

# Property, Stock and Business Agents Regulation 2014

[2014-563]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

[Property, Stock and Business Agents Amendment \(Fees and Contributions\) Regulation 2016 \(239\)](#) (LW 11.5.2016) (not commenced — to commence on 1.7.2016)

[Statute Law \(Miscellaneous Provisions\) Act 2016 No 27](#) (not commenced — to commence on 8.7.2016)

### Authorisation

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New South Wales

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# Property, Stock and Business Agents Regulation 2014



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Property, Stock and Business Agents Regulation 2014*.

### 2 Commencement

This Regulation commences on 1 September 2014 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Property, Stock and Business Agents Regulation 2003* which is repealed on 1 September 2014 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**buyer's agent** means a real estate agent whose licence is subject to a condition that restricts the holder to acting as a real estate agent for a prospective purchaser of land.

**Chief Executive** means:

- (a) the Commissioner for Fair Trading, Office of Finance and Services, or
- (b) if there is no such position in that office—the Chief Executive of the Office of Finance and Services.

**the Act** means the *Property, Stock and Business Agents Act 2002*.

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

(2) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Conduct of agency business**

### **4 Extended functions of real estate agents and real estate salespersons**

The definition of **real estate agent** in section 3 (1) of the Act includes a person who carries on business as an auctioneer or agent in respect of any parcel of rural land that has an area of up to 20 hectares.

### **5 Itemised account**

- (1) A request for an itemised account under section 36 (3) or 101 of the Act may be served on the licensee concerned by:
  - (a) delivering it personally to the licensee, or
  - (b) leaving it for the licensee at a place of business of the licensee, or
  - (c) sending it by post to the licensee at the address of a place of business of the licensee, or
  - (d) sending it by facsimile transmission to a number specified by the licensee (in correspondence or otherwise) as a number to which facsimile transmissions to the licensee may be sent, or
  - (e) transmitting it electronically to the email address specified by the licensee (in correspondence or otherwise) as an address to which electronic transmissions to the licensee may be sent.
- (2) An itemised account requested under section 36 (3) or 101 of the Act may be provided to the person who made the request by:
  - (a) delivering it personally to the person, or
  - (b) leaving it for the person at an address specified as the person's address in the request or (if an address is not specified in the request) in an agency agreement, or
  - (c) sending it by post to the person at an address specified as the person's address in the request or (if an address is not specified in the request) in an agency agreement, or
  - (d) sending it by facsimile transmission to a number specified by the person (in correspondence or otherwise) as a number to which facsimile transmissions to the person may be sent, or
  - (e) transmitting it electronically to the email address specified by the person (in correspondence or otherwise) as an address to which electronic transmissions to the person may be sent.

## **6 Provision of financial and investment advice**

- (1) This clause applies to financial or investment advice that:
  - (a) is intended to influence the person to whom the advice is given in making a decision in relation to a particular financial or investment decision in connection with the sale or purchase of land, or
  - (b) could reasonably be regarded as being intended to have such an influence.
- (2) A real estate agent who provides financial or investment advice to which this clause applies to a person in connection with the sale or purchase of land must provide the following warnings and information to the person for the purposes of section 46 of the Act:
  - (a) a warning that the advice is general advice and that its preparation has not taken into account the individual circumstances of the person or the person's objectives, financial situation or needs,
  - (b) in the case of advice provided in connection with the purchase of land—a warning that an intending purchaser should assess the suitability of any investment in the property in light of the purchaser's own needs and circumstances, which the purchaser can do personally or by consulting an appropriately licensed financial adviser,
  - (c) information that discloses the existence and nature of any conflict of interest the agent may have in connection with the provision of the advice (for example, entitlement to commission or referral fees).

### **Note—**

Section 46 of the Act provides that a real estate agent who fails to comply with a requirement to provide information or warning specified in the regulations is guilty of an offence.

## **7 Rules of conduct**

- (1) The rules set out in Schedules 1–6 are prescribed for the purposes of section 37 of the Act as rules of conduct to be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration, with those Schedules applying as follows:
  - (a) Schedule 1 applies to all licensees and registered persons (in addition to any other Schedule or Schedules that may be applicable to particular kinds of licensees or registered persons),
  - (b) Part 1 of Schedule 2 applies to real estate agents and registered persons they employ and Part 2 of Schedule 2 applies to real estate agents, registered persons they employ and on-site residential property managers,



- (c) Schedule 3 applies to stock and station agents and registered persons they employ,
  - (d) Schedule 4 applies to business agents and registered persons they employ,
  - (e) Schedule 5 applies to buyer's agents and registered persons they employ,
  - (f) Schedule 6 applies to strata managing agents, community managing agents, on-site residential property managers and real estate agents engaged in property management, and registered persons they employ.
- (2) In each of Schedules 1-6, a reference to an agent includes a reference to a registered person to whom the Schedule applies.
- (3) In Schedule 4, a reference to a business includes a reference to a professional practice.

## **8 Contents of agency agreements**

- (1) For the purposes of section 55 of the Act, an agency agreement must comply with the requirements of Schedules 7-14 as to the terms, conditions and other provisions that an agency agreement must or must not contain, with the application of those Schedules to be as follows:
- (a) Schedule 7 applies to all agency agreements (in addition to any other Schedule that may be applicable to the agency agreement),
  - (b) Schedule 8 applies to an agency agreement under which the agent will act for the seller on the sale of residential property,
  - (c) Schedule 9 applies to an agency agreement under which the agent will act for the buyer on the purchase of land,
  - (d) Schedule 10 applies to an agency agreement under which the agent will act for the seller on the sale of rural land,
  - (e) Schedule 11 applies to an agency agreement under which the agent will act for the seller on the sale of a business or professional practice (with a reference in that Schedule to a business including a reference to a professional practice),
  - (f) Schedule 12 applies to an agency agreement under which the agent will provide property management services in respect of the leasing of residential property or rural land,
  - (g) Schedule 13 applies to an agency agreement under which the agent will act for the owner of residential property or rural land in relation to the entering into of a lease of the residential property or rural land,

- (h) Schedule 14 applies to an agency agreement under which the agent will exercise the functions of a strata managing agent or community managing agent.
- (2) A reference in Schedules 7-14 to **property** (other than as a reference to residential property) includes a reference to any land.
- (3) An agency agreement must not contain any term, condition or other provision that is inconsistent with a term, condition or other provision that the agency agreement is required to contain by this clause, but otherwise the terms, conditions and other provisions that an agency agreement can contain is not limited by this clause.
- (4) For the purposes of section 55 (3) of the Act, each of the following methods of service is prescribed as a means by which an agency agreement may be served on a person:
- (a) for service on an individual:
- (i) delivering it personally to the person, or
  - (ii) leaving it at the person's place of residence, or at an address provided in the agency agreement as the person's address for service, with a person who apparently resides there and who has apparently reached the age of 16 years, or
  - (iii) sending it by post to the person at the person's residential address or postal address as disclosed in the agency agreement or at an address provided in the agency agreement as the person's address for service, or
  - (iv) transmitting it electronically to an email address provided in the agency agreement as the person's address for electronic service,
- (b) for service on a body corporate:
- (i) delivering it personally to the secretary of the body corporate or any other person concerned in the management of the body corporate, or
  - (ii) leaving it at the body corporate's principal place of business with a person who is apparently employed there and who has apparently reached the age of 16 years, or
  - (iii) sending it by post to the body corporate at the address of its principal place of business or postal address, as disclosed in the agency agreement, or
  - (iv) transmitting it electronically to an email address disclosed in the agency agreement.
- (5) Subclause (1) does not apply to an agency agreement entered into before the commencement of the Act (on 1 September 2003).
- (6) An agency agreement entered into before the commencement of the Act must contain

such terms (if any) as it was required to contain under section 42AA of the *Property, Stock and Business Agents Act 1941* at the time the agreement was entered into.

## **9 Notice of change of registered office**

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

## **10 Professional indemnity insurance**

(1) A licensee must be insured under a policy of professional indemnity insurance in force with respect to the licensee, or the licensee's employer, that complies with the requirements of this clause.

### **Note—**

Under section 22 of the Act it is a condition of a licensee's licence that the licensee be insured as required by this clause.

(2) The policy must provide cover for the following types of civil liability arising in the conduct of an agency business:

(a) liability arising from any acts or omissions of the licensee that constitute:

- (i) negligence, or
- (ii) misleading or deceptive conduct, or
- (iii) breach of professional duty, or
- (iv) unintentional defamation, or
- (v) unintentional interference with intellectual property rights,

(b) vicarious liability arising from any acts or omissions of an employee, agent or other person engaged in the agency business that constitute:

- (i) negligence, or
- (ii) misleading or deceptive conduct, or
- (iii) breach of professional duty, or
- (iv) defamation (for which the claimant is not at fault), or
- (v) interference with intellectual property rights (for which the claimant is not at fault), or
- (vi) fraud or dishonesty by the employee, agent or other person (for which the claimant is not at fault).

(3) To avoid doubt, civil liability includes liability for personal injury.

- (4) The policy must provide cover of not less than \$1 million for any one claim and not less than \$3 million in the aggregate for all claims made during the period of insurance.
- (5) Amounts referred to in subclause (4) are inclusive of any costs incurred or payable by the claimant in connection with the claim (including legal costs).
- (6) A licensee is required to be insured under this clause only if the licensee engages in activities for which a licence is required under the Act.
- (7) A licensee is not required to be insured under this clause in respect of civil liability arising in the conduct of either of the following activities:
  - (a) commercial property agency work with respect to any property that exceeds \$10 million in value,
  - (b) commercial property agency work carried out by a corporation on behalf of an affiliate that has indemnified the corporation against claims in accordance with this clause.
- (8) An indemnity provided to a corporation by its affiliate must cover:
  - (a) any claim arising from a type of civil liability referred to in this clause, and
  - (b) an amount equivalent to the amount of cover that would otherwise be required for such claims under this clause.
- (9) In this clause:

**affiliate**, in relation to a corporation, means:

  - (a) a body corporate that is related (by virtue of section 50 of the Corporations Act) to the corporation, or
  - (b) an entity that is controlled (within the meaning of section 50AA of the Corporations Act) by the corporation.

**agency business** means a business referred to in section 8 (1) of the Act.

**commercial property agency work** means selling, purchasing, exchanging, leasing, managing or otherwise dealing with property that is not residential property.

**employer** of a licensee means a person who employs or otherwise engages the licensee to perform services for which a licence is required under the Act.

**Note—**

Insurers must be authorised to provide insurance under the [Insurance Act 1973](#) of the Commonwealth.

## Part 3 Auctions

### 11 Definitions

In this Part:

**property** means residential property or rural land.

**Note—**

The terms **residential property** and **rural land** are defined in section 3 (1) of the Act.

**vendor bid** means a bid made by or on behalf of the seller.

### 12 Making the Bidders Record

- (1) The Bidders Record for an auction of property that is made and kept for the purposes of section 68 of the Act must:
  - (a) be in the English language, and
  - (b) record the date and place of the auction, and
  - (c) record the address of the property, and
  - (d) record the name and licence number of the auctioneer conducting the auction, and
  - (e) record the name of the owner of the property at the time of the auction, and
  - (f) record the name and licence number of the selling agent for the auction, and
  - (g) if the property is sold at the auction, indicate which of the persons named in the Bidders Record is the successful bidder and the sale price, and
  - (h) if the property is not sold at the auction, record the highest bid accepted, and the vendor bid (if any), at the auction.

**Note—**

A Bidders Record made by a licensee is one of the licensee's records for the purposes of Part 8 (Records) of the Act and is to be kept by the licensee. There are no restrictions on the technology that can be used to make and keep a Bidders Record. A Bidders Record can be made and kept on paper or by electronic means.

