

Estate agent trust accounts

A reference guide



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Because this publication avoids the use of legal language, information about the law may have been expressed in general statements. This guide should not be relied upon as a substitute for the *Estate Agents Act 1980* or professional legal advice.

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Introduction

As an estate agent, you must have a trust account for holding money you receive from clients; for example:

- sales deposits
- rent
- advertising or maintenance fees paid in advance.

You may open one or multiple trust accounts, depending on your agency's needs.

You must set up and maintain these accounts in accordance with the:

- *Estate Agents Act 1980* (referred to in this guide as 'the Act')
- Estate Agents (General, Accounts and Audit) Regulations 2008 ('the Regulations').

Consumer Affairs Victoria can inspect your trust account records, and there are penalties of up to 120 penalty units for breaches of the law (up to \$16,900.80 for 2012–13; for more information on penalty unit amounts, see www.ocpc.vic.gov.au).

About this guide

This guide provides a summary of your trust account obligations. It does **not** cover all the:

- trust account provisions of the Act and Regulations
- exceptions or qualifications that may apply.

If you are unsure how the law applies to your particular circumstances, obtain independent legal advice.

For copies of the Act and Regulations, visit consumer.vic.gov.au/estateagents.



What is trust money?

The boxes below summarise the types of payments that are:

- considered trust money and therefore must be deposited in a trust account
- not considered trust money and can be deposited in a general business account.

Trust account

Payment for or deposits on:

- sales of land, buildings and accompanying chattels, including 'off the plan' sales
- sales of businesses
- shares in a company that entitles the shareholder to occupy land, buildings and accompanying chattels
- options to purchase land, buildings and accompanying chattels
- options to purchase shares in a company that entitles the shareholder to occupy land, buildings and accompanying chattels

Rental bonds or security deposits on:

- commercial, industrial or storage land, buildings and accompanying chattels, unless the lease agreement specifies another arrangement agreed to by the parties to the lease. Note: security deposits for retail premises (as defined in the Retail Leases Act 2003) do not have to be placed in a trust account
- residential land, buildings and accompanying chattels, prior to lodgement of the bond with the Residential Tenancies Bond Authority – see '[Residential tenancy bonds](#)' on page 6 for more information
- holiday accommodation for more than 90 days

Rent on:

- residential, commercial, industrial or storage leased land, buildings and accompanying chattels
- residential accommodation for a rental period of more than 90 days

Fees received in advance for advertising of:

- land, buildings and accompanying chattels for sale or lease
- businesses for sale

Costs of outgoings and utilities (for example, council rates, water, electricity, payments to tradespeople, insurance) relating to land, buildings and accompanying chattels for sale or lease.

General business account

Payments from trust accounts where the estate agency is entitled to receive them, such as:

- commission
- management fees
- disbursements and general expenses

Payments for estate agency services where these payments are not required to be deposited in a trust account; for example, commission or management fees.

Residential tenancy bonds

Exemptions

You do not need to deposit trust money in your trust account if:

- you act as an estate agent solely in relation to letting residential property for periods of 90 days or less (for example, holiday accommodation). See the Estate Agents (Exemption) Regulations 2005
- you are licensed in another state or territory, the transaction relates to a property or business in that state or territory, and you have complied with that state or territory's law on estate agent trust accounts.

If you are unsure what to do with an amount of money you receive, we recommend you treat it as trust money, or seek independent legal advice.

Payments from general business accounts to trust accounts

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

An exception is where you must do so in order to resolve a deficiency in the trust account. For more information, see ['Deficiencies in a trust account'](#) on page 13.

Under the *Residential Tenancies Act 1997*, you must lodge residential tenancy bonds (also called rental bonds or security deposits) with the Residential Tenancies Bond Authority (RTBA).

Generally, you are not required to deposit a rental bond in your trust account. The exception is where a bond is paid in cash – see ['Bonds paid by cash'](#) below.

Complete and sign a bond lodgement form, and give this to the tenant to sign. Send the form and the bond payment to the RTBA within 10 business days of receiving the bond.

For forms and more information, visit rentalbonds.vic.gov.au.

Bonds paid by cheque or money order

When a tenant pays their bond by cheque or money order, send this directly to the RTBA. You do not need to deposit it into a trust account.

The RTBA can accept bond cheques and money orders made payable either to you or the RTBA.

Bonds paid by cash

The RTBA cannot accept bonds paid by cash. If you receive a cash bond from a tenant, you must deposit the money into your trust account and send a trust account cheque to the RTBA for the bond amount.



Opening a trust account

Authorised financial institutions

You must hold a trust account in an authorised financial institution – that is, a bank, building society, credit union or other deposit-taking institution that we have approved to hold estate agents' trust money.

