

Trust accounts

A guide for property agents, motor dealers,
debt collectors and their auditors



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Introduction

In Queensland, there are laws to protect how money received by property agents, motor dealers and debt collectors, on behalf of clients, is handled.

Agents must have a trust account if they receive trust money or intend to collect trust money on behalf of others. For the purposes of this guide, an agent is:

- a real estate agent
- a resident letting agent
- an auctioneer
- a chattel auctioneer
- a motor dealer (if you sell used vehicles on consignment)
- a field agent (if you collect debts on behalf of someone else)
- a collection agent (even though they aren't licensed).

This guide only applies to businesses, agents and auditors licensed and/or operating under the:

- *Property Occupations Act 2014*
- *Motor Dealers and Chattel Auctioneers Act 2014*
- *Debt Collectors (Field Agents and Collection Agents) Act 2014*
- *Agents Financial Administration Act 2014* (referred to in this guide as 'the Act')
- Agents Financial Administration Regulation 2014 (referred to in this guide as 'the Regulations').

Agents must set up and maintain their trust account(s) in accordance with the Act and Regulations.

These laws exist to ensure trust money held by agents is properly dealt with and can be accurately accounted for at all times. Agents have a fiduciary duty to their clients, and the controls imposed by the Act and Regulations increase public confidence in the protection of client money and the services of agents.

Introduction continued

The Office of Fair Trading (OFT) can inspect agents' trust account records at any time. Breaches of the Act are taken seriously by the OFT. Penalties for the misuse of trust money include fines of up to 1000 penalty units or five years imprisonment per offence.

You can find current penalty unit values in the Penalties and Sentences Regulation 2005 at www.legislation.qld.gov.au

About this guide

This guide provides a summary of agents' trust account obligations and important information for auditors.

It does not cover all the trust account provisions of the Act and Regulations or all exceptions or qualifications that may apply.

Any agents who are unsure how the law applies to their particular circumstances should obtain independent legal advice.

For copies of the Act and Regulations, visit www.legislation.qld.gov.au

The Office of Fair Trading can
inspect agents' trust account
records at any time.

Information for agents



What is trust money?

Trust money is money collected by an agent on behalf of a client, such as:

- the payment of rent for a holiday let apartment
- a deposit on a property for sale
- debt repayments collected on behalf of a client.

Non-trust money is money received by an agent that is unrelated to acting as an agent under the Act. This might include payments for goods or services such as trips and tours, restaurant meals, room service, equipment hire and transport.

Some agents may face practical issues with respect to dealing with trust and non-trust money in their business. The following should help to clarify those issues:

- Payments which consist entirely of trust money, or a combination of trust and non-trust money that cannot be divided, must be banked to the licensee's trust account.
- Funds received for a matter related to a transaction, for example, a guest charges a tour or a meal to their room account, may be paid to the trust account.
- Funds received from a person who is not a guest or resident, and therefore not part of, or related to, a transaction, must not be banked into the trust account.

If an agent deposits trust and non-trust money that cannot be divided into their trust account or they receive non-trust money by EFT, the non-trust money must be removed from the trust account within 14 days of it becoming available.

Payments from general business accounts to trust accounts

Generally, agents should not make any payments from general business accounts to trust accounts.

Opening a trust account

Only the principal agent of a business may operate a trust account. This might be:

- an individual agent who owns the business
- the relevant officer of a licensed corporation.

They must have their licence or collection agent's authority before they open the account. Where a licence or collection authority is for a corporation, the account must be opened in the corporation's name.

Collection agents must apply to the Office of Fair Trading for a collection agent authority. For a copy of the application form, visit **www.qld.gov.au/fairtrading**

Agents with multiple licences do not need to operate a general trust account for each licence. One general trust account is sufficient.

Approved financial institutions

Once an agent has a licence or authority, they may open a trust account with a Queensland branch of an approved financial institution. That is, a bank, building society, credit union or other deposit-taking institution the OFT has approved to hold agents' trust money.

The OFT has approved the following institutions:

- Australia & New Zealand Banking Group
- Bank of Queensland Limited
- Bank of Western Australia Ltd
- Bendigo Bank Limited
- Capricornia Credit Union
- Commonwealth Bank of Australia
- Heritage Building Society
- HSBC Bank Australia Limited
- Macquarie Bank Limited
- National Australia Bank Limited
- Queensland Country Credit Union
- St. George Bank Limited
- Suncorp-Metway Ltd
- Westpac Banking Corporation.

Opening a trust account continued

This list is accurate at the time of printing. For any updates to this list, visit **www.qld.gov.au/fairtrading**

Interest on agents' trust accounts is paid to the Queensland Government.

Account name

The name of an agent's trust account must include the words 'trust account' for a general trust account or 'special trust account' for a special trust account (for information on special trust accounts, see 'Special trust accounts for the property industry' on page 12). We recommend agents also include the name under which they are licensed to carry on a business.

Agents must provide a copy of their licence to the financial institution before they can open an account.

Agents may change the name of a trust account at any time, although the new name must adhere to the above naming rules.

Agents must notify the OFT of a name change within two months of the change. For a copy of the relevant notification form, visit **www.qld.gov.au/fairtrading**

Notifying OFT of your new account

Within two months of opening a trust account, agents must notify the OFT:

- of the name of the financial institution where the account is kept
- of the account name and number, and the bank-state-branch identification number (BSB)
- if the account is a general trust account or special trust account.

For a copy of the relevant notification form, visit **www.qld.gov.au/fairtrading**

Appointing an auditor

An agent must appoint an auditor within one month of opening a trust account.

