

# Property, Stock and Business Agents (General) Regulation 1993

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New South Wales

## Status Information

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### Notes—

- **Does not include amendments by**  
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### Authorisation

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# Property, Stock and Business Agents (General) Regulation 1993



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# Property, Stock and Business Agents (General) Regulation 1993



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation may be cited as the *Property, Stock and Business Agents (General) Regulation 1993*.

### 2 Commencement

This Regulation commences on 1 September 1993.

### 3 Definitions

In this Regulation:

**community association, neighbourhood association** and **precinct association** have the same meanings as in the *Community Land Development Act 1989*.

**owners corporation** means an owners corporation constituted under section 11 of the *Strata Schemes Management Act 1996*.

**registered office** has the same meaning as in section 34 of the Act.

**residential property** has the same meaning as in Division 8 of Part 4 of the *Conveyancing Act 1919*.

**the Act** means the *Property, Stock and Business Agents Act 1941*.

**visible form**, in relation to a record of information, means permanent legible form in the English language or any other form from which the information can be reproduced on demand in permanent legible form in the English language.

## Part 2 Licences and certificates

### 4 Objections to applications

(1) If an objection to the grant of any application under the Act has been lodged with a

Local Court, the Clerk of the Local Court must notify the Director-General and the reviewing officer of the date for the hearing of the application.

- (2) If a member of the Police Service has objected, the notice of hearing given to the Director-General must set out the nature of the objection.

## **5 Procedure for hearing of application to which objection taken**

The following provisions apply to the hearing of an application to which an objection has been taken:

- (a) in the case of an application for the renewal or restoration of a licence or for the renewal of registration, the objector is to commence and the applicant is to reply,
- (b) in any other case, the applicant is to commence, the objector is to be heard and the applicant is entitled to, but need not, reply.

## **6 Surrender of provisional certificates**

- (1) A provisional certificate of registration issued to a person under section 57 (4A) of the Act and any further provisional certificate issued to that person under section 57 (4CA) of the Act must be surrendered by that person to the Director-General immediately on:
  - (a) the issue of a certificate of registration to the person or the renewal of a certificate of registration of the person, or
  - (b) the issue of a further provisional certificate to the person, or
  - (c) the expiry of the provisional certificate or further provisional certificate, or
  - (d) the withdrawal or refusal of the application in respect of which the provisional certificate or further provisional certificate was issued.

Maximum penalty: 10 penalty units.

- (2) This clause does not require the surrender of a provisional certificate of registration if its former holder satisfies the Director-General it cannot be surrendered because it has been lost, stolen or destroyed.

## **7 Issue of duplicate licences and certificates**

- (1) The Director-General may, on application made to the Director-General and accompanied by a fee of \$30, issue a duplicate licence or certificate of registration in the place of a licence or certificate of registration that has been lost, destroyed or damaged.
- (2) The Director-General may decline to issue a licence or certificate of registration in the place of one that has been damaged if the application is not accompanied by the damaged licence or certificate, or so much of it as is available.

- (3) The Director-General may dispense with production of a damaged licence or certificate.
- (4) The Director-General must endorse on each duplicate licence or certificate issued a notice that the licence or certificate is a duplicate licence or certificate.
- (5) A person to whom a duplicate licence or certificate is issued must, if the licence or certificate for which the duplicate licence or certificate was issued comes into the person's possession, surrender the duplicate licence or certificate to the Director-General.

Maximum penalty (subclause (5)): 20 penalty units in the case of a corporation or 10 penalty units in any other case.

## **8 Licensing under corresponding Act**

For the purposes of section 39A (2) of the Act, each of the following Acts is declared to be a corresponding Act:

- *Estate Agents Act 1980, Victoria*
- *Auctioneers and Agents Act 1971, Queensland*
- *Land Agents, Brokers and Valuers Act, 1973, South Australia*
- *Real Estate and Business Agents Act 1978, Western Australia*
- *Auctioneers and Real Estate Agents Act 1991, Tasmania*
- *Agents Licensing Act, Northern Territory*
- *Agents Act 1968, Australian Capital Territory*

## **Part 3 Agency agreements**

### **9 Agency agreements—prescribed terms**

- (1) For the purposes of section 42AA (1) (d) of the Act, the following terms are prescribed for agreements specified in subclauses (2)–(6), as well as the relevant additional terms set out in those subclauses:
  - (a) a term specifying the period of the duration of the agreement or, if there is no such period, specifying the manner in which the agreement may be terminated by a party to the agreement,
  - (b) a term specifying:
    - the circumstances in which the licensee is entitled to remuneration for services performed under the agreement, and

- the amount of the remuneration or the way in which it is to be calculated, and
  - when the remuneration is due and payable,
- (c) if the agreement is for a service **other than**:
- a service relating to arbitration, or
  - a service relating to commercial land, being land used or intended to be used solely or principally for commercial, business or industrial purposes, but not including land used or intended to be used solely or principally for agricultural or pastoral purposes, or
  - a service relating to the sale of residential property under an agreement entered into before 1 March 1994,

the following term:

**THIS FEE HAS BEEN NEGOTIATED BETWEEN THE PARTIES TO THE AGREEMENT**

This term must appear in the agreement immediately after the term fixing the remuneration of the agent,

- (d) if the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee, a term specifying that the licensee is so entitled, the circumstances in which the licensee is so entitled and when the sum or reimbursement is due and payable,
- (e) a term containing a warranty by the principal that the principal has authority to enter into the agreement with the licensee.
- (2) The additional terms for an agreement in respect of **the sale of land** are:
- (a) a term specifying that a prospective purchaser is entitled to inspect the land and the circumstances in which such an inspection is to be made, unless the principal has instructed otherwise, and
- (b) a term specifying whether or not the licensee is authorised to sell the land on behalf of the principal and, if so authorised, the limitations on that authority (including any minimum or reserve price for the land at which the licensee is authorised to sell), and
- (c) if the agreement is made after 1 March 1994 and the sale is to be by auction (but the minimum or reserve price is not so specified), a term specifying that the principal is to advise the licensee in writing of that price before the start of bidding for the land at the auction.
- (3) In addition to the other terms prescribed by subclauses (1) and (2), the prescribed



terms in relation to an agreement in respect of **the sale of residential property** are:

- (a) a term specifying that the licensee cannot act on behalf of the principal in respect of the sale of residential property unless the licensee has a copy of the proposed contract of sale in respect of the property available for inspection, and
- (b) a term specifying both the way in which the licensee's remuneration is to be calculated (together with the dollar amount of that remuneration in relation to the licensee's estimate of the selling price of the land) and an estimate of the amount of expenses or charges the licensee expects to incur and for which he or she is entitled under the agreement to be reimbursed.

(4) The additional terms for an agreement in respect of **the leasing of an interest in land** are:

- (a) a term specifying that a prospective lessee of the interest in land is entitled to inspect the land and the circumstances in which such an inspection is to be made, unless the principal has instructed otherwise, and
- (b) a term specifying whether or not the licensee is authorised to lease the interest in the land on behalf of the principal and, if so authorised, the limitations on that authority, and
- (c) if the licensee is to be required to seek references from a prospective lessee of the interest, a term specifying that the licensee is so required, and
- (d) if the licensee is to be required to receive or dispose of rental bonds in relation to the leasing, a term specifying that the licensee is so required and the procedure to be adopted for the receipt or disposal.

