

**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994 No. 20**

NEW SOUTH WALES



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**PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994 No. 20**

NEW SOUTH WALES



Act No. 20, 1994

An Act to amend the Property, Stock and Business Agents Act 1941 with respect to money held in trust accounts maintained under that Act and the use of funds held in the Real Estate Services Council Statutory Interest Account; and for other purposes. [Assented to 16 May 1994]

Property, Stock and Business Agents (Amendment) Act 1994 No. 20

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Property, Stock and Business Agents (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Property, Stock and Business Agents Act 1941 No. 28

3. The Property, Stock and Business Agents Act 1941 is amended as set out in Schedules 1–4.

Consequential amendment of Real Estate Services Council Act 1990 No. 14, s. 13 (Investment)

4. The Real Estate Services Council Act 1990 is amended by omitting section 13 (4).

**SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.**

(Sec. 3)

(1) Section 3 (**Definitions**):

In section 3 (1), insert in alphabetical order:

“**Business day**” means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

“**Prescribed financial institution**” means:

- (a) a bank authorised to carry on the business of banking under a law of the Commonwealth or of a State or Territory; or
- (b) a building society, or credit union, authorised under the Trustee Act 1925 for the investment of trust funds.

“**Statutory Interest Account**” means the Real Estate Services Council Statutory Interest Account established under section 63B.

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

(2) Section **25 (RESC Administration Account)**:

From section 25 (4), omit “bank”, insert instead “prescribed financial institution operating”.

(3) Section **36 (Money to be paid to trust account)**:

(a) From section 36 (1), omit “bank”, insert instead “prescribed financial institution operating”.

(b) After section 36 (1), insert:

(1A) When opening a trust account at a prescribed financial institution for the purpose of complying with subsection (1), the licensee concerned must ensure that the institution is notified in writing that the account is a trust account required by this Act.

(1B) If money is held in a trust account in accordance with subsection (1) at the commencement of this subsection, the licensee concerned must, within 1 month after that commencement, ensure that the bank at which the account is kept is notified in writing that the account is a trust account required by this Act.

(c) From section 36 (3), omit “or section 36D”.

(d) After section 36 (3), insert:

(3A) A licensee must, within 14 days after closing a trust account, notify the Council in writing of the closure.

(3B) If at any time a trust account becomes overdrawn, the licensee concerned must, within 5 days after becoming aware of the overdrawn, notify the Council in writing of:

(a) the name and number of the account; and

(b) the amount by which the account is overdrawn; and

(c) the reason for the account becoming overdrawn.

(e) From section 36 (4A), omit “bank”, insert instead “prescribed financial institution operating”.

(4) Sections **36AA, 36AB**:

After section 36, insert:

Determination of trust account rate

36AA. (1) For the purposes of sections 36AB and 36AC, the Minister is required to determine from time to time, after

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

consultation with the Treasurer, a trust account rate for each prescribed financial institution. The rate, which may be a fixed or variable one, is to be determined by reference to an interest rate that applies in the short term money market.

(2) As soon as practicable after determining a trust account rate for a prescribed financial institution, the Minister must:

- (a) inform the institution of the rate by notice in writing; and
- (b) publish a notice of the rate in the Gazette.

Prescribed percentage of trust account rate

36AB. (1) For the purposes of section 36AC, the prescribed percentage, in relation to money held in trust accounts kept with a prescribed financial institution under section 36 (whether opened before or after the commencement of this section), is:

- (a) during the period of 2 years beginning on the date of that commencement—25 per cent of the trust account rate relevant to the institution; and
- (b) during any subsequent period—25 per cent of that rate or such greater percentage of that rate as may be determined under subsection (2) and notified in the Gazette.

(2) For the purposes of subsection (1) (b), the Minister may, from time to time, determine a percentage greater than 25 after consultation with the Treasurer.

(5) Sections 36AC–36AF:

Before section 36A, insert:

Interest earned on trust accounts to be paid to Statutory Interest Account

36AC. (1) On the first business day after the end of each named month beginning after the commencement of this section, every prescribed financial institution must:

- (a) calculate interest on the daily balances of all money held during the month in trust accounts kept with the institution under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act) by applying to those

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
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balances the prescribed percentage of the trust account rate applicable to the institution; and

- (b) pay the amount of that interest to the Council for crediting to the Statutory Interest Account.

(2) A prescribed financial institution must not deduct transaction or other charges, other than statutory charges (such as bank account debits tax), from the balances referred to in subsection (1) or from an amount of interest calculated under that subsection.

(3) The Council may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable to it under this section.

