

Passed by both Houses



New South Wales

Conveyancers Licensing Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Conveyancers Licensing Amendment Bill 2006

Act No , 2006

An Act to amend the *Conveyancers Licensing Act 2003* to make further provision with respect to the licensing and regulation of conveyancers; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Conveyancers Licensing Amendment Act 2006*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Amendment of Conveyancers Licensing Act 2003 No 3

The *Conveyancers Licensing Act 2003* is amended as set out in Schedule 1.

4 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 6 Persons conducting conveyancing business required to be licensed

Omit section 6 (2) (b). Insert instead:

- (b) who is an incorporated legal practice or solicitor corporation (if the conveyancing business is carried on on its behalf by an Australian legal practitioner).

[2] Section 8 Eligibility for licence

Insert after section 8 (2) (c):

- (c1) the corporation is not a disqualified person, and

[3] Section 9 Qualifications for licence

Omit “replacement” from section 9 (5). Insert instead “renewal”.

[4] Section 10 Disqualified persons

Omit section 10 (1) (b)–(d).

[5] Section 10 (1) (g)

Omit the paragraph. Insert instead:

- (g) is the holder of a licence, permit or other authority that is suspended under legislation administered by the Minister or is disqualified from holding a licence, permit or other authority under legislation administered by the Minister, or

[6] Section 10 (1) (h)

Omit “the holder of a licence, permit or other authority that is suspended under the *Fair Trading Act 1987*”.

Insert instead “a disqualified person”.

[7] Section 10 (1) (n)

Omit “or controlled money”.

[8] Section 10 (1) (p1)

Insert after section 10 (1) (p):

- (p1) is an Australian legal practitioner, incorporated legal practice or solicitor corporation, or

[9] Section 10 (1) (q1)

Insert after section 10 (1) (q):

- (q1) is the holder of a licence or certificate of registration under the *Property, Stock and Business Agents Act 2002*, or

[10] Section 10 (2)

Omit the subsection. Insert instead:

- (2) A person is also a disqualified person for the purposes of this Act (except for the purposes of section 29) if the person:
 - (a) is an undischarged bankrupt, or
 - (b) at any time in the last 3 years was an undischarged bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit, or
 - (c) is, or was at any time in the last 3 years, a director or person concerned in the management of an externally-administered body corporate (within the meaning of the Corporations Act) except in a case of the voluntary winding up of the body corporate, or
 - (d) is a person:
 - (i) who at any time in the last 3 years, was a director or person concerned in the management of a body corporate that, within 12 months of the person ceasing to be such a director or person, became an externally-administered body corporate (within the meaning of the Corporations Act) except in the case of a voluntary winding up of the body corporate, and
 - (ii) who failed (while a director or person concerned in the management of that body corporate) to take all reasonable steps to avoid the body corporate becoming an externally-administered body corporate.

[11] Section 10 (3A)–(3D)

Insert after section 10 (3):

- (3A) The Director-General may, in any case that the Director-General thinks it appropriate to do so, determine that a suspension or disqualification from holding a licence, permit or other authority under legislation administered by the Minister (as referred to in

subsection (1) (g)) is to be ignored for the purposes of this section.

- (3B) The Director-General may exempt a person from the operation of subsection (2) (a), (b) or (c) by:
- (a) certifying, in the case of exemption from subsection (2) (a), that the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy concerned, or
 - (b) certifying, in the case of exemption from subsection (2) (b), that the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy or other financial difficulties concerned, or
 - (c) certifying, in the case of exemption from subsection (2) (c), that the Director-General is satisfied that the person took all reasonable steps (while a director or person concerned in the management of the body corporate) to avoid the body corporate becoming an externally-administered body corporate.
- (3C) Subsection (2) (d) does not operate to make a person a disqualified person unless the Director-General has served a notice on the person giving the person the opportunity to make oral or written submissions to the Director-General within a period (being not less than 14 days) specified in the notice with respect to the grounds on which the person believes he or she took all reasonable steps to avoid the body corporate becoming an externally-administered body corporate and the Director-General is satisfied that the person failed to take all such steps.
- (3D) In determining for the purposes of subsection (3B) or (3C) what reasonable steps could have been taken by a person to avoid a particular outcome, the Director-General is to have regard to the steps that could have been taken by the person from the time that the financial difficulties that gave rise to the outcome first arose.