Authorised financial institutions currently include:

- ANZ
- Bank of Cyprus Australia
- Bank of Queensland
- Bendigo and Adelaide Bank
- Commonwealth Bank of Australia
- Hume Building Society
- Macquarie Bank
- MECU
- NAB
- St George Bank
- WAW Credit Union Co-operative
- Westpac.

For any updates to this list, see consumer.vic.gov.au/estateagents.

Interest on agents' trust accounts is paid to the Victorian Property Fund. Visit consumer.vic.gov.au/estateagents for more information about the Fund.

Account name

The name of your trust account must include the:

- name under which you are licensed to carry on business. In most cases, this will be the registered name of your agency
- words 'estate agency business statutory trust account' or 'estate agency business statutory trust a/c'. 'Estate agency business' is not required to be repeated if it forms part of the agency's name.

This applies to accounts established after 20 May 2008.

Notifying us of your new account

Within 14 days of opening a trust account, you must notify us of the:

- account name and number
- address of the financial institution branch at which it is held.

Use the 'Notice of opening a trust account' form, available from consumer.vic.gov.au/estateagents.

The form must be endorsed by the authorised financial institution where you opened your trust account. Both you and your financial institution must keep a copy of this form.

Banking fees

You must pay any banking fees for trust accounts from your general business account.

Records

You must keep full and accurate accounting records that:

- show the true position of all trust money received
- enable your trust accounts to be properly audited.

Your accounting records must show:

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

Whenever a trust money transaction occurs, you must update your accounting records by the end of the next business day.

You must keep trust records for at least seven years.

Receiving trust money



Receipts

When you receive trust money, you must provide a receipt.

If you use printed receipts, you must issue these in numerical sequence and have the words 'trust account' printed on them. You must keep a duplicate copy of each receipt (marked 'duplicate') for seven years. You must keep a register that records the:

- number printed on each receipt
- date a batch of receipts is received from the printer
- name of any employee or agent's representative to whom receipts are given
- date receipts are handed to an employee or agent's representative
- date receipts are returned.

You do not need to provide a receipt for a cheque or an electronic funds transfer (EFT) payment if you recorded the payment electronically, and the person making the payment did not request a receipt.

You do not need to retain duplicate copies of receipts for cash, cheque or EFT payments if you recorded the payment electronically.

Depositing trust money in a trust account

You must pay trust money into a trust account before the end of the:

- next business day after you receive the money, or
- third business day after you receive it, if your agency is more than 16 kilometres from an authorised financial institution.

If you are an agent's representative and receive trust money, you must immediately pay it to the licensed estate agent for whom you act as a representative; or to a trust account specified by that agent.

Deposit forms

When depositing trust money into a trust account by cheque or cash (not EFT), you must provide your financial institution with a completed trust account deposit form at the time of each deposit.

You can draft this form yourself. It must contain:

- the date of the deposit
- the name and number of your trust account
- the deposit amount
- whether the deposit consists of cheques or cash, and the total amounts
- if the deposit includes cheques, the name of the drawer, name and branch (or BSB number) of the financial institution against which the cheque is drawn and the amount of the cheque.

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

Paying out trust money

You can only pay money from a trust account to the person who is entitled to that money – usually the seller or the landlord – by cheque or electronic funds transfer (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 registered as a signatory to the agency's trust account with the authorised institution where the account is held may sign and authorise payments.

When money is paid from a trust account, the agency's commission and expenses for the transaction may be withdrawn from the payment.

Recording payment details

When you make a payment or withdrawal, you must record the following details on the cheque butt or EFT:

- date of the cheque or EFT payment
- serial or reference number of the cheque or EFT payment
- name of the person to whom the payment is made or, in the case of a payment to a financial institution, the name or BSB of the financial institution and the name of the person receiving the payment
- name, reference, account and BSB number (EFT only) or other identification of the person on whose behalf the payment was made
- details identifying the account in the trust ledger to which the payment is to be debited
- information stating why the payment was made
- amount of the cheque or EFT payment.

Payments made by cheque must:

- be machine numbered in sequence
- be marked 'not negotiable'
- not be payable to cash, or similar
- contain the name under which the estate agent conducts business and the words 'trust account'
- be signed by the estate agent or, if the agent is a corporation, the officer in effective control; or, if they are unavailable, by an employee who is a signatory to the trust account.

You must also update a cash payments journal with all daily withdrawals from the account (see '[Cash payments journal!](#)' on page 10 for more information).



Register of trust cheques

You must maintain a register of trust cheques that records the:

- serial number of each cheque
- date a batch of cheques is received from the financial institution
- name of any employee or agent's representative to whom cheques are given
- date cheques are handed to an employee or agent's representative
- date cheques are returned.

