book in respect of each payment of trust money by electronic funds transfer—

(a) the date and number of the transaction;

(b) the amount transferred;

(c) the name and number of the account to which the amount was transferred and relevant BSB number;

(d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

(e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

(f) details clearly identifying the ledger account to be debited;

(g) particulars sufficient to identify the purpose for which the payment was made.
(3) The particulars in respect of payments must be recorded in the order in which the payments are made.

(4) The particulars in respect of a payment must be recorded within 5 business days from and including the day the payment was made.

19 Recording transactions in trust ledger accounts

(1) A licensee who keeps a general trust account must keep a separate trust ledger account in relation to each client in each matter for which trust money has been received by the licensee.

(2) The following particulars must be recorded in the title of a trust ledger account—

   (a) the name of the person for or on behalf of whom the trust money was paid;

   (b) the person's address;

   (c) particulars sufficient to identify the matter in relation to which the trust money was received.

(3) Details of any changes in the title of a trust ledger account must be recorded.

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

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

   (a) the date a receipt was made out for the money or, if different, the date the money was received;

   (b) the amount of money received;
(c) the name of the person from whom the money was received;

(d) particulars sufficient to identify the purpose for which the money was received.

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

(a) the date of the cheque;

(b) the amount ordered to be paid by 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 ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

(d) particulars sufficient to identify the purpose for which the payment was made.

(7) 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 transaction;

(b) the amount transferred;

(c) the name of the account to which the amount was transferred;

(d) the name of the person to whom the payment was made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

(e) particulars sufficient to identify the purpose for which the payment was made.
(8) The following particulars must be recorded in the trust ledger account in respect of each transfer of trust money effected by a journal entry—

(a) the date of the transfer;

(b) the amount transferred;

(c) the name of the other trust ledger account from which or to which the money was transferred;

(d) particulars sufficient to identify the purpose for which the payment was made.

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

(10) The particulars in respect of a receipt, payment or transfer of trust money must be recorded within 5 business days from and including the day the receipt was made out, the payment was made or the transfer was effected, as the case requires.

(11) The trust ledger account balance must be recorded in the trust ledger account after each receipt, payment or transfer of trust money.

20 Journal transfers

(1) Trust money held by a licensee must be transferred by journal entry from one trust ledger account to another trust ledger account, only if—

(a) the licensee is authorised or entitled to withdraw the money and pay it to the other trust ledger account; and

(b) the transfer has been authorised in writing—

(i) by the licensee; or

(ii) if the licensee is not available, by an authorised employee of the licensee.
(2) A licensee must keep a trust account transfer journal if the licensee transfers trust money by journal entry.

(3) The following particulars must be recorded in the trust account transfer journal in respect of each transfer of trust money by journal entry—

(a) the date of the transfer;
(b) the names of all ledger accounts to be debited or credited, including identifying references;
(c) the amount transferred;
(d) particulars sufficient to identify the purpose for which the transfer is made, the matter reference and a short description of the matter.

(4) Journal pages and entries must be consecutively numbered.

(5) A licensee must keep particulars of the authorisation for each transfer of trust money by journal entry, whether in the trust account transfer journal or in some other way.

21 Reconciliation of trust records

(1) A licensee who maintains a general trust account must reconcile the trust records relating to the general trust account.

(2) The trust records in subregulation (1) are to be reconciled as at the end of each month by preparing—

(a) a statement—

(i) reconciling the general trust account balance as shown in ADI records with the balance of the trust account cash books; and
(ii) showing the date the statement was prepared; and

(b) a statement—

(i) reconciling the balance of the trust ledger accounts with the balance of the trust account cash books; and

(ii) containing a list of the trust ledger accounts showing the name, identifying the reference and balance of each and a short description of the matter to which each relates; and

(iii) showing the date the statement was prepared.

(3) The statements must be prepared within 15 business days after the end of the month concerned.

