



New South Wales

Property, Stock and Business Agents Amendment Regulation 2005

under the

Property, Stock and Business Agents Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Property, Stock and Business Agents Act 2002*.

JOHN HATZISTERGOS, M.L.C.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is to amend the *Property, Stock and Business Agents Regulation 2003* as follows:

- (a) to provide that the term **trust money** has the same meaning in the Regulation as in Part 7 of the *Property, Stock and Business Agents Act 2002* (**the Act**) (that is, money received for or on behalf of any person by a licensee in connection with the licensee's business as a licensee) (Schedule 1 [1]),
- (b) to exempt all agreements between licensees who are members of a multiple listing organisation, and all agreements between parties to a notified franchise agreement, from the requirements to be in writing, to be signed and to contain prescribed terms (at present only agreements approved by the Director-General of the Department of Commerce are exempt) (Schedule 1 [2]),
- (c) to prescribe 14 days as the time within which notice of any change in the location of the registered office of a licensee must be lodged with the Director-General of the Department of Commerce (Schedule 1 [3]),
- (d) to provide that a licensee is not required to retain duplicate receipts in relation to trust money if an electronic record of receiving the money was made as soon as was practicable after the money was received (Schedule 1 [4]),
- (e) to prescribe the Property Services Compensation Fund as an account out of which the costs of management and receivership of a licensee's business can be paid, but only to the extent that they cannot be paid out of the receipts of the relevant business (Schedule 1 [5]),

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Explanatory note

- (f) to provide that the requirement under section 63 of the Act that the proposed contract for the sale of property, and other required documents, must be available for inspection before a real estate agent offers residential property for sale does not apply if the offer is made under an agreement between licensees to share any commission, fee, gain or reward in respect of the sale of a residential property and the requirement is complied with in respect of the offer when made by the licensee with whom the principal concerned has entered into an agency agreement (Schedule 1 [6]),
- (g) to exempt from the operation of the Act any person, such as a tourist information centre or short-term accommodation booking agent, who introduces, or arranges for the introduction of, a prospective licensee of land to the owner of land or to the agent of the owner of land, but only if that person deals only with licences of land for a period of not more than 2 months other than for residential purposes and does not accept any money for doing so from the prospective licensee or licensee (Schedule 1 [7]),
- (h) to prohibit an agency agreement under which the agent will exercise the functions of a strata managing agent from containing a term that indemnifies the agent against any liability to pay a fine that arises by virtue of section 30 of the *Strata Schemes Management Act 1996* (Breach of duty by strata managing agent) (Schedule 1 [8]).

This Regulation is made under the *Property, Stock and Business Agents Act 2002*, including sections 4 (1), 28 (4), 55, 63 (7), 123 and 230 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Property, Stock and Business Agents Amendment Regulation 2005*.

2 Amendment of Property, Stock and Business Agents Regulation 2003

The *Property, Stock and Business Agents Regulation 2003* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 2)

[1] Clause 3 Definitions

Insert in alphabetical order:

trust money has the same meaning as in Part 7 of the Act.

[2] Clause 8 Subagency agreements

Omit clause 8 (1) (a) and (b). Insert instead:

- (a) agreements between licensees who are members of a multiple listing organisation,
- (b) agreements between licensees who are parties to a franchise agreement,

[3] Clause 13A

Insert after clause 13:

13A Notice of change of registered office

For the purposes of section 28 (4) of the Act, 14 days is prescribed as the time within which notice of any change in the location of the registered office must be lodged.

[4] Clause 25 Receipts for trust money

Insert after clause 25 (6):

- (6A) Despite subclause (6) (c), a licensee is not required to retain duplicate receipts in relation to money received if an electronic record of receiving the money was made as soon as was practicable after the money was received.

[5] Clause 41A

Insert after clause 41:

41A Meaning of "Operating Account"

For the purposes of the definition of *Operating Account* in section 123 of the Act, the Compensation Fund is prescribed.

[6] Clause 46A

Insert after clause 46:

46A Proposed contract for sale of residential property—exception

Section 63 of the Act does not apply if the indication, offer or invitation referred to in section 63 (3) of the Act is made under an agreement between licensees to share any commission, fee, gain or reward in respect of the sale and section 63 of the Act is complied with in respect of the indication, offer or invitation when made by the licensee with whom the principal concerned has entered into an agency agreement.

[7] Clause 47A

Insert after clause 47:

47A Exemption for certain visitor information centres or short-term accommodation booking agents

- (1) This clause applies to persons who:
 - (a) introduce, or arrange for the introduction of, a prospective licensee of land to the owner of land or to the agent of the owner of land, and
 - (b) deal only with licences of land for a period of not more than 2 months other than for residential purposes, and
 - (c) do not accept any money for doing so from any prospective licensee of land or licensee of land, and
 - (d) do not otherwise introduce, or arrange for the introduction of, a prospective purchaser, lessee or licensee of land to a licensed agent or to the owner, or the agent of the owner, of land.
- (2) For the purposes of section 4 (1) of the Act, a person who is a member of a class of persons to which this clause applies is exempt from the operation of all of the Act in respect of any act or omission by the person in the person's capacity as agent in respect of the introduction, or arranging for the introduction, of a prospective licensee of land to another licensed agent or to the owner, or the agent of the owner, of land.

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Schedule 1 Amendments

[8] Schedule 14 Terms specific to agency agreement for the management of strata or community title land

Insert after clause 4:

5 Indemnification of strata managing agent prohibited

An agency agreement under which the agent will exercise the functions of a strata managing agent must not contain a term that indemnifies the agent against any liability to pay a fine that arises by virtue of section 30 of the *Strata Schemes Management Act 1996*.

Note. Section 30 of the *Strata Schemes Management Act 1996* provides that if a strata managing agent has been delegated a duty by an owners corporation and a breach of the duty by the owners corporation would constitute an offence under a provision of the *Strata Schemes Management Act 1996*, the agent is guilty of an offence under that provision (instead of the owners' corporation) for any breach of the duty by the agent occurring while the delegation remains in force.

BY AUTHORITY