Journals

You must generally keep three journals to record trust account transactions: cash receipts, cash payments and transfers.

Cash receipts journal

You must keep a trust account cash receipts journal, recording all money received daily.

This must include the:

- number of the receipt
- date the receipt was made out and, if different, the date on which the trust money was received
- amount of money received
- form in which the money was received; for example, cash, cheque or EFT
- name of the person from whom the money was received
- name and reference number or other identification of the person on whose behalf the money was received
- details clearly stating why the money was received
- details identifying the ledger account to be credited.

Cash payments journal

You must update a cash payments journal with all daily withdrawals from the account.

For payments made by cheque, this must include the:

- date, serial number and amount of the cheque
- name of the person to whom the payment was made; or, for a cheque made payable to an authorised financial institution, the institution's name or BSB and the name of the person receiving the benefit of the payment
- name and reference number or other identification of the person on whose behalf the cheque was drawn
- details of the account in the trust ledger to which the cheque is to be debited
- details of the purpose for which the cheque was drawn.

For payments made by EFT, this must include the:

- date, reference number and amount of the transfer
- name of the person to whom the payment was made; or, for a payment to an authorised financial institution, the institution's name or BSB and the name of the person receiving the benefit of the payment
- name and number of the account, including the BSB number, to which the amount was transferred
- name and reference number or other identification of the person on whose behalf the transfer was made
- details of the account in the trust ledger to which the payment is to be debited
- details of the purpose for which the payment was made.

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

Transfers

You must not transfer money between accounts in the trust ledger unless you are entitled to transfer the money for that purpose.

For example, you may transfer money from a landlord's ledger to a commission ledger if the landlord has signed a property management authority that entitles you to claim commission.

You must record transfers in a journal kept exclusively for that purpose.

Entries in a transfer journal must include:

- the date of the transfer
- the amount transferred to and from each ledger account
- the names of all ledger accounts to be debited or credited, including identifying references
- details that clearly identify the purpose for which the money was transferred.

Trust ledger accounts

You must keep a ledger consisting of a separate identifiable account for each:

- person on whose behalf you hold trust money
- transaction for which you hold trust money.

The title of each ledger account must include the:

- name and address of the seller or landlord
- purpose for which the money was received.

You must record the following details in the trust ledger account when you receive trust money, cheque payments, electronic funds transfer (EFT) payments or transfer of funds via journal entry:

- date of issuing receipt, receiving money, making payment, or funds transfer
- receipt, cheque, EFT payment or journal number
- name of the person from whom the money was received or paid, or ledger account to which money was transferred
- purpose for which the money was received, paid or transferred
- amount received, paid or transferred.

You must record transactions relating to trust money in the trust ledger account in the order in which they occur.

You must also ensure that a trust ledger account has a continuous running balance, showing the amount held.

Computerised accounting systems

If you use a computerised accounting system, it must:

- keep a record of any information created, amended or deleted that relates to the:
 - seller's or landlord's name and address, reference number or other identification
 - description of each transaction
 - ledger account reference number or other identification for each trust ledger account
 - ledger account number

The record must show the details before and after this information was created, amended or deleted

- not accept entries of transactions that result in a debit balance in a trust account, unless there is a chronological record of the details of the change that can be produced on request
- not be able to delete a trust ledger account unless the balance is zero and all outstanding cheques have been presented. When the account is deleted, the system must retain a permanent copy
- not be able to amend the details of a transaction already recorded, except by recording a separate transaction that makes the amendment
- require input in every field of a transaction data entry screen that receives information required by the Act and the Regulations
- be backed up at least once a month. Each back-up copy must be retained by the agent in charge of the business or the officer in effective control, and a complete set of the back-up copies must be kept in a separate location.

Using an estate agent trust accounting software package can make it easier to comply with many of the above requirements.

General accounting software packages may also be of some assistance; whichever system you use, it is your responsibility to ensure you comply with the Act and Regulations.

Trust account reconciliation statement

You must complete and keep a trust account reconciliation statement at the end of each month.

This statement:

- ascertains the balance of the trust journals
- reconciles the balance of your trust cash journals and trust bank account
- reconciles the balances of the accounts of your trust ledger with the balance of your trust cash journal.

The principal agent or officer in effective control must verify the reconciliation statement as true and accurate within 14 days of the end of each month.

Register of securities

If you hold securities, documents of title or receipts for trust money on behalf of another person, you must keep a register of these.

The register must show:

- the date the security, document of title or receipt was received
- a description of the security, document of title or receipt
- the value or amount of the security or money deposited
- the name of the person for whom the security, document of title or receipt is held
- the date you delivered the security, document of title, or receipt to another person, and the name of the person to whom you gave it
- the reason the security, document of title or receipt is being held
- if the security, document of title or receipt is held jointly with another estate agent, the name under which they operate an estate agency business.