Prescribed financial institutions to provide the Council with certain information

36AD. (1) Within 14 days after the end of each named month beginning after the commencement of this section, every prescribed financial institution must, by notice in writing, inform the Council of the following matters:

- (a) the number of trust accounts opened with the institution during the month under section 36 (being trust accounts notified to the institution under that section as trust accounts required by this Act), the names of the licensees who opened those accounts, the names and numbers of those accounts and the addresses of the branches of that institution at which those accounts are kept;
- (b) the total amount of interest that the institution paid for the month under section 36AC (1) (b).

(2) As soon as practicable (and in any case within 5 business days) after a prescribed financial institution becomes aware that a trust account kept with it under section 36 is overdrawn (being a trust account notified to the institution under that section as a trust account required by this Act), the institution must, by notice in writing, inform the Council of

- (a) the name and business address of the licensee concerned; and
- (b) the name and number of the account; and

SCHEDULE 1—AMENDMENTS RELATING TO TRUST
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(c) the amount by which the account is overdrawn.

(3) This section has effect irrespective of any other law or any rule of practice to the contrary.

Sections 36AC and 36AD not to apply to certain accounts

36AE. Sections 36AC and 36AD do not apply:

- (a) to a separate trust account kept on the instructions of a client of a licensee or a firm of licensees for the exclusive benefit of the client; or
- (b) to a trust account of a class of trust accounts prescribed by the regulations for the purposes of this section.

Offences by prescribed financial institutions

36AF. A prescribed financial institution that fails to comply with a provision of section 36AC or 36AD is guilty of an offence against this Act.

(6) Section 36C (**Disposal of unclaimed money in trust accounts**):

- (a) From section 36C (1) and (2) (a), omit “into the Consolidated Fund” wherever occurring, insert instead “to the Council”.
- (b) From section 36C (2) (b), omit “the Treasurer”, insert instead “the Council”.
- (c) After section 36C (2), insert:
 - (2A) The Council must pay my money received by it under subsection (2) into the fund.
 - (2B) Within 2 months after the end of each year, the Council must pay into the Consolidated Fund all money received by it and paid into the fund during that year. When the Council makes that payment, it must give the Treasurer a statement containing the following particulars:
 - (a) the name and last known address of each person for whom or on whose behalf the money received by the Council was held;
 - (b) the amount held in respect of each such person;
 - (c) the date of gazettal of the notice under subsection (1)
 - (b) in respect of that money;

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- (d) the name and address of each licensee who furnished a statement to the Council under section 36A or 36B in respect of that money.
- (d) After section 36C (3), insert:
- (4) If an application for the payment of money to which a person is entitled is made while the money is held in the fund, the Council must pay the money to the person from the fund.
- (7) Section 36D (**Licencees to deposit part of trust account with the Council**), section 36E (**Moneys deposited by licensee or firm with Council to be invested etc.**):
Omit the sections.
- (8) Section 36F (**Real Estate Services Council Special Account**):
Omit the section.
- (9) Section 37:
Omit the section, insert instead:
- Prescribed financial institutions to be relieved from liability in certain cases**
37. (1) A prescribed financial institution:
- (a) does not incur liability, and is not obliged to make inquiries, in relation to any transaction concerning an account of a licensee kept with the institution or with some other financial institution; and
- (b) is, in relation to any such transaction, taken not to have any knowledge of a right of any person to money credited to such an account,
- unless it would incur such a liability, be obliged to make such inquiries or be taken to have that knowledge in relation to an account kept with it in respect of a person absolutely entitled to the money held in that account. This subsection is subject to section 36AD.
- (2) Subsection (1) does not relieve a prescribed financial institution from any liability or obligation that it would have apart from this Act.
- (3) A prescribed financial institution at which a licensee keeps an account for clients' money does not, as regards any

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
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liability that the licensee has to the institution (not being a liability relating to that account), have a right to any of the money held in that account, whether by way of set-off, counterclaim, charge or otherwise.

(10) Section 38A (**Furnishing of particulars of trust account or transactions**):

From section 38A (1) (a), omit “bank”, insert instead “prescribed financial institution”.

(11) Section 38B (**Inspection of records**):

(a) From section 38B (2) (b), omit “bankers”, insert instead “financial institutions”.

(b) From section 38B (2AB) (b), omit “bankers”, insert instead “financial institutions”.

(c) From section 38B (2A), omit “a banker with whom”, insert instead “a prescribed financial institution with which”.

(d) From section 38B (2A) (a) (iii), omit “the banker in accordance with subsection (2)”, insert instead “the institution in accordance with subsection (2) or (2AB)”.