- (2) If a person who is registering to bid on behalf of another person will be bidding for the other person as a buyer's agent:
  - (a) the Bidders Record must also record the agent's licence number, and
  - (b) the Bidders Record may record the address of the agent's registered office as the agent's address.
- (3) If a person is registering to bid on behalf of a body corporate:

- (a) there is an exemption from the requirement under section 68 (2) of the Act that the relevant details of the person bidding include the number or other identifier of proof of identity of the body corporate as referred to in section 68 (2) (b) of the Act, and
  - (b) there is an exemption from the requirement under section 69 (1) (b) of the Act that the letter of authority to bid on behalf of a body corporate specify the number or other identifier of proof of identity for the body corporate if the letter of authority specifies the Australian Business Number of the body corporate.
- (4) If a person who is registering to bid on behalf of another person will be bidding for the other person under a power of attorney, there is an exemption from the requirement under section 68 (2) of the Act that the relevant details of the person bidding include details of the other person as specified in section 68 (2) (b) of the Act.
- (5) If a person who is registering to bid on behalf of another person will be bidding in the capacity of a buyer's agent, there is an exemption from section 69 (1) (b) of the Act if details of the person on behalf of whom the agent is to bid are established by the production of a copy of the agency agreement pursuant to which the agent will be bidding.
- (6) An entry in a Bidders Record may only be made by the agent who makes the Bidders Record or by an employee of that agent acting on behalf of the agent. An agent who makes a Bidders Record must not permit a person to make an entry in the Bidders Record unless the person is authorised by this subclause to make the entry.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
  - (b) 20 penalty units in any other case.
- (7) If more than one property is to be offered for sale at an auction sale, a single Bidders Record may be made so as to apply to more than one (or all) of the properties to be offered so that the required details of a person who will be entitled to bid at the auction of any of the properties concerned need only be entered in the Bidders Record once, but without otherwise affecting the requirement for the separate recording in respect of each of those properties of the details required by subclauses (1) and (2).

**Note—**

When an auction involves a number of properties and a number of different licensees, subclause (7) gives the licensees concerned the option of each making a separate Bidders Record for the properties the licensee is auctioning or relying on a single Bidders Record made by or on behalf of the auctioneer for all of the properties to be auctioned.

### **13 Keeping the Bidders Record**

- (1) A licensee who acts on the sale of property that is offered for sale by auction must

make and keep as part of the records that the licensee is required to make by section 104 of the Act in respect of the sale a record of the name, business address and licence number of the licensee who made the Bidders Record for the auction.

**Note—**

The licensee who makes a Bidders Record is responsible for keeping it.

- (2) A licensee who keeps a Bidders Record in electronic form must also keep, as part of the licensee's records with respect to auction sales to which the Bidders Record relates, a record of such details as will enable the Bidders Record to be located and accessed in the electronic records of the licensee.

**14 Proof of identity for Bidders Record**

- (1) Any of the following forms of proof of identity may be used for a person for the purposes of an entry in a Bidders Record:
- (a) a card or document that is issued by the government or a statutory authority of New South Wales, the Commonwealth, another State or a Territory, or by an authorised deposit-taking institution and that:
    - (i) shows the name and address of the person, or
    - (ii) shows the name of the person (but only if it is accompanied by a statutory declaration by the person as to the person's address),
  - (b) a combination of cards or documents:
    - (i) that show the name and address of the person, and
    - (ii) one of which is issued by the government or a statutory authority of New South Wales, the Commonwealth, another State or a Territory, or by an authorised deposit-taking institution,
  - (c) a passport or motor vehicle driver's licence issued under the law of a jurisdiction outside Australia that shows the person's name, together with:
    - (i) a card or document that is issued by an organisation or person other than the person concerned and that shows the person's address, or
    - (ii) a statutory declaration by the person as to the person's address.
- (2) If the relevant details of a person are entered in the Bidders Record for an auction of property before the day of the auction or otherwise than at the place the auction is held, the person must not be provided with the identifying number allocated for the purposes of identification at the auction unless the person's identity is established by means of proof of identity that may be used for the purposes of any entry in the Bidders Record under section 69 of the Act.

- (3) An agent or employee of an agent who provides an identifying number to a person in contravention of subclause (2) is guilty of an offence.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **15 Conditions of sale by auction**

- (1) The following conditions are prescribed as applicable to and in respect of the sale by auction of land or livestock:
- (a) The vendor's reserve price must be given in writing to the auctioneer before the auction commences (but not if the auction relates solely to livestock).
  - (b) A bid for the vendor cannot be made unless the auctioneer has, before the commencement of the auction, announced clearly and precisely the number of bids that may be made by or on behalf of the vendor.
  - (c) The highest bidder is the purchaser, subject to any reserve price.
  - (d) In the event of a disputed bid, the auctioneer is the sole arbitrator and the auctioneer's decision is final.
  - (e) The auctioneer may refuse to accept any bid that, in the auctioneer's opinion, is not in the best interests of the vendor.
  - (f) A bidder is taken to be bidding on the bidder's own behalf 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.
  - (g) A bid cannot be made or accepted after the fall of the hammer.
  - (h) As soon as practicable after the fall of the hammer the purchaser is to sign the agreement (if any) for sale.
- (2) The following conditions, in addition to those prescribed by subclause (1), are prescribed as applicable to and in respect of the sale by auction of residential property or rural land:
- (a) All bidders must be registered in the Bidders Record and display an identifying number when making a bid.
  - (b) Subject to subclause (3), the auctioneer may make only one vendor bid at an auction for the sale of residential property or rural land and no other vendor bid may be made by the auctioneer or any other person.



- (c) Immediately before making a vendor bid the auctioneer must announce that the bid is made on behalf of the seller or announce “vendor bid”.
- (3) The following conditions, in addition to those prescribed by subclauses (1) and (2), are prescribed as applicable to and in respect of the sale by auction of co-owned residential property or rural land or the sale of such land by a seller as executor or administrator:
  - (a) More than one vendor bid may be made to purchase the interest of a co-owner.
  - (b) A bid by or on behalf of an executor or administrator may be made to purchase in that capacity.
  - (c) Before the commencement of the auction, the auctioneer must announce that bids to purchase the interest of another co-owner or to purchase as executor or administrator may be made by or on behalf of the seller.
  - (d) Before the commencement of the auction, the auctioneer must announce the bidder registration number of any co-owner, executor or administrator or any person registered to bid on behalf of any co-owner, executor or administrator.
- (4) The following condition, in addition to those prescribed by subclause (1), is prescribed as applicable to and in respect of the sale by auction of livestock:

The purchaser of livestock must pay the stock and station agent who conducted the auction (or under whose immediate and direct supervision the auction was conducted) 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.

## **16 Notification of auction conditions**

- (1) A stock and station agent or real estate agent who offers land or livestock for sale by auction must notify the conditions of the sale by means of a notice that:
  - (a) sets out the conditions of the sale clearly and legibly written or printed in the English language, and
  - (b) 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.

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

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or  
(b) 20 penalty units in any other case.

### **17 Warnings about bidders' obligations**

- (1) The notice required to be given by section 78 (3) of the Act is to be in the following form:

#### **Penalty for collusive practices**

It is an offence against the [Property, Stock and Business Agents Act 2002](#) for a person to do any of the following as a result of a collusive practice, or to induce or attempt to induce another person by a collusive practice to do any of the following:

- (a) to abstain from bidding,  
(b) to bid to a limited extent only,  
(c) to do any other act or thing that might prevent free and open competition.

Severe penalties may be imposed on persons convicted of collusive practices.

- (2) The notice required to be given by section 83 (2) of the Act is to be in the following form:

#### **Successful bidders**

The actual successful bidder at an auction sale must give to the auctioneer or an employee of the auctioneer:

- (a) the bidder's name, or  
(b) the name of the person on behalf of whom the successful bid was made.

- (3) The notice required to be given by section 66 (4) of the Act is to be in the following form:

#### **Penalty for dummy bidding**

It is an offence against the [Property, Stock and Business Agents Act 2002](#) for a person

to do any of the following:

- (a) make a bid as the seller,
- (b) make a bid on behalf of the seller (unless the person is the auctioneer),
- (c) procure another person to make a bid on behalf of the seller.

Any bid made with the dominant purpose of benefiting the seller constitutes a bid made on behalf of the seller.

A bid may be found to be a bid made on behalf of the seller even though the seller did not:

- (a) request the bid, or
- (b) have any knowledge of the bid.

Severe penalties may be imposed on persons convicted of dummy bidding.

(4) Each notice must:

- (a) have its contents clearly and legibly written or printed in the English language, and
- (b) be 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.

**Note—**

A notice under this clause may be combined with the notice of auction conditions.

## **Part 4 Trust money**

### **18 Banking of trust money**

A licensee who receives trust money must pay it into the licensee's trust account:

- (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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

### **19 Provision of unique identifying number when opening or maintaining a trust account**

(1) On and from 1 January 2015, a licensee who opens a trust account in accordance with

section 86 (4) of the Act must provide the authorised deposit-taking institution, at the time of making the application to open the account, with a unique identifying number obtained from the Office of Finance and Services.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

- (2) A licensee who maintains a trust account that was opened on or before 31 December 2014 in accordance with section 86 (4) of the Act must, before 1 July 2015, provide the authorised deposit-taking institution with a unique identifying number obtained from the Office of Finance and Services.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

- (3) The authorised deposit-taking institution must use this unique identifying number when it lodges its monthly returns in accordance with section 91 (1), (2) and (3) of the Act.

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

- (1) A licensee must keep the records required by this Part in a form from which the information can be produced on demand in permanent legible form in the English language.
- (2) A licensee must keep the records required by this Part at the licensee's registered office, unless the licensee keeps those records as permitted by subclause (4).
- (3) If a computer system is used for the purpose of recording any information that is reproduced in the records required by this Part, the licensee must keep the computer system records required by clause 22 at the licensee's registered office.
- (4) A licensee may, at each separate place of business at which the licensee's business is conducted, keep the records required by this Part for business transacted at that place of business.
- (5) A licensee must, within 21 days after the end of each month:
  - (a) compile with the records kept by the licensee under this Part the original, or a true copy, of each trial balance statement prepared by the licensee in accordance with clause 29 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **21 Additional requirements for strata managing agents and community managing agents**

- (1) A strata managing agent or community managing agent must keep either of the following additional records:
  - (a) a single trust account ledger that 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,
  - (b) a separate trust account ledger for each such owners corporation, community association, precinct association or neighbourhood association.
- (2) 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **22 Computer systems control**

- (1) If a licensee maintains records for the purposes of this Part 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 (including creation, amendment or deletion) to any of the following information:
  - (a) the name of the person on behalf of whom the licensee acts,
  - (b) the address of the person on behalf of whom the licensee acts,
  - (c) the code reference number, if any, of the person on behalf of whom the licensee acts,
  - (d) agency description,

- (e) trust 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 those 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 (as it was immediately before deletion) in a form from which the information can be produced on demand in permanent legible form in the English language.
- (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 that enables the completeness of the records required to be kept by this Part 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 Part to be included in records.
- (10) The licensee must ensure that either:
  - (a) 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 the most recent back-up copy is kept in such a place at a separate location that any incident (such as fire, or a power or disk failure) that

could adversely affect the records would not also affect the back-up copy, or

- (b) all records to which this clause refers are backed up using cloud technology through the internet not less frequently than once each month.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

### **23 Receipts for trust money**

- (1) A licensee must, immediately on receiving money for or on behalf of any person, prepare or cause to be prepared a receipt in accordance with this clause.
- (2) When a receipt is being prepared by a licensee:
  - (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 record required to be kept by clause 26 (Record of trust account transactions).
- (3) The following particulars must be shown on a receipt:
  - (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 from whom the payment was received,
  - (e) the name and ledger reference number of the person on behalf of whom the payment was made,
  - (f) particulars sufficient to identify the transaction in respect of which the money was paid,
  - (g) the amount 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) Receipts must be prepared in the numerical order of the series to which they belong.
- (5) The original of a receipt must be issued, on demand, to the person from whom the trust money is received.