Deficiencies in a trust account

You must notify us and your auditor within three business days of becoming aware of a deficiency in a trust account or trust ledger account.

This notification must include:

- the date on which the deficiency occurred
- the amount
- the reason it occurred
- any action taken to restore it.

You do not need to notify us if the deficiency was:

- accidental, or caused solely by an error by an authorised financial institution, and
- rectified within two business days after you became aware of it.

Unclaimed money

If you cannot identify the person entitled to trust money, those funds may be considered unclaimed money under the *Unclaimed Money Act 2008*.

For information on what to do with unclaimed money, visit the State Revenue Office website: sro.vic.gov.au.

Closing a trust account

You must notify us in writing within 14 days of closing a trust account.

Use the 'Notice of closing a trust account' form, available from consumer.vic.gov.au/estateagents.



Audits

You must have your trust accounts audited each year:

- for the period 1 July to 30 June
- within three months after 30 June
- by an approved auditor (see ['Approved auditor'](#) below)
- using the audit report form approved by us.

You must lodge a copy of the audit report with us within 10 business days of receiving it from the auditor. Failure to do this is an offence, and may result in a penalty of up to 120 penalty units (\$16,900.80 for 2012–13).

You must also:

- provide the auditor with all books, papers, accounts, documents, securities, statements and reports reasonably necessary for the audit, and any information they reasonably require
- prepare, certify and produce for the auditor a statement detailing:
 - trust monies held on the last day of the period to which the audit relates
 - negotiable or bearer securities or deposit receipts you held that day, which represent money drawn from your trust account
- retain a copy of the signed audit report for seven years after it is delivered to you, and be able to produce the report on demand.

Audit report form

The approved audit report form is the Independent Assurance Report to the Licensed Estate Agent, available from consumer.vic.gov.au/estateagents.

Approved auditor

An approved auditor is a practising public accountant who is a member of at least one of these professional bodies:

- CPA Australia
- the Institute of Public Accountants
- the Institute of Chartered Accountants in Australia.

An approved auditor cannot:

- be an estate agent or the employee of an estate agent
- be a partner of the estate agent whose trust accounts are being audited
- have been, in the last two years, an employee or partner of the estate agent whose trust accounts are being audited
- be a member, director, employee or officer of an estate agency corporation
- keep, control or have custody of estate agent trust accounts.

Variation of audit date

You can apply to us in writing for a variation of your annual audit date. The new audit date cannot be more than 12 months after the previous auditor's report.

If we approve a variation, the trust account audit and auditor's report must be completed within three months of the new audit date.

Final audit report

If your estate agency ceases to operate, you must:

- notify us in writing within 28 days
- have your trust accounts audited within three months.

Additional reporting requirements during an audit

An auditor must provide us with a written report if they find:

- an agent's accounts are unable to be properly audited
- any dishonesty or legal breach by an agent
- a loss or deficiency of trust money
- failure to pay or account for such a loss
- failure to comply with the Act.

The auditor must also provide a signed copy of this report to the estate agent.

Appendix: Legislation references

Topic	Legislation reference
What is trust money?	Section 59 of the <i>Estate Agents Act 1980</i> Regulation 7 of the Estate Agents (Exemption) Regulations 2005
Residential tenancy bonds	Section 59 (8) of the <i>Estate Agents Act 1980</i> Sections 405, 406 and 408 of the <i>Residential Tenancies Act 1997</i>
Opening a trust account	Section 59(7)(a) of the <i>Estate Agents Act 1980</i> Regulation 9 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Records	Section 98 of the <i>Estate Agents Act 1980</i> Regulation 30 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Receiving trust money	Section 63 of the <i>Estate Agents Act 1980</i> Regulations 12, 13, 16 and 21 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Paying out trust money	Regulations 10, 17, 18, 19 and 22 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Journals	Section 63 of the <i>Estate Agents Act 1980</i> Regulations 12, 13, 21, 22 and 24 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Trust ledger accounts	Regulation 23 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Computerised accounting systems	Section 63 of the <i>Estate Agents Act 1980</i> Regulations 23, 28, 29 and 31 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Trust account reconciliation statement	Regulation 25 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Register of securities	Regulation 26 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Deficiencies in a trust account	Regulation 11 of the Estate Agents (General, Accounts and Audit) Regulations 2008
Audits	Section 64 of the <i>Estate Agents Act 1980</i>
Unclaimed money	Section 59A of the <i>Estate Agents Act 1980</i>
Closing a trust account	Section 59(7)(b) of the <i>Estate Agents Act 1980</i>

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