(e) From section 38B (2A) (b), omit “that banker”, insert instead “the institution”.

(f) From section 38B (2A) (b), omit “the bank”, insert instead “the institution”.

(12) Section 63B (**Statutory Interest Account**):

(a) From section 63B (1), omit “(which is in this Part referred to as ‘**the Statutory Interest Account**’)”.

(b) From section 63B (2), omit “bank”, insert instead “prescribed financial institution operating”.

(13) Section 63C:

Omit the section, insert instead:

Money in the Statutory Interest Account

63C. There is to be paid to the credit of the Statutory Interest Account any money that is required or permitted to be paid to the credit of that Account, whether by this Act or any other Act.

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SCHEDULE 1—AMENDMENTS RELATING TO TRUST
ACCOUNTS ETC.—*continued*

(14) Section 83A (**Definitions**):

From the definition of “Money”, omit “bank”, insert instead “financial institution”.

(15) Section 83F (**Receiver may forbid withdrawal of moneys from financial institution**):

(a) From section 83F (1), omit “bank account”, insert instead “account kept with a financial institution”.

(b) From section 83F (1), omit “the bank”, insert instead “the institution”.

(c) From section 83F (2) and (3), omit “bank” wherever occurring, insert instead “financial institution”.

SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE
COMPENSATION FUND

(Sec3)

(1) Section 3 (**Definitions**):

In section 3 (1), before the definition of “Auctioneer”, insert:

“**Administration Account**” means the Real Estate Services Council Administration Account established under section 25.

(2) Section 25 (**RESC Administration Account**):

(a) At the end of section 25 (4) (c), insert:

; and

(d) money transferred to the account from the Statutory Interest Account.

(b) From section 25 (S), omit “Account”, insert instead “Administration Account”.

(c) Omit section 25 (6).

(3) Section 57 (**Procedure**):

From section 57 (10), omit “Real Estate Services Council”.

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SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

(4) Section 63D:

Omit the section, insert instead:

Application of money in the Statutory Interest Account

63D. (1) The Council may apply money held in the Statutory Interest Account for all or any of the following purposes:

- (a) supplementing the fund by such amount as may be needed to enable the current liabilities of the fund to be met;
- (b) meeting costs incurred by persons or organisations in conducting courses of study the successful completion of which is a pre-requisite to persons becoming licensees or being registered as real estate salespersons, business salespersons, stock and station salespersons, trainee managing agents or practising, non-practising or associate real estate valuers;
- (c) meeting costs incurred by persons or organisations in providing professional development or other educational programs approved by the Council;
- (d) providing grants or loans to persons or organisations to enable them to carry out capital works so that those courses and educational programs can be provided;
- (e) meeting costs incurred in conducting lectures, seminars, courses of study and educational programs organised by or for the Council;
- (f) meeting the cost of evaluating courses of study and educational programs referred to in this subsection and of developing educational standards relating to the conduct of those courses and programs;
- (g) meeting the cost of providing the public information and guidance programs referred to in section 10 (1) (c) of the Real Estate Services Council Act 1990;
- (h) meeting costs involved in establishing a scheme under which the conduct or provision of real estate services in New South Wales can be jointly regulated by the Council, the Government and organisations representing licensees and registered valuers;

SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

- (i) meeting costs involved in establishing a disciplinary tribunal, or some other body, to deal with complaints concerning the conduct of licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers;
- (j) meeting costs involved in establishing a scheme for resolving disputes arising between licensees, registered real estate salespersons, registered business salespersons, registered stock and station salespersons, trainee managing agents or registered valuers and their clients in connection with the provision of real estate services;
- (k) meeting any deficiency that has occurred in the Administration Account;
 - (1) meeting the cost of administering this Part.
 - (2) The Council may apply money under this section only with the consent of the Minister.
 - (3) The Council must:
 - (a) transfer to the fund money applied for the purpose specified in subsection (1) (a); and
 - (b) transfer to the Administration Account money applied for any of the purposes specified in subsection (1) (k) and (l).
 - (4) The Council may, in accordance with section 13 of the Real Estate Services Council Act 1990, invest money held in the Statutory Interest Account and not immediately required for the purposes of the Account.
 - (5) Nothing in this section limits the operation of sections 63E–63G.
- (5) Section 66 (**Fund moneys to be held in a separate account kept with a prescribed financial institution**):
Omit “bank”, insert instead “prescribed financial institution operating”.
- (6) Section 67 (**Composition of the fund**):
From section 67 (b1), omit “Real Estate Services Council”.