- (6) A licensee must retain:
- (a) any original receipt that is not issued to the person from whom the trust money is received, and
  - (b) any original receipt that is cancelled after it is prepared, and
  - (c) duplicate receipts.
- (7) Despite subclause (6) (c), a licensee is not required to retain duplicate receipts in relation to money received if an electronic record of receiving the money was made as soon as was practicable after the money was received.
- (8) 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.
- (9) 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 11 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 one 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:

- (a) 40 penalty units in the case of a corporation, or



- (b) 20 penalty units in any other case.

#### **24 Payment of trust money by cheque or electronic funds transfer**

- (1) Trust money must not be drawn from a licensee's trust account otherwise than by cheque or electronic funds transfer in accordance with this clause.
- (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 31 to sign the cheque.
- (3) The licensee must ensure that cheques are drawn in the numerical order of the series to which they belong and that for each cheque a record is kept of:
  - (a) the number and date of issue of the cheque, the name of the payee and the amount of the cheque, and
  - (b) details identifying the ledger account to be debited and the name and ledger reference number of the person on behalf of whom the cheque was drawn, and
  - (c) the reason for which the cheque was drawn and the invoice number that is applicable to that cheque, if one is available to the licensee.
- (4) If the licensee maintains an accounting system that (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 under clause 26, the entry of the particulars in the cash book is a sufficient compliance with the record keeping requirements of subclause (3).
- (5) The licensee must ensure that, for each electronic funds transfer, a record is kept of:
  - (a) the name of the person effecting the transfer and, if the transfer is effected under the direction of some other person, or under an authority delegated under clause 31, the name of the person under whose direction or under whose delegation the transfer is effected, and
  - (b) the reference number or other particulars sufficient to identify the transfer, the date of the transfer, the name of the payee and the amount transferred to or from each ledger account, and

- (c) details identifying the ledger accounts to be debited and the name and ledger reference number of each person on behalf of whom the transfer was made, and
- (d) particulars of the reason for the transfer.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **25 Trust deposits**

- (1) A licensee who makes a deposit of money to the licensee's trust account must ensure:
  - (a) that the relevant deposit book or other written deposit record is produced to the authorised deposit-taking institution when the deposit is made, and
  - (b) that the following particulars are entered in the book or record:
    - (i) the date of the deposit,
    - (ii) the amount of the deposit,
    - (iii) whether the deposit consists of cheques, notes or coins,
    - (iv) if cheques are included in the deposit, the name of the drawer, the name and branch of the authorised deposit-taking institution on which the cheque is drawn and the amount of each cheque, and
  - (c) that a duplicate of the particulars of each deposit is retained by the licensee.
- (2) This clause does not apply to a deposit of money made directly to a licensee's trust account, electronically or otherwise.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **26 Record of trust account transactions**

- (1) A licensee must keep a record of daily receipts and payments of money into and out of the licensee's trust account.
- (2) The record must be in the nature of a cash book in which the pages are consecutively numbered and on the respective pages of which are shown:
  - (a) the consecutive numbers of receipts issued or cancelled, and

- (b) the consecutive numbers of cheques drawn or cancelled, and
  - (c) in the case of money received or disbursed by means of electronic funds transfer, the consecutive reference numbers or other means of identification of the transfers.
- (3) When money required to be paid into the trust account is received, the licensee must enter into the record the particulars required by clause 23 (3) (a), (b) and (d)–(g) to be entered in a receipt for the money, together with the date of the deposit of the money to the trust account and the amount of the deposit.
- (4) When money is paid out of the trust account, the licensee must enter into the record the particulars required by clause 24 (3) to be recorded for a cheque or required by clause 24 (5) to be recorded for an electronic funds transfer.
- (5) At the end of each named 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 named month, prepare a statement reconciling the balance of the licensee’s trust account with the balance of the related cash book or other record.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **27 Journal**

- (1) A licensee must record in a journal, maintained exclusively for the licensee’s trust account, all transfers between accounts in the trust account ledger that are not effected by cheque or electronic funds transfer.
- (2) The recording must include the following:
- (a) the date of the transfer,
  - (b) the amount transferred to and from each ledger account,
  - (c) the names of all ledger accounts to be debited or credited,
  - (d) the relevant reference number or other identification,
  - (e) sufficient particulars to identify the transfer and the reason for the transfer.

(3) Each transfer, when entered in the journal, is to be numbered consecutively.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **28 Trust account ledger**

- (1) A licensee must maintain a separate ledger account for trust money received on behalf of or paid to each person on behalf of whom the agent acts.
- (2) The ledger account must include the name of the person on behalf of whom the licensee acts, 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **29 Trust account ledger trial balance**

- (1) A licensee must, within 21 days after the end of each named 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 person on behalf of whom the agent is acting, 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 account as required by clause 26 (6).

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

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

A licensee served with a requisition under section 100 of the Act must furnish the required statement in writing:

- (a) by delivering the statement to the Chief Executive, or a member of the staff of the Office of Finance and Services nominated by the Chief Executive for the purpose of receiving such statements, at the address of the Office of Finance and Services appearing in the requisition, or
- (b) by sending the statement to the Chief Executive at the address of the Office of Finance and Services appearing in the requisition so as to be received, by the Chief Executive or a member of staff so nominated, within 7 days after service of the requisition.

### **31 Signing of cheques or effecting electronic funds transfers—trust account**

- (1) A licensee that is a corporation or who is a sole proprietor or a partner has authority to sign a cheque (a **trust cheque**) drawn on, or to effect an electronic funds transfer (a **trust EFT**) from, the trust account required to be maintained by section 86 of the Act.
- (2) A licensee in charge of a place of business has authority to sign a trust cheque or effect a trust EFT.
- (3) A licensee who has authority otherwise than as a delegate to sign trust cheques or effect trust EFTs may delegate that authority:
  - (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, or
  - (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 clause authorises the delegate to sign trust cheques or effect trust EFTs to which the delegation relates:
  - (a) (except in the case of a delegation by a licensee that is a corporation) only if the delegator is unable to sign the cheque or effect the transfer with due expedition, and
  - (b) subject to such terms and conditions (whether relating to the value of the cheques or transfers 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 trust cheques or the effecting of trust EFTs made by the constitution 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 trust cheque or effect a trust EFT otherwise than in accordance with this clause is guilty of an offence.
- (8) A person who signs a trust cheque or effects a trust EFT 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)):

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

## **32 Exemptions**

Sections 90 (Interest earned on trust accounts to be paid to Statutory Interest Account) and 91 (Monthly returns by authorised deposit-taking institutions) of the Act do not apply to:

- (a) a separate trust account kept on the instructions of a client of a licensee or firm of licensees for the exclusive benefit of the client, or
- (b) a separate trust account opened by a licensee for the exclusive benefit of both the vendor and the purchaser of land.

## **Part 5 Records**

### **33 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

**Note—**

There are no restrictions on the technology that can be used to make and keep records. Records can be made and kept on paper or by electronic means.

**34 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 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 83 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

### **35 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 83 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

### **36 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* or section 51 of the *Community Land Management Act 1989* 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:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

### **37 Report to be prepared by managing agent**

- (1) A 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* or by an association under Schedule 1 to the *Community Land Management Act 1989* 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 association or since the person last prepared a report under this clause for the owners corporation or association.
- (3) Such a report must be signed by the agent and forwarded to the treasurer of the owners corporation or association at the following times:
  - (a) if the money is held in a separate trust account kept for the owners corporation or association—at least once in every 3 months,
  - (b) if the money is not held in a separate trust account kept for the owners corporation or association—at least once in every 3 months,
  - (c) if the agent ceases to act as managing agent for the owners corporation or association—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 or association 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 authorised deposit-taking institution 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 or association:
- (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 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 or association 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 that is expected to become due and payable from that fund by the owners corporation or association before the next report is prepared,
  - (g) the amount of any money standing to the credit of that fund in an authorised deposit-taking institution and the name of the account at the authorised deposit-taking institution,
  - (h) the amount of any money standing to the credit of that fund invested otherwise than in an authorised deposit-taking institution and, if so, where it is invested,
  - (i) the total amount of money standing to the credit of that fund.
- (7) The 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.

(8) In this clause:

***managing agent*** means strata managing agent or community managing agent.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.

### **38 Managing agent to permit executive committee to inspect records**

- (1) A strata managing agent or community managing agent must permit, on demand made at any reasonable time, any member of the executive committee of an owners corporation, community association, precinct association or neighbourhood

association for whom the agent acts as managing agent to inspect any records or books of account of the corporation or association.

- (2) A strata managing agent or community managing agent must, within 14 days of being appointed by an owners corporation, community association, precinct association or neighbourhood association to act as managing agent, give to the corporation or association a written authority directing the authorised deposit-taking institution or any other person or body with which any money of the corporation or association is invested to disclose to a member of the executive committee of the corporation or association, at the request of the member, any information relating to that money.

Maximum penalty:

- (a) 40 penalty units in the case of a corporation, or
- (b) 20 penalty units in any other case.
- (3) Where a strata managing agent or community managing agent has not complied with subclause (2), the authorised deposit-taking institution or other person or body with which money of the corporation or association is or has been invested may disclose to a member of the executive committee of the corporation or association, at the request of the member, any information relating to that money as though subclause (2) had been complied with.

## Part 6 Exemptions

### 39 Section 31 exemptions—person in charge at place of business

- (1) The matters specified in subclause (2) are to be taken into account by the Chief Executive in considering:
- (a) whether to grant an exemption from a provision of section 31 (1), (2) or (3) of the Act that will authorise a licensee to be the person in charge of business (***the licensee-in-charge***) at more than one place of business, or
- (b) whether to grant an exemption from a provision of section 31 (4) of the Act that will authorise a licensee employed as the person in charge of business (***the licensee-in-charge***) at a place of business to exercise functions or provide services on behalf of 2 or more licensees at that place.
- (2) For the purposes of subclause (1), the following matters are to be taken into account by the Chief Executive:
- (a) reasons why the exemption is needed,
- (b) the licensee's previous experience as licensee-in-charge at a place of business of a licensee,

- (c) the licensee's capacity to properly supervise the conduct of business at more than one place of business or of more than one licensee,
- (d) fiduciary safeguards and office systems proposed to be established to provide for accountability to the licensee-in-charge,
- (e) whether separate trust accounts are in place for the deposit of trust money received in connection with the business of each licensee for whom the licensee proposes to act pursuant to the exemption,
- (f) the licensee's capacity to comply with any guidelines issued by the Chief Executive under section 32 (4) of the Act,
- (g) the licensee's record in relation to compliance with the conditions of a licence or certificate of registration held at any time by the licensee under the Act, and in relation to compliance with the provisions of the Act and the regulations under the Act,
- (h) employer references in relation to the licensee's experience as a licensee-in-charge.