22 Trust ledger account in name of conveyancing business or licensee

(1) A licensee may only maintain a trust ledger account in the licensee's name or the conveyancing business's name for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the licensee for costs.

(2) In a case to which subregulation (1) applies, the licensee must ensure that the money in the trust ledger account is withdrawn from the general trust account not later than one month after the day on which the money was transferred to the trust ledger account.
Division 4—Controlled money

23 Requirements for controlled money accounts

(1) For the purposes of section 64(2) of the Act, a direction to a licensee to deposit money received by the licensee on behalf of a person in an account (other than a general trust account) over which the licensee has or will have exclusive control can only be made if the licensee is satisfied that—

(a) the amount of money to be paid to the licensee exceeds $50,000; or

(b) the transaction in respect of which the money is to be paid is not to be settled within 60 days.

(2) This regulation does not apply to an account established in Victoria before the commencement of this regulation.

24 Maintenance of controlled money accounts

For the purposes of section 71 of the Act, a controlled money account must be maintained under an account name that includes the following particulars—

(a) the name of the licensee;

(b) the expression "controlled money account or CMA/c";

(c) particulars that are sufficient to identify the purpose of the account and to distinguish the account from any other account maintained by the licensee.
25 Receipt of controlled money

(1) This regulation applies if a licensee receives controlled money.

(2) The licensee must operate a separate controlled money receipt system for the receipt of controlled money for all the licensee's controlled money accounts.

(3) After receiving controlled money, the licensee must make out a receipt as soon as practicable—

   (a) after the controlled money is received; or

   (b) in the case of controlled money received by direct deposit—after the licensee receives or can access notice or confirmation (in written or electronic form) of the deposit from the ADI concerned.

(4) The receipt, containing the required particulars, must be made out in duplicate, whether by way of making a carbon copy or otherwise, unless at the time the receipt is made out those particulars are recorded by computer program in the register of controlled money.

(5) For the purposes of subregulation (4), the required particulars are as follows—

   (a) the date the receipt is made out and, if different, the date the money was received;

   (b) the amount of money received;

   (c) the form in which the money was received;

   (d) the name of the person from whom the money was received;

   (e) details clearly identifying the name of the person on whose behalf the money was received and the matter description and matter reference;
(f) particulars sufficient to identify the purpose for which the money was received;

(g) the name of and other details clearly identifying the controlled money account to be credited, unless the account has not been established by the time the receipt is made out;

(h) the name of the licensee's conveyancing business, or the business name under which the licensee performs conveyancing work, and the expression "controlled money receipt";

(i) the name of the person who made out the receipt;

(j) the receipt number.

(6) If the controlled money account to be credited has not been established by the time the receipt is made out, the name of and other details clearly identifying the account when established must be included on the duplicate receipt (if any).

(7) The original receipt is to be delivered, on request, to the person from whom the controlled money was received.

(8) Receipts must be consecutively numbered and issued in consecutive sequence.

(9) If a receipt is cancelled or not delivered, the original receipt must be retained.

(10) A receipt is not required to be made out for any interest or other income received from the investment of controlled money and credited directly to a controlled money account.
Withdrawal of controlled money must be authorised

(1) A withdrawal of money from a controlled money account held by a licensee must be effected by, under the direction of or with the authority of—

(a) the licensee; or

(b) if the licensee is not available, an authorised employee of the licensee.

(2) A written record of the required particulars must be kept of each withdrawal, unless at the time the withdrawal is made those particulars are recorded by computer program.

(3) For the purposes of subregulation (2), the required particulars are as follows—

(a) the date and number of the transaction;

(b) the amount withdrawn;

(c) in the case of a transfer made by electronic funds transfer—the name and number of the account to which the amount was transferred and the relevant BSB number;

(d) the name of the person to whom payment is to be made or, in the case of a payment to an ADI, the name or BSB number of the ADI and the name of the person receiving the benefit of the payment;

(e) details clearly identifying the name of the person on whose behalf the payment was made and the matter reference;

(f) particulars sufficient to identify the purpose for which the payment was made;

(g) the person or persons effecting, directing or authorising the withdrawal.
r. 27

(4) The particulars are to be recorded in the order in which the payments are recorded and are to be recorded separately for each controlled money account.