Under the Act, an auditor is a person who is any of the following:

- registered as an auditor under the *Corporations Act 2001*
- a member of CPA Australia (using the letters CPA or FCPA)
- a member of the Chartered Accountants Australia and New Zealand (using the letters CA or FCA)
- a member of the Institute of Public Accountants (using the letters MIPA or FIPA).

Within one month of appointing an auditor, an agent must give the OFT both:

- written notice of the auditor's name and address
- evidence the auditor has accepted the appointment.

Ending an auditor's appointment

If an agent's auditor resigns or an agent ends an appointment, both the agent and the auditor must immediately notify the OFT of both:

- the resignation or the ending of the appointment
- the reason for it.

An agent must appoint another auditor within one month of the cessation of the previous appointment, and give the OFT both:

- written notice of the auditor's name and address
- evidence the auditor has accepted the appointment.

Legislation reference:

Sections 9–13, 19 and 29–31 of the *Agents Financial Administration Act 2014*

Closing a trust account

Agents must notify the OFT within two months if they close a trust account.

For a copy of the relevant notification form, visit www.qld.gov.au/fairtrading

Legislation reference:

Section 13 of the *Agents Financial Administration Act 2014*

Special trust accounts for the property industry

In certain circumstances, and with the agreement of all parties, agents may invest trust money in a special trust account.

Agents may only use a special trust account if they:

- are transacting the sale of real property
- will be holding money in trust for more than 60 days; and
- have a written request from all parties that they invest the money.

In all other circumstances, agents must use a general trust account.

The steps to open, maintain, audit and close a special trust account are the same as for a general trust account, except that the words 'special trust account' must be used in the account name.

Legislation reference:

Section 17 of the *Agents Financial Administration Act 2014*

Transferring a trust account

If an agent enters into a partnership with another agent or a partnership changes, or if they dispose of part or all of their business to another agent, the trust account must be reconciled by an auditor before any associated trust money can be transferred to the new entity. Trust money may only be transferred if:

- an auditor certifies the money has been properly accounted for and reconciled, or
- a trust creditor authorises the transfer of their money in writing—or in the event of a rental bond, the landlord and tenant authorise the transfer in writing.

If the transferee is the Public Trustee:

- the trustee must have agreed to receive the transfer, and
- the original agent or partnership must have taken reasonable steps to contact the person entitled to the money, and
- the agent must have satisfied the requirements of section 67 of the *Trusts Act 1973*.

When an agent sells their business, they must involve the auditor who will conduct the final audit in the settlement process. It is essential the agent books their final trust account audit prior to the transfer of the account(s). Amounts in dispute may affect the settlement of a business that includes a trust account being transferred.

Legislation reference:

Regulation 23 of the Agents Financial Administration Regulation 2014

Record keeping

Agents must keep full and accurate accounting records that show the true position of all trust money received and enable their trust accounts to be properly audited.

They must be able to provide these records to their auditor and the OFT on request.

Agents' trust account records must include the following:

- a register of trust account receipts
- consecutively numbered trust account receipt forms in duplicate
- trust account deposit forms in duplicate
- a trust account cashbook
- a trust account ledger
- a trust account journal with journal pages or entries consecutively numbered
- full and accurate accounts of amounts paid or received for a sale or transaction.

Agents' accounting records must show:

- who is entitled to the trust money
- details of each trust money transaction
- dates on which each transaction took place.

Whenever a trust money transaction occurs, the agent must update their accounting records within two business days of receipt or payment of the trust money, or if it is money that is received by electronic funds transfer (EFT), on the date they become aware of the receipt of trust money.

Agents must keep all trust account records in a secure, orderly and accessible way for five years.

Computerised accounting systems

If an agent uses a computerised accounting system (the system) to manage their trust account records, they must ensure it:

- does not allow the deletion of a trust ledger account unless the balance is zero and a record of the account is kept immediately before it is deleted
- records any amendments to a transaction recorded on the system as a separate transaction (i.e. the original transaction and the amendment will both be recorded on the system)
- produces records in chronological order.

The system must also be capable of keeping, in chronological sequence, a record of changes to any of the:

- name and address of a person for whom trust money is held
- description of a matter being conducted by the principal agent
- amount of trust money held for a person by the principal agent
- financial institution account number of a trust account.

If an agent uses the system to keep a trust ledger account or to prepare a trust account cash book reconciliation, they must make a hard copy of the balance of the trust ledger account and the completed reconciliation within five days after the end of the month. Before deleting any trust ledger account, a hard copy must also be made and kept in the agent's records.

When using a computerised accounting system, agents must ensure the:

- computer system has enough backup capability to record the information required to be kept by the Act
- system is backed up at least once a month
- backed up information is not stored at the agent's business address and is protected from anything that could affect the backed up information (such as magnetic interference).

Using a computerised accounting system can make it easier to comply with many of the requirements of the Act and Regulations. Whichever system an agent uses, it is their responsibility to ensure they comply with the Act and Regulations.

Legislation reference:

Regulations 3, 4, 26 and 27 of the Agents Financial Administration Regulation 2014

Receiving trust money

Agents must deposit any trust money they receive to their trust account or special trust account by the end of the next business day.

Only trust money can be deposited into a trust account, except where an amount is received consisting of trust money and non-trust money that cannot be divided. In this instance, the agent must pay the whole amount into the trust account, then draw the non-trust money from the account within 14 days of it becoming available.

Trust money cannot be used to pay an agent's debts, nor can it be claimed by any of the agent's creditors either before or after it is deposited to the trust account.