#### **40 Sharing of commission**

- (1) A licensee is exempt from complying with section 33 of the Act if:
  - (a) the transaction concerned relates solely to livestock and the person with whom the licensee enters into an arrangement or acts in conjunction in respect of that transaction is a person whose principal place of business is a State or Territory under the law of which a person is not required to be licensed, registered or otherwise authorised to act as an agent in connection with any such transaction, or
  - (b) the person with whom the licensee enters into an arrangement or acts in conjunction as referred to in that section is a person who is licensed, registered or otherwise authorised under the law of a place outside Australia to act as agent in connection with the transaction concerned.
- (2) Each of the following Acts is declared to be a corresponding Act for the purposes of section 33 of the Act:
  - the *Agents Act 2003* of the Australian Capital Territory
  - the *Agents Licensing Act* of the Northern Territory
  - the *Property Occupations Act 2014* of Queensland
  - the *Land Agents Act 1994* of South Australia
  - the *Property Agents and Land Transactions Act 2005* of Tasmania

the *Estate Agents Act 1980* of Victoria

the *Real Estate and Business Agents Act 1978* of Western Australia

#### **41 Subagency agreements**

Each of the following classes of agreement is exempt from section 34 (Non-commercial subagency agreements to be in writing) of the Act:

- (a) agreements between licensees who are members of a multiple listing organisation,
- (b) agreements between licensees who are parties to a franchise agreement,
- (c) agreements for services relating only to livestock.

#### **42 Agency agreements—exemptions**

- (1) An agreement for the performance of services that relate only to livestock is exempt from section 55 of the Act.
- (2) A licensee is exempt from the operation of section 55 of the Act in respect of services performed by the licensee pursuant to an appointment as a strata managing agent or managing agent appointed under section 162 of the *Strata Schemes Management Act 1996* or section 85 of the *Community Land Management Act 1989*.

#### **43 Proposed contract for sale of residential property—exception**

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

#### **44 Exemption for certain visitor information centres or short-term accommodation booking agents**

- (1) This clause applies to persons who:
  - (a) introduce, or arrange for the introduction of, a prospective licensee of land to the owner of land or to the agent of the owner of land, and
  - (b) deal only with licences of land for a period of not more than 2 months other than for residential purposes, and
  - (c) do not accept any money for doing so from any licensee of land or prospective licensee of land, and
  - (d) do not otherwise introduce, or arrange for the introduction of, a prospective purchaser, lessee or licensee of land to a licensed agent or to the owner, or the

agent of the owner, of land.

- (2) For the purposes of section 4 (1) of the Act, a person who is a member of a class of persons to which this clause applies is exempt from the operation of all of the Act in respect of any act or omission by the person in the person's capacity as agent in respect of the introduction, or arranging for the introduction, of a prospective licensee of land to another licensed agent or to the owner, or the agent of the owner, of land.

#### **45 Exemption for persons acting as travel agents**

- (1) For the purposes of section 4 (1) of the Act, any person who carries on business as a travel agent is exempt from the operation of all of the Act in respect of any act or omission when doing work as part of carrying on business as a travel agent.
- (2) For the purposes of this clause, a person carries on business as a travel agent if the person carries on a business (whether or not in the course of, or as incidental to, or in connection with, any other business) of:
- (a) selling tickets entitling another person to travel, or otherwise arranging for another person a right of passage, on a conveyance, or
  - (b) selling to, or arranging or making available for, another person rights of passage to, and hotel or other accommodation at, one or more places:
    - (i) which are within or outside New South Wales, or
    - (ii) some of which are within, and others of which are outside, New South Wales, or
  - (c) purchasing for resale the right of passage on a conveyance, or
  - (d) the making, by a person who carries on an activity referred to in paragraph (a), (b) or (c), of a travel related arrangement, either separately from or in conjunction with the activity,
- or if the person holds out or advertises that the person is willing to carry on any activity referred to in paragraph (a), (b), (c) or (d).
- (3) In this clause, **travel related arrangement** means an arrangement that may commonly be made in connection with an activity referred to in subclause (2) (a), (b) or (c), such as an arrangement for hotel or other accommodation, car hire or the provision of travellers cheques.

#### **46 Exemption for persons acting on behalf of government departments and certain statutory bodies**

For the purposes of section 5 (1) of the Act, a person who is authorised to act on behalf of any government department of the State of New South Wales or the Commonwealth, or

any statutory body representing the Crown in right of the State or the Commonwealth, is prescribed as a person who is not required to hold a licence under the Act (but only in relation to functions exercised by the person while acting on behalf of the department or statutory body).

## **Part 7 General**

### **47 Complaints and discipline**

- (1) The following provisions of the Act are prescribed as provisions that remain applicable to a suspended licence or certificate of registration for the purposes of section 192 of the Act:
  - (a) section 74 (Requirement to substantiate selling price estimates—residential property),
  - (b) section 100 (Director-General may require information),
  - (c) section 107 (Power to require production of licensee’s records),
  - (d) section 111 (Requirement for audit), except when a receiver or manager has been appointed,
  - (e) section 179 (Production of documents),
  - (f) section 184 (Powers of accounts examiner),
  - (g) section 211 (Fraudulent conversion and false accounts of money received by licensee or registered person),
  - (h) section 212 (Fraudulent accounts for expenses, commission and other charges).
- (2) The following provisions of this Regulation are prescribed as provisions that remain applicable to a suspended licence or certificate of registration for the purposes of section 192 of the Act:
  - (a) clause 5 (Itemised account),
  - (b) clause 30 (Furnishing of particulars of trust account or transactions),
  - (c) clause 38 (Managing agent to permit executive committee to inspect records).

### **48 Meaning of “Operating Account”**

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

### **49 Levies**

A notice to a licensee to pay a levy imposed under section 169 (1) of the Act is prescribed

for the purposes of section 169 (4) of the Act if the notice is signed by the Chief Executive and contains the following particulars:

- (a) the amount of the levy payable by the licensee,
- (b) the date by which and the manner in which the amount of the levy is payable,
- (c) a note, in terms of section 169 (4) of the Act, as to the consequences of a failure by a licensee to pay the levy,
- (d) the date on which the notice was signed by the Chief Executive.

## **50 The Register**

- (1) The Chief Executive is to enter and keep in the Register details of the following particulars in respect of each licence or certificate of registration issued under the Act:
  - (a) the name and business address of the person to whom the licence or certificate of registration is issued,
  - (b) the kind of licence or certificate of registration issued (as described in section 17 of the Act),
  - (c) the number of the licence or certificate of registration,
  - (d) date of issue and expiry,
  - (e) in the case of a licence issued to a member of a partnership, the name and business address of each licensed member of the partnership,
  - (f) in the case of a corporation licence, the name and business address of each director of the corporation,
  - (g) the cancellation or any current suspension of the licence or certificate of registration,
  - (h) any condition of the licence or certificate of registration under section 20 (a) or (d) or 23 (2) of the Act,
  - (i) the accreditation of the licensee as an auctioneer under section 21 of the Act,
  - (j) action taken under Part 12 (Complaints and disciplinary action) of the Act against the holder of the licence or certificate of registration that resulted in an adverse finding against the person, together with details of any disciplinary action taken against the person as a result of that adverse finding,
  - (k) proceedings for any offence under the Act or the regulations made under the Act taken against the holder of the licence or certificate of registration that resulted in a conviction for any such offence, together with details of any penalty imposed for



the offence,

- (l) current undertakings given under the Act by the holder of the licence or certificate of registration,
  - (m) the appointment of a manager or receiver under the Act in respect of the licensee,
  - (n) the number of payments made from the Compensation Fund under Part 10 of the Act in respect of any failure to account of the licensee,
  - (o) the suspension of the licence or certificate of registration under section 79A of the *Fair Trading Act 1987*,
  - (p) action in the nature of disciplinary action taken under any other legislation administered by the Minister against the holder of the licence or certificate of registration that resulted in an adverse finding against the person, together with details of any action taken against the person as a result of that adverse finding.
- (2) The Chief Executive is also to enter and keep in the Register details of any application for a licence or certificate of registration that is refused on the ground that the applicant is not a fit and proper person to hold a licence or a certificate of registration.
- (3) Details entered in the Register under subclause (2) in respect of a person whose application is so refused are to be removed from the Register on the subsequent grant of a licence or certificate of registration to the person.
- (4) Details entered in the Register under subclause (1) (j) or (k) are to be removed from the Register on the expiration of the period of 10 years after the action or conviction to which they relate.

## **51 Application of Licensing and Registration (Uniform Procedures) Act 2002**

Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* applies to and in respect of a licence or certificate of registration subject to the following limitations and modifications:

- (a) an application for the grant of a licence or certificate of registration may only be made by an individual unless the licence is a corporation licence,
- (b) an application for the grant of a corporation licence may only be made by a corporation,
- (c) an application for the grant of a certificate of registration may be made by an individual aged 16 years or more.

## **52 Penalty notice offences and penalties**

- (1) For the purposes of section 216 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 15 is an offence for which a penalty notice may be served, and
  - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule or, if the person alleged to have committed the offence is a corporation and a greater penalty is specified in Column 3 of the Schedule, the amount specified in Column 3 of Schedule 15.
- (2) If the reference to a provision in Column 1 of Schedule 15 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

### 53 Fees and Compensation Fund contributions

- (1) The fees payable for the purposes of the Act are listed in Column 1 of Schedule 16.
- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Schedule 16 in relation to that fee.
- (3) An amount specified in relation to an application fee in Column 3 of Schedule 16 under the heading **Processing component** is taken to be a fee to cover the costs incurred by the Chief Executive in processing the application.

**Note—**

This amount is consequently a **processing fee** for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

- (4) The amount specified in relation to an application fee in Column 4 of Schedule 16 under the heading **Compensation Fund contribution** is prescribed as the amount of the contribution to the Compensation Fund payable by the applicant for the licence concerned.
- (5) The amount specified in relation to an application fee in Column 5 of Schedule 16 under the heading **Total** is the total of the fees payable in respect of the application and the contribution to the Compensation Fund payable by the applicant.
- (6) An applicant for the issue, renewal or restoration of 2 or more licences, or an applicant for the issue of a licence who is already a licensee, is not liable to pay fees or a Compensation Fund contribution for more than one of the licences that are issued, renewed or restored to expire at the same time.

## Schedule 1 General rules of conduct applying to all licensees and registered persons

(Clause 7)

**Note—**

Clause 7 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

### **1 Knowledge of Act and regulations**

An agent must have a knowledge and understanding of the Act and the regulations under the Act, and such other laws relevant to the category of licence or certificate of registration held (including, laws relating to residential tenancy, fair trading, competition and consumer protection, anti-discrimination and privacy) as may be necessary to enable the agent to exercise his or her functions as agent lawfully.

### **2 Fiduciary obligations**

An agent must comply with the fiduciary obligations arising as an agent.

### **3 Honesty, fairness and professionalism**

- (1) An agent must act honestly, fairly and professionally with all parties in a transaction.
- (2) An agent must not mislead or deceive any parties in negotiations or a transaction.

### **4 Skill, care and diligence**

An agent must exercise reasonable skill, care and diligence.

### **5 High pressure tactics, harassment or unconscionable conduct**

An agent must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

### **6 To act in client's best interests**

An agent must act in the client's best interests at all times unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

### **7 Confidentiality**

An agent must not, at any time, use or disclose any confidential information obtained while acting on behalf of a client or dealing with a customer, unless:

- (a) the client or customer authorises the disclosure, or
- (b) the agent is permitted or compelled by law to disclose the information.

### **8 To act in accordance with client authority**

- (1) An agent must not act as an agent or represent himself or herself as acting as an agent on behalf of a person without written authority.
- (2) This clause does not apply to a sale solely of livestock.

### **9 To act in accordance with client's instructions**

An agent must act in accordance with a client's instructions unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

### **10 Licensee must ensure employees comply with the Act and regulations**

An agent who is the licensee-in-charge at a place of business of a licensee must take reasonable steps to ensure other licensees or registered persons employed in the business conducted there comply with the Act and regulations under the Act.

### **11 Conflicts of interest**

An agent must not accept an appointment to act, or continue to act, as an agent if doing so would place the agent's interests in conflict with the client's interests.

### **12 Referral to service provider**

- (1) An agent who refers a person to a service provider must not falsely represent to the person that the service provider is independent of the agent.
- (2) For the purposes of this clause, a service provider is considered to be **independent** of an agent if:
  - (a) the agent receives no rebate, discount, commission or benefit for referring a client or customer to the service provider, and
  - (b) the agent does not have a personal or commercial relationship with the service provider.
- (3) The following are examples of a personal or commercial relationship:
  - (a) a family relationship,
  - (b) a business relationship,
  - (c) a fiduciary relationship,
  - (d) a relationship in which one person is accustomed, or obliged, to act in accordance with the directions, instructions or wishes of the other person.
- (4) If the service provider is not independent of the agent, the agent must disclose to the person:
  - (a) the nature of any relationship, whether personal or commercial, the agent has with the service provider, and
  - (b) the nature and value of any rebate, discount, commission or benefit the agent may receive, or expects to receive, by referring the client or customer to the service provider.

**13 Licensee not to recommend engagement of services of solicitor or licensed conveyancer acting for other party**

- (1) An agent must not recommend that a person engage the services of a solicitor or licensed conveyancer, or firm of solicitors or licensed conveyancers, if the agent knows that the solicitor or licensed conveyancer, or the firm of solicitors or licensed conveyancers, acts or will be acting for the other party to the agreement concerned.
- (2) Subclause (1) does not prevent an agent recommending that a person engage the services of a solicitor or licensed conveyancer if no other solicitor or licensed conveyancer is available (for example, in a remote location).
- (3) If no other solicitor or licensed conveyancer is available, the agent must, in recommending the engagement of the solicitor or conveyancer, advise the person that the solicitor or licensed conveyancer is or will be acting for the other party.

**14 Inducements**

An agent must not offer to provide to any other person any gift, favour or benefit, whether monetary or otherwise, in order to induce a third person to engage the services of the agent as agent in respect of any matter.

**15 Soliciting through false or misleading advertisements or communications**

An agent must not solicit clients or customers through advertisements or other communications that the agent knows or should know are false or misleading.

**16 Insertion of material particulars in documents**

An agent must not submit or tender to any person for signature a document, or cause or permit any document to be submitted or tendered to any person for signature, unless at the time of submission or tendering of the document all material particulars have been inserted in the document.

**17 Duty to provide copy of signed documents**

An agent who submits or tenders a document to any person for signature, or who causes or permits a document to be submitted or tendered to any person for signature, must immediately after the person has signed the document give a copy of the document to the person.

**18 Representations about the Act or regulations**

- (1) An agent must not falsely represent to a person the nature or effect of a provision of the Act or any regulation under the Act.
- (2) An agent 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 a regulation under the Act.

## **19 Agency agreements must comply with regulations**

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of this Regulation, as required by section 55 of the Act.

## **Schedule 2 Rules specific to real estate agents, real estate salespersons and on-site residential property managers**

(Clause 7)

### **Note—**

Clause 7 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

## **Part 1 Sales**

### **1 Preliminary physical inspection of property for sale to be conducted by agent**

An agent must not act on behalf of a person on the sale of a property unless the agent has conducted a preliminary physical inspection of the property.

### **2 Sales inspection report required for property**

On completion of the inspection required by clause 1, an agent must prepare and give to the vendor a sales inspection report for the property. The report must specify the following and be signed by the agent:

- (a) the name and address of the person on behalf of whom the agent is acting,
- (b) the date of preparation of the report,
- (c) the agent's name, business address and telephone number,
- (d) a description of the property, including the address of the property and such other details as may be necessary to enable the property to be readily identified,
- (e) a description of any fittings and fixtures that are to be included in the sale of the property,
- (f) any terms and conditions of sale known to the agent (for example, whether or not vacant possession is to be given),
- (g) the agent's recommendation as to the most suitable method of sale of the property,
- (h) the agent's estimate of the selling price (or price range) for the property,
- (i) details of any covenants, easements, defects, local government notices or orders affecting the property that are known to the agent,
- (j) details of any special instructions about the marketing and showing of the property,

- (k) the name, business address, telephone number and address for service of documents of the solicitor of the person on behalf of whom the agent is acting.

### **3 Vendor to be informed of an offer**

- (1) The agent must, unless the vendor has instructed to the contrary in writing, inform the vendor of all offers of purchase as soon as practicable after receiving each offer up until exchange of contracts has taken place.
- (2) If the agent is not going to inform the vendor of an offer, the agent must inform the person who made the offer that the offer will not be submitted to the vendor.
- (3) The agent may inform the vendor of an offer orally or in writing and must identify the party by whom the offer is made. If the vendor is informed orally, the agent must confirm the information in writing.
- (4) This clause does not apply to bids made in the course of an auction.

### **4 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 property by the vendor, the licensee conducting the auction must not set aside that price without the express permission of the vendor or a person given that permission by the vendor.

### **5 Information to be given when expression of interest deposit paid**

- (1) When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the vendor has no obligation to sell the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt.
- (2) The agent must promptly inform the vendor when an expression of interest deposit has been paid.
- (3) The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offer to purchase the property received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

### **6 Notifying managing agent of appointment to sell residential property**

If an agent accepts an appointment to sell residential property that is tenanted, the agent must immediately give written notice of the appointment to any agent responsible for managing the property.

### **7 Licensee must not accept payment for a referral**

An agent must not demand or accept a fee or other valuable consideration for referring the person on behalf of whom the agent is acting on the sale to a buyer's agent.

### **8 Bidding on behalf of telephone bidder**

An agent must not bid at an auction on behalf of a person who is giving instructions to the agent by telephone unless:

- (a) the written authority on the basis of which the agent bids on behalf of the person contains an acknowledgment that the person has been given a copy of the conditions that are applicable in respect of the sale, and
- (b) the agent is satisfied that the person has been given a copy of those conditions.

### **9 Agent participating in exchange of contracts for residential property**

If an agent participates in the exchange or making of a contract for the sale of residential property, the agent must serve a copy of the contract within 2 business days on:

- (a) each party to the contract, unless paragraph (b) requires the agent to serve a copy of the contract on a solicitor or conveyancer acting for the party, or
- (b) the solicitor or conveyancer acting for a party to the contract if the party has notified the agent, or it is apparent from the contract, that a solicitor or conveyancer is acting for the party.

## **Part 2 Property management**

### **Note—**

These rules apply to real estate agents, registered persons they employ and on-site residential property managers.

### **10 Inspection report**

An agent must, as soon as practicable after entering into an agency agreement in respect of the management of property, prepare and give to the owner of the property an inspection report for the property. The inspection report must include the following and be signed by the agent:

- (a) the name and address of the owner,
- (b) the address of the property,
- (c) the date of preparation of the report,
- (d) the agent's name, licence number and business address,
- (e) a description of the exterior and interior condition of the property, including fittings, fixtures, improvements and anything provided with the property,



(f) details of any work still to be completed by the owner on the property.

#### **11 Inspection of property for rent**

- (1) An agent must accompany a prospective tenant on an inspection of the property.
- (2) An agent must not give the keys to a property to a prospective tenant, even for a short time.
- (3) Subclauses (1) and (2) do not apply if the owner, and, if the property is currently let, the tenant, have authorised otherwise in writing.

#### **12 Use of collection agent to collect rent**

- (1) A licensee must not use the services of a collection agent to collect rent on behalf of the owner unless the arrangements for the collection and holding of that rent pending its payment to the agent or the owner comply with such guidelines as the Chief Executive may issue from time to time under this clause (including guidelines requiring rent collected by a collection agent to be paid into and retained in a trust account).
- (2) In this clause:

**collection agent** means a person who collects rent as agent for and on behalf of a licensee.

#### **13 Maintenance or repairs of rental property**

- (1) An agent managing a rental property must promptly respond to and, subject to the instructions of the owner, attend to all requests by a tenant, for maintenance of, or repairs to, the property.
- (2) If the owner has instructed that a repair not be carried out, the agent must inform the owner if the owner's failure to carry out the repair would constitute a breach of any tenancy agreement in force in relation to the property.

#### **14 Breach of tenancy agreement**

An agent managing a rental property must immediately notify the owner in writing if the agent becomes aware of a tenant's breach of the tenancy agreement.

#### **15 Notifying tenant of appointment to sell**

- (1) This clause applies if an agent managing a rental property is aware that:
  - (a) the property is listed for sale, or
  - (b) a real estate agent has been appointed to act on the sale of the property.
- (2) The agent must immediately give the tenant written notice of:

- (a) the intended sale of the property, or
- (b) the appointment of the real estate agent for the sale of the property (together with the name and contact details of the agent).

## **16 Final inspection of property**

An agent must take all reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the tenant (unless otherwise authorised by the tenant).

### **Note—**

“Reasonable steps” by an agent would comprise contacting the tenant to discuss suitable times for the inspection, arranging to meet at a particular time and place and proceeding to meet the tenant at the arranged time and place.

## **17 Obtaining tenant’s signature for rental bond refund**

An agent must not solicit or obtain the signature of a tenant to any document relating to the refund of a rental bond prior to the termination of the tenancy, unless the document directs the bond to be repaid in full to the tenant or transferred to another tenancy in accordance with the tenant’s directions.

## **Schedule 3 Rules specific to stock and station agents and registered persons they employ**

(Clause 7)

### **Note—**

Clause 7 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

## **Part 1 Sales**

### **1 Preliminary physical inspection of the property to be conducted by agent**

An agent must not act on behalf of a vendor on the sale of any property, including livestock included in the sale, unless the agent has conducted a preliminary physical inspection of the property. This clause does not apply to a sale solely of livestock.

### **2 Sales inspection report required for the property**

On completion of the inspection required by clause 1, an agent must prepare and give to the vendor a sales inspection report for the property. The report must specify the following and be signed by the agent:

- (a) the name and address of the vendor,
- (b) the date of preparation of the report,

- (c) the agent's name, business address and telephone number,
- (d) a description of the property, including the address of the property and such other details as may be necessary to enable the property to be readily identified, and the size of the property in hectares,
- (e) a description of the services provided to the property (for example, power, phone, airstrip, closest schools, mail service, closest rail service),
- (f) information about the type of country (topography, soils, timber, arable area, pasture development), water (irrigation, dams, rainfall) and production capacity,
- (g) a description of any fittings and fixtures that are to be included in the sale of the property,
- (h) a description of items included in the sale such as house, other accommodation, grain storage, wool shed, sheep/cattle yards or plant equipment,
- (i) a description of other items to be included in the sale, such as livestock,
- (j) any terms and conditions of sale known to the agent (for example, whether or not vacant possession is to be given),
- (k) the agent's recommendation as to the most suitable method of sale of the property,
- (l) the agent's estimate of the selling price (or price range) for the property,
- (m) details of any covenants, easements, defects, local government notices or orders affecting the property that are known to the agent,
- (n) details of any special instructions about the marketing and showing of the property,
- (o) the name, business address, telephone number and address for service of documents of the solicitor of the person on behalf of whom the agent is acting.

**3 Person on behalf of whom sale is to be carried out to be informed of an offer**

- (1) The agent must, unless the vendor has instructed to the contrary in writing, inform the vendor of all offers of purchase as soon as practicable after receiving each offer up until exchange of contracts has taken place.
- (2) If the agent is not going to inform the vendor of an offer, the agent must inform the person who made the offer that the offer will not be submitted to the vendor.
- (3) The agent may inform the vendor of an offer orally or in writing and must identify the party by whom the offer is made. If the vendor is informed orally, the agent must confirm the information in writing.
- (4) This clause does not apply to bids made in the course of an auction.