27 Register of controlled money

(1) A licensee who receives controlled money must maintain a register of controlled money consisting of the records of controlled money movements for the controlled money accounts of the licensee.

(2) A separate record of controlled money movements must be maintained for each controlled money account.

(3) A record of controlled money movements for a controlled money account must record the following information—
   (a) the name of the person on whose behalf the controlled money is held;
   (b) the person's address;
   (c) particulars sufficient to identify the matter;
   (d) any changes to the information referred to in paragraphs (a) to (c).

(4) The following particulars must be recorded in a record of controlled money movements for a controlled money account—
   (a) the date the controlled money was received;
   (b) the number of the receipt;
   (c) the date the money was deposited in the controlled money account;
   (d) the name of and other details clearly identifying the controlled money account;
   (e) the amount of controlled money deposited;
Conveyancers (Professional Conduct and Trust Account and General) Regulations 2008
S.R. No. 49/2008
Part 3—Trust Accounts

(r. 27) (f) details of the deposit sufficient to identify the deposit;

(g) interest received;

(h) details of any payments from the controlled money account, including the particulars required to be recorded under regulation 26(2).

(5) With the exception of interest and other income received in respect of controlled money, particulars of receipts and payments must be entered in the register as soon as practicable after the controlled money is received by the licensee or any payment is made.

(6) Interest and other income received in respect of controlled money must be entered in the register as soon as practicable after the licensee is notified of its receipt.

(7) The licensee must retain as part of the licensee's trust records all supporting information (including ADI statements and notifications of interest received) relating to controlled money.

(8) Within 15 business days after each month, the licensee must prepare and keep as a permanent record a statement as at the end of the month containing a list of the licensee's controlled money accounts showing—

(a) the name, number and balance of each account in the register; and

(b) the name of the person on whose behalf the controlled money in each account was held; and

(c) a short description of the matter to which each account relates; and

(d) the date the statement was prepared.
Division 5—Transit money

28 Information to be recorded about transit money

(1) This regulation has effect for the purposes of section 73 of the Act.

(2) A licensee must, in respect of transit money received by the licensee, record and retain particulars sufficient to identify the relevant transaction and any purpose for which the money was received.

Division 6—Trust money generally

29 Trust account statements

(1) A licensee must furnish a trust account statement to each person for whom or on whose behalf trust money (other than transit money) is held or controlled by the licensee.

(2) The licensee must furnish a separate statement for each trust ledger account.

(3) The licensee must furnish a separate statement for each controlled money account.

(4) In the case of trust money subject to a power given to the licensee or an associate of the licensee in respect of which the licensee is required to keep a record of all dealings with the money to which the licensee or associate is a party, the licensee must furnish a separate statement for each record.

(5) A trust account statement is to contain particulars of—

(a) all the information required to be kept under this Part in relation to the trust money included in the relevant ledger account or record; and

(b) the remaining balances (if any) of the money.

(6) A trust account statement is to be furnished—

(a) as soon as practicable after completion of the matter to which the ledger account or record relates; or

(b) as soon as practicable after the person for whom or on whose behalf the money is held or controlled makes a reasonable request for the statement during the course of the matter; or

(c) except as provided by subregulation (7), as soon as practicable after 30 June in each year.

(7) The licensee is not required to furnish a trust account statement under subregulation (6)(c) in respect of a ledger account or record if at 30 June—

(a) the ledger account or record has been open for less than 6 months; or

(b) the balance of the ledger account or record is zero and no transaction affecting the account has taken place within the previous 12 months; or

(c) a trust account statement has been furnished within the previous 12 months and there has been no subsequent transaction affecting the ledger account or record.