(5) The additional terms for an agreement in respect of **the management of property** are:

- (a) a term containing particulars of the extent of the authority of the licensee to act as agent on behalf of the principal in the management of the property, including whether or not there is any limitation on the authority of the licensee:
  - to enter and sign a lease agreement in respect of the property on behalf of the principal, or
  - to effect repairs to, or maintain, the property or engage the services of a person appropriately qualified in a trade for the purpose of doing so, or
  - to pay disbursements or expenses in connection with services performed by the agent on behalf of the principal, and
- (b) if a prospective tenant is to be entitled to inspect the property, a term specifying

that a prospective tenant is so entitled and the circumstances in which such an inspection is to be made, and

- (c) if the letting and re-letting of the property is to be advertised or otherwise promoted, a term specifying that the letting and re-letting of the property is to be advertised or otherwise promoted and the manner in which it is to be advertised or otherwise promoted, and
  - (d) if the licensee is to be required to seek references from a prospective tenant of the property, a term specifying that the licensee is so required, and
  - (e) if the licensee is to be required to receive or dispose of rental bonds in relation to the leasing of the property, a term specifying that the licensee is so required and the procedure to be adopted for the receipt or disposal, and
  - (f) a term specifying the manner in which and the frequency at which the licensee is required to account to the principal in relation to money received on behalf of the principal, and
  - (g) if the licensee has undertaken to perform any other services in connection with the management of the property, a term specifying that the licensee has so undertaken and providing particulars of those services.
- (6) The additional term for an agreement in respect of **the sale of a business** is a term specifying that a prospective purchaser of the business is entitled to inspect the business premises (if any) and the records, documents and books of account relating to the business and the circumstances in which such an inspection is to be made, unless the principal has instructed otherwise.

#### **10 Agency agreements—exemptions**

- (1) For the purposes of section 42AA (2) of the Act, the following are prescribed agreements:
  - (a) agreements entered into before 1 October 1981, and
  - (b) agreements for the performance of services, being services that relate only to livestock.
- (2) An agreement is prescribed as an agreement to which section 42AA (1) of the Act does not apply if:
  - (a) the agreement is solely for the performance of services that relate only to:
    - commercial land, being land used or intended to be used solely or principally for commercial, business or industrial purposes, or
    - land used or intended to be used solely or principally for agricultural or pastoral

purposes, and

(b) the agreement is in writing and signed by or on behalf of the licensee and the person for whom the services are to be performed, and

(c) the agreement is subject to terms specifying:

- the period for which the agreement is to be in force or, if there is no such period, the manner in which the agreement may be terminated by a party to the agreement, and
- the circumstances in which the licensee is entitled to remuneration for services performed under the agreement, and
- the amount of the remuneration or the way in which it is to be calculated, and
- when the remuneration is due and payable, and
- a warranty by the principal that the principal has authority to enter into the agreement with the licensee, and

(d) as well as providing the proposed agreement signed by or on behalf of the licensee for signature by or on behalf of the person for whom the services are to be performed, the licensee served a copy of the agreement on that person before it was signed by or on behalf of that person.

(3) A document is not prevented from being a copy of an agreement for the purposes of subclause (2) merely because it does not show any one or more of the following:

- (a) a signature or seal of a party to the agreement (other than of the licensee) or any particular relating to such a signature or seal,
- (b) a signature of a witness to the agreement or any particular relating to attestation,
- (c) the date of the agreement or any other date inserted into the agreement before it was signed by or on behalf of the person for whom the services are to be performed.

## **11 Subagency agreements—exemptions**

(1) For the purposes of section 39B (2) of the Act, the following are prescribed agreements:

(a) agreements:

- between licensees who are members of a multiple listing organisation approved by the Director-General, or
- between licensees who are parties to a franchise agreement approved by the

Director-General,

(b) agreements entered into before 1 October 1981,

(c) agreements for the performance of services, being services that relate only to livestock.

(2) An approval given under this clause by the Director-General may be given generally or be limited by reference to specified factors.

## **Part 4 Rules of conduct**

### **12 Rules of conduct must be observed**

A licensee, and a holder of a certificate of registration employed by a licensee, must, in the course of carrying on the business of the licensee, observe the rules of conduct set out in Schedule 1, unless the licensee or holder has a reasonable excuse for not doing so.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **Part 5 Remuneration**

### **13 Fees etc to be displayed**

(1) A licensee whose business activities include acting as an agent in respect of any of the following:

- the sale or purchase of residential property (whether by auction or otherwise)
- the leasing of residential property
- the management of residential property

must display at each separate place of the licensee's business a guide to the licensee's fees and commissions and to the expenses for which he or she will require to be reimbursed.

(2) The guide must state that the fees, commissions and expenses are subject to negotiation.

(3) The guide must be displayed in such a way that it is visible to, and may be read by, a member of the public visiting the place of business.

Maximum penalty: 20 penalty units in the case of a corporation or 10 penalty units in any other case.

### **14 Details of fees etc to be given before agreement signed**

(1) Before entering into an agreement relating to the sale, purchase, leasing or

management of residential property, a licensee must furnish the other party to the proposed agreement with a printed guide to the licensee's fees and commissions and to the expenses for which he or she will require to be reimbursed.

- (2) The guide must state that the fees, commissions and expenses are subject to negotiation.
- (3) The guide must also be provided to any person who requests it.

Maximum penalty: 20 penalty units in the case of a corporation or 10 penalty units in any other case.

### **15 Furnishing of itemised account**

- (1) A demand in writing under section 38A (3) of the Act must be made by serving notice of the demand on the licensee concerned:
  - (a) by delivering the notice to the licensee, or
  - (b) (Repealed)
  - (c) in any of the ways provided by section 86B of the Act for the service of documents.
- (2) An itemised account must be rendered under section 38A (3) of the Act by delivering it to the person making the demand or by sending it by registered post addressed to the person making the demand at the address stated in the notice.

### **16 Notice under section 42A**

- (1) A licensee must (except as provided by subclause (2)) include in or append to a statement of claim or itemised account under section 42A of the Act a legible and conspicuous notice in a form approved by the Director-General for the purposes of this subclause.

Maximum penalty: 20 penalty units in the case of a corporation or 10 penalty units in any other case.

- (2) A licensee is not required to include or append a notice as referred to in subclause (1) if:
  - (a) the statement of claim or itemised account is served on or given to a person who is a party to the agreement pursuant to which the statement or account is issued, and
  - (b) a legible and conspicuous notice in a form approved by the Director-General for the purposes of this subclause was included in that agreement.
- (3) A notice under subclause (1) or (2) is to contain advice concerning remedies available

under the *Consumer Claims Act 1998*.

**17, 18 (Repealed)**

**19 Proposed contract for sale of residential property—exemption**

Section 84AA of the Act does not apply if the indication, offer or invitation referred to in section 84AA (2) 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 84AA of the Act is complied with in respect of the indication, offer or invitation when made by a licensee with whom the principal concerned has entered into an agency agreement.

**Part 6 Records**

**20 Records and book entries to be in English language**

A licensee must ensure that all written records required to be made or produced by the licensee, and all entries in books of account required to be kept by the licensee, by the provisions of the Act and this Regulation, are in the English language.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

**21 Records of livestock bought to be kept by stock and station agents**

- (1) A stock and station agent who buys livestock as an agent (whether or not by auction) must keep a written record of livestock purchases at the agent's registered office.
- (2) Immediately after entering into an agreement for the purchase of livestock as an agent, a stock and station agent must record the following particulars:
  - (a) the name and address of the other person,
  - (b) a description of the livestock to be purchased,
  - (c) the number of livestock to be purchased.
- (3) Immediately after purchasing livestock as an agent, a stock and station agent must record the following particulars:
  - (a) the date and place of purchase,
  - (b) the mode of purchase,
  - (c) the person for whom the livestock was purchased,
  - (d) the person from whom the livestock was purchased,
  - (e) the total number of livestock purchased,

- (f) the lot number or numbers, if the livestock was sold as a lot or as lots,
- (g) the name supplied pursuant to section 85C of the Act as the name of the purchaser of each lot of livestock, if the purchase was by auction,
- (h) the price for which the livestock was purchased per kilogram of live weight or per head,
- (i) the details of the live weight weighing, if the livestock was purchased on a live weight basis,
- (j) the total price for which the livestock was purchased,
- (k) a description of the livestock that is sufficient to identify the livestock.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **22 Records of livestock sales to be kept by stock and station agents**

- (1) A stock and station agent who sells livestock as an agent (whether or not by auction) or who offers livestock for sale by auction as an agent must keep a written record of the sales at the agent's registered office.
- (2) Immediately after being engaged to sell livestock by auction as an agent, a stock and station agent must record the following particulars:
  - (a) the name of the owner of the livestock,
  - (b) the number of livestock to be sold,
  - (c) a description of the livestock that is sufficient to identify the livestock.