#### **4 Information to be given when expression of interest deposit paid**

- (1) When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the vendor has no obligation to sell the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt.
- (2) The agent must promptly inform the vendor when an expression of interest deposit has been paid.
- (3) The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offers to purchase the property received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

#### **5 Agent must not accept payment for a referral**

An agent must not demand or accept a fee or other valuable consideration for referring the vendor to a buyer's agent.

#### **6 Bidding on behalf of telephone bidder**

An agent must not bid at an auction on behalf of a person who is giving instructions to the agent by telephone unless:

- (a) the written authority on the basis of which the agent bids on behalf of the person contains an acknowledgment that the person has been given a copy of the conditions that are applicable in respect of the sale, and
- (b) the agent is satisfied that the person has been given a copy of those conditions.

#### **7 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 property by the vendor, the licensee conducting the auction must not set aside that price without the express permission of the vendor or a person authorised to give that permission by the owner.

## **Part 2 Property management**

#### **8 Inspection report**

An agent must, as soon as practicable after entering into an agency agreement in respect of the management of property, prepare and give to the owner an inspection report for the property. The inspection report must include the following and be signed by the agent:

- (a) the name and address of the owner,

- (b) the address of the property,
- (c) the date of preparation of the report,
- (d) the agent's name, licence number and business address,
- (e) a description of the exterior and interior condition of the property, including fittings, fixtures, improvements and anything provided with the property,
- (f) details of any work still to be completed by the owner on the property.

### **9 Inspection of property for rent**

- (1) An agent must accompany a prospective tenant on an inspection of the property.
- (2) An agent must not give the keys to a property to a prospective tenant, even for a short time.
- (3) Subclauses (1) and (2) do not apply if the owner, and, if the property is currently let, the tenant, have authorised otherwise in writing.

### **10 Use of collection agent to collect rent**

- (1) A licensee must not use the services of a collection agent to collect rent on behalf of an owner unless the arrangements for the collection and holding of that rent pending its payment to the agent or the owner comply with such guidelines as the Chief Executive may issue from time to time under this clause (including guidelines requiring rent collected by a collection agent to be paid into and retained in a trust account).

- (2) In this clause:

**collection agent** means a person who collects rent as agent for and on behalf of a licensee.

### **11 Maintenance or repairs of rental property**

- (1) An agent managing a rental property must promptly respond to and, subject to the instructions of the owner, attend to all requests by a tenant, for maintenance of, or repairs to, the property.
- (2) If the owner has instructed that a repair not be carried out, the agent must inform the owner if the owner's failure to carry out the repair would constitute a breach of any tenancy agreement in force in relation to the property.

### **12 Breach of tenancy agreement**

An agent managing a rental property must immediately notify the owner in writing if the agent becomes aware of a tenant's breach of the tenancy agreement.

### **13 Notifying tenant of appointment to sell**

- (1) This clause applies if an agent managing a rental property is aware that:
  - (a) the property is listed for sale, or
  - (b) an agent has been appointed to act on the sale of the property.
- (2) The agent must immediately give the tenant written notice of:
  - (a) the intended sale of the property, or
  - (b) the appointment of the agent for the sale of the property (together with the name and contact details of the agent).

### **14 Final inspection of property**

An agent must take all reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the tenant (unless otherwise authorised by the tenant).

**Note—**

“Reasonable steps” by an agent would comprise contacting the tenant to discuss suitable times for the inspection, arranging to meet at a particular time and place and proceeding to meet them at the arranged time and place.

## **Schedule 4 Rules specific to business agents and registered persons they employ**

(Clause 7)

**Note—**

Clause 7 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

### **1 Preliminary physical inspection of the business to be conducted by agent**

An agent must not act on behalf of a vendor on the sale of a business unless the agent has conducted a preliminary physical inspection of the business or has the written instructions of the vendor that such an inspection is not required by the vendor.

### **2 Sales inspection report required for business**

On completion of the inspection required by clause 1, an agent must prepare and give to the person on behalf of whom the agent is acting on the sale of the business a sales inspection report for the business. The report must specify the following and be signed by the agent:

- (a) the name and address of the vendor,
- (b) the date of preparation of the report,

- (c) the agent's name, business address and telephone number,
- (d) a description of the business, including the address of the business and such other details as may be necessary to enable the business to be readily identified, including the business name and its Australian Business Number,
- (e) a description of inclusions to be included in the sale such as goodwill, plant, fittings and stock in inventory, together with details of any encumbrances affecting those inclusions,
- (f) any terms and conditions of sale known to the agent,
- (g) the agent's recommendation as to the most suitable method of sale of the business,
- (h) the agent's estimate of the selling price (or price range) for the business,
- (i) details of any defects, local government notices or orders affecting the business that are known to the agent.

### **3 Confirmation of specific instructions**

- (1) Before or at the time of entering into an agency agreement under which the agent will act for the vendor on the sale of the business, the agent must prepare for inclusion in the agency agreement written confirmation of any specific instructions given to the agent by the vendor before the agreement is entered into about any of the following:
  - (a) arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale,
  - (b) the marketing of the business,
  - (c) the entitlement of prospective purchasers to inspect the premises of the business and the circumstances under which such an inspection can be made,
  - (d) the entitlement of prospective purchasers to inspect records, books of account and other documents concerning the business and the circumstances under which such an inspection can be made.
- (2) The written confirmation may be prepared and be included as part of the agency agreement.

### **4 Vendor to be informed of an offer**

- (1) The agent must, unless the vendor has instructed to the contrary in writing, inform the vendor of all offers of purchase as soon as practicable after receiving each offer up until exchange of contracts has taken place.
- (2) If the agent is not going to inform the vendor of an offer, the agent must inform the person who made the offer that the offer will not be submitted to the vendor.

(3) The agent may inform the vendor of an offer orally or in writing and must identify the party by whom the offer is made. If the vendor is informed orally, the agent must confirm the information in writing.

(4) This clause does not apply to bids made in the course of an auction.

#### **5 Information to be given when expression of interest deposit paid**

(1) When an agent issues a receipt for an expression of interest deposit made prior to exchange of contracts, the agent must inform the person who paid the deposit that the vendor has no obligation to sell the business or the purchaser to buy the business and the deposit is refundable if a contract for the sale of the business is not entered into. The information must be provided in writing and may be provided on the receipt.

(2) The agent must promptly inform the vendor when an expression of interest deposit has been paid.

(3) The agent must promptly inform the person who paid the deposit when the agent becomes aware of any subsequent offers to purchase the business received from any other person. The agent must also advise the person who paid the deposit that they have the right to make further offers up until exchange of contracts has taken place.

#### **6 Agent must not accept payment for a referral**

An agent must not demand or accept a fee or other valuable consideration for referring the vendor to a buyer's agent.

### **Schedule 5 Rules specific to buyer's agents**

(Clause 7)

#### **Note—**

Clause 7 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

#### **1 Statement of property details**

At the time of entering into an agency agreement with the person on behalf of whom an agent will act as buyer's agent, the agent must prepare and give the person a statement of property details that is signed by the agent and specifies the following:

(a) details known to the agent of the type of property to be purchased,

(b) details of any special instructions about the property to be purchased (for example, an instruction that vacant possession is required in the case of a rented property).

#### **Note—**

These details can be changed by agreement between the parties or as provided by the agency agreement.



## **2 Person on behalf of whom agent is acting as buyer's agent to be informed of negotiations**

The agent must keep the person on behalf of whom the agent is acting as buyer's agent informed of each stage of the negotiation of a purchase price, as instructed by the person on behalf of whom an agent is acting as buyer's agent. This clause does not apply to bids made in the course of an auction.

## **3 Agent to obtain best possible purchase price**

An agent is to use his or her best efforts to obtain the best possible purchase price, without breaching standards of ethical conduct or engaging in conduct that is contrary to good agency practice.

## **4 Agent not to exceed agreed purchase price in negotiations or at auction**

- (1) In negotiations for the purchase of a property, the agent must not exceed the maximum or agreed price fixed by the person on behalf of whom the agent is acting as buyer's agent without the express written authorisation of the person or a person authorised by the person on behalf of whom the agent is acting.
- (2) When the bidding at an auction exceeds the maximum or agreed price fixed by the person on behalf of whom the agent is acting, the agent must not continue bidding without the express authorisation of the person on behalf of whom an agent is acting as buyer's agent or a person authorised by the person on behalf of whom the agent is acting as buyer's agent.

## **5 Information to be given when expression of interest deposit paid**

- (1) When the person on behalf of whom an agent is acting as buyer's agent pays an expression of interest deposit in respect of the proposed purchase of a property prior to exchange of contracts, the agent must inform the person that the vendor has no obligation to sell the property or the purchaser to buy the property and the deposit is refundable if a contract for the sale of the property is not entered into. The information must be provided in writing and may be provided on the receipt issued by the vendor or the vendor's agent.
- (2) An agent must promptly inform the person on behalf of whom an agent is acting as buyer's agent when the agent becomes aware of any subsequent offers to purchase the property.

## **6 Agent must not accept payment for a referral**

An agent must not demand or accept a fee or other valuable consideration for referring the person on behalf of whom the agent is acting as buyer's agent to a selling agent.

## **Schedule 6 Rules specific to strata, community, residential and other**

## property managers

(Clause 7)

### Note—

Clause 7 provides that a reference in this Schedule to an agent includes a reference to a registered person to whom the Schedule applies.

### 1 Co-operation about records, access and transfer

If an agent is acting on behalf of a person in the management of property and is advised by another agent that the other agent (***the new agent***) has been engaged to act on behalf of that person in the management of that property, the agent must co-operate with the new agent in regard to access to the records of the person, including but not limited to making the records reasonably available (according to law) and facilitating the transfer of management functions between the agent and the new agent.

### 2 Disclosure of potential agency

If an agent intends to act (or offers to act) for a person in the management of property and is aware that another agent is or other agents are managing that property for the person, the agent must, unless the person otherwise directs in writing, disclose the agent's intention to act or offer to act to the current agent or agents.

### 3 Use of collection agent to collect rent

(1) A licensee must not use the services of a collection agent to collect rent or levies on behalf of a person unless the arrangements for the collection and holding of the rent or levies pending payment to the agent or the person comply with such guidelines as the Chief Executive may issue from time to time under this clause (including guidelines requiring rent or levies collected by a collection agent to be paid into and retained in a trust account).

(2) In this clause:

***collection agent*** means a person who collects rent or levies as agent for and on behalf of a licensee.

### 4 Confirmation of specific instructions—property management services

Before or at the time of entering into an agency agreement under which an agent will provide property management services in respect of the leasing of residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the management of the property and any limitations on the agent's authority to undertake those duties:

(a) obtaining references from prospective tenants, arranging inspections of the property

by prospective tenants and choosing a tenant,

- (b) entering into and signing a tenancy agreement (specifying the term for which the property may be let),
- (c) undertaking inspections of the property,
- (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and detailing limitations on expenditure that may be incurred by the agent without obtaining the approval of the owner,
- (e) paying disbursements and expenses incurred in connection with the agent's management of the property,
- (f) collecting rent,
- (g) receiving, claiming and disbursing rental bond money,
- (h) serving notices for breach of the tenancy agreement or to terminate the tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the owner in relation to the tenancy of the property,
- (j) representing the owner in any tribunal or court proceedings in respect of the tenancy of the property,
- (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, maintenance expenses and owners corporation levies),
- (l) advertising the property for letting or re-letting,
- (m) reviewing the rent at the end of a tenancy.