(8) The licensee must retain a copy of a trust account statement provided under this regulation.
30 Trust account statements for institutional clients

(1) In this regulation—

institutional client of a licensee means a client of a licensee, if the client is—

(a) a public company, a subsidiary of a public company, a foreign company, a subsidiary of a foreign company or a registered Australian body (within the meaning of the Corporations Act); or

(b) a financial services licensee (within the meaning of the Corporations Act).

(2) Regulation 29 does not apply to an institutional client to the extent to which the client directs the licensee not to provide trust account statements under that regulation.

(3) If the institutional client directs the licensee to provide trust account statements on a basis different from that prescribed by regulation 29, the licensee must supply those statements as directed, except to the extent to which the direction is unreasonably onerous.

(4) The licensee must retain a copy of a trust account statement provided under this regulation.

31 Withdrawing trust money for costs

(1) This regulation prescribes, for the purposes of section 77(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a licensee for payment of costs owing to the licensee by the person for whom the trust money was paid into the account.

(2) The trust money may only be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).
(3) The licensee may withdraw the trust money—

(a) if—

(i) the money is withdrawn in accordance with a costs agreement that authorises the withdrawal; or

(ii) the money is withdrawn in accordance with instructions that have been received by the licensee and that authorise the withdrawal; or

(iii) the money is owed to the licensee by way of third party disbursements incurred on behalf of the person; and

(b) if, before effecting the withdrawal, the licensee gives or sends to the person—

(i) a request for payment, referring to the proposed withdrawal; or

(ii) a written notice of withdrawal.

(4) The licensee may withdraw the trust money—

(a) if the licensee has given the person a bill relating to the money; and

(b) if—

(i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or

(ii) the person has objected within 7 days after being given the bill but has not made a complaint to the Director under Part 8 of the Fair Trading Act 1999 or made an application to VCAT under Part 9 of the Fair Trading Act 1999 within 60 days after being given the bill; or
(iii) the money otherwise becomes legally payable.

(5) Instructions mentioned in subregulation (3)(a)(ii)—

(a) if given in writing, must be retained as a permanent record; or

(b) if not given in writing, must be reduced to writing either before, or not later than 5 business days after, the licensee effects the withdrawal and a copy must be retained as a permanent record.

(6) For the purposes of subregulation (3)(a)(iii), money is taken to have been paid by the licensee on behalf of the person when the relevant account of the licensee has been debited.

32 Duration for keeping of trust records

(1) This regulation has effect for the purposes of section 71(5) and section 80 of the Act for the keeping in a permanent form of a licensee's trust records in relation to trust money received by the licensee.

(2) The trust records are to be kept for a period of 7 years after—

(a) in the case of a trust record referred to in paragraph (a) to (m) of the definition of trust records in section 62 of the Act—the only or the last transaction entry in the record; or

(b) in the case of any other trust record—finalisation of the matter to which the record relates.
Division 7—Miscellaneous

33 Exemption

The Director may—

(a) exempt a licensee from complying with any of the provisions of this Part subject to any conditions that may be imposed by the Director; and

(b) at any time impose a new condition on the exemption, amend or revoke a condition already imposed on the exemption, or revoke the exemption.
PART 4—GENERAL

34 Statutory declaration on ceasing to hold trust money

A statutory declaration for the purposes of section 86(4) of the Act must be in the form of Form 1 in Schedule 2.

35 Claims against the Fund

For the purposes of section 145(1)(b) of the Act, the prescribed information is—

(a) the name and address of the claimant;
(b) the name and address of the licensee in respect of whom the claim is made;
(c) the grounds on which the claim is made;
(d) the amount of monetary loss suffered by the claimant;
(e) details of any action taken by the claimant to recover the loss from a source other than the Fund;
(f) details of any monetary or non-monetary amount recovered in relation to the loss by the claimant from a source other than the 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 145(5) of the Act must be in the form of Form 2 in Schedule 2.