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SCHEDULE 2—AMENDMENTS RELATING TO THE
STATUTORY INTEREST ACCOUNT AND THE COMPENSATION
FUND—*continued*

(7) Section 74 (**Application of fund**):

- (a) From section 74 (2), omit “6”, insert instead “12”.
- (b) After section 74 (2), insert:

(2A) Despite subsection (2), a claim caused by a failure of a licensee (or any employee or agent of a licensee) to lodge a rental bond with the Rental Bond Board may also be made at any time within 1 year after the termination of the tenancy agreement.

(8) Section 92 (**Regulations**):

Omit section 92 (2) (g) and (h).

SCHEDULE 3—AMENDMENTS RELATING TO LICENCES

(Sec. 3)

(1) Section 23A (**Restoration of licence by the General Manager**):

After section 23A (1), insert:

(1A) If the application for restoration of a licence is made less than 7 days after the expiration of the licence, the General Manager may waive the payment of the prescribed late fee.

(2) Section 23C (**Effect of decision on application for restoration of licence**):

After section 23C (1A), insert:

(1B) Anything done (other than the commission of an offence under section 20) between:

- (a) the expiration of a licence; and
- (b) the dismissal of an application duly made for the restoration of the licence,

by the person whose licence had expired is taken to have been done while the person was the holder of the licence.

(1C) For the purposes of subsection (1B), if the Local Court dismisses an application for the restoration of a licence and an appeal is duly lodged against the Court’s decision, the application is dismissed when the appeal is dismissed or withdrawn.

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SCHEDULE 3—AMENDMENTS RELATING TO LICENCES—
continued

(3) Section 64A (**Definitions**):

After section 64A (2), insert:

(3) For the purposes of the definition of “failure to account” in subsection (1), it does not matter that the failure to account occurred after the licensee ceased to be licensed if the money or other valuable property concerned was entrusted to the person (or the person’s employee or agent) before the person ceased to be licensed.

**SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS**

(Sec. 3)

(1) Schedule 2:

Before clause 1, insert:

PART 1—GENERAL

Regulations

1A. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

the Auctioneers and Agents (Amendment) Act 1992;
the Property, Stock and Business Agents (Amendment)
Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
or

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SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON THE
AUCTIONEERS AND AGENTS (AMENDMENT)
ACT 1992**

- (2) Schedule 2, clauses 1, 4 (3), 8, 9:
Omit “Schedule” wherever occurring, insert instead “Part”.
- (3) Schedule 2, Part 3:
After clause 15, insert:

**PART 3—PROVISIONS CONSEQUENTIAL ON THE
PROPERTY, STOCK AND BUSINESS AGENTS
(AMENDMENT) ACT 1994**

Definition

16. In this Part, “**amending Act**” means the Property, Stock and Business Agents (Amendment) Act 1994.

Money deposited with the Council to be returned to licensees

17. (1) As soon as practicable after the repeal of section 36E, the Council must repay all money deposited with it under section 36D to the person or firm that deposited it.

(2) However, if the person or firm that deposited the money is no longer a licensee, the Council must pay the money to the Treasurer for payment to the Consolidated Fund.

(3) The Treasurer must, on application made to the Treasurer by any person entitled to money paid into the Consolidated Fund under subclause (2), pay the money to the person.

(4) Despite the repeal of section 36E, the money so deposited may, pending its repayment or payment under this clause, continue to be invested as provided by subsection (3) of that section.

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SCHEDULE 4—SAVINGS AND TRANSITIONAL
AMENDMENTS—*continued*

(5) Section 36 applies to a person or firm to which money is repaid under subclause (1).

Transfer of money held in the RESC Special Account

18. As soon as practicable (and in any case not later than 3 months) after the requirements of clause 17 (1) and (2) have been complied with, the Council must close the Real Estate Services Council Special Account.

Investment of money held in the Statutory Interest Account

19. Any money in the Statutory Interest Account invested under section 63D (as in force immediately before the commencement of Schedule 2 (4) to the amending Act) is taken to have been invested under that section (as in force after that commencement).

Claims against the fund

20. Section 74 (as in force after the commencement of Schedule 2 (7) to the amending Act) does not apply to a claim that has been barred by section 74 (as in force immediately before that commencement).

Restoration of licences etc.

21. Subsections (1B) and (1C) of section 23C, and subsection (3) of section 64A, extend to a licence that expired before the commencement of those subsections.

*[Minister's second reading speech made in—
Legislative Assembly on 17 March 1994
Legislative Council on 4 May 1994]*