## **5 Confirmation of specific instructions—leasing of property**

Before or at the time of entering into an agency agreement under which an agent will act for the owner of residential property or rural land in relation to the entering into of a lease of the residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the entering into of the lease and any limitations on the agent's authority to undertake those duties:

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a tenancy agreement,

- (c) undertaking an initial inspection of the property,
- (d) collecting the initial rent payment,
- (e) receiving and disbursing rental bond money,
- (f) advertising the property for letting.

**6 Confirmation of specific instructions—strata managing agent or community managing agent**

Before or at the time of entering into an agency agreement under which an agent will exercise the functions of a strata managing agent or community managing agent, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the exercise of those functions and any limitations on the agent's authority to undertake those duties:

- (a) undertaking the financial management of funds and books of account,
- (b) holding documents and maintaining records relating to the scheme (for example, the strata roll, notices and minutes of meetings),
- (c) arranging building inspections and reports,
- (d) effecting repairs to and maintaining common property or engaging appropriately qualified tradespersons to do so and detailing limitations on expenditure that may be incurred by the agent without obtaining the approval of the person on behalf of whom the agent is acting,
- (e) paying disbursements and expenses incurred in connection with the agent's management of the scheme,
- (f) arranging insurance cover for the scheme,
- (g) serving notices to comply with a by-law,
- (h) managing the sinking fund and the administrative fund,
- (i) undertaking steps necessary to recover any money owing in relation to levies,
- (j) representing the owners corporation or association in tribunal or court proceedings,
- (k) paying accounts in relation to the scheme (for example, accounts for water charges, council rates and maintenance),
- (l) arranging and undertaking administrative duties in relation to annual general meetings and other general meetings.

## **Schedule 7 Terms applying to all agency agreements**

(Clause 8)

### **1 Identification of property, business or professional practice**

The agreement must specify the address of the property, business or professional practice to which the agreement applies or must contain such other description of the property, business or professional practice as clearly identifies it. This clause does not apply to an agency agreement to act for the buyer of land.

### **2 Names of parties to agreement**

The agreement must specify the names of each of the parties to the agreement (including the licensee).

### **3 Information identifying parties**

The agreement must specify the address of the person on behalf of whom the agent is acting, the licensee's licence number and any business name under which the licensee conducts business.

### **4 Authority of the person on behalf of whom the agent will act to enter into agreement**

The agreement must contain a statement to the effect that the person on behalf of whom the agent is acting warrants that the person has authority to enter into the agreement.

### **5 Authorisation for licensee to act on behalf of person**

The agreement must contain a term containing particulars of the extent of the authority of the licensee to act as agent on behalf of the person on behalf of whom the agent is acting in providing services under the agreement.

### **6 Period of duration of the agreement**

The agreement must contain a term indicating the period for which the agreement remains in force or indicating that the agreement remains in force until terminated.

### **7 Termination of the agreement**

If the agreement provides for its termination by a party to the agreement, the agreement must indicate how and when it can be terminated.

### **8 Reimbursement of licensee**

(1) If the licensee is to be entitled to any sum or reimbursement for expenses or charges incurred by the licensee in connection with services provided under the agency agreement, the agreement must include a term that:

(a) states that the licensee is so entitled, and

- (b) describes those services, and
  - (c) specifies the amount to which the licensee is so entitled and when it is payable, and
  - (d) states that those services and amounts cannot be varied except with the agreement in writing of the person on behalf of whom the agent is acting.
- (2) Subclause (1) (d) does not apply to an agency agreement for the exercise of the functions of a strata managing agent or community managing agent.

## **9 Remuneration**

- (1) The agreement must include a term specifying:
- (a) the circumstances in which the licensee is entitled to remuneration (by way of commission or otherwise) for services performed under the agreement, and
  - (b) the amount of the remuneration or the way in which it is to be calculated, and
  - (c) when the remuneration is payable.
- (2) If the agreement relates to the sale or purchase of residential property and provides for payment of commission to the agent calculated as a percentage of the sale or purchase price, the term must also specify the amount of the remuneration to which the licensee will be entitled calculated on the basis of a specified estimated sale or purchase price for the property.

## **Schedule 8 Terms specific to agency agreement for sale of residential property**

(Clause 8)

### **1 Exclusive agency and sole agency agreements**

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:
- IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.
- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement:
- IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.

- (3) An agency agreement is an **exclusive agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent is the effective cause of the happening of the event and whether or not the client is the effective cause of the happening of the event.
- (4) An agency agreement is a **sole agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.
- (5) A statement that an agency agreement is required by this clause to include must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 and must be no less prominent than that term.

## **2 Warning about other agency agreements**

- (1) The agency agreement must include the following statement:

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) A statement that an agency agreement is required by this clause to include must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 or immediately following the statement required by clause 1 of this Schedule, and must be no less prominent than that term or statement.

## **3 Warning if agreement includes a term that a commission is payable**

- (1) On and from 1 March 2015, if the agency agreement includes a term that a commission is payable even if the sale of the property is not completed, the agency agreement must include the following statement:

WARNING: The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.

- (2) The statement must be included in the agreement immediately following the term and must be no less prominent than that term.

## **4 Fixed term agency agreements**

- (1) If the agreement is for a fixed term that exceeds 90 days, the agreement must include a term that entitles the person on behalf of whom the agent is acting to terminate the agreement (without penalty) by giving 30 days' notice in writing to the agent at any time after the end of the first 90 days of the term.
- (2) This clause does not apply to an agency agreement on the sale of residential property where the contract for sale provides for the construction by the seller of a dwelling on

the land.

## **5 (Repealed)**

## **6 Providing person on behalf of whom the agent is acting with consumer guide**

The agreement must include a provision that states whether or not the agent provided the person on behalf of whom the agent is acting with a copy of the approved guide entitled *Agency Agreements for the Sale of Residential Property* (being the approved guide mentioned in section 56 of the Act) before the agreement was entered into and (if the guide was provided) specifies the date it was provided.

## **7 Cooling-off period**

(1) The agency agreement must include the following statement:

COOLING-OFF PERIOD: You (the vendor) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5 pm on the next business day or Saturday.

(2) A statement that this clause requires an agency agreement to include must be included in the agreement in close proximity to the place where the person on behalf of whom the agent is acting signs the agreement and must be no less prominent than any other term of the agreement.

## **8 A sales inspection report to form part of the agreement**

The agreement must include a copy of any sales inspection report prepared by the agent and given to the person on behalf of whom the agent is acting under clause 2 of Schedule 2.

## **Schedule 9 Terms specific to a buyer's agent agency agreement**

(Clause 8)

### **1 Property details**

The agreement must include a copy of the statement prepared and given to the person on behalf of whom the agent is acting by the agent for the purposes of clause 1 (Statement of property details) of Schedule 5.

### **2 Purchase price range**

The agreement must specify a price or price range as the maximum price or the price range that the person on behalf of whom the agent is acting is prepared to pay for a property.



## Schedule 10 Terms specific to agency agreement for sale of rural land

(Clause 8)

### 1 Exclusive agency and sole agency agreements

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the property or introduces a buyer who later buys the property.

- (2) If the agency agreement is a sole agency agreement the agreement must include the following statement:

IMPORTANT: This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the property or introduces a buyer who later buys the property.

- (3) An agency agreement is an **exclusive agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent is the effective cause of the happening of the event and whether or not the client is the effective cause of the happening of the event.
- (4) An agency agreement is a **sole agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.
- (5) A statement that an agency agreement is required by this clause to include must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 and must be no less prominent than that term.

### 2 Warning about other agency agreements

- (1) The agency agreement must include the following statement:

WARNING: Have you signed an agency agreement for the sale of this property with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) A statement that an agency agreement is required by this clause to include must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 or immediately following the statement required by clause 1 of this Schedule, and must be no less prominent than that term or statement.

### **3 Warning if agreement includes a term that a commission is payable**

- (1) On and from 1 March 2015, if the agency agreement includes a term that a commission is payable even if the sale of the property is not completed, the agency agreement must include the following statement:

WARNING: The term immediately above provides that a commission is payable under this agreement even if the sale of the property is not completed.

- (2) The statement must be included in the agreement immediately following the term and must be no less prominent than that term.

### **4 Price at which property is to be offered**

If the agreement provides for the property to be offered for sale by private treaty, the agreement must specify the price at which the property is to be offered.

### **5 Cooling-off period**

- (1) The agency agreement must include the following statement:

COOLING-OFF PERIOD: You (the vendor) have a cooling-off period for this agreement. If you do not wish to continue with this agreement you can cancel it until 5 pm on the next business day or Saturday.

- (2) A statement that this clause requires an agency agreement to include must be included in the agreement in close proximity to the place where the person on behalf of whom the agent is acting signs the agreement and must be no less prominent than any other term of the agreement.

### **6 A sales inspection report to form part of the agreement**

The agreement must include a copy of any sales inspection report prepared by the agent and given to the person on behalf of whom the agent is acting under clause 2 of Schedule 3.

## **Schedule 11 Terms specific to agency agreement for sale of business**

(Clause 8)

### **1 Exclusive agency and sole agency agreements**

- (1) If the agency agreement is an exclusive agency agreement the agreement must include the following statement:

IMPORTANT: This is an exclusive agency agreement. This means you may have to pay the agent commission even if another agent (or you) sells the business or introduces a buyer who later buys the business.

- (2) If the agency agreement is a sole agency agreement the agreement must include the

following statement:

**IMPORTANT:** This is a sole agency agreement. This means you may have to pay the agent commission even if another agent sells the business or introduces a buyer who later buys the business.

- (3) An agency agreement is an **exclusive agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event whether or not the agent is the effective cause of the happening of the event and whether or not the client is the effective cause of the happening of the event.
- (4) An agency agreement is a **sole agency agreement** if the agreement provides for the agent to be entitled to commission on the happening of an event (whether or not the agent is the effective cause of the happening of the event) unless the client is the effective cause of the happening of the event.
- (5) A statement that an agency agreement is required by this clause to include must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 and must be no less prominent than that term.

## **2 Warning about other agency agreements**

- (1) The agency agreement must include the following statement:

**WARNING:** Have you signed an agency agreement for the sale of this business with another agent? If you have you may have to pay 2 commissions (if this agreement or the other agreement you have signed is a sole or exclusive agency agreement).

- (2) A statement that an agency agreement is required by this clause to include must be included in the agreement immediately following the term required by clause 9 (Remuneration) of Schedule 7 or immediately following the statement required by clause 1 of this Schedule, and must be no less prominent than that term or statement.

## **3 Warning if agreement includes a term that a commission is payable**

- (1) On and from 1 March 2015, if the agency agreement includes a term that a commission is payable even if the sale of the business is not completed, the agency agreement must include the following statement:

**WARNING:** The term immediately above provides that a commission is payable under this agreement even if the sale of the business is not completed.

- (2) The statement must be included in the agreement immediately following the term and must be no less prominent than that term.

## **4 Transfer of liability for the leasing or hire purchase of inclusions**

The agreement must include any written confirmation prepared for the purposes of clause 3 of Schedule 4 of any specific instructions given to the agent by the person on behalf of

whom the agent is acting before the agreement is entered into about arrangements for the transfer to the purchaser of any liability for the leasing or hire purchase of goodwill, plant, fittings or stock in inventory included in the sale.