All trust money received must be deposited to the trust account by the end of the next business day.

Legislation reference:

Sections 16, 18 and 20 of the *Agents Financial Administration Act 2014*

Receipts

When an agent receives trust money, they must complete a receipt immediately, or in the case of a direct deposit or EFT, on the day they become aware they have received it. This includes for any amounts received that consist of trust and non-trust money that cannot be divided.

Every receipt must have a unique receipt number and be issued in numerical sequence. They must have as their heading the words 'Agents Financial Administration Act 2014 Trust account receipt'.

Any duplicate receipts must also have 'Office copy' or 'Duplicate copy' in the heading.

Completing receipts

Agents may complete trust account receipts manually or electronically. When completing a receipt, they must include:

- the name of the principal agent and their licence or authority number
- the dates the money was received and the receipt was completed (these may be the same or different)
- the name of the person completing the receipt and, if there is a hard copy, their signature
- the payer's name
- the payee's name or unique identification code
- why they received the money
- the amount received, in numerals
- how they received the money (such as cash, cheque, direct deposit or electronic transfer)
- (if the money received is for rent) the address of the rented premises and the day up to which the rent is paid.

When completing a receipt for trust money received for payment from a prospective buyer for an option to purchase a used motor vehicle for sale on consignment, agents must also include the vehicle's:

- make
- body model
- colour
- engine number or, if the vehicle is a caravan, the chassis number
- identification number
- registration number
- built date.

Receiving trust money continued

The below trust account and duplicate receipts are examples of receipts that satisfy the regulations.

Example trust account receipts

<u>ORIGINAL</u>	Receipt No: 1122
Agents Financial Administration Act 2014 Trust account receipt Fair Trading Realty Pty Ltd Licence no. 1234567	
Date Received: 01/01/2015 Date Completed: 02/01/2015	
Tenant:	Mr & Mrs D Scott
Owner:	Mr J Phillips
Property:	111 Johnson Street, AMDALE QLD 4444
Details:	Rent paid 01/01/2015 to 14/01/2015
The sum of:	\$1140.00
Payment method:	CASH
Completed by: Frank Smith	Signature: 
Comments	

<u>DUPLICATE COPY</u>	Receipt No: 1122
Agents Financial Administration Act 2014 Trust account receipt Fair Trading Realty Pty Ltd Licence no. 1234567	
Date Received: 01/01/2015 Date Completed: 02/01/2015	
Tenant:	Mr & Mrs D Scott
Owner:	Mr J Phillips
Property:	111 Johnson Street, AMDALE QLD 4444
Details:	Rent paid 01/01/2015 to 14/01/2015
The sum of:	\$1140.00
Payment method:	CASH
Completed by: Frank Smith	Signature: 
Comments	

All receipts should be posted to the trust account cash book within two business days of the transaction. For more information, see ‘Cash books’ on page 25.

Agents must keep a duplicate copy of each receipt (marked ‘duplicate copy’ or ‘office copy’) for at least five years. Where an agent does not produce a receipt in hard copy, they must keep it in their soft copy records for at least five years.

Cancelling a receipt

If an agent needs to cancel a trust account receipt, they must mark it with the reason for the cancellation and keep it in their records.

Receipt register

Agents must keep a register of trust account receipts that contains a record of the receipt number of each receipt form held by the principal agent.

The register must be updated within two business days of a receipt being created or completed.

Legislation reference:

Regulations 6–10 of the Agents Financial Administration Regulation 2014

Deposit forms

For all cheque or cash (not EFT) trust account deposits, agents must complete a trust account deposit form.

Deposit forms must contain the:

- name and number of the trust account
- amount and date of the deposit
- signature of the depositor.

If the deposit includes a cheque, the deposit form must contain the name of the drawer and the name and branch (or BSB number) of the financial institution against which the cheque is drawn.

Agents must make and retain a duplicate copy of each completed trust account deposit form.

They must also update their trust account cash book with all deposits to the account within two business days.

Recording deposits made by EFT

Where money is deposited to a trust account by EFT, agents must obtain and keep in their records a transaction report from their financial institution showing deposits made. This must be done at least once per week.

Legislation reference:

Regulations 11–12 of the Agents Financial Administration Regulation 2014

Paying out trust money

Trust money must remain in an agent's trust account until the relevant transaction is finalised.

Once a transaction is finalised, the agent may draw money from their trust account to pay the person entitled to the money—less any outstanding transaction fees or expenses—or to another person nominated in writing by the person entitled to it.

Where the entitled person asks in writing for this money, it must be paid within 14 days of the request.

Where the entitled person does not ask in writing for the money to be paid, it must be paid within 42 days after the transaction is finalised.

Only after the money has been paid to the person entitled to it, may the agent draw their transaction fee and any remaining transaction expenses from the account.

Emergency transaction expenses

There is only one instance in which an agent may draw money from their trust account before a transaction is finalised, and that is to pay an emergency expense—such as to repair a burst water pipe in a rental property—and only when:

- it is drawn against an amount held for the transaction
- it is drawn when the expense becomes payable
- the agent is authorised by the client to incur the expense.

No other trust money can be paid out until after a transaction is finalised.

Disputes about trust money

If an agent becomes aware of a dispute or believes that a dispute may arise regarding the ownership of trust money, they cannot pay out the amount in dispute until:

- the agent has given the interested parties notice as to who the agent believes is entitled to the money and nominated a payment date that is at least 60 days after the notice, and they are not aware of any agreement by the parties or court proceedings started to establish ownership
- the dispute is resolved and the agent receives written agreement from all interested parties regarding who is entitled to the money; or
- the agent receives written advice that a legal proceeding has been started in a court to decide who is entitled to it—in this case it must be paid to the court in which the proceeding was started.