37 Embargo notice

An embargo notice issued by an inspector under section 168 of the Act must be in the form of Form 3 in Schedule 2.
SCHEDULES

SCHEDULE 1

Regulation 5

RULES OF PROFESSIONAL CONDUCT

1 Honesty, fairness and professionalism
   (1) A licensee must act honestly, fairly and professionally with all parties in a transaction.
   (2) A licensee must not misinform or otherwise mislead or deceive any parties in negotiations or a transaction.

2 Skill, care and diligence
   A licensee must exercise reasonable skill, care and diligence in the performance of conveyancing work or carrying on a conveyancing business.

3 Fiduciary obligations
   A licensee must comply with the fiduciary obligations arising out of the performance of conveyancing work or carrying on a conveyancing business.

4 To only undertake work within competence
   A licensee must only accept instructions to perform conveyancing work if the licensee is competent to perform the conveyancing work concerned.

5 To perform work promptly
   A licensee must only accept instructions to perform conveyancing work if the licensee reasonably expects to be able to carry out the conveyancing work concerned reasonably promptly.
6 **To act in the client's best interests and according to the client's instructions**

A licensee must act in the client's best interests and according to the client's instructions at all times unless it would be contrary to the Act or these Regulations or otherwise unlawful to do so.

7 **To regularly communicate with client**

A licensee must regularly communicate with a client to ensure that the client is kept up to date with the progress of the client's matter.

8 **To confirm client's oral instructions in writing**

A licensee must ensure that oral instructions (other than those of a trivial nature) received from a client are confirmed with the client in writing as soon as possible after they are received.

9 **Conflicts of interest**

A licensee must not accept instructions to perform or continue to perform conveyancing work for a client if doing so would place the licensee's interests in conflict with the client's interests.

10 **Acting for more than one party to a transaction**

(1) A licensee may only act for more than one party to a transaction if the licensee discloses in writing to each party that the licensee is intending to act for the others, and each party consents in writing to the licensee so acting.

(2) If a licensee who is acting for more than one party cannot continue to act for all of the parties without acting in a manner contrary to the interests of one or more of them, the licensee must cease to act for all of the parties.
(3) The disclosure referred to in subrule (1) must indicate that, as a consequence of acting for more than one party to the transaction—

(a) the licensee may be prevented from—

(i) disclosing to each party all information within the licensee's knowledge that is relevant to the transaction; and

(ii) giving advice to one party which is contrary to the interests of the other; and

(b) the licensee will cease to act for all parties if the licensee would, otherwise, be obliged to act in a manner contrary to the interests of one or more of them.

11 Confidentiality

A licensee must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client unless—

(a) the client authorises the disclosure; or

(b) the licensee is permitted or compelled by law to disclose the information.

12 Noting of instructions, enquiries and telephone conversations

(1) A licensee must keep, in the form of a file note, a written record of the following—

(a) all instructions received from the licensee's clients and advice given;

(b) all telephone conversations made or received in connection with conveyancing work;

(c) all enquiries made in connection with conveyancing work and responses given.
Sch. 1

(2) A record required to be kept under this rule may be kept in the electronic form, provided it can be produced in a permanent legible form in the English language.

13 Referral to service provider

(1) A licensee who refers a client or prospective client to a service provider must not falsely represent to the client or prospective client that the service provider is independent of the licensee.

(2) A service provider is considered to be independent of a licensee if—

(a) the licensee receives no rebate, discount, commission or benefit for referring a client or customer to the service provider; and

(b) the licensee does not have a personal or commercial relationship with the service provider.

(3) The following are examples of a personal or commercial relationship—

(a) a family relationship;

(b) a business relationship;

(c) a fiduciary relationship;

(d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.

(4) If the service provider is not independent of the licensee, the licensee must disclose to the client or prospective client—

(a) the nature of the relationship, whether personal or commercial, the licensee has with the service provider; and
(b) the nature and value of any rebate, discount, commission or benefit the licensee may receive, or expects to receive, by referring the client or prospective client to the service provider.

(5) In this rule—

service provider means a person who provides a service in relation to a conveyancing transaction (for example, a building inspector, pest inspector, valuer, surveyor, insurer, mortgage originator, mortgage broker, law practice or another licensee).

14 Soliciting through false or misleading advertisements or communications

(1) A licensee must not solicit clients or customers through advertisements or other communications that the licensee knows or ought to know are false or misleading.

(2) A licensee must not include any matter (including any statement, slogan or logo) on stationery or business cards used in connection with conveyancing work that the licensee knows or ought to know is false or misleading.

15 Termination of licensee's services

A licensee must complete the conveyancing work in respect of which the licensee has accepted instructions to perform for a client unless—

(a) the licensee and the client have otherwise agreed; or

(b) the client terminates the services of the licensee; or

(c) the licensee terminates the provision of services to the client by giving 14 days written notice to the client.
16 Transfer of conveyancing work

If—

(a) a licensee ceases to act for a client before completing the conveyancing work in respect of which the licensee has accepted instructions to perform for a client; and

(b) the client instructs another licensee or a law practice to take over the performance of the client's conveyancing work—

the first-mentioned licensee must, within 14 days after receipt of a direction in writing from the client, deliver to the second-mentioned licensee or the law practice all relevant documents to which the client is entitled and any information that is necessary for the proper performance of the client's conveyancing work.

17 Transfer of conveyancing business

(1) If a licensee intends to transfer the whole or any part of the licensee's conveyancing business (including clients' work in progress) to another licensee or a law practice, the first-mentioned licensee must give each client 14 days written notice of the following—

(a) the intended transfer of documents to the licensee or law practice acquiring the business, unless a contrary direction is received from the client;

(b) the client's right to give to the first-mentioned licensee a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.
(2) If the licensee holds money on behalf of the client in trust or under the licensee's control, the notice referred to in subrule (1) must also advise the client of the following—

(a) the balance of money held on the client's behalf;

(b) the licensee's intention to transfer the relevant account to the licensee or law practice acquiring the business, unless advised by the client to the contrary;

(c) the client's right to give to the first-mentioned licensee a contrary direction as to the manner in which the licensee should deal with the account on the client's behalf.

18 Conducting another business

(1) A licensee who engages in the conduct of another business concurrently with the conduct of the licensee's conveyancing business must ensure the following—

(a) that the other business is not of such a nature that the licensee's involvement in it would be likely to impair, or conflict with, the licensee's duties to clients in the conduct of the conveyancing business;

(b) that separate and independent files, records and accounts are maintained in respect of the conveyancing business and of the other business;

(c) that the licensee ceases to act for a client of the conveyancing business if the licensee's interest in the other business is likely to conflict with the client's interests.
19 **Independence of licensee advising on loan or security documents**

(1) A licensee must provide competent and independent advice in advising a proposed signatory to a document creating a loan or a security interest *(loan or security document)*.

(2) The licensee must not act for the lender in the transaction to which the loan or security document relates.

(3) The licensee must not advise a proposed signatory to a loan or security document in any circumstances where the interests of any signatory or proposed signatory to the document conflict with those of the licensee or with those of any other client of the licensee.

20 ** Advising proposed signatories on loan or security documents**

(1) A licensee must advise a proposed signatory to a loan or security document of those matters that the licensee, in exercising the professional skill and judgment called for in the circumstances of the particular case, considers appropriate.

(2) Without limiting the generality of subrule (1), when advising a proposed signatory who is to be a borrower in a loan or security document *(the borrower)*, the licensee must, where necessary, advise the borrower of the following—

   (a) that by signing the document the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date;

   (b) that if the borrower fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;
(c) that if the borrower fails to comply with any of the terms and conditions of the loan including the obligations to pay principal or interest—

(i) the lender may sue the borrower personally; and

(ii) the lender may take possession of the borrower's property and, after notice, sell it to recover the amount owing together with interest and other costs including conveyancer's costs, the costs of selling the property and the costs of maintaining the property; and

(iii) if the proceeds of sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender may sue the borrower for the deficit;

(d) that if the Consumer Credit (Victoria) Code applies, additional obligations, rights and remedies may apply as set out in the loan or security document.