In the case of a sale by auction, the record must be made for each lot of the livestock and each lot number must be recorded.

- (3) Immediately after selling livestock as an agent, a stock and station agent must record the following particulars for each lot of livestock sold:
  - (a) the date and place of the sale,
  - (b) the name of the purchaser or, if the stock was sold by auction, the name supplied under section 85C of the Act by the successful bidder as the name of the purchaser and the lot number,
  - (c) the price for which the livestock was sold per kilogram of live weight or per head,
  - (d) the details of the live weight weighing, if the livestock was sold on a live weight basis,

(e) the total price for which the livestock was sold.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **23 Copy of accounts of owners corporation to be kept as record**

A strata managing agent served with a notice of resolution of the executive committee of an owners corporation under section 105 (2) of the *Strata Schemes Management Act 1996* that requires the agent to deliver any records or books of account of the owners corporation kept by the agent must, before delivering them:

- (a) prepare a true copy of the records or books of account the subject of the notice of resolution for retention by the agent, and
- (b) certify in writing on the copy that the copy is a true copy of those records or books of account.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **24 Report to be prepared by strata managing agent**

- (1) A strata managing agent who holds or ceases to hold the money in a fund established by an owners corporation under section 66 or 69 of the *Strata Schemes Management Act 1996* must comply with this clause.
- (2) The agent must prepare a report relating to the management of each such fund during the period since the person last commenced to act as managing agent for the owners corporation or since the person last prepared a report under this clause for the owners corporation.
- (3) Such a report must be signed by the agent and forwarded to the treasurer of the owners corporation at the following times:
  - (a) if the money is held in a separate trust account kept exclusively for the benefit of the owners corporation—at least once in every 6 months,
  - (b) if the money is not held in a separate trust account kept exclusively for the benefit of the owners corporation—at least once in every 3 months,
  - (c) if the agent ceases to act as managing agent for the owners corporation—within 14 days after termination of the agency agreement.
- (4) Such a report (other than one resulting from the termination of an agency agreement) must have been completed no earlier than one month before it is forwarded to the treasurer.
- (5) Each report must:



- (a) state the name and address of the owners corporation for whom the report is prepared, and
  - (b) specify the period in respect of which the report is prepared, and
  - (c) state the date of completion of the report, and
  - (d) if the report is required because of the termination of an agency agreement, reconcile all receipts and payments with the statements from the relevant bank, building society or credit union up to the time of termination.
- (6) A report must also contain the following particulars for the fund or, if more than one, for each fund of the owners corporation:
- (a) the amount of contribution to that fund levied during the period to which it relates in respect of each of the lots in the strata scheme concerned,
  - (b) the amount of contribution to that fund paid during that period in respect of each of those lots,
  - (c) the amount of contribution to that fund levied in respect of each of those lots but not paid as at the date of the report,
  - (d) the amount of any money received into that fund otherwise than as such a contribution and a description of the sources of that money,
  - (e) the amount of any money actually expended from that fund on behalf of the owners corporation and the amount of any money due to be paid from that fund but not actually paid as at the date of the report,
  - (f) the amount of any money which is expected to become due and payable from that fund by the owners corporation before the next report is prepared,
  - (g) the amount of any money standing to the credit of that fund in a bank, building society or credit union and the name of the account at the bank, building society or credit union,
  - (h) the amount of any money standing to the credit of that fund invested otherwise than in a bank, building society or credit union and, if so, where it is invested,
  - (i) the total amount of money standing to the credit of that fund.
- (7) The strata managing agent who prepared the report must retain a copy of the report at the agent's registered office for 3 years from the date on which the report was prepared.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **25 Strata managing agent to permit owners corporation to inspect records**

- (1) A strata managing agent must permit, on demand made at any reasonable time, any member of the council of an owners corporation for whom the agent acts as managing agent to inspect any records or books of account of the owners corporation.
- (2) A strata managing agent must, within 14 days of being appointed by an owners corporation to act as managing agent, give to the owners corporation a written authority directing the bank, building society or credit union or any other person or body with which any money of the owners corporation is invested to disclose to a member of the council of the owners corporation, at the request of the member, any information relating to that money.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **Part 7 Trust money**

### **Division 1 Licensee's responsibilities**

#### **26 Banking of trust money**

A licensee who receives trust money must pay it into the licensee's trust account at a bank, building society or credit union:

- (a) before the end of the next banking day after the day of its receipt, if that is practicable, or
- (b) if that is not practicable, as soon as practicable after that day.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

#### **27 Records of trust money to be kept by licensees**

- (1) Every licensee must keep the following records:
  - (a) a trust receipt book containing the duplicates of all receipts issued for all amounts received and required to be paid into the trust account (the duplicates being machine numbered consecutively to correspond with the machine numbered receipts),
  - (b) a trust bank, building society or credit union deposit book showing all deposits made by the licensee into the trust account or some other written record showing those deposits,
  - (c) a trust account cash book or some other written record of all receipts of amounts required to be paid into, and of all payments made from, the trust account.

- (2) A licensee is not required to keep duplicates of receipts in a trust receipt book if the particulars entered on the receipts when they were prepared were entered simultaneously in the trust account cash book and the licensee keeps a printed record in that cash book containing those particulars recorded sequentially to correspond with the receipts issued.
- (3) A strata managing agent or community managing agent must keep either of the following additional records:
  - (a) a single trust account ledger which is in a form permitting each account for an owners corporation, community association, precinct association or neighbourhood association for or on behalf of which the agent holds any money to be physically removed from the ledger, or
  - (b) a separate trust account ledger for each such owners corporation, community association, precinct association or neighbourhood association.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **28 Further requirement for strata managing agents and community managing agents**

A strata managing agent or community managing agent must ensure that each ledger kept for an owners corporation, community association, precinct association or neighbourhood association contains sufficient information to enable the name of the owners corporation, community association, precinct association or neighbourhood association for which it is kept to be identified.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

## **29 Keeping of records**

- (1) A licensee must keep the books or written records specified in clause 27 at the licensee's registered office, unless the licensee complies with subclause (3).
- (2) If a computer system is used for the purpose of recording any information that is reproduced in those books or written records, the licensee must keep the computer control records required by clause 30 at the licensee's registered office.
- (3) A licensee may, at each separate place of business at which the licensee's business is conducted, maintain, or cause to be maintained, in visible form separate books or records referred to in subclause (1) for business transacted at that place of business.
- (4) A licensee who maintains records under subclause (1) or (3) must, within 21 days after the end of each month:
  - (a) compile with those records the original, or a true copy, of each trial balance

statement prepared by the licensee in accordance with clause 36 for that month, and

- (b) maintain a summary of the total of trust money disclosed in the trial balance statements for that month.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **30 Computer systems control**

- (1) If a licensee maintains trust records by means of a computer system, the licensee must comply with this clause in relation to the records.
- (2) The licensee must maintain a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information:
  - (a) principal's name,
  - (b) principal's address,
  - (c) principal's code reference number, if any,
  - (d) agency description,
  - (e) trust bank, building society or credit union account number,disclosing the details of the information before and after the change.
- (3) The licensee must ensure, in respect of any journal:
  - (a) that entries balance before entries are made in the ledger, and
  - (b) that any journal reference numbers are allocated in sequence under program control.
- (4) The licensee must ensure in respect of any ledger that no program is capable of accepting the entry of a transaction resulting in a debit balance to an account unless a contemporaneous record of the transaction is made in such a manner as to enable the production in permanent legible form, on demand, of a separate chronological report of all such occurrences.
- (5) The licensee must ensure in respect of any ledger that no program enables the deletion of an account unless:
  - (a) the balance of the account is zero, and
  - (b) the account when deleted is retained in visible form.
- (6) The licensee must ensure that any entry in a record produced in visible form appears

in chronological sequence.