If the agent receives a written agreement from the interested parties or a notice from the court, they must pay the amount immediately.

A transaction cannot be finalised until any disputes are resolved, and the agent must therefore not draw their fees or remaining expenses until the matter is resolved and the disputed money is paid out.

How to pay out trust money

Trust money may only be paid out by cheque or EFT.

The principal agent or officer in effective control must sign the cheques and authorise the EFTs. If they are not available, an employee who is a signatory to the agency's trust account may sign and authorise payments.

Recording payment details

When paying out trust money by cheque, agents must record and keep the following details on the cheque butt or another document (such as a cheque requisition form):

- the date the cheque is drawn
- the payee's name
- the person on whose behalf the cheque is drawn
- the reason the cheque is drawn
- the amount of the payment.

When paying out trust money by EFT, agents must obtain and keep a transaction report from their financial institution, with the following details:

- the date of the payment
- the amount of the payment
- the name and number of the account to which the money was paid.

Agents must also update their trust account cash book with all withdrawals from the account within two business days.

Legislation reference:

Sections 21–22 and 25–28 of the *Agents Financial Administration Act 2014*
Regulations 13–14 of the *Agents Financial Administration Regulation 2014*

Accounting to clients

Agents must provide a written account to their clients for all money received for a transaction.

If the client asks in writing for the account, the agent must provide it within 14 days of the request. If the client does not ask for the account, the agent must provide it within 42 days after the transaction is finalised. *Note: these timeframes correspond with when money must be paid out for a transaction.*

The account must include:

- the amounts received for the transaction
- how the money was or is to be paid out
- the source and amount of any rebate, discount, commission or benefit the agent received for any expenses incurred by the client or for referring the client to a service provider.

Legislation reference:

Section 23 of the *Agents Financial Administration Act 2014*

Agents must provide a written account to their clients for all money received for a transaction.

Cash books

Agents must keep a cash book to record all trust account transactions. Generally, they must update their cash book to reflect these transactions within two business days of the transaction.

Within five business days of the end of each month, they must reconcile their end of month cash book balance with their trust account ledger balances and the statement issued by their financial institution.

Trust money received

Agents must record all trust money received in their cash book within two business days of receiving the money. The only exception to this rule is when they receive money by EFT, in which case the agent must update their cash book on the day they become aware of it.

Their records must include the:

- date the trust money was received and, if different, the date the receipt was completed
- name of the person from whom the money was received
- name of, or other means of identifying, the person on whose behalf the money was received
- reason the money was received
- amount of money received
- receipt number
- date the money was deposited into the trust account.

All entries must be recorded in the order in which the receipts are made out.

Trust money paid

Agents must record all payments from their trust account in their cash book within two business days of making the payment.

For payments made by cheque, the record must include the:

- date and amount of the cheque
- cheque number
- name of the person to whom the payment was made
- name of, or other means of identifying, the person on whose behalf the payment was made
- reason why the money was paid
- ledger account to be debited.

For payments made by EFT, the record must include the:

- date and amount of the transfer
- EFT number (reference number)
- name and number of the account—including the BSB number—to which the amount was transferred
- name of, or other means of identifying the person on whose behalf the transfer was made
- reason why the money was paid
- ledger account to be debited.

Payments must be recorded in the order in which they were made.

Cash book reconciliation

At the end of each month, agents must reconcile their trust account cash book with their trust ledger and a statement from their financial institution. They must complete this within five days after the end of the month.

For more information on how to reconcile trust account records, see 'Trust account cash book reconciliation' on page 29.

Legislation reference:

Regulations 15–16 of the Agents Financial Administration Regulation 2014

Trust ledger accounts

Agents must keep a trust account ledger with a separate identifiable ledger account for each person on whose behalf they receive trust money.

Each ledger account must include the:

- name of the person for whom the trust money is received or paid
- reason the money was received or paid.

Agents must ensure the ledger contains the following details for each entry:

- the date the trust money is received or paid
- the name of the person from whom the money was received or to whom it was paid
- the reason why the money was received, paid or transferred
- the amount
- for trust money received, the receipt number
- for trust money paid, the cheque or EFT number
- for trust money transferred from one ledger account to another, the journal or folio reference number
- the new ledger account balance.

Agents must ensure that each entry in the trust account cash book is recorded in the relevant trust ledger account within two business days of the money being received or paid.

Transactions relating to trust money must appear in the trust ledger account in the order in which they occur.

Transferring trust money by journal entry

Agents may transfer trust money from one ledger account to another by journal entry. This must only be done where an agent is entitled to do so.

For example, they may transfer money from a property owner's ledger to a creditor's ledger for urgent repairs that have been completed with authority.

The agent must keep a trust account journal which includes the following:

- the date of the transfer
- the names of, or other means of identifying all ledger accounts to be debited or credited
- the reason for the transfer
- the amount transferred.

Legislation reference:

Regulations 19–22 of the Agents Financial Administration Regulation 2014

Agents may transfer trust
money from one ledger
account to another by
journal entry.

Trust account cash book reconciliation

Agents must complete and keep a trust account cash book reconciliation for each month. They must complete this within five business days after the end of the month.

They must reconcile:

- the trust account cash book balance as at the end of the month with the trust account ledger balances as at the end of the month
- the trust account cash book balance as at the end of the month with the financial institution's trust account statement balance as at the end of the month.