[12] Section 11 Application to licences of Licensing and Registration (Uniform Procedures) Act 2002

Omit “section 21 (1), (4) and (7)” from section 11 (3) (f).

Insert instead “section 21 (1) and (4)”.

[13] Section 17 Duration

Omit “suspended, cancelled or surrendered”.

Insert instead “suspended or cancelled”.

[14] Section 18 Surrender of licence

Omit the section.

[15] Section 27 Partnerships

Omit “Trust money and controlled money” from section 27 (5) (e).

Insert instead “Trust money”.

[16] Section 35 Advertisement to include information about licensee

Insert “or cause to be published” after “publish”.

[17] Part 5, heading

Omit “and controlled money”.

[18] Part 5, Divisions 1 and 2

Omit the Divisions. Insert instead:

Division 1 Preliminary

52 Interpretation

(1) In this Part:

trust money means money received for or on behalf of any person by a licensee in connection with the licensee’s conveyancing business.

(2) A reference in this Part to a licensee includes a reference to a person who has ceased to be a licensee and to the personal representative of a licensee who has died.

(3) In the application of this Part:

(a) to a person who has ceased to be a licensee, a reference to money received for or on behalf of a person by a licensee is to be read as a reference to money received by that person for or on behalf of any other person in connection with his or her business as a licensee, and

(b) to the personal representative of a licensee who has died, a reference to money received for or on behalf of a person by a licensee is to be read as a reference to money received by that licensee or personal representative for or on behalf of a person in connection with the business carried on by that licensee.

Division 2 Payment of trust money into trust account**53 Payment of trust money into trust account**

- (1) Money received for or on behalf of any person by a licensee in connection with the licensee's conveyancing business:
 - (a) is to be held by the licensee or (if the licensee is employed by a corporation) by the corporation, exclusively for that person, and
 - (b) is to be paid to the person or disbursed as the person directs, and
 - (c) until so paid or disbursed, is to be paid into and retained in a trust account (whether general or separate) at an authorised deposit-taking institution in New South Wales and approved by the Director-General for the purposes of this Part.
- (2) If the licence is held by a corporation, the trust account is to be in the name of the corporation and in any other case is to be in the name of the licensee or of the firm of licensees of which the licensee is a member.
- (3) Subsection (1) does not prevent a licensee from:
 - (a) withdrawing or receiving, from trust money, money due to the licensee for costs so long as the procedure prescribed by the regulations is followed, and
 - (b) holding, or disposing of, a cheque or other negotiable instrument payable to a third party if the licensee does so on behalf of a client and in accordance with directions given by the client, and
 - (c) exercising a general retaining lien for unpaid costs and disbursements in respect of money in a trust account (other than money received subject to an express direction by the client with respect to the purposes for which the money is to be applied).
- (4) A lien referred to in subsection (3) (c):
 - (a) may not be exercised for an amount in excess of the sum of the costs and disbursements unpaid, and
 - (b) may not be exercised unless:
 - (i) the licensee has disclosed to the client, in accordance with Division 5 of Part 3, the basis of the costs for the conveyancing work concerned, or

- (ii) if such a disclosure is not required to be made (as provided by sections 39 and 40 and any relevant regulations)—the licensee has served a bill of costs on the client.
- (5) The name of a trust account and the description of the trust account in the books and records of the licensee and also on all cheques drawn on the trust account:
 - (a) must include the name of the licensee corporation, licensee or firm of licensees in whose name the trust account is kept, and
 - (b) must include the words “Trust Account”, and
 - (c) may include, at the end of the account’s name, a name or other matter to identify the person on whose behalf money in the account is held.
- (6) When opening a trust account at an authorised deposit-taking institution for the purpose of complying with this section, the licensee concerned must ensure that the authorised deposit-taking institution is notified in writing that the account is a trust account required by this Act.
- (7) A licensee must, within 14 days after closing a trust account, notify the Director-General in writing of the closure.
Maximum penalty: 100 penalty units.

54 Approval of authorised deposit-taking institutions

- (1) The Director-General may approve an authorised deposit-taking institution for the purposes of this Part and may revoke any such approval by notice in writing to the authorised deposit-taking institution.
- (2) The Director-General is not to approve an authorised deposit-taking institution for the purposes of this Part unless satisfied that the institution is able to discharge the obligations of an authorised deposit-taking institution under this Part.
- (3) An authorised deposit-taking institution that is the subject of an approval that is in force for the purposes of Part 7 of the *Property, Stock and Business Agents Act 2002* is taken to have been approved by the Director-General for the purposes of this Part.

55 Trust money not available to pay licensee's debts

- (1) Trust money is not available for the payment of the debts of the licensee to any other creditor of the licensee, or liable to be attached or taken in execution under the order or process of any court at the instance of any other creditor of the licensee.
- (2) This section does not take away or affect any just claim or lien that any licensee may have against or upon trust money.

56 Licensee to notify trust account becoming overdrawn

A licensee must, within 5 days after becoming aware that a trust account of the licensee has become overdrawn, notify the Director-General 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.

Maximum penalty: 100 penalty units.

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

- (1) Sections 90 and 91 of the *Property, Stock and Business Agents Act 2002* apply in respect of all money held in a general trust account under this Division as if:
 - (a) the trust account were a trust account opened and kept under section 86 of that Act, and
 - (b) the licensee who opened and keeps the trust account were a licensee under that Act.

Note. Section 90 of the *Property, Stock and Business Agents Act 2002* provides for interest earned on trust accounts to be paid to the Statutory Interest Account. Section 91 requires authorised deposit-taking institutions to notify the Director-General of certain matters with respect to trust accounts kept with the institution, including the number of trust accounts opened with the institution during a month and the names of the licensees who opened the accounts.

- (2) A licensee must, when opening a trust account at an authorised deposit-taking institution under this Division, ensure that the authorised deposit-taking institution is notified that the trust account is, for the purposes of sections 90 and 91 of the *Property, Stock and Business Agents Act 2002*, to be regarded as a trust account required by that Act. Such a notification is, for the purposes of those sections, to be regarded as a notification that the trust account concerned is required by that Act.

[19] Part 5, Division 4

Omit the Division. Insert instead:

Division 4 Unclaimed trust money

62 Unclaimed trust money held by licensee

- (1) A licensee who in the month of January in a year holds in a trust account kept by the licensee money that was received by the licensee more than 2 years before that month must furnish to the Director-General in that month a statement (an *unclaimed money statement*) showing particulars of:
 - (a) the money so held, and
 - (b) each person for whom or on whose behalf the money is held, and
 - (c) the address last known to the licensee of each of those persons.
- (2) A statement under this section is to be in the form approved by the Director-General.

63 Unclaimed trust money held by former licensee or personal representative

- (1) A former licensee, or the personal representative of a deceased licensee, who holds money in a trust account kept under this Act must furnish to the Director-General a statement giving particulars of:
 - (a) the money held in the trust account as at the date on which the statement is furnished, and
 - (b) the names of the persons for whom or on whose behalf the money is held, and
 - (c) the address of each of those persons last known to the person furnishing the statement.
- (2) This statement is the first statement that the former licensee or personal representative is required to furnish and it is to be furnished within 3 months after the date on which the person ceased to be a licensee or became the personal representative of the deceased licensee.
- (3) The former licensee or personal representative must furnish a further statement (an *unclaimed money statement*) within 14 days after the period of 12 months has elapsed since the first statement was furnished.

- (4) The further statement is to give particulars of the same matters as the first statement and also include particulars of any payments made from the trust account or other place where money is held since the date of the first statement.
- (5) A statement under this section is to be in the form approved by the Director-General.
- (6) The regulations may exempt money or a class of money from the operation of this section.