- (7) The licensee must ensure that a report, or each page of or entry in a report, is numbered sequentially under program control in a manner which enables the completeness of the records required to be kept by this Regulation to be conveniently verified.
- (8) The licensee must ensure that no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment.
- (9) The licensee must ensure that each program requires input in each field of a data entry screen intended to receive information required by this Regulation to be included in trust records.
- (10) The licensee must ensure:
  - (a) that a back-up copy of all records to which this clause refers is made on a computer disk or magnetic tape or by other electronic means not less frequently than once each month, and
  - (b) that the most recent back-up copy is kept in such a place that any incident (such as a power or disk failure) which could adversely affect the records would not also affect the back-up copy.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **31 Receipts for trust money**

- (1) A licensee must immediately cause a receipt to be prepared on the licensee's receiving money for or on behalf of any person.
- (2) When a receipt is being prepared by a licensee for issue:
  - (a) from the trust receipt book, a copy of the entries made on the receipt must be made simultaneously on the machine numbered duplicate form provided in the book, or
  - (b) otherwise than from a trust receipt book, a copy of the entries made on the receipt must be made simultaneously in the trust cash book.
- (3) The following particulars must be shown on each receipt issued by a licensee:
  - (a) the date of issue,
  - (b) the number of the receipt in numerical sequence,
  - (c) the name of the licensee and the words "Trust Account",

- (d) the name of the person on whose behalf the payment was made,
  - (e) particulars of the transaction in respect of which the money was paid,
  - (f) the sum of money received and whether (or the extent to which) it was paid in cash or by cheque, by electronic funds transfer or otherwise.
- (4) When a receipt is issued by a licensee in respect of rent collected, there must be shown on the receipt (in addition to the particulars required by subclause (3)) the date to which rent has been calculated and the position of the rental account as at that date.
- (5) When a strata managing agent or community managing agent issues a receipt for a payment received in the course of acting as a strata managing agent or community managing agent, the agent must (in addition to the particulars required by subclause (3)) show on the receipt the following particulars:
- (a) if the payment is in respect of a contribution referred to in section 75 or 76 of the *Strata Schemes Management Act 1996*, the fact that it is made in respect of that contribution and the lot number in respect of which the contribution is paid,
  - (b) if the payment is in respect of a regular periodic contribution determined under section 75 or 76 of the *Strata Schemes Management Act 1996*, the period in respect of which the payment is made,
  - (c) if the payment is in respect of a contribution referred to in clause 13 of Schedule 1 to the *Community Land Management Act 1989*, the fact that it is made in respect of that contribution, a statement identifying the land or premises in respect of which the liability to make the contribution is imposed and, if the contribution is a regular periodic contribution, the period in respect of which it is made,
  - (d) if the payment was received in respect of more than 1 matter, the apportionment of that payment between those matters,
  - (e) if the receipt is issued from a general trust receipt book, the name of the owners corporation, community association, precinct association or neighbourhood association for or on behalf of which the payment is received.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **32 Payment of trust money**

- (1) Trust money must not be drawn from a licensee's trust bank, building society or credit union account otherwise than by a cheque or electronic funds transfer.
- (2) Each cheque must:

- (a) be machine numbered in series, and
  - (b) be marked “not negotiable”, and
  - (c) not be payable to cash, and
  - (d) contain the name of the licensee or (if appropriate) of the licensee’s firm and the words “Trust Account”, and
  - (e) be signed by the licensee or another person authorised by or under clause 38 to sign the cheque.
- (3) The licensee must ensure that, for each cheque, a record is kept of:
- (a) the date of issue, the payee and the amount of the cheque, and
  - (b) details identifying the ledger account to be debited and the name of the person on whose behalf the cheque was drawn, and
  - (c) sufficient particulars to identify the cheque and the reason for drawing it.
- (4) If the licensee maintains an accounting system which (at the same time as that at which, and in the same operation as that in which, a cheque is drawn) causes the particulars required by subclause (3) to be entered directly in the cash book required to be kept, the entry of the particulars in the cash book is a sufficient compliance with subclause (3).
- (5) The licensee must ensure that, for each electronic funds transfer, a record is kept of:
- (a) the date of the transfer, the payee and the amount transferred to or from each ledger account, and
  - (b) details identifying the ledger accounts to be debited and the name and code reference number of each principal on whose behalf the transfer was made, and
  - (c) sufficient particulars to identify the transfer and the reason for it.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **33 Trust deposits**

- (1) A licensee who makes a deposit of money to the licensee’s trust account with a bank, building society or credit union must ensure:
- (a) that the relevant bank, building society or credit union deposit book or other written deposit record is produced to the bank, building society or credit union concerned when the deposit is made, and
  - (b) that the following particulars are then entered in the book or record:

- the date of the deposit,
  - the amount of the deposit,
  - whether the deposit consists of cheques, notes or coins,
  - if cheques are included in the deposit, the name of the drawer, the name and branch of the bank, building society or credit union on which the cheque is drawn and the amount of each cheque, and
- (c) that a duplicate of the particulars of each deposit is authenticated by an officer of the bank.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

- (2) A bank deposit record is not required by this clause if money is paid to the credit of the trust account by electronic funds transfer or other means by someone other than the licensee.

#### **34 Record of trust account transactions**

- (1) A licensee must keep a trust account cash book or other written record in which are entered as soon as is practicable particulars of receipts and payments of money required to be paid into, or paid out of, the licensee's trust account.
- (2) The pages of the book or other record must be consecutively numbered and on the respective pages the consecutive numbers of receipts issued and cheques drawn or electronic funds transfer payments made must be shown.
- (3) When money required to be paid into the trust account is received, the licensee must enter the following particulars in the book or other record:
- (a) the date of receipt and the receipt number,
  - (b) the amount of money received and the form in which it was received,
  - (c) the name or code reference of the person from whom, and of the principal on whose behalf, the money was received,
  - (d) details identifying the ledger account to be credited,
  - (e) particulars sufficient to identify the purpose for which the money was received.
- (4) When money is paid out of the trust account, the licensee must enter the following particulars in the book or other record:
- (a) the date of issue of the cheque, the cheque number, its amount and the payee or the date of the electronic funds transfer payment, the amount transferred and the



payee,

- (b) details identifying the ledger account to be debited and the name of the principal on whose behalf the cheque was drawn or the electronic funds transfer payment was made,
  - (c) particulars sufficient to identify the purpose for which the cheque was drawn or the electronic funds transfer payment was made.
- (5) At the end of each month, the licensee must balance the cash book or other record and either:
- (a) carry forward the balance to the commencement of the next month, or
  - (b) carry forward the balance to a ledger account provided for the purpose.
- (6) The licensee must, at the end of each month, prepare a statement reconciling the balance of the licensee's trust bank, building society or credit union account with the balance of the related cash book or other record.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **35 Trust account ledger**

- (1) A licensee must maintain a separate ledger account for trust money received or paid to each principal.
- (2) The ledger account must include the name of the principal, a reference number or other identification and particulars of each transaction affecting trust money.
- (3) Those particulars must include the following:
  - (a) the date of the transaction,
  - (b) a description of the transaction,
  - (c) particulars sufficient to identify the trust record originating the transaction,
  - (d) the amount of the transaction,
  - (e) the resulting current balance of account arising from the transaction.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **36 Trust account ledger trial balance**

- (1) A licensee must, within 21 days after the end of each month, prepare a trial balance statement of all ledger accounts current as at the end of that month.