The cash book and ledger reconciliation must include each trust account creditor's name and the amount held on their behalf at the end of the month.

The cash book and bank statement reconciliation must include the:

- balance as at the end of the month shown on the trust account statement issued by the agent's financial institution
- amount of trust money on hand at the end of the month and the date the money was received
- amounts of any outstanding deposits at the end of the month, as well as the dates the deposits were received and the dates they were subsequently deposited
- details of any EFT deposits recorded on the financial institution statement that were not yet entered into trust account cash book at the end of the month
- details of any outstanding cheques, including the date and amount of the cheque and the cheque number
- trust account balance as at the end of the month as shown in the cash book.

The principal agent or officer in effective control should verify the reconciliation statement as true and accurate within five business days of the end of each month.

Agents must keep hard copies of the trust account ledger and completed cash book reconciliations for at least five years.

Legislation reference:

Regulations 17–18 of the Agents Financial Administration Regulation 2014

Deficiencies in a trust account

Should an agent find there is a deficiency in their trust account, they should contact their auditor and advise the OFT how it has been rectified.

Agents who are found to have a deficient balance in their trust account may be subject to enforcement action, including prosecution.

...they should contact their
auditor and advise the OFT
how it has been rectified.

Unclaimed or unidentified money

Unclaimed money

If an agent cannot locate the person entitled to trust money, those funds may be considered unclaimed money under the *Public Trustee Act 1978*.

For more information on what to do with unclaimed money, visit www.pt.qld.gov.au

Unidentified money

Agents should not accept money unless they know who is entitled to it. A well-run business will have procedures and staff training in place to ensure unidentified money is not accepted.

Sometimes, money may be deposited in an agent's account, or a cheque received, without it being clear what it's for or who is entitled to it. In such cases, the agent needs to make every effort to identify, return or refuse the unidentified money. This might involve the agent contacting their bank to request a reversal of the transaction, or returning the cheque to the issuing bank to be cancelled.

In rare, very limited circumstances, where unidentified money is received and the above steps are unsuccessful, the agent should ensure the money is securely kept. They must continue to make every effort to identify the person entitled to the money and, once known, act as required. If the agent is unable to identify the person entitled to the money, they may need to treat it as unclaimed money.

The Act does not provide a specific mechanism to handle money in situations like these. If an agent finds themselves in this position, they may consult their appointed auditor for information and advice.

Audits

If an agent has used a trust account in an audit period, they must submit an audit report.

Agents must appoint an auditor within one month of opening a trust account, and advise the OFT within one month of the appointment. An auditor must be appointed to audit the trust account from that point on.

For information on what to do when an agent doesn't use their trust account during an audit period, please see 'Unused trust accounts' on page 35.

The audit process

Individual auditors will advise agents of their audit process, however, there are certain things agents can expect.

For each audit period, auditors will:

- inspect and audit the agent's trust accounts
- make an audit report for the agent for the audit period
- make two unannounced examinations of the agent's trust account records **if** the agent is an agent for the whole of the audit period
- make one unannounced examination of the agent's trust account records **if** the agent is an agent for less than the whole audit period, but more than six months of the period.

In some cases an auditor may request access to an agent's general account records. Agents must provide any documents or information requested.

Auditors are required by law to immediately advise the OFT in writing if:

- an agent's accounts are not able to be properly audited
- they find an irregularity during an unannounced examination that ought to be brought to the OFT's attention
- an agent refuses access to their general account and related information, if requested
- they find a loss or deficiency of trust money; or
- an agent has failed to comply with the Act.

If this occurs the auditor may also provide a signed copy to the agent.

To ensure agents fulfil their legal requirements regarding audits they must:

- provide the auditor with all books, papers, accounts, documents, securities, statements, reports and reconciliations reasonably necessary for an audit, and any other information the auditor requests
- ensure their audit report is lodged with the OFT, whether it is lodged by themselves or their auditor
- keep a copy of the signed audit report for five years and be able to produce it on demand.

Audit periods

A licensed agent's first audit period will end on the last day of the eighth month after their licence was issued. For example, if their licence was issued on 17 January, their audit period will end on 30 September.

A collection agent's first audit period will always end on 30 June.

All subsequent audit periods will be 12 months long, with the exception of the agent's final audit period or if a variation has been approved by the OFT. See 'Final audits' on page 35.

Audit deadlines

In most cases audit reports must be completed and a signed original copy submitted to the OFT within four calendar months of the end of the audit period.

Please use the below table to see when an agent's audit report is due.

Audit period ends	Audit report due
30 September	31 January
31 October	28/29 February
30 November	31 March
31 December	30 April
31 January	31 May
28/29 February	30 June
31 March	31 July
30 April	31 August
31 May	30 September
30 June	31 October
31 July	30 November
31 August	31 December

Exceptions to this rule include if:

- the agent ceases to be a principal agent before the end of their audit period. See 'Final audits' on page 35.
- the OFT agrees to an extension of the audit deadline.

Final audits

If an agent stops trading, their audit period will end on the day they stop trading, and they must lodge their final audit report within two months from that date.

Unused trust accounts

If an agent doesn't use their trust account(s) at all during the audit period, and they make a statutory declaration to that effect, they will not need to submit an audit report.

Penalties

If an agent does not lodge an audit report or statutory declaration:

- they can be fined or convicted of an offence; and
- the OFT can suspend or seek to cancel their licence.

Lodging audit reports

Agents may lodge their audit reports online at www.qld.gov.au/fairtrading or via email at financial.OFT@justice.qld.gov.au

When lodging an audit report electronically, the agent must submit a scanned copy of the original, signed report they receive from their auditor.