(3) A licensee giving independent advice to a proposed borrower must obtain the borrower's written acknowledgment of the independent advice.

(4) Without limiting the generality of subrule (1), when advising a proposed signatory who is to be a third party mortgagor, guarantor, surety mortgagor or indemnifier providing security for the borrower (the guarantor), the licensee must, where necessary, advise the guarantor of the following—

(a) that if the borrower fails to make any payment on time, the guarantor will be liable to remedy that failure, and that could involve the guarantor in payment to the lender of all amounts owed by the borrower to the lender
including principal, interest, default interest and the lender's costs of rectifying the default;

(b) that if the guarantor fails to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligation to pay principal, interest, default interest, or other charges—

(i) the lender may sue the guarantor personally;

(ii) the lender may take possession of the guarantor's property secured to the lender and, after notice, sell it to recover the amount owing together with interest and other costs including conveyancer's costs, the costs of selling the property and the costs of maintaining the property;

(iii) if the proceeds of sale of the guarantor's property are insufficient to satisfy the debt to the lender, the lender may sue the guarantor for the deficit;

(c) if the guarantor is a proposed signatory to a loan or security document under which the guarantor's liability can be increased, of that fact and the extent of the possible increase, and of any restriction or limitation of the guarantor's rights or obligations in relation to the security and any other party to the transaction or document;

(d) that the lender may exercise the lender's rights against the guarantor even if the lender has not pursued the borrower;
(e) that the liability of the guarantor is limited to a specified sum, or is unlimited (whichever is the case) and may be affected by cross guarantees;

(f) that if the Consumer Credit (Victoria) Code applies, additional obligations, rights and remedies may apply as set out in the loan or security document.

(5) A licensee giving independent advice to a proposed guarantor must obtain the guarantor's written acknowledgment of the independent advice.

(6) In any case, a licensee advising a proposed signatory (whether a proposed borrower or a proposed guarantor) must advise the proposed signatory of the following—

(a) that the licensee does not profess any qualification to give financial advice;

(b) that if the proposed signatory has any questions about any financial aspect of the transaction or the loan or security document, the proposed signatory should consult an accountant or other financial counsellor of the proposed signatory's choice before signing the document.
SCHEDULE 2

FORM 1

Regulation 34

STATUTORY DECLARATION ON CEASING TO HOLD TRUST MONEY

Conveyancers Act 2006
Section 86

I, [insert full name],
of [insert name of licensee's conveyancing business]
of [insert address]

DECLARE THAT:

1 I am or was a licensee who on [insert date] ceased to be authorised to receive trust money.

2 I do not now hold any trust money, all such trust money having been applied in accordance with the Conveyancers Act 2006.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

Signed
Full Name [block letters]

DECLARED AT [place] in the State of Victoria on [date] Before:
[Name and address in legible writing, type or stamp below signature]

A person authorised under section 107A(1) of the Evidence Act 1958 to witness the signing of a statutory declaration.
FORM 2

Regulation 36

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

Conveyancers Act 2006
Section 145

To: [name of claimant]
of [address]

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

**The Secretary disallows $ of your claim.

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

Signed

Dated
(For and on behalf of the Secretary)

* Delete if not applicable.
** Delete if claim wholly disallowed.
1 The item described below has been embargoed under section 168 of the Conveyancers Act 2006.

2 Section 168(2) provides that a person who knows that an embargo notice relates to a thing and who without the written consent of the inspector who issued the embargo notice—

(a) sells; or
(b) leases; or
(c) transfers; or
(d) moves; or
(e) disposes of; or
(f) otherwise deals with—

the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

3 Section 168(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.

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

46