(2) The trial balance statement must:

- (a) specify the month to which it refers and the date of its preparation, and
- (b) list each ledger account that does not have a zero balance at the end of that month by stating the name of the client, the reference number or other identification and the balance of the account at the end of the month, and
- (c) show the total of the ledger account balances at the end of that month, and
- (d) show a comparison between that total and the balance in the cash book reconciled with the balance in the trust bank, building society or credit union account as required by clause 34 (6).

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **37 Furnishing of particulars of trust account or transactions**

A licensee served with a requisition under section 38A (1) of the Act must furnish the required statement in writing:

- (a) by delivering the statement to the Director-General, or a member of the staff of the Department nominated by the Director-General for the purpose of receiving such statements, at the address of the Department appearing in the requisition, or
- (b) by sending the statement by registered post to the Director-General at the address of the Department appearing in the requisition so as to be received, by the Director-General or a member of staff so nominated, within 7 days after service of the requisition.

### **38 Signing of trust account cheques**

- (1) A licensee that is a corporation or who is a sole proprietor or a partner has authority to sign a cheque drawn on the trust bank, building society or credit union account required to be maintained by section 36 of the Act (a **trust cheque**).
- (2) A licensee in charge of a place of business has authority to sign a trust cheque.
- (3) A licensee who has authority to sign trust cheques otherwise than as a delegate may delegate the authority to sign those cheques:
  - (a) if the licensee is a corporation, to each director of the corporation who is the holder of a licence or certificate under the Act and to not more than 2 employees at each place of business of the corporation, or
  - (b) if the licensee is a sole proprietor or a partner, to not more than 2 employees at each place of business of the sole proprietor or partnership, and

- (c) if the licensee is a person in charge of a place of business, to not more than 2 employees at the place of business.
- (4) The delegation must be in writing and signed by the licensee and the delegate and may be revoked by the delegator by giving written notice of revocation to the delegate.
- (5) A delegation in force under this section authorises the delegate to sign trust cheques to which the delegation relates:
- (a) only if the delegator is unable to sign the cheque with due expedition because of his or her being sick or injured or absent for good reason, and
- (b) subject to such terms and conditions (whether relating to the value of the cheques or the number of signatories or not) as may be stated in the instrument of delegation.
- (6) This clause does not remove any additional prohibition or restriction on the signing of cheques made by the memorandum or articles of association or the terms of the partnership agreement of any company or partnership concerned.
- (7) A licensee who purports to delegate his or her authority to sign a cheque drawn on the trust bank, building society or credit union account otherwise than in accordance with this clause is guilty of an offence.
- (8) A person who signs a cheque drawn on the trust bank, building society or credit union account purporting to do so as the delegate of a licensee but who has not been authorised to do so in accordance with this clause is guilty of an offence.

Maximum penalty (subclauses (7) and (8)): 40 penalty units in the case of a corporation or 20 penalty units in any other case.

### **38A Trust accounts exempted from certain requirements**

For the purposes of section 36AE of the Act, a separate trust account opened by a licensee for the exclusive benefit of both the vendor and the purchaser concerned is prescribed as a class of trust accounts to which sections 36AC and 36AD do not apply.

## **Division 2 Financial institution's responsibilities**

### **38B Closure of trust accounts**

Within 14 days after the end of each month, a bank, building society or credit union must, by notice in writing, inform the Director-General of the following if a trust account kept with it under section 36 of the Act was closed during the month:

- (a) the name and number of the account,

(b) the date on which the account was closed.

Maximum penalty: 40 penalty units.

### **38C Overdrawn trust accounts**

Within 5 business days of a bank, building society or credit union becoming aware that a trust account kept with it under section 36 of the Act is overdrawn, the bank, building society or credit union must, by notice in writing, inform the Director-General of the date on which the account became overdrawn.

Maximum penalty: 40 penalty units.

### **38D Dishonoured cheques**

Within 5 business days of a bank, building society or credit union becoming aware that a cheque presented on a trust account kept with it under section 36 of the Act has been dishonoured, the bank, building society or credit union must, by notice in writing, inform the Director-General of the following:

- (a) the name and number of the account,
- (b) the amount of the dishonour,
- (c) the date on which the cheque was dishonoured.

Maximum penalty: 40 penalty units.

### **38E Monthly certification**

Within 14 days of the end of each month, a bank, building society or credit union must provide a written report to the Director-General, certified as correct by the bank, building society or credit union, containing the following information in relation to trust accounts kept by it under section 36 of the Act during the month:

- (a) the name of the bank, building society or credit union and its branch number or its BSB number,
- (b) the period to which the report relates,
- (c) the name of each account,
- (d) the number of each account,
- (e) the end of month balance for each account (including any nil or overdrawn balances),
- (f) the interest earned on each account during the month,
- (g) the interest rate applied to calculate the interest earned on each account during the month,

- (h) the total amount of interest that the bank, building society or credit union paid under section 36AC (1) (b) of the Act during the month in respect of the accounts.

Maximum penalty: 40 penalty units.

### **38F Annual certification**

Within 21 days of the end of each financial year ending 30 June, a bank, building society or credit union must certify in writing to the Director-General as to the following:

- (a) that the bank, building society or credit union has complied with the requirements of sections 36AC and 36AD of the Act and this Division in relation to trust accounts kept by it under section 36 of the Act,
- (b) the total amount of interest that the bank, building society or credit union paid under section 36AC (1) (b) of the Act during the financial year in respect of those accounts.

Maximum penalty: 40 penalty units.

## **Part 8 Auction sales**

### **39 Auction sales—prescribed conditions**

For the purposes of section 85B of the Act, the following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:

- 1 The highest bidder is the purchaser, subject to any reserve price.**
- 2 In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.**
- 3 The auctioneer may refuse to accept any bid which, in the auctioneer's opinion, is not in the best interests of the vendor.**
- 4 If the vendor reserves the right to bid at the auction in respect of a lot and instructs the auctioneer to make more than one bid on the vendor's behalf, the auctioneer must, before submitting the lot for sale by auction, announce in a clear and precise manner the number of bids reserved by the vendor in respect of that lot.**
- 5 A bidder is taken to be a principal unless, before bidding, the bidder has given to the auctioneer a copy of a written authority to bid for or on behalf of another person.**
- 6 As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.**
- 7 The purchaser of livestock must pay the stock and station agent who conducted the auction or the vendor the full amount of the purchase price:**

**(a) if that amount can reasonably be determined immediately after the fall of the hammer—before the close of the next business day following the auction, or**

**(b) if that amount cannot reasonably be determined immediately after the fall of the hammer—before the close of the next business day following determination of that amount,**

**unless some other time for payment is specified in a written agreement between the purchaser and the agent or the purchaser and the vendor made before the fall of the hammer.**

#### **40 Notification of conditions of sale by auction**

(1) A stock and station agent or real estate agent who auctions land or livestock must notify the conditions of the sale by means of a notice:

(a) which (except as provided by subclause (2)) contains all of the conditions written or printed in the English language in figures and letters that are clear and readily legible, and

(b) which is exhibited in a conspicuous position so as to be clearly visible to, and available for inspection by, any person attending the auction before and during the auction.