It is important to note that agents are ultimately responsible for the lodgement of their audit reports, however, auditors can lodge audit reports on an agent's behalf.

See page 44 for a sample audit report.

Applying for an extension

Agents and auditors can apply for an extension for lodging an audit report. They must:

- apply in writing before the audit report is due to be lodged
- state the reason for the extension
- tell the OFT the extra time they need.

All requests should be sent to **financial.OFT@justice.qld.gov.au**

Applying for a variation of an audit period

Agents can apply to the OFT in writing for a variation of their annual audit period.

An audit period can only be changed by the OFT in writing or by gazette notice.

All requests should be sent to **financial.OFT@justice.qld.gov.au**

Legislation reference:

Section 29–40 of the *Agents Financial Administration Act 2014*

Information for auditors



The auditor's role

It is the auditor's role to examine and audit an agent's trust account records so that any irregularities or poor record keeping are detected and reported to the OFT.

Auditors must complete their roles in a professional and ethical manner. They have an obligation to abide by all standards, guidance notes and authoritative interpretations issued by the Auditing & Assurance Standards Board and the Australian Accounting Standards Board.

The OFT may report a matter about an auditor to the Australian Securities and Investments Commission (ASIC) or the auditor's professional body if they believe the auditor has failed to perform their duties in line with the Act or professional standards.

Appointment as an auditor

Agents must appoint an auditor within one month of opening a trust account, and must have an auditor appointed from that time on.

Under the Act, an auditor is a person who is any of the following:

- registered as an auditor under the *Corporations Act 2001*
- a member of CPA Australia (using the letters CPA or FCPA)
- a member of the Chartered Accountants Australia and New Zealand (using the letters CA or FCA)
- a member of the Institute of Public Accountants (using the letters MIPA or FIPA).

Appointments must be made in writing, and the agent must give the OFT:

- written notice of the auditor's name and address
- evidence the auditor has accepted the appointment.

When an auditor accepts an appointment, they should give the agent an engagement letter that details the services they will provide and stipulates that the appointment will be in effect until it is ended in writing by either party.

Ending an appointment

If an agent's auditor resigns or an agent ends an appointment, both the agent and the auditor must immediately notify the OFT of:

- the resignation or the ending of the appointment
- the reason for it.

This notification should be made in writing to
financial.OFT@justice.qld.gov.au

Audit periods

A licensed agent's first audit period will end on the last day of the eighth month after their licence was issued. For example, if their licence was issued on 17 January, their audit period will end on 30 September.

A collection agent's first audit period will always end on 30 June.

All subsequent audit periods will be 12 months long, with the exception of the agent's final audit period or if a variation has been approved by the OFT.

Audit deadlines

In most cases audit reports must be completed and a signed original copy submitted to the OFT within four calendar months of the end of the audit period.

Exceptions to this rule include if:

- the agent ceases to be a principal agent before the end of their normal audit period—in this case the audit report is due within two months of the day they stop trading
- the OFT agrees to an extension of the audit deadline.

Where an agent does not operate a trust account at all during the audit period and they submit a statutory declaration to that effect, the appointed auditor is not required to audit the account for that period.

Auditor functions and obligations

The audit process is generally determined by acceptable auditing practices, however, the Act prescribes certain functions that must be carried out. In each auditing period, an appointed auditor must:

- inspect and audit the agent's trust accounts
- make an audit report for the agent for the audit period
- make two unannounced examinations of the agent's trust account records **if** the agent is an agent for the whole of the audit period or
- make one unannounced examination of the agent's trust account records **if** the agent is an agent for less than the whole audit period, but more than six months of the period.

Auditors' unannounced examinations must not be made within two months after the last day of the audit period or another unannounced examination.

An auditor must immediately advise the OFT in writing if:

- an agent's accounts are not able to be properly audited
- they find an irregularity during an unannounced examination that should be brought to the OFT's attention
- an agent refuses access to their general account and related information, if requested
- they find a loss or deficiency of trust money.

Requests for information

Agents must produce all trust account records to their auditor on request.

If an auditor needs more information to determine whether an agent's trust accounts have been kept in accordance with the Act, they may ask the agent to produce the general account for inspection or information regarding the general account.

If the agent refuses, the auditor must immediately notify the OFT in writing.

Final audits

If an agent stops trading, the auditor must audit the agent's trust account(s) for the period from the beginning of the audit period to the day the agent stopped trading.

The audit report must be completed and submitted to the OFT within two months of the day the agent stopped trading.

If the agent is transferring a trust account balance when they stop trading, they must have a verification of the trust account completed prior to the transfer. For more information see 'Transferring a trust account' on page 13.

Audit reports

Auditors must provide agents with an original signed audit report for each audit period, in accordance with section 40 of the Act.

The types of information that must be included in the report include:

- identifying information for the auditor and agent
- whether the agent has kept the accounts satisfactorily
- when each unannounced visit took place, and the results of those inspections
- details about any overdrawn trust accounts and creditor's ledgers
- pre-drawn commissions and other unauthorised withdrawals.

You can find specific details regarding what's required in section 40 of the Act and in the sample audit report on page 44.

Lodgement

Agents are ultimately responsible for lodging their audit reports, however, an auditor may lodge a report on their client's behalf.

Auditors may lodge an agent's audit report online at **www.qld.gov.au/fairtrading** or via email at **financial.OFT@justice.qld.gov.au**

When lodging an audit report electronically, the auditor should submit a scanned copy of the original, signed report they will provide to the agent.