## **5 Specific instructions about marketing and inspections**

The agreement must include any written confirmation prepared for the purposes of clause 3 of Schedule 4 of any specific instructions given to the agent by the person on behalf of whom the agent is acting before the agreement is entered into about any of the following:

- (a) the marketing of the business,
- (b) the entitlement of prospective purchasers to inspect the premises of the business and the circumstances under which such an inspection can be made,
- (c) the entitlement of prospective purchasers to inspect records, books of account and other documents concerning the business and the circumstances under which such an inspection can be made.

## **6 Sales inspection report to form part of the agreement**

The agreement must include a copy of any sales inspection report prepared by the agent and given to the person on behalf of whom the agent is acting under clause 2 of Schedule 4.

# **Schedule 12 Terms specific to agency agreement for management of residential property or rural land**

(Clause 8)

## **1 Extent of agent's authority**

The agreement must include any written confirmation prepared for the purposes of clause 4 of Schedule 6 of the extent of the agent's authority to undertake the following duties in connection with the management of the property and any limitations on the agent's authority to undertake those duties:

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a tenancy agreement (specifying the term for which the property may be let),
- (c) undertaking inspections of the property,
- (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and detailing limitations on expenditure that may be incurred by the agent without obtaining the approval of the person on behalf of whom the agent is acting,

- (e) paying disbursements and expenses incurred in connection with the agent's management of the property,
- (f) collecting rent,
- (g) receiving, claiming and disbursing rental bond money,
- (h) serving notices for breach of the tenancy agreement or to terminate the tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the person on behalf of whom the agent is acting in relation to the tenancy of the property,
- (j) representing the person on behalf of whom the agent is acting in any tribunal or court proceedings in respect of the tenancy of the property,
- (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, maintenance expenses and owners corporation levies),
- (l) advertising the property for letting or re-letting,
- (m) reviewing the rent at the end of a tenancy.

## **2 Accounting to the person on behalf of whom the agent is acting in respect of money received**

The agreement must specify the manner in which and the frequency with which the agent is required to account to the person on behalf of whom the agent is acting in respect of money received by the agent on behalf of the person.

## **Schedule 13 Terms specific to agency agreement for the leasing of residential property or rural land**

(Clause 8)

### **1 Extent of agent's authority**

The agreement must include any written confirmation prepared for the purposes of clause 5 of Schedule 6 of the extent of the agent's authority to undertake the following duties in relation to the entering into of the lease and any limitations on the agent's authority to undertake those duties:

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a tenancy agreement,

- (c) undertaking an initial inspection of the property,
- (d) collecting initial rent payment,
- (e) receiving and disbursing rental bond money,
- (f) advertising the property for letting.

## **2 Details about the period of the tenancy, rent and bond**

The agreement must specify the period of the tenancy, the amount of the rent to be paid, the rent payment period and the amount of the bond to be paid.

## **Schedule 14 Terms specific to agency agreement for the management of strata or community title land**

(Clause 8)

### **1 Authorisation for the licensee to undertake certain duties relating to management of strata or community title land**

The agreement must include any written confirmation prepared for the purposes of clause 6 of Schedule 6 of the extent of the agent's authority to undertake the following duties in connection with the exercise of the functions of a strata managing agent or community managing agent and any limitations on the agent's authority to undertake those duties:

- (a) undertaking the financial management of funds and books of account,
- (b) holding documents and maintaining records relating to the scheme (for example, the strata roll, notices, and minutes of meetings),
- (c) arranging building inspections and reports,
- (d) effecting repairs to and maintaining common property or engaging appropriately qualified tradespersons to do so and detailing limitations on expenditure that may be incurred by the agent without obtaining the approval of the person on behalf of whom the agent is acting,
- (e) paying disbursements and expenses incurred in connection with the agent's management of the scheme,
- (f) arranging insurance cover for the scheme,
- (g) serving notices to comply with a by-law,
- (h) managing the sinking fund and the administrative fund,
- (i) undertaking steps necessary to recover any money owing in relation to levies,
- (j) representing the owners corporation or association in tribunal or court proceedings,

- (k) paying accounts in relation to the scheme (for example, accounts for water charges, council rates and maintenance),
- (l) arranging and undertaking administrative duties in relation to annual general meetings and any other general meetings.

## **2 Effect of statutory appointment of managing agent**

The agreement must include a term or terms to the effect of the following provisions:

- (a) the agent does not have and may not exercise any of the powers, authorities, duties or functions of the owners corporation, association or strata corporation that are conferred on another strata managing agent or managing agent appointed for the owners corporation, association or strata corporation for the time being under section 162 of the *Strata Schemes Management Act 1996* or section 85 of the *Community Land Management Act 1989*,
- (b) the agency agreement is terminated on the appointment of a strata managing agent or managing agent under section 162 of the *Strata Schemes Management Act 1996* or section 85 of the *Community Land Management Act 1989* to exercise or perform all the functions of the owners corporation, association or strata corporation,
- (c) the agent is not entitled to any remuneration by way of commission or otherwise in respect of any period after termination of the agency agreement as referred to in paragraph (b),
- (d) the agent is not entitled to any payment (in the nature of a penalty or otherwise) by reason of the early termination of the agency agreement as referred to in paragraph (b).

## **3 Renewal of agreement for fixed term**

If the agreement is for a fixed term, it must not contain a provision that operates (without the further agreement in writing of the person on behalf of whom the agent is acting) to renew the agreement for a subsequent fixed term of more than 3 months unless the agreement also provides for the person on behalf of whom the agent is acting to be able to terminate the agreement (without penalty) by giving 3 months' notice of termination at any time during that subsequent fixed term.

### **Note—**

This does not prevent the person on behalf of whom the agent is acting from agreeing in writing to the renewal of the agreement for a further fixed term.

## **4 Accounting to the person on behalf of whom the agent is acting in respect of money received**

The agreement must specify the manner in which and the frequency with which the agent is required to account to the person on behalf of whom the agent is acting in respect of

money received by the agent on behalf of that person.

## 5 Indemnification of strata managing agent prohibited

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

### Note—

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

## Schedule 15 Penalty notice offences

(Clause 52)

Column 1	Column 2	Column 3
Provision	Penalty (individuals)	Penalty (corporations)
<b>Offences under the Act</b>		
Section 8 (1)	\$1,100	
Section 9 (1)		\$2,200
Section 10 (1)	\$1,100	
Section 11 (1)	\$550	
Section 11 (2)	\$550	
Section 12	\$550	
Section 28 (4)	\$550	
Section 29 (1)	\$550	
Section 29 (2)	\$550	
Section 29 (3)	\$550	
Section 30 (1)	\$550	
Section 30 (5)	\$550	
Section 31 (1)	\$1,100	\$2,200
Section 31 (2)	\$1,100	\$2,200
Section 31 (3)	\$1,100	\$2,200
Section 31 (4)	\$1,100	



Section 32 (2)	\$1,100	
Section 32 (4)	\$1,100	\$2,200
Section 33 (1)	\$550	\$1,100
Section 34 (3)	\$550	
Section 35 (1)	\$1,100	
Section 35 (2)	\$1,100	
Section 37 (2)	\$550	\$1,100
Section 39 (1)	\$550	
Section 40	\$1,100	
Section 42 (1)	\$550	
Section 42 (2)	\$550	
Section 42 (3)	\$550	
Section 43 (1)	\$550	
Section 44	\$550	
Section 45	\$550	
Section 46 (2)	\$2,200	
Section 47 (1)	\$2,200	
Section 48 (2)	\$1,100	\$2,200
Section 49 (1)	\$2,200	
Section 49 (2)	\$2,200	
Section 50 (1)	\$1,100	
Section 50 (2)	\$1,100	
Section 51 (1)	\$2,200	
Section 52 (1)	\$2,200	
Section 56 (1)	\$550	
Section 58 (1)	\$1,100	\$2,200
Section 58 (2)	\$1,100	\$2,200
Section 63 (2)	\$1,100	
Section 66 (1)	\$2,200	
Section 67 (1)	\$1,100	
Section 68 (1)	\$1,100	

Section 68 (4)	\$1,100	
Section 69 (1)	\$1,100	
Section 69 (3)	\$1,100	
Section 70 (1)	\$1,100	
Section 71 (2)	\$550	
Section 72A (6)	\$2,200	
Section 73 (1)	\$2,200	
Section 73 (2)	\$2,200	
Section 73 (3)	\$2,200	
Section 73A (1)	\$2,200	
Section 73B (1)	\$2,200	
Section 74 (2)	\$2,200	
Section 78 (1)	\$1,100	\$2,200
Section 78 (2)	\$1,100	\$2,200
Section 78 (3)	\$550	
Section 79 (1)	\$550	\$1,100
Section 79 (2)	\$550	\$1,100
Section 80	\$550	
Section 81 (2)	\$550	
Section 82 (2)	\$550	
Section 83 (1)	\$550	
Section 83 (2)	\$550	
Section 86 (1)	\$1,100	
Section 86 (2)		\$1,100
Section 86 (3)	\$1,100	
Section 86 (4)	\$1,100	
Section 86 (5)	\$1,100	
Section 89	\$1,100	
Section 90 (1)	\$1,100	
Section 91 (1)	\$1,100	
Section 91 (2)	\$1,100	

Section 91 (3)	\$1,100	
Section 92	\$1,100	
Section 93	\$1,100	
Section 94	\$1,100	
Section 102 (1)	\$1,100	
Section 102 (2)	\$1,100	
Section 104 (1)	\$550	
Section 104 (2)	\$550	
Section 104 (3)	\$550	
Section 110 (1) (a)	\$1,100	
Section 110 (1) (b)	\$1,100	
Section 110 (1) (c)	\$1,100	
Section 110 (1) (d)	\$1,100	
Section 110 (3)	\$110	
Section 111 (1) (a)	\$550	\$1,100
Section 111 (1) (b)	\$550	\$1,100
Section 111 (3)	\$550	\$1,100
Section 111 (4)	\$550	\$1,100
Section 119 (1)	\$5,500	
Section 119 (3)	\$1,100	
Section 120	\$1,100	
Section 137	\$1,100	
Section 143 (1)	\$1,100	
Section 145 (a)	\$1,100	
Section 145 (b)	\$1,100	
Section 145 (c)	\$1,100	
Section 145 (d)	\$1,100	
Section 145 (e)	\$1,100	
Section 145 (f)	\$1,100	
Section 163 (2)	\$550	
Section 164	\$1,100	

Section 184 (2) (a)	\$550	
Section 184 (2) (b)	\$550	
Section 185	\$550	
Section 202	\$1,100	\$2,200
Section 203	\$550	\$1,100
Section 207 (a)	\$1,100	
Section 207 (b)	\$1,100	
Section 207 (c)	\$1,100	
Section 219 (1)	\$550	

**Offences under this Regulation**

Each provision of this Regulation that creates an offence	\$550	\$1,100
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**Schedule 16 Fees and Compensation Fund contributions**

(Clause 53)

Item	Column 1	Column 2	Column 3	Column 4	Column 5
	Nature of fee payable	Fixed component of fee	Processing component of fee	Compensation Fund contribution	Total
1	Application fee for grant of licence	\$227	\$205	\$70	\$502
2	Application fee for grant of certificate of registration	\$45	\$84	Nil	\$129
3	Application fee for renewal of licence	\$227	\$67	\$70	\$364
4	Application fee for renewal of certificate of registration	\$45	\$42	Nil	\$87
5	Application fee for restoration of licence	\$227	\$136	\$70	\$433
6	Application fee for restoration of certificate of registration	\$45	\$56	Nil	\$101

7	Application fee for accreditation as an auctioneer under section 21 of the Act	Nil	\$67	Nil	\$67
8	Application fee for a replacement licence	Nil	\$44	Nil	\$44
9	Application fee for a replacement certificate of registration	Nil	\$44	Nil	\$44