Maximum penalty: 40 penalty units in the case of a corporation or 20 penalty units in any other case.

(2) If a stock and station agent or real estate agent conducts an auction sale of land or livestock comprising more than one lot and one or more of the conditions of sale for any one or more of those lots are different from the conditions of sale for all or most of the other lots, the agent may notify the different conditions by reciting those conditions aloud in a clear and precise manner immediately before offering that lot for sale.

#### **41 Notice of material parts of sections 45 and 85C of the Act**

(1) For the purposes of section 47 of the Act, the following terms are prescribed as the terms in which notice is to be given of the material parts of sections 45 and 85C of the Act:

### **PROPERTY, STOCK AND BUSINESS AGENTS ACT 1941—WARNINGS**

#### **SECTION 45**

**It is an offence against the *Property, Stock and Business Agents Act 1941* for any person to engage in, or to induce or attempt to induce another person to engage in, any collusive practice which may hinder free and open competition at an auction sale of land or livestock, whether by:**

- (a) restricting the bidding, or**
- (b) abstaining from bidding, or**
- (c) any other activity which may hinder free and open competition.**

### **SECTION 85C**

**The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer on the day of the auction the bidder's name or, where the bidder acts as an agent, the name of the bidder's principal. It is an offence not to do so.**

- (2) For the purposes of section 47 of the Act, the prescribed manner for giving notice of the material parts of sections 45 and 85C of the Act is by a notice:
  - (a) which contains the prescribed terms written or printed in the English language in figures and letters that are clear and readily legible, and
  - (b) which is exhibited in a conspicuous position so as to be clearly visible to any person attending an auction sale of land or livestock.

## **Part 9 Miscellaneous**

### **42 Fees payable under the Act**

- (1) The fees and other amounts set out in the Table to this clause are prescribed for the purposes of the provisions of the Act specified in that Table.
- (2) For the purposes of section 23 (2A) of the Act, the prescribed application fee, administration fee and contribution fee for:
  - (a) the issue or renewal of 2 or more licences (one of which is an on-site residential manager's licence) that expire at the same time, or
  - (b) the issue of a further licence to a licensee who already holds an on-site residential property manager's licence that expires at the same time as the further licence,is the application fee, administration fee and contribution fee for one of the licences other than the on-site residential property manager's licence.

#### **Table**

<b>Provision</b>	<b>Fee</b>
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	In the case of an application for an on-site residential property manager's licence:
Section 23 (2) (d)	\$204 (application fee)
	\$51 (contribution)
	In any other case:
	\$612 (application fee)
	\$153 (contribution)
	\$59 (late fee to accompany:
	(a) an application for restoration of an expired licence, or
Section 23A (1) (b)	(b) any number of applications made at the same time for restoration of expired licences of different classes held by the same person,
	regardless of the term for which the licence is being renewed)
Section 30 (2)	\$24
Section 57 (6) and (9) (c)	\$59
Section 57 (12)	\$30
Section 58 (2)	\$24
Section 59 (5)	\$1

#### **42A (Repealed)**

#### **43 Time for lodgment of notice of change of registered office etc**

- (1) The prescribed time referred to in sections 34 (4) and 59 (7) of the Act is 14 days after the date of the change.
- (2) The prescribed period referred to in section 34 (4A) of the Act is 14 days.

#### **44 Items excluded from annual return of unclaimed money**

For the purposes of section 36A (2) of the Act, the following classes of money are specified:

- (a) money that is being held by a licensee on a sale of land or livestock that has not been completed,
- (b) money that is being held by a licensee pursuant to a tenancy agreement:
  - that has not expired or been determined, or



- under which the tenant, pursuant to the terms of the agreement, holds over after the expiration of the term, specified in the agreement, for which the agreement was made.

#### **44A Compensation Fund contribution by licensed conveyancers**

For the purposes of section 64D of the Act, an amount of \$144 is prescribed as the amount required to be paid under that section by a licensee under the *Conveyancers Licensing Act 1995*.

#### **45 Levies**

A notice to a licensee to pay a levy imposed under section 64E (1) of the Act is a prescribed notice for the purposes of section 64E (4) of the Act if the notice is signed by the Director-General and contains the following particulars:

- (a) (Repealed)
- (b) the amount of the levy payable by the licensee,
- (c) the date by which and the manner in which the amount of the levy is payable,
- (d) a note, in terms of section 64E (4) of the Act, as to the consequences of a failure by a licensee to pay the levy,
- (e) the date on which the notice was signed by the Director-General.

#### **46 Monetary limits on compensation**

- (1) For the purposes of section 64K of the Act, the prescribed amount is \$500,000 in relation to a failure to account whether it occurred before or occurs after the commencement of this Regulation.
- (2) For the purposes of section 64L of the Act, the prescribed amount is \$2,000,000.
- (3) An amendment of this clause to increase a monetary amount in subclause (1) or (2) extends to apply in respect of a failure to account that occurs before the amendment commences, but not so as to affect the settlement of a claim or recovery of an amount effected before the amendment commences. An amendment to decrease such a monetary amount does not apply in respect of a failure to account that occurs before the amendment commences.

#### **47 Maintenance of registers etc**

The Director-General is to ensure that the registers and supplies of the forms and other documents required to be used by the Act and this Regulation are kept up-to-date at all times.

#### **48 Approval to employ otherwise disqualified persons**

- (1) When the Director-General notifies an applicant in writing of its decision under section 39AA (3) of the Act, the Director-General must at the same time notify the reviewing officer in writing of that decision.
- (2) Notice of an appeal pursuant to section 39AA (4) of the Act must be given to the Clerk of the Local Court referred to in that subsection.
- (3) On receipt of a notice of appeal, the Clerk of the Local Court must:
  - (a) set the appeal down for hearing before the Local Court, and
  - (b) forward to the Director-General and the reviewing officer a copy of the notice of appeal given to the Clerk, and
  - (c) forward to the Director-General, the reviewing officer and the appellant a notice specifying the time, date and place fixed for the hearing of the appeal.

#### **48A Penalty notice offences**

For the purposes of section 86C of the Act:

- (a) each offence arising under a provision specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 4 of Schedule 2.

#### **48B Short description of offences**

- (1) For the purposes of section 145B of the *Justices Act 1902*, the prescribed expression for an offence arising under a provision specified in Column 1 of Schedule 2 consists of the IPB Code set out in relation to the offence in Column 2 together with:
  - (a) the expression specified in Column 3 of that Schedule, or
  - (b) if a choice of words is indicated in that expression, the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence arising under a provision specified in Column 1 of Schedule 2, the prescribed expression is taken to relate to the offence arising under the provision, as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used, and any such document continues to have effect as if that expression had not been amended or repealed.

(4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

(5) In this clause:

**Infringement Processing Bureau** means the Infringement Processing Bureau within the Police Service.

**IPB Code**, in relation to an offence, means the code allocated to the offence by the Infringement Processing Bureau.

#### **49 Transitional—variation of former general auctioneer’s licence**

(1) This clause applies in respect of a person who:

(a) is the former holder of a general auctioneer’s licence that ceased to have effect because of Schedule 2 to the Act, and

(b) has appealed under clause 5 of that Schedule against a decision of the Director-General under clause 4 of that Schedule.

