



Auditors Guide

To completing the 2014 Auditors report required under the Property, Stock and Business Agents Act 2002 – Sections 111

New trust account audit responsibilities for real estate licensees

Amendments to the *Property, Stock and Business Agents Act 2002*, which will commence from 1 July 2013, change the way licensees will fulfil their responsibilities in relation to the auditing of trust accounts.

Obtaining the Audit Report

In 2014, the Audit Report form must be obtained from the Fair Trading website, www.fairtrading.nsw.gov.au.

All persons who have held a licence [natural persons and corporations] at some time during the applicable audit period (1 July 2013 – 30 June 2014) have been advised in writing, that the required report and audit guidelines are to be downloaded from the [Trust account audit requirements](#) page of the Fair Trading website.

Note: licensees operating under an alternative audit year are advised of their audit requirements immediately prior to their audit period.

New laws are coming from 1 July 2013

The amendments to the Property, Stock and Business Agents Act 2002 will commence from 1 July 2013. The amendments provide a new framework for how licensees handle their trust account auditing responsibilities under the Act, commencing from the 2012/2013 audit year including:

- While all licensees who held or received trust money during their audit year **will still need to have their trust accounts audited, only those audits which are qualified by the auditor are required to be lodged by the auditor and licensee with Fair Trading;**
- The term **“qualified”** is now defined in the amendments to the Act;
- The list of persons who are qualified to audit trust accounts under the Act is extended to include authorised audit companies, members of a Professional Accounting Body as defined under the *ASIC Regulation 2001* (i.e. CPA Australia, Institute of Chartered Accountants in Australia and National Institute of Accountants) holding a Public Practising Certificate with one or more of those bodies;
- Placing a requirement on the auditor to forward a copy of the trust account audit (if qualified) to Fair Trading within 14 days after providing the report to the licensee. A maximum penalty of 50 penalty units (\$5,500) is provided for a breach of this requirement;
- Licensees who did not hold or receive trust money during the audit year will no longer lodge a statutory declaration to that effect. Instead, licensees will be required to note whether or not they did so when they next re-apply for their licence;
- Licensees are now required to hold a copy of their trust account audit (whether qualified or not) at their registered place of business, for at least three years, and make it available to Fair Trading inspectors for examination if required;

Identify who the Audit Report is about

Under Licensee Entity Name(s) and Licensee Entity No(s), list the name/s of the sole trader, or corporation or partnership members that held trust money and carried on business, or held trust money and was inactive, during the period.

Licence particulars can be checked on the *Property services licence check* page of the Fair Trading website.

What is a qualified audit report?

The amendments define “**qualified**” as a discovery by the auditor of a breach of the Act or Regulations, any discrepancy relating to the trust account or a failure to keep records in a manner that enables them to be properly audited.

What do licensees need to do?

Licensees who held or received trust money during their audit year of 2013/2014 need to download a copy of the trust account audit forms and cover sheet, as well as the explanatory documentation and provide it to their auditor. Remember that the qualifications of persons who can now conduct audits has been expanded, making it easier to find an auditor.

Licensees who did not hold or receive trust money during the audit year (the majority of licensees in NSW), need now not do anything until they renew their licence. Full information will be provided at that time.

Other important amendments to the Property, Stock and Business Agents Act 2002

Opening of trust accounts

These amendments will require licensees to formally notify NSW Fair Trading each time they open a trust account with an Authorised Deposit Taking Institution. The licensee will provide Fair Trading with a copy of the form they currently provide to the Institution advising that the account they are opening is a trust account.

Closing of trust accounts

Similarly, this amendment will require licensees to formally notify Fair Trading each time they close a trust account with an Authorised Deposit Taking Institution. Notification will be in a form approved by the Director-General.

Section 86 (6) Exemptions

The amendments exempt separate trust accounts kept on the instructions of a client of a licensee or firm of licensees for the exclusive benefit of the client, or a separate trust account opened by a licensee for the exclusive benefit of both the vendor and the purchaser of land from the notification requirements.