Applying for an extension

Agents and auditors can apply for an extension on an audit report's due date. They must:

- apply in writing before the audit report is due to be lodged
- state the reason for the extension
- tell the OFT the extra time they need.

All requests should be sent to **financial.OFT@justice.qld.gov.au**

Penalties for non-compliance

Auditors can be penalised if they don't comply with the Act. Penalties include:

- fines of up to 200 penalty units
- one year's imprisonment
- being reported to ASIC
- being reported to their professional accounting body for disciplinary action.

Legislation reference:

Sections 33–40 of the *Agents Financial Administration Act 2014*

Auditors must provide agents
with an original signed audit
report for each audit period...

Sample audit report

Auditor report for the Agent 'Fair Trading Real Estate Pty Ltd' under section 40 of the *Agents Financial Administration Act 2014*.

FOR THE PERIOD 1 JULY 2014 TO 30 JUNE 2015

In accordance with section 40 of the *Agents Financial Administration Act 2014* (the Act) I report:

- a. The auditor's name, prescribed entity of which the auditor is a member, auditor's membership number issued by the prescribed entity;
Bill Brown, Certified Practising Accountant, 7975555
- b. The audit period for which the report is made;
1 July 2014 to 30 June 2015 (The report is due to be lodged with the Chief Executive by 31 October 2015)
- c. The name and number of each trust account audited;
 1. **Fair Trading Real Estate Pty Ltd Trust Account**
ACC: 1234-56789
- d. The name of the financial institution, the office or branch of the institution where each trust account was kept and the identifying number of the office or branch;
 1. **ANZ, Garden City, BSB: 014-123**
- e. The agent's name;
Fair Trading Real Estate Pty Ltd
- f. If the agent is an individual who holds a licence – the agent's licence number;
N/A
- g. For a corporation –
 - i. If the corporation is a licensee – the corporation's licence number; and
1234567
 - ii. The licence number of each licensee in charge of the corporation's business; and
9876543
 - iii. The name of each agent in charge of the corporation's business during the audit period;
Frank Smith
- h. If the agent carried on business under a registered business name – the business name and the names of any persons with whom the agent carried on the business;
Fair Trading Realty
- i. Each place where the agent carried on business as an agent;
123 Compliance Way, Southport QLD 4215
- j. A statement about whether each trust account has been satisfactorily kept under this Act;
In my opinion, based on tests carried out by me, the Trust Account has not been properly kept in accordance with the provisions of the Act, refer point (u).

- k. A statement specifying the day and result of each unannounced examination for the audit period under section 36(1);
Two unannounced examinations were made during the audit period.
1. **3 October 2014 – Satisfactory results; and**
 2. **11 March 2015 – Un-satisfactory result (Previously notified by letter dated 11 March 2015, see attached).**
- l. A statement about whether the auditor has audited the agent's general account;
I did not audit the agent's general account.
- m. If a trust account has been overdrawn, the following details –
- i. The name of the overdrawn account;
Fair Trading Real Estate Pty Ltd Trust Account
 - ii. The date and amount of each overdraw;
29 March 2015 - \$3,303.88
 - iii. Any reason given by the agent for each overdraw;
The agent pre-drew a sales commission totalling \$8,805.22 prior to settlement of the property 1 Beach St, Surfers Paradise, however the sale contract was subsequently terminated. The agent returned the sales deposit to the purchaser causing the overdraw. The agent used the money to pay for a boat.
 - iv. If an overdraw was corrected, the date of the correction;
The above overdraw was corrected at the end of March as the Agent transferred by journal some commissions he was entitled to at the end of the month from rental to the vendors ledger.
- n. If a trust creditor's ledger account has been overdrawn, the following details –
- i. The name of the trust creditor;
Poppy Homeowner
 - ii. The date and amount of each overdraw;
29 March 2015 - \$8,805.22
 - iii. Any reason given by the agent for each overdraw;
See point (m)
 - iv. If any overdraw was corrected, the date of the correction;
See point (m)
- o. A statement about whether, for each month during the audit period –
- i. Each trust account cash book was reconciled with the bank balance and trust ledger;
and
The trust account cash book has been reconciled with the bank balance and trust ledger as at the end of the month, and as per Regulation 17(1)(a)(b) of the Agents Financial Administration Regulation 2014.
 - ii. An analysis was made showing the name of each person for whom an amount was held and the amount held for each person;
An analysis has been made showing the names of each person for whom an amount was held and the amount held for each person.
- p. The serial numbers of the trust receipts used during the audit period and any unused trust receipts produced to the auditor;
010095 – 037000. There were no unused receipts as they are computer generated only.