(2) A Local Court may make orders providing that, from 1 May 1993 or the date of the order (whichever is the later) until the determination or withdrawal of the appeal, the person is taken to be the holder of either or both of the following:

(a) a real estate agent’s licence restricted in its operation under section 22 (1A) of the Act to the auctioning of land other than land that is used for agricultural or pastoral purposes and that is more than 2.5 hectares in area,

(b) a stock and station agent’s licence restricted in its operation under section 22 (1A) of the Act to the auctioning of land used for agricultural or pastoral purposes or the auctioning of livestock or to the auctioning of both.

(3) A person in respect of whom a Local Court makes such an order must notify the Director-General in writing within 7 days after the making of the order.

(4) If the date on which the person’s general auctioneer’s licence would have expired had it not ceased to have effect is reached during the currency of the order, the person must, within 21 days after that date, pay to the Director-General a renewal fee appropriate to the licence of which the person is taken to be the holder.

#### **50 Repeal of Regulations**

The *Property, Stock and Business Agents Regulations 1941* are repealed.

## Schedule 1 Rules of conduct

(Clause 12)

### 1 Definitions

In this Schedule:

**holder** means a person who holds a licence or certificate of registration under the Act.

**property** includes land and livestock and any estate or interest in any land or livestock and, in relation to the sale of a business, includes all assets and goodwill (if any).

**prospect** means a person who has indicated to a holder an interest in buying or otherwise acquiring an interest in property.

### 2 Delegation of performance of duty etc

If a licensee (whether described in this Schedule as a holder or in any other way) is required to do anything by a provision of this Schedule, that requirement is complied with if the licensee causes an employee who is a holder to do that thing.

### 3 Preliminary physical inspection of property for sale to be conducted by licensee

- (1) A licensee must not act on behalf of a principal in respect of the sale of any property unless the licensee has conducted a preliminary physical inspection of that property.
- (2) This rule does not apply to:
  - (a) a sale of livestock, or
  - (b) a sale of commercial property, being property used or intended to be used solely or principally for commercial, business or industrial purposes, unless the property is used or intended to be used solely or principally for agricultural or pastoral purposes.

### 4 Sales inspection report required for property

On completion of an inspection of property required by rule 3, the licensee must prepare and deliver to the principal a sales inspection report which contains the following particulars (if applicable):

- (a) the name and address of the principal,
- (b) the date of preparation of the report,
- (c) the licensee's name, business address and telephone number,
- (d) a description of the property sufficiently detailed so as to allow it to be readily identified,

- (e) any fittings and fixtures which are to be included in the sale of the property,
- (f) the price at which the property is to be offered for sale,
- (g) such of the terms and conditions of sale as are known to the licensee (for example, whether or not vacant possession is to be given),
- (h) the licensee's recommendation as to the most suitable method of sale of the property,
- (i) any covenants, easements, defects, local government notices or orders affecting the property which are known to the licensee,
- (j) the name, business address, telephone number and address for service of documents of the principal's solicitor,
- (k) the signature of the licensee.

#### **5 Principal to be informed of offer**

- (1) A licensee who acts on behalf of a principal in respect of the sale of any property must, as soon as practicable after the licensee receives an offer to acquire any interest in that property, inform the principal of that offer.
- (2) This rule does not apply to an offer received in the course of an auction.

#### **6 Setting aside minimum or reserve price at auction**

When the bidding at an auction does not reach the minimum or reserve price fixed for the land by the principal, the holder conducting the auction must not set aside that price without the express permission of the principal or a person authorised to give that permission by the principal.

#### **7 Information to be given when preliminary deposit paid**

- (1) When a holder issues a receipt for a deposit in respect of the proposed purchase of any property, being a deposit that is not paid under a contract for the sale of that property, the holder must inform the person who paid the deposit that:
  - (a) the principal has no obligation to sell that property or the purchaser to buy that property, and
  - (b) the deposit is repayable to that person in the event that a contract is not entered into between that person and the principal for the sale of the property.
- (2) The information must be provided in writing and may be provided on the receipt.
- (3) A holder must promptly inform a person who has paid the holder such a deposit of any subsequent offers to purchase the property that are received from any other person.

## **8 Sub-agency—request for contract**

- (1) If a licensee (***the listing agent***) is acting on behalf of a principal in the sale of residential land, the licensee must, as soon as practicable after a request from another licensee, make a copy of the proposed contract of sale for the land available for inspection by the other licensee.
- (2) This rule applies only if the listing agent has an agreement with the other licensee to share any commission, fee, gain or reward in respect of the sale.

## **9 Delivery of account of costs to prospective lessees**

- (1) A licensee acting as an agent of a prospective lessor who intends to enter into a lease which contains a requirement that the lessee pay the lessor's costs relating to the lease must, before submitting or tendering the proposed lease to a prospective lessee, or causing or permitting a lease to be so submitted, provide the prospective lessee with an itemised account of those costs.
- (2) The itemised account must include a notice in a form approved by the Director-General for the purposes of this subclause.

## **10 Inspection of managed property let or to be leased**

A licensee who acts as the agent for a principal in respect of the leasing of any property (other than livestock) or the management of any property (other than livestock) let by the principal must, immediately before the commencement of a lease in respect of that property and either immediately before or immediately after its termination:

- (a) inspect the property in the presence of the prospective lessee or lessee, if the prospective lessee or lessee is available, and
- (b) prepare a written report detailing the state of repair and cleanliness of the property and the fixtures, fittings and appliances provided by the principal under the lease, and
- (c) retain the report at the licensee's office, and
- (d) forward a copy of the report to the prospective lessee or lessee.

## **11 Inspection of other managed property**

A licensee who acts as the agent for a principal in the management of any property (other than livestock or property let by the principal) must:

- (a) inspect the property as soon as practicable after entering into the agreement, and
- (b) inspect the property at least once a year after that inspection, and
- (c) on completion of each inspection, prepare a written report on the state of repair and cleanliness of the property, and

(d) forward a copy of that report to the principal.

**12 Lessor to be advised of any breach of conditions of lease**

A licensee who acts as the agent of a lessor in the management of any land must, on becoming aware of any failure by the lessee to observe a condition of the lease, promptly advise the lessor of that failure.

**13 Licensee not to recommend new lease for variation of rent**

A licensee who acts as the agent of a lessor in the management of any land must not advise the lessor to enter into a new lease in order to vary the rent payable under the existing lease if the rent may be varied by a written agreement between the lessor and lessee.

**14 Holder not to obtain lessee's signature to rental bond document prior to end of lease**

A holder must not solicit or obtain the signature of a lessee to any document relating to the refund of a rental bond prior to the termination of the lease.

**15 Representations as to registration of certain leases**

A licensee acting as the agent of a lessor of land referred to in section 5AA or 5A (1) (a), (b) or (f) of the *Landlord and Tenant (Amendment) Act 1948* must not:

- (a) advise a lessee or prospective lessee of the land to attend on a solicitor or Clerk of a Local Court for the purpose of having the lessee's or prospective lessee's signature on a lease or proposed lease of the land witnessed by the solicitor or that Clerk, or
- (b) submit a lease of the land for registration, or advise any person to submit such a lease for registration, in the office of the Rent Controller.

**16 Disclosure of information**

- (1) A holder must not divulge to another person any information of a confidential nature obtained through acting for a principal or obtained from a vendor, prospective vendor or prospect.
- (2) This requirement does not apply if the holder divulges the information with the consent of the person from whom it was obtained.
- (3) A licensee must not inform a holder of the details of any property in respect of which another licensee acts as agent without the consent of that other licensee.