64 Disposal of unclaimed money in trust accounts

- (1) When the Director-General receives an unclaimed money statement under this Division, the Director-General is to:
 - (a) send by post to each person for whom or on whose behalf any money referred to in the statement is held a notice (an *individual notice*) in writing addressed to the person at the person's address shown in the statement stating the particulars of the money held for or on behalf of that person, and
 - (b) cause notification to be published in the Gazette (a *Gazette notification*) stating the particulars of the money held for or on behalf of each of those persons.
- (2) Each individual notice and the Gazette notification is to state that, if the money is not paid out of the trust account or other place in which it is held within 3 months after the date of publication of the Gazette notification, the person holding the money will be required to pay it to the Director-General.
- (3) At any time after the expiration of that 3 months the Director-General may, by a notice in writing served personally or by post on the person by whom the money is held, require that person:
 - (a) to pay to the Director-General any money referred to in the Gazette notification that has not been previously paid by that person out of the trust account or other place in which it is held, and
 - (b) to furnish to the Director-General, within such period as may be specified in the notice to the person, a statement showing particulars of any payments made out of the money referred to in the Gazette notification since the unclaimed money statement was made.
- (4) The Director-General must pay any money received by the Director-General under this section into the Compensation Fund.

- (5) Within 2 months after 31 December in each year, the Director-General must pay into the Consolidated Fund all money received by the Director-General and paid into the Compensation Fund under this section during the period of 12 months ending on that 31 December (less any of that money that has been paid from the Compensation Fund to the person entitled to the money).
- (6) A person who fails to comply with the requirements of any notice served on the person under this section is guilty of an offence.
Maximum penalty: 50 penalty units.

65 Repayment of unclaimed trust money

- (1) The Director-General must, on application by a person entitled to an amount of money paid under this Division into the Compensation Fund or the Consolidated Fund, pay that amount to the person out of the Compensation Fund.
- (2) When an amount is paid out of the Compensation Fund in respect of an amount that has been paid into the Consolidated Fund, the Treasurer must, on application by the Director-General, pay that amount to the Director-General out of the Consolidated Fund (which is appropriated accordingly) for payment into the Compensation Fund.

[20] Part 5, Division 5, heading

Omit “, controlled money”.

[21] Section 66 Director-General may require information

Omit “controlled” from section 66 (1) (b).

[22] Section 71 Inspection of records of authorised deposit-taking institutions

Omit “and controlled money” from section 71 (2) (e).

[23] Section 75 Requirement for audit

Omit “or controlled money” from section 75 (1) (a).

[24] Section 80 Duties of auditors

Omit “or controlled money” from section 80 (1).

[25] Section 101 Trust money

Omit “and controlled money accounts” wherever occurring in section 101 (2).

[26] Section 110 Information about receivable property

Omit “and controlled money” from section 110 (4) (c).

[27] Section 172 Regulations

Insert after section 172 (2) (f):

- (g) the waiver or refund of the whole or any part of a fee payable under this Act.

[28] Schedule 1 Savings and transitional provisions

Insert before clause 1:

Part 1 General

[29] Schedule 1, clause 2

Insert at the end of clause 2 (1):

Conveyancers Licensing Amendment Act 2006

[30] Schedule 1

Insert after clause 2:

Part 2 Provisions consequent on the enactment of this Act

[31] Schedule 1, Part 3

Insert after clause 16:

Part 3 Provisions consequent on the enactment of the Conveyancers Licensing Amendment Act 2006

17 Definition

In this Part:

amending Act means the *Conveyancers Licensing Amendment Act 2006*.

18 Trust money and controlled money

- (1) Subject to the regulations, Part 5, as amended by the amending Act, extends to money received by a licensee, before the relevant commencement date, that was received for or on behalf of

another person in connection with the licensee's conveyancing business and is still held for or on behalf of that person at the relevant commencement date.

- (2) In this clause, *the relevant commencement date* means the date of commencement of the amending Act, or of Part 5 of this Act, whichever is the later.

19 Disqualified persons

The amendments made to section 10 of this Act (Disqualified persons) by the amending Act do not apply in respect of any licence issued before the commencement of the amending Act (including a licence referred to in clause 3).