- q. If any amount has been held in trust for more than 3 months by the agent at the last day of the audit period, the particulars for each amount, including –
- i. Any reason given by the agent for holding the amount for more than 3 months; and **See Appendix A for list of amounts. It is normal business practice to hold forward booking amounts in the trust account.**
 - ii. Whether the amounts have been dispersed before the day the report is given; **All amounts were still held at the time of this report.**
- r. A statement that each trust account cash book has been reconciled with the bank balance of the trust account at the last day of the audit period;
Each trust account cash book has been reconciled with the bank balance of the trust account as at the last day of the audit period.
- s. A copy of the reconciliation of the trust account cash book and the bank balance of the trust account at the last day of the audit period containing the particulars prescribed under a regulation for this paragraph;
Appendix B sets out the particulars of all monies held in the trust by the agent on the last day of the audit period and includes the reconciliation of the trust account and cash book with the bank balance as at the last day of the period in accordance with Regulation 17(1)(a)(b) of the Agents Financial Administration Regulation 2014.
- t. If the agent used software in connection with keeping the trust account – the name and version number of the software;
The Agent uses the program 'Trust accounting 101' 'Version 3.3.3' in connection with the keeping of the trust account.
- u. A statement about anything else about a trust account audited that the auditor considers should be reported to the chief executive;
The other matters that should be reported to the chief executive are the following;
- The agent has had recurring issues with overdrawing the trust account which have been noted in points (k), (n) & (m) above
 - 2 receipts (#029999 & #031011) did not include the name of the person on whose behalf the trust money was received in breach of Regulation 10(a)
 - 2 amounts of \$400 were paid to the trust account on 7 April 2015 in breach of section 18 of the Act. The amounts were not trust money as they were direct deposits paid to the trust account as a deposit on the purchase of the agents Tinny
 - The agent charged the client 'John Citizen' for advertising when no authority was given in the Form 6 Appointment to Act in breach of 22(1) of the Act and 89(2) of the *Property Occupations Act 2014*.

Bill Brown, CPA
5 July 2015

Appendix A

Wednesday 1 Jul 2015 2:16 PM		Tenant Trial Balance		Page 1 of 1
JULY				
Ref	Account	Bond In Trust	Deposits In Trust	
	Andy Smith	\$0.00	\$250.00	
	Frederick Jones	\$0.00	\$450.00	
	Elliot Lewis	\$0.00	\$320.00	
	Samantha Jones	\$0.00	\$250.00	
	Tracey Mann	\$0.00	\$324.34	
		<u>\$0.00</u>	<u>\$1,594.34</u>	
Fair Trading Real Estate Pty Ltd ACN 123 123 123 Fair Trading Real Estate Pty Ltd T/A Fair Trading Realty Trust Account				

Appendix B

Wed 1 July 2015 2:14 PM	Trust Account Reconciliation	Page 1 of 1
Fair Trading Real Estate Pty Ltd Trust Account		
Trust Bank Account		
Bank Statement Balance as at 30/06/2015	\$11,344.34	
ADD Unpresented Deposits	\$0.00	
LESS Unpresented Cheques	\$11,000.00	
ADD Adjustments	-\$1,250.00	
Reconciled Bank Statement Balance		<u><u>\$1,594.34</u></u>
Cashbook Balance		
Opening Balance	\$1,777.43	
ADD Receipts	\$98,030.00	
LESS Reverse Receipts	\$0.00	
ADD Credits	\$14,038.87	
LESS Payments	\$98,212.59	
ADD Reverse Payments	\$0.00	
LESS Debits	\$14,038.87	
Closing Cashbook Balance as at 30/06/2015		<u><u>\$1,594.34</u></u>
Ledger Balance		
Owners	\$0.00	
Tenants	\$1,594.34	
Bonds	\$0.00	
Creditors	\$0.00	
Banks	\$0.00	
Sales	\$0.00	
Closing Ledger Balance		<u><u>\$1,594.34</u></u>
The Ledgers are in Balance		<u><u>\$0.00</u></u>
The Bank is under		<u><u>\$0.00</u></u>
Fair Trading Real Estate Pty Ltd ACN 123 123 Fair Trading Real Estate Pty Ltd T/A Fair Trading Realty Trust Account		

Cheque List

Unpresented - Current Period

Reference	Date	Payee	Unpresented
27	28/05/2015	Fair Trading Realty	\$4,000.00
28	26/06/2015	Residential Tenancies Authority	\$2,480.00
29	27/06/2015	Joe Allen	\$370.00
30	27/06/2015	McPherson Electrical	\$900.00
31	30/06/2015	Fair Trading Realty	\$3,250.00
Total			<u>\$11,000.00</u>

Fair Trading Real Estate Pty Ltd ACN 123 123 Fair Trading Real Estate Pty Ltd T/A Fair Trading Realty Trust Account

Adjustments

Unpresented - All Periods

Date	Details	Unpresented
30/06/2015	EFT Bank Direct Debit	-\$1,250.00
Total		<u>-\$1,250.00</u>

Fair Trading Real Estate Pty Ltd ACN 123 123 Fair Trading Real Estate Pty Ltd T/A Fair Trading Realty Trust Account

Sample interim audit report

11 March 2015

Financial Investigations Unit
Office of Fair Trading
GPO BOX 3111
Brisbane QLD 4001

Dear Sir/Madam,

Fair Trading Real Estate Pty Ltd (#1234567) – interim audit report

On 11 March 2015, we conducted the second unannounced examination of Fair Trading Real Estate Pty Ltd (“the Licensee”) for the year ending 30 June 2015. In accordance with section 37 of the Agents Financial Administration Act 2014, we are required to immediately give written notice to the chief executive if we find an irregularity.

We identified the following breaches we wish to bring to your attention –

The Licensee has breached Regulation 52 of the Agents Financial Administration Regulation 2014. The licensee maintains the trust account in Microsoft Excel. The licensee has advised us that they are currently in the process of reviewing trust account software which the licensee plans to implement before the year ending 30 June 2015. We will advise you in our audit report for the period ending 30 June 2015 whether or not this breach is ongoing.

Should you have any further queries regarding the above information please do not hesitate to contact this office.

Regards,

Bill Brown
CPA 7975555

Office of Fair Trading

www.qld.gov.au/fairtrading

Phone: **13 QGOV** (13 74 68)

Email: **BrisbaneOFT@justice.qld.gov.au**

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