**17 False representation as being authorised etc to deal with property**

A holder must not falsely represent that the holder is authorised or has been instructed to sell, lease, purchase, manage or otherwise deal with property, whether as an agent or not.

**18 False representation as prospect**

A holder must not falsely represent to a prospect, principal or other holder that the holder is a prospect.

**19 Holder not to recommend engagement of services of solicitor acting for other party**

A holder must not recommend that a principal or prospect engage the services of the same solicitor or the same firm of solicitors as the solicitor or firm acting for the other party to any proposed agreement.

**20 Inducements**

A holder must not offer to provide any person (other than another holder) with any gift, favour or benefit, whether monetary or otherwise, in order to induce another person to engage the services of the holder as agent in respect of any matter.

**21 Insertion of material particulars in documents**

A holder must not submit or tender to any person for signature a document in which a material particular is to be inserted, or cause or permit any such document to be submitted or tendered to any person for signature, unless at the time of the submission or tendering of the document the material particular has been inserted.

**22 Delivery of signed documents**

If a holder submits or tenders a document to any person for signature, or causes or permits a document to be submitted or tendered to any person for signature, the holder must, immediately after the person has signed the document, deliver a copy of the document to the person for retention by the person.

**23 Service of document signed by holder**

If a holder signs a document as a holder for and on behalf of another person (other than another holder), the holder must serve a copy of the document on the person within 48 hours of the document being signed by the holder.

**24 Representations concerning the Act etc**

- (1) A holder must not falsely represent to a person the nature or effect of a provision of the Act or any Regulation made under the Act.
- (2) A holder must not, either expressly or impliedly, falsely represent, whether in writing or otherwise, to a person that a particular form of agency agreement or any term of such an agreement is required by the Act or any Regulation made under the Act.

**25 Remuneration of licensee by principal**

- (1) A licensee must not, in the course of the licensee's business, receive any



remuneration, whether by way of commission, fee, gain or reward, or any reimbursement for expenses or charges, from any person other than a person on whose behalf the licensee has agreed to act as agent.

- (2) This rule does not apply to or in relation to any remuneration or reimbursement received by a licensee on behalf of a principal where the remuneration or reimbursement, as the case may be, has been paid to the licensee pursuant to an agreement between a principal on whose behalf the licensee acts and another person, being a person who has agreed to pay specified costs associated with, or arising out of, the agreement.

## Schedule 2 Penalty notice offences and short descriptions

(Clauses 48A and 48B)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Offence</b>	<b>IPB Code</b>	<b>Prescribed expression</b>	<b>Penalty</b>
<b>Offences under the Act</b>			
Section 34 (4)	7144 BBA	fail to notify change of registered office/ address	\$110
Section 34 (4A) (a)	7145 BBB	fail to notify details of new employee	\$110
Section 34 (4A) (b)	7146 BBC	fail to notify date when person ceases to be employee	\$110
Section 35 (3) (a)	7147 BBD	fail to display licensee's details as required	\$220
Section 35 (3) (a)	7148 BBE	fail to display name of person in charge	\$220
Section 35 (3) (a)	7149 BBF	fail to display details as required	\$220
Section 35 (3) (b)	7150 BBG	falsely imply that person is licensed	\$220
Section 36 (1A)	7152 BBH	fail to ensure notice given that account is trust account	\$220
Section 36 (3A)	7153 BBI	fail to notify closure of trust account	\$220
Section 38D (2) (a)	7154 BBJ	fail to cause audit	\$550
Section 38D (2) (b)	7155 BBK	fail to lodge auditor's report	\$550
Section 38D (2A)	7156 BBL	lodge auditor's report more than 14 days after receipt	\$550
Section 38D (2B)	7157 BBM	lodge auditor's report that is not in approved form	\$550
Section 38D (4)	7158 BBN	fail to preserve auditor's report for 3 years	\$550
Section 38D (6)	7159 BBO	fail to lodge statutory declaration	\$550

Section 40	7160 BBP	fail to produce licence on demand	\$220
Section 42AA	7161 BBQ	recover/retain remuneration/sum to which not entitled	\$220
Section 47	7162 BBR	sell land/livestock without notice of statutory requirements	\$220
Section 50L	7163 BBS	fail to keep instrument of appointment/delegation	\$220
Section 50L	7164 BBT	fail to produce instrument of appointment/delegation on demand	\$220
Section 84AA (2) (a)	7165 BBU	indicate property for sale/auction when documents unavailable	\$550
Section 84AA (2) (b)	7166 BBV	offer to sell property when documents unavailable	\$550
Section 84AA (2) (c)	7167 BBW	invite offer to purchase when documents unavailable	\$550
Section 84AA (2) (d)	7168 BBX	indicate option may be granted when documents unavailable	\$550

**Offences under this Regulation**

Clause 13 (1)	7169 BBY	fail to display guide to fees etc	\$220
Clause 13 (2)	7170 BBZ	display guide without stating that fees etc are negotiable	\$220
Clause 13 (3)	7171 BCA	display guide to fees etc that is not visible to public	\$220
Clause 14 (1)	7172 BCB	fail to give other party guide to fees etc	\$220
Clause 14 (2)	7173 BCC	give guide without stating that fees etc are negotiable	\$220
Clause 14 (3)	7174 BCD	fail to give non-party guide to fees etc	\$220
Clause 16	7175 BCE	fail to include legible notice in claim/account	\$220
Clause 20	7176 BCF	fail to keep records/entries in English language	\$220
Clause 26	7177 BCG	fail to pay trust money into trust account	\$550
Schedule 1, rule 4	7178 BCH	fail to provide complete sales inspection report	\$550
Schedule 1, rule 5	7179 BCI	fail to inform principal of offer	\$550
Schedule 1, rule 7 (1)	7180 BCJ	fail to give deposit payer required information	\$550

Schedule 1, rule 7 (2)	7181 BCK	fail to give required information in writing	\$550
Schedule 1, rule 7 (3)	7182 BCL	fail to inform deposit payer of subsequent offers	\$550
Schedule 1, rule 9 (1)	7183 BCM	fail to deliver itemised account of costs to prospective lessee	\$550
Schedule 1, rule 9 (2)	7184 BCN	fail to include notice in account of costs	\$550
Schedule 1, rule 10 (a)	7185 BCO	fail to inspect before commencement of lease	\$550
Schedule 1, rule 10 (a)	7186 BCP	fail to inspect before/after termination of lease	\$550
Schedule 1, rule 10 (b)	7187 BCQ	fail to prepare report of inspection of leased property	\$550
Schedule 1, rule 10 (c)	7188 BCR	fail to retain report of inspection of leased property	\$550
Schedule 1, rule 10 (d)	7192 BCS	fail to forward report of inspection to prospective lessee/lessee	\$550
Schedule 1, rule 11 (a)	7193 BCT	fail to carry out initial inspection of managed property	\$550
Schedule 1, rule 11 (b)	7194 BCU	fail to carry out annual inspection of managed property	\$550
Schedule 1, rule 11 (c)	7195 BCV	fail to prepare report of inspection of managed property	\$550
Schedule 1, rule 11 (d)	7196 BCW	fail to forward report of inspection to principal	\$550
Schedule 1, rule 12	7197 BCX	fail to advise lessor of breach of lease	\$550
Schedule 1, rule 14	7198 BCY	solicit/obtain signature to bond document prior to end of lease	\$550
Schedule 1, rule 16 (1)	7199 BCZ	divulge confidential information	\$550
Schedule 1, rule 16 (3)	7200 BDA	inform holder of details of other agent's property	\$550
Schedule 1, rule 22	7201 BDB	fail to deliver copy of signed document	\$550
Schedule 1, rule 23	7202 BDC	fail to serve documents within required time	\$550