Section 112A Random audits of trust accounts

This amendment provides for the random auditing of trust accounts by authorising the Director-General to appoint a qualified person to audit the trust account at any time. The amendments create a penalty amount of 50 penalty units (\$5,500).

The Handling of unclaimed trust money

Presently, unclaimed trust money has been handled under provisions in the Property, Stock and Business Agents Act 2002. This will change from 1 July 2013.

NSW Fair Trading will no longer handle unclaimed trust money. Responsibility for handling unclaimed trust money will be transferred to the NSW Office of State Revenue.

The *Unclaimed Money Act 1995* is amended so it can apply to unclaimed money held in a trust account under the Property, Stock and Business Agents Act 2002.

- It provides that money that has been held by a licensee for more than 2 years in a trust account kept by the licensee is unclaimed money for the purposes of the Act.
- It also provides that a licensee must make reasonable efforts to locate the owner of any money held after more than 2 years, with a maximum penalty provision of 50 penalty units (\$5,500) for an offence.

- It provides that amounts of unclaimed money held by a licensee that are under \$100 are unclaimed money for the purposes of the Act and the licensee is required to remit these amounts to the Chief Commissioner of the Office of State Revenue.

Please note that as licensees have already fulfilled their responsibilities in relation to the handling of unclaimed trust money for 2012, the new provisions for handling unclaimed trust money will not commence until 1 July 2013.

Affected licensees will not be required to lodge their unclaimed trust money statement with the Director-General in January 2014. The new provisions will apply and information will be provided to the Industry prior to 1 July 2014 when licensees will observe the requirements of the Unclaimed Money Act 1995

Trust money held by former licensee or personal representative

A new Part 2A provides that money held in a trust account by a former licensee or the personal representative of a deceased licensee is unclaimed money but section 10 of the Unclaimed Money Act (Return and Payment of Money to the Chief Commissioner) does not apply to the money.

It further provides that a former licensee, or the personal representative of a deceased licensee, who holds unclaimed money must within the required time for compliance with this section lodge with the Chief Commissioner a return relating to the unclaimed money in a form approved by the Chief Commissioner, and also pay the amount of the unclaimed money to the Chief Commissioner. The amendments provide that the required time for compliance with this section is 3 months after the date on which the person ceased to be a licensee or became the personal representative of the deceased licensee (or such longer period as the Chief Commissioner may in a particular case allows).

The amendments further provide that a former licensee, or the personal representative of a deceased licensee, who fails to comply with this section is guilty of an offence and is liable to a penalty not exceeding 50 penalty units (\$5,500), and to a further penalty not exceeding 5 penalty units (\$550) for each day after the period within which it was required to comply.

Guide to completing the Auditor's Report

1. The Auditor's Report must list the Licensee Entity Name(s) and Licensee Entity No(s) on the front page of the report [not the business name], and the audit period that is applicable for that person. Most reports are for annual audit period ended 30 June.
2. The report provided by you pursuant to the provision of section 111 would be an engagement to examine the accounting records and internal controls and procedures of the Licensee Entity during the audit period, in relation to trust money and other matters designated by Part 7 Trust Money of the Act, and report those matters in terms of the generally accepted auditing standards and practice.
3. This Guide provides a list of trust accounting requirements to guide you through designing the scope of your audit and in respect of these requirements makes reference to the appropriate provisions that are applicable under the *Property, Stock and Business Agents Act 2002* and its associated Property, Stock and Business Agents Regulation 2003.
4. This Guide has been prepared to assist auditors in their examination of the books, records, accounts and documents maintained by licensees in respect of trust moneys and to assess the compliance of those records with the appropriate legislation.

Any trust accounts, which held trust moneys during the audit period, form part of the examination.

This would include the general trust accounts held at any time during the year, and all separate trust accounts ie. accounts held exclusively for the client, such as for a vendor & purchaser and the accounts maintained for strata plans or community title associations.

5. You should obtain direct written confirmation from the financial institution(s) as to the balance(s) of the trust account(s).
6. You must use appropriate sampling techniques and make appropriate inquiries during your examination to form an opinion as to whether the accounting records have been maintained in accordance with the Act and the Regulation.

Note: The auditor's declaration of the Auditor's Report requires the auditor to provide an opinion based on "appropriate examination" and "sampling techniques", rather than a one hundred per cent check of transactions.

7. You must provide a summary of your findings in respect of breaches of the Act and/or Regulation of the audit of the books and records of the trust account/s:
 - Any breaches are to be listed under Schedule 2 of the report
 - Your findings would, in terms of declaration 8 of the report, be listed under Schedule 3
 - You should list "not applicable" in Schedules 2 and/or 3 when no breaches or findings are reported.
8. Where there is audit qualifications of a financial nature, the auditor must attach a copy of the trust bank reconciliation statement and the trial balance (incorporating the list of ledger accounts of the principals that moneys are held for), for the applicable accounting periods, and of the end of audit year period, as prescribed under clause 31 of the Regulation, in respect of the trust account(s) affected.

If applicable & not provided list your explanation in Schedule 2 and/or 3 of the report.

9. You must discuss all breaches with the Licensee-in-charge for appropriate correction action to be taken.
10. Audits which are **qualified** by the auditor are required **to be lodged by the auditor and licensee with Fair Trading** and there is now a **requirement on the auditor** to forward a copy of the trust account audit (if qualified) to Fair Trading within 14 days after providing the report to the licensee. A maximum penalty of 50 penalty units (\$5,500) is provided for a breach of this requirement.
11. Index:
 - S on the following pages means Section of the Act.
 - C on the following pages means Clause of the Regulation.
 - The Act and the Regulation can be accessed at www.legislation.nsw.gov.au

**Property, Stock and Business Agents Act 2002 – Sections 111
Property, Stock and Business Agents Regulation (commenced 1 September 2003)**

Section/clause(s)	Item no.	Guide to completing the 2014 Audit Report
Records pursuant to Part 7: Trust Money		
a <u>TRUST RECORDS – general</u>		
C.35	a.1	Are trust records and book entries made in English?
C.22(2)	a.2	Are trust records kept at the registered office? <i>List all trust accounts held during the year on Schedule 1 of the report</i>
C.22(4)	a.3	Are there any branch offices?
	a.4	Does the branch office operate a separate trust account? <i>List all trust accounts held during the year on Schedule 1 of the report</i>
S86(2)	a.5	Are trust accounts, if the Licensee Entity is a corporation, in the name of the corporation and, in any other case, in the name of the licensee or of the firm of licensees of which the licensee is a member?
S86(3)	a.6	Do the words “Trust Account” appear in the name of the trust account and in the description of the trust account in the books and records and also on all cheques drawn on the trust account?
S103, S104 Reg. Parts 4 & 5	a.7	Have the appropriate Licensee Entity records been provided for purposes of undertaking the audit of the trust accounts?
b <u>COMPUTER SYSTEM CONTROLS</u>		
	b.1	Does the Licensee Entity maintain any trust records by means of a computer system?
	b.2	What are the name of the Computer System Software(s) and version(s) used?
C.24	b.3	Does the computer comply with system controls as prescribed in the Clause?
c <u>STATEMENTS OF ACCOUNT/DISBURSEMENTS/EXPENSES</u>		
	c.1	Do statements of account contain particulars of the money received, disbursed and the balance remaining with the Licensee Entity?
(S86(1) (S54, S55 (C.12 (C13,Sch 7 (Sch 12-14) S57	c.2	Are the commissions disbursed, costs incurred and sums reimbursed in accordance with instructions?
	c.3	Are the disclosure of rebates, discounts and commissions received from other parties, where occurring, contained in the agency agreements [this requirement does not apply to commercial land transactions]?

**Property, Stock and Business Agents Act 2002 – Sections 111 & 113
Property, Stock and Business Agents Regulation (commenced 1 September 2003)**

Section/Clause(s)	Item no.	Guide to completing the 2014 Audit Report
	d	<u>DEPOSITS</u>
C.21	d.1	Is Trust Money banked in accordance with the Clause?
C.27(1)(a)	d.2	Is a bank deposit book or other written bank record produced to the financial institution when the deposit is made?
C.27(1)	d.3	Is the bank deposit book or other written bank record produced to the financial institution in compliance with the Clause?
	e	<u>TRUST ACCOUNT RECEIPTS</u>
C.25(1)	e.1	Are trust receipts prepared when the Licensee Entity receives the trust money?
C.25(2)-(8)	e.2	Do trust receipt records comply with all provisions of the Clause?
	f	<u>TRUST CHEQUES & ELECTRONIC PAYMENT TRANSFERS</u>
C.26(1)	f.1	Are all funds drawn from the trust account by way of a trust cheque and/or electronic funds transfer?
C.26(3)	f.2	Are all cheques drawn in the numerical order of the series to which they belong?
	f.3	Are all cancelled cheques retained?
C.26(2)-(4)	f.4	Are trust cheque payments & particulars in accordance with the Clause?
C.26(5)	f.5	Are electronic funds payments & particulars in accordance with the Clause?
	g	<u>DAILY RECEIPT AND PAYMENT TRANSACTIONS (CASH BOOK) - MANUAL & COMPUTER SYSTEMS</u>
C.28(1)-(4)	g.1	Does the Licensee Entity maintain a record of trust account transactions that records daily trust receipts and payment transactions that would constitute a cash book in accordance with the Clause?
C.28(3)-(4)	g.2	Is the daily record of the particulars of money in and out of the trust account entered as soon as practicable after the receipt or payment of the money?
C.28(5)	g.3	Is the cash book balanced at the end of each month and carried forward in accordance with the Clause?
	h	<u>TRUST RECONCILIATIONS</u>
C.28(6), C.30(1), C31(2)(d)	h.1	Does the licensee, at the end of each month, prepare a statement reconciling the balance of the Licensee Entity's trust account with the balance of the related cash book?
	h.2	Do reconciliation statements accurately reflect the reconciliation of the balance(s) of the trust account(s) with the balance(s) of the cash book(s)?

**Property, Stock and Business Agents Act 2002 – Sections 111 & 113
Property, Stock and Business Agents Regulation (commenced 1 September 2003)**

Section/clause(s)	Item no.	Guide to completing the 2014 Audit Report
C.29(1)	i	<u>TRUST ACCOUNT JOURNAL</u>
29(2)-(3)	i.1	For each trust account, has the Licensee Entity effected any transfers between accounts in the trust account ledger that are not effected by cheque or electronic funds transfer?
	i.2	<i>If "Yes" to Item i.1.</i> Is a journal maintained for each trust account/s that is in accordance with the requirements of the Clause?
	j	<u>ADDITIONAL REQUIREMENTS FOR STRATA MANAGING AGENTS AND COMMUNITY MANAGING AGENTS</u>
C.23(1)	j.1	Does a: <ul style="list-style-type: none"> • strata managing agent (for a strata plan owners corporation) or • community managing agent (for a community association, precinct association or neighbourhood association) keep the following records: <i>Either:</i> A single trust account ledger that is in a form permitting each account for an owners corporation, community association, precinct association or neighbourhood association to be physically removed from the ledger? <i>Or</i> A separate trust account ledger for each owners corporation, community association, precinct association or neighbourhood association that is in a form that permits it to be physically removed from the ledger?
C.23(1)		
C.23(2)	j.2	Does each ledger kept for an owners corporation, community association, precinct association or neighbourhood association contain 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?
	k	<u>TRUST ACCOUNT LEDGER</u>
C.30(1)	k.1	Does the Licensee Entity maintain a separate ledger account for each principal?
C.30(2)-(3)	k.2	Are those ledger accounts in accordance with the requirements of the Clause?
	l	<u>UNCLAIMED TRUST MONEY (be aware of change in the handling of unclaimed money from 1 July 2013)</u>
S96	l.1	Have unclaimed trust moneys statements been furnished by Licensee Entities in respect of trust money held in trust for more than 2 years prior to January of the audit year [usually funds are paid across at the time of the statement]?
S97	l.2	Have statements & unclaimed trust moneys statements been furnished by former Licensee Entities or the personal representative of a deceased Licensee Entity, if occurring within the audit year, within 3 months and then 12 months later in respect of trust money held [usually funds are paid across at the time of the statement]? For more information about this refer to the Trust accounts page of the Fair Trading website at www.fairtrading.nsw.gov.au

Property, Stock and Business Agents Act 2002 – Sections 111 & 113
Property, Stock and Business Agents Regulation (commenced 1 September 2003)

Section/clause(s)	Item no.	Guide to completing the 2014 Audit Report
	m	<u>WRITTEN PROCEDURES & CHECKLIST</u>
S32(4)	m.1	In accordance with Section 32 (4) requirements 1 & 2, are, if applicable, the required written procedures, checklist or review system in place and, that in accordance with requirement 6 is documented and evidences regular use & maintenance of the required documentation in accordance with those requirements? For more information refer to the <i>Commissioners Guidelines on supervision</i> , available from the <i>Rules of conduct</i> page on the Fair Trading website at www.fairtrading.nsw.gov.au
	n	<u>TRUST ACCOUNT POSITION/ TRIAL BALANCES/OVERDRAFTS</u>
C.31	n.1	Have trust trial balances been prepared within 21 days after the end of each month and in accordance with the Clause?
S86(1) / S88	n.2	Do any trust accounts show debit balances or otherwise indicate a deficiency of trust funds to pay trust creditors at any time?
	n.3	Have all of those debit balances or the indicated deficiencies been rectified as soon as practicable after the time when the deficiencies should have become apparent?
	n.4	Are details of the accounts concerned, the duration of the debit balances and the method of restoration (if applicable) outlined for the particular account(s) in the auditor's report?
S89	n.5	Have all overdrafts on trust bank statements of the general trust account(s), identified under n.2 above, been notified to NSW Fair Trading within five (5) days of the licensee becoming aware of the overdraft?
	n.6	For trust account(s) that list debit balances or otherwise indicate a deficiency of trust funds to pay trust creditors in the audit year, have a copy of the appropriate trust bank reconciliation statement(s) and trial balance (s) (<i>incorporating the list of ledger accounts of principals that moneys are held for</i>) of the effected accounting periods and for the final end of the auditing period in respect of the effected trust accounts been enclosed with the auditor's report? <i>If not, list reasons in Schedule 2 and/or 3 of the report.</i>
S86(4)	n.7	Have you sighted a copy of Trust Account Notice(s) (Blue Form) in respect of the general account(s) and applicable separate account(s) <i>that were opened during the audit period</i> that have been endorsed by the authorised deposit-taking institutions, at the time of opening of the account(s), requiring interest payment to be credited to the department Statutory Interest Account? For more information refer to the <i>Trust accounts</i> page of the Fair Trading website at www.fairtrading.nsw.gov.au

**Property, Stock and Business Agents Act 2002 – Sections 111 & 113
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Section/clause(s)	Item no.	Guide to completing the 2014 Audit Report
Other Trust Money records- particular agents		
<u>STOCK AND STATION AGENTS RECORDS</u>		
C.37	o.1	Records of livestock bought. Does the agent maintain a written record of livestock purchases, in accordance with the Clause?
C.38	o.2	Records of sales of livestock. Does the agent maintain a written record of livestock sales, in accordance with the Clause?
<u>STRATA/COMMUNITY MANAGING AGENTS RECORDS</u>		
C.39	p.1	<p>Has:</p> <ul style="list-style-type: none"> • the strata managing agent (for a strata plan owners corporation) or • the community managing agent (for a community association, precinct association or neighbourhood association), <p>relating to the management of each fund, prepared, signed and forwarded a report that are forwarded within 1 month of the date of the report to the treasurer & are in accordance with the Clause:</p> <p><i>Either</i></p> <p>if the money is held in a separate trust account kept for the owners corporation or association—at least once in every 6 months?</p> <p><i>or</i></p> <p>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?</p> <p><i>or</i></p> <p>if the agent ceases to act as managing agent for the owners corporation or association - within 14 days after termination of the agency agreement?</p>