

South Australia

# Land Agents Regulations 2010

under the *Land Agents Act 1994*

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## Legislative history

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Land Agents Regulations 2010*.

### 3—Interpretation

In these regulations—

*Act* means the *Land Agents Act 1994*;

*BSB number* (Bank State Branch number) means the number assigned to identify a particular branch of a particular ADI.

### 4—Fees—waiver, reduction and refund

The Commissioner may waive, reduce or refund a fee (or part of a fee) prescribed for the purposes of the Act if satisfied that it is appropriate to do so in a particular case.

## Part 2—Registration and management of agent's business

### 4A—Definition of property manager

Pursuant to paragraph (d) of the definition of *property manager* in section 3 of the Act, the function of conducting inspections of a property for the purposes of a residential tenancy agreement is prescribed.

### 5—Registration as sales representative subject to conditions relating to training and supervision

For the purposes of section 8B(4) of the Act, a sales representative will not be taken to be properly supervised unless the sales representative is under the direct supervision of a person who is—

- (a) a registered agent; or
- (b) a registered sales representative (other than a sales representative registered under section 8B of the Act) who has been a sales representative (other than a sales representative registered under section 8B of the Act) for an agent, for at least 2 years or a total of at least 2 years.

### 5A—Registration as property manager subject to conditions relating to training and supervision

For the purposes of section 8BB(4) of the Act, a property manager will not be taken to be properly supervised unless the property manager is under the direct supervision of a person who is—

- (a) a registered agent; or

- (b) a registered property manager (other than a property manager registered under section 8BB of the Act) who has been a property manager (other than a property manager registered under section 8BB of the Act) for an agent, for at least 2 years or a total of at least 2 years; or
- (c) a registered sales representative (other than a sales representative registered under section 8B of the Act) who—
  - (i) is additionally registered as a property manager (other than a property manager registered under section 8BB of the Act); and
  - (ii) has been a sales representative (other than a sales representative registered under section 8B of the Act) for an agent, for at least 2 years or a total of at least 2 years.

## 6—Annual fee and return

- (1) For the purposes of section 9(2) of the Act, a registered person must pay the fee and lodge the return on or before—
  - (a) in the case of a registered person who, immediately before the commencement of the Act, held a licence as a land agent, or was registered as a manager, under the *Land Agents, Brokers and Valuers Act 1973*—
    - (i) the last day of the month in each year nominated in writing to the person by the Commissioner; or
    - (ii) if the Commissioner does not nominate a month—31 May in each year;
  - (b) in the case of any other registered person—
    - (i) the last day of the month in each year nominated in writing to the person by the Commissioner; or
    - (ii) if the Commissioner does not nominate a month—the last day of the month in each year that is the same month as the month in which the person's registration was granted.

## 7—Notification of change in circumstances

- (1) If there is any change in—
  - (a) the residential address of a registered agent; or
  - (b) the business or trading name under which a registered agent carries on business; or
  - (c) the address at which a registered agent carries on business; or
  - (d) the address of the registered corporate office of a registered agent that is a body corporate,

the agent must, within 14 days after that change, give written notice to the Commissioner of the new address or name (as the case may be).

Maximum penalty: \$2 500.

Expiation fee: \$160.

- (2) If there is a change in the residential address of a registered sales representative or registered property manager, the sales representative or property manager must, within 14 days after that change, give written notice to the Commissioner of the new address.  
Maximum penalty: \$2 500.  
Expiation fee: \$160.
- (3) A registered agent must, within 14 days after ceasing to carry on business as an agent, give written notice to the Commissioner of that fact.  
Maximum penalty: \$2 500.  
Expiation fee: \$160.
- (5) A registered agent must, within 14 days after entering into partnership to carry on business as an agent or ceasing to be in such a partnership, give written notice to the Commissioner of that fact, together with the names of the members of the new or former partnership.  
Maximum penalty: \$2 500.  
Expiation fee: \$160.
- (6) If a person is appointed as a director of a body corporate that is a registered agent, the agent must, within 14 days after the appointment—
  - (a) notify the Commissioner in the manner and form approved by the Commissioner of the appointment of the new director; and
  - (b) provide the Commissioner with any information required by the Commissioner for the purposes of determining whether the new director meets the requirements for directors under section 8(2) of the Act.Maximum penalty: \$2 500.  
Expiation fee: \$160.

## **8—Return or replacement of certificate of registration and card**

- (1) If a person's registration is surrendered, suspended or cancelled, the person must, at the direction of the Tribunal or the Commissioner, return the certificate of registration and any registration card to the Commissioner.  
Maximum penalty: \$2 500.  
Expiation fee: \$160.
- (2) If, on an application under section 7 of the Act, a registration certificate or card has been issued to a person but the fee payable in respect of the application has not been paid (whether because of the dishonouring of a cheque or otherwise), the person must, at the direction of the Commissioner, return the certificate or card to the Commissioner.  
Maximum penalty: \$2 500.  
Expiation fee: \$160.
- (3) The Commissioner may issue to a registered person a registration certificate or card in replacement of a current registration certificate or card if satisfied that—
  - (a) the current certificate or card has been lost, destroyed or damaged; or
  - (b) any particulars appearing on the current certificate or card are incorrect.

- (4) If the Commissioner issues to a registered person a replacement registration certificate or card, the person must, at the direction of the Commissioner, return the original (or previous duplicate) registration certificate or card to the Commissioner.

Maximum penalty: \$2 500.

Expiation fee: \$160.

### **9—Each of agent's places of business to be properly managed and supervised**

For the purposes of section 11 of the Act, a place of business of an agent will be properly managed and supervised by a natural person nominated to the Commissioner if—

- (a) the person is a registered sales representative; and
- (b) the person has been nominated in a form approved by the Commissioner; and
- (c) the Commissioner has approved the person as a person qualified to be nominated to manage and supervise a place of business of an agent.

### **10—Regulations relating to proper management and supervision**

- (1) For the purposes of section 11A of the Act, a registered agent will not be taken to properly manage and supervise a business or place of business referred to in that section unless—
- (a) the agent makes written procedures readily available to all employees who handle trust money instructing those employees in the proper handling of such money; and
  - (b) the agent, in respect of each place of business managed and supervised by a person other than a registered agent ensures that—
    - (i) a registered agent who is a natural person is responsible for managing the trust accounts; and
    - (ii) the person nominated to manage and supervise the place of business and all other persons employed at the place of business are instructed as to their obligations under the Act, these regulations and any other relevant laws; and
    - (iii) procedures are in place to enable the agent to ascertain whether the person nominated to manage and supervise the place of business is managing and supervising the place of business properly and with due care and diligence (including inspection by a registered agent who is a natural person, at least once per month, of the place of business and of previously uninspected prescribed business documents of the agent held at the place of business).
- (2) In this regulation—
- prescribed business documents*** of an agent means documents or copies of documents relating to the sale or purchase of land or a business in respect of which the agent has been authorised to act and includes—
- (a) sales agency agreements; and
  - (b) auction records; and

- (c) trust account records.

## Part 3—Trust accounts and indemnity fund

### Division 1—Preliminary

#### 11—Interpretation of Part 3

For the purposes of paragraph (b) of the definition of *auditor* in section 12 of the Act, a person meets the prescribed requirements if the person—

- (a) holds a degree in commerce, accounting, business studies or a related field from an Australian university or from another university approved by the Commissioner; and
- (b) is a member of—
  - (i) The Institute of Chartered Accountants in Australia; or
  - (ii) CPA Australia; and
- (c) meets the requirements of a body referred to in paragraph (b) to practise as a public accountant; and
- (d) has been continuously engaged for at least 3 years in practice as a public accountant in this State (whether or not as an employee of a public accountant).

#### 12—Exemptions

- (1) An agent is exempt from the operation of Part 3 Division 2 of the Act and regulations 16(2) and 23(1)(d) in respect of the receipt and delivery of a cheque by the agent if the cheque—
  - (a) is a crossed cheque expressed to be payable to a person or persons not being or including the agent (whether or not it is also expressed to be payable to bearer); and
  - (b) is held by the agent for the purpose of delivery to a person to whom the cheque is expressed to be payable (or such a person's agent), and is so delivered.
- (2) An agent is exempt from the operation of section 21(2) of the Act in respect of the receipt of payments of rent (within the meaning of the *Residential Tenancies Act 1995*) into the agent's trust account.
- (3) An agent is exempt from the application of the Act to the extent that the agent—
  - (a) sells, purchases or otherwise deals with businesses or land (other than residential land or rural land) on behalf of an affiliated entity; or
  - (b) sells, purchases or otherwise deals with businesses or land (other than residential land or rural land) on behalf of an entity that owns (whether or not together with any affiliated entity) any property that has—
    - (i) an aggregate market value of \$10 million or more; or
    - (ii) an aggregate gross floor area of 10 000 square metres or more,

or conducts negotiations for that purpose.

- (4) For the purposes of subregulation (3)—

**affiliated entity**, in relation to a person, means—

- (a) an entity that is controlled (within the meaning of section 50AA of the *Corporations Act 2001* of the Commonwealth) by the person; or
- (b) a related entity (within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth) of the person;

**rural land** means land used, intended to be used, or apparently intended to be used, wholly or mainly for agricultural, pastoral, horticultural or viticultural purposes.

- (5) A person who acts as a property manager for an agent is exempt from the operation of section 6AB(1) of the Act if—

- (a) the agent is a community housing provider registered under the *Community Housing Providers National Law*; and
- (b) the person is an employee engaged by the agent under a contract of service; and
- (c) the person performs the functions of a property manager for or on behalf of the agent in relation to land—
  - (i) owned by the agent; or
  - (ii) held by or on behalf of a Minister, agency or instrumentality of the Crown or a council.

- (6) An agent is exempt from the operation of section 6AB(3) of the Act in respect of the engagement of another person to perform the functions of a property manager in the course of the agent's business if—

- (a) the agent is a community housing provider registered under the *Community Housing Providers National Law*; and
- (b) the other person is engaged to perform those functions as an employee under a contract of service; and
- (c) the land in relation to which the other person performs those functions is—
  - (i) owned by the agent; or
  - (ii) held by or on behalf of a Minister, agency or instrumentality of the Crown or a council.

- (7) In this regulation—

**council** means a council under the *Local Government Act 1999*.

## **Division 2—Trust accounts**

### **13—Electronic records relating to trust accounts**

If an agent uses a computer program to keep records under Part 3 Division 2 of the Act, the agent must ensure that, in addition to any other requirements relating to the making or keeping of electronic records under this Division—

- (a) an electronic copy of all the records is made within 24 hours of any alteration of the records; and
- (b) at least once in each month, an electronic copy of all the records is made and kept in a safe place at a location other than the premises where the computer program is operating; and
- (c) before any information is deleted from the computer records, a hard copy of the information is made and kept by the agent as part of the agent's records; and
- (d) an up-to-date electronic copy of the computer program is made and kept in a safe place at a location other than the premises where the computer program is operating.

Maximum penalty: \$2 500.

### **14—Payment of interest on trust accounts to Commissioner**

For the purposes of section 15 of the Act, interest that an ADI is liable to pay in respect of trust money held in a trust account must be paid by the ADI to the Commissioner on—

- (a) 15 January, 15 April, 15 July and 15 October in each year; or
- (b) the 15th day of each month in each year.

### **15—Receipt of trust money**

- (1) For the purposes of section 21(2)(a) of the Act, the receipt that an agent must make available to a person making a payment of trust money—
  - (a) must be legibly written on a form comprised in a series of consecutively pre-numbered duplicate receipt forms marked with the name of the agent and the words "Trust Account"; and
  - (b) must contain the following information:
    - (i) —
      - (A) in the case of a payment made by electronic transfer of funds into an agent's trust account—the date on which the agent makes out the receipt; or
      - (B) in any other case—the date of the payment;
    - (ii) the name of the person making the payment;
    - (iii) whether the payment is by cash, cheque, bank cheque or electronic transfer of funds into the agent's trust account and, if the payment is by cheque or bank cheque, the name of the drawer of the cheque;



- (iv) the name of the person for whom the money is received;
  - (v) brief particulars of the purpose of the payment;
  - (vi) the amount of the payment.
- (2) An agent must make out a receipt in accordance with section 21(2) of the Act and this regulation—
- (a) in the case of a payment made by electronic transfer of funds into an agent's trust account—immediately the agent receives official confirmation that the payment has been made (whether that is by way of receipt by the agent of an ADI statement or some other way, whichever occurs sooner); or
  - (b) in any other case—immediately on receipt of the payment.
- Maximum penalty: \$2 500.
- (3) An agent need not comply with subregulation (1)(a) or section 21(2)(b) of the Act if the agent uses a computer program to make out the receipt and the program—
- (a) automatically produces in chronological sequence consecutively numbered receipts marked with the name of the agent and the words "Trust Account"; and
  - (b) automatically makes a separate contemporaneous record of the receipt so that, at any time, a hard copy of the receipt may be produced; and
  - (c) requires input in each field of a data entry screen intended to receive information for the purposes of producing the receipt so that each receipt contains all of the information required by subregulation (1)(b).

## **16—Payment of trust money**

- (1) An agent must not make a payment of trust money in cash.  
Maximum penalty: \$2 500.
- (2) When an agent makes a payment of trust money by cheque, the agent—
- (a) must ensure that the cheque is marked with the name of the agent and the words "Trust Account"; and
  - (b) must—
    - (i) cause the cheque to be crossed and endorsed "Not negotiable"; or
    - (ii) obtain from the person receiving the cheque a receipt that complies with subregulation (4) and keep the receipt as part of the agent's records.
- Maximum penalty: \$2 500.
- (3) When an agent makes a payment of trust money by cheque, the agent must prepare and keep as part of the agent's records a cheque stub or voucher containing the following information:
- (a) the date and reference number of the cheque;
  - (b) the name of the payee;
  - (c) the client name or reference and brief particulars of the purpose of the payment;

- (d) the amount of the cheque.
- (4) The receipt must be legible and contain the following information:
  - (a) the date and reference number of the cheque;
  - (b) particulars identifying the trust account against which the cheque is drawn;
  - (c) the name of the payee;
  - (d) brief particulars of the purpose of the payment;
  - (e) the amount of the cheque.
- (5) When an agent authorises the payment of trust money by electronic transfer of funds, the agent—
  - (a) must prepare and keep as part of the agent's records the following information:
    - (i) the date and reference number of the payment;
    - (ii) the name of the payee;
    - (iii) the client name or reference and brief particulars of the purpose of the payment;
    - (iv) the name or style of the ADI account to which the payment is made, its number and the identifying numbers of the receiving ADI and its branch;
    - (v) the amount of the payment; and
  - (b) must, on receiving official written confirmation that the payment has been made, keep that confirmation as part of the agent's records.

## **17—Keeping of records**

For the purposes of section 21(1)(c) of the Act, the detailed accounts of receipts and disbursements of trust money to be compiled by an agent must comply with regulations 18, 19 and 20.

## **18—Cash books**

- (1) An agent must keep as part of the agent's records—
  - (a) a cash receipts book in which the agent records the following information in respect of each receipt of trust money:
    - (i) the date and reference number of the receipt;
    - (ii) the name of the person from whom the money is received;
    - (iii) the client name or reference to which the transaction relates;
    - (iv) brief particulars of the purpose of the receipt;
    - (v) the amount of the receipt; and
  - (b) a cash payments book in which the agent records the following information in respect of each payment of trust money:
    - (i) the date and reference number of the cheque or electronic transfer of funds by which the payment was made;

- (ii) the name of the payee;
  - (iii) the client name or reference to which the transaction relates;
  - (iv) brief particulars of the purpose of the payment;
  - (v) the amount of the cheque or electronic transfer of funds.
- (2) An agent need not keep a cash receipts book or a cash payments book as required by subregulation (1) if the agent uses a computer program to record the information referred to in that subregulation in respect of each receipt or payment of trust money and the program—
- (a) requires input in each field of a data entry screen intended to receive information in respect of a receipt or payment so that all of the information referred to in subregulation (1) is recorded in respect of each receipt and payment; and
  - (b) is capable, at any time, of producing—
    - (i) a report of the information in respect of receipts of trust money in the order in which they were received; and
    - (ii) a report of the information in respect of payments of trust money in the order in which they were made.
- (3) An agent who uses a computer program as referred to in subregulation (2) must ensure that—
- (a) at the end of each month, hard copies of each of the following reports are produced:
    - (i) a report of the information in respect of receipts of trust money received during that month in the order in which they were received;
    - (ii) a report of the information in respect of payments of trust money made during that month in the order in which they were made; and
  - (b) those hard copies are kept as part of the agent's records.
- (4) The records of receipts and payments must be made by the agent in accordance with this regulation in the order in which they are received or made, each such record being made within 2 working days after the receipt or payment in question.
- (5) Subregulation (4) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 working days after the agent receives official confirmation that the transfer has occurred.

## **19—Separate trust ledger accounts**

- (1) An agent must ensure that the agent's trust ledger accounts are kept separately—
- (a) in respect of each of the agent's clients; and
  - (b) if the agent performs services for a client in respect of a number of transactions between different parties—in respect of each such transaction.
- (2) The agent must record in each of the separate accounts the following details:
- (a) the name and address of the client to whom the accounts relate;

- (b) a brief description of the service provided and the transaction to which the accounts relate;
- (c) in respect of each receipt or disbursement of trust money—
  - (i) the date and reference number of the receipt or disbursement; and
  - (ii) the name of the person from whom the money is received or to whom the money is disbursed; and
  - (iii) brief particulars of the purpose of the receipt or disbursement; and
  - (iv) the amount received or disbursed.
- (3) The agent must ensure that any changes in the details referred to in subregulation (2)(a) or (b) are recorded in a manner that enables the changes and the order in which they occurred to be identified.
- (4) If the agent transfers money between any of the separate accounts, the transfer must be clearly recorded—
  - (a) in both accounts; and
  - (b) in a transfer journal,in sufficient detail that the transfer may be clearly understood.
- (5) The records of receipts, disbursements and transfers must be made by the agent in accordance with this regulation in the order in which the receipts, disbursements or transfers are received or made, each such record being made within 2 working days after the receipt, disbursement or transfer in question.
- (6) Subregulation (5) does not apply in relation to receipts or payments by way of electronic transfer of funds, a record of which must be made within 2 working days after the agent receives official confirmation that the transfer has occurred.
- (7) If an agent uses a computer program to keep trust ledger accounts or a transfer journal, the agent must ensure that—
  - (a) the program is incapable of—
    - (i) recording a transaction that would result in a debit balance in a trust ledger account unless a separate contemporaneous record of the transaction is also made so that, at any time, a hard copy may be produced of all such transactions in chronological order; and
    - (ii) deleting from its records the information relating to a trust ledger account unless—
      - (A) the balance of the account is 0; and
      - (B) a hard copy of all of the information required under these regulations relating to the account has been produced; and
    - (iii) changing existing information relating to a transaction otherwise than by making a further entry showing a separate transaction to effect the change; and
  - (b) the program automatically inserts consecutive page numbers into any hard copy report produced by use of the program; and

- (c) the program requires input in each field of a data entry screen intended to receive information for the purposes of a trust ledger account or transfer journal so that the entry contains all of the information required by this regulation.

Maximum penalty: \$2 500.

- (8) If an agent uses a computer program to keep trust ledger accounts or a transfer journal, the agent must, within 2 working days of a request from the Commissioner or the agent's auditor, produce hard copies of the trust ledger accounts or transfer journal.

Maximum penalty: \$2 500.

## 20—Reconciliation statements

- (1) An agent must, at the end of each month, prepare and keep as part of the agent's records—
  - (a) a statement reconciling the balance of the agent's cash books, or equivalent computer records, kept under regulation 18 with the balance of the agent's trust account; and
  - (b) a statement reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account.
- (2) The agent is not required to set out a list of individual balances, or the names of the clients on whose behalf money is held, when preparing the statement referred to in subregulation (1)(b).

## 21—Transfer of money from trust account to office account

An agent who becomes entitled to money held in the agent's trust account in or towards satisfaction of the agent's commission, fees, costs or disbursements must, as soon as practicable and in any event within 3 months, transfer the money to an account maintained by the agent for receipts other than trust money.

Maximum penalty: \$2 500.

## 22—Audit of trust accounts

- (1) For the purposes of section 22(1)(a) of the Act, the audit period in respect of which an agent must have the accounts and records audited is the period from—
  - (a) the end of the agent's last audit period (whether under the Act or the repealed *Land Agents, Brokers and Valuers Act 1973*); or
  - (b) in the case of an agent being granted registration—the date of registration, until—
    - (c) 2 months before the date next occurring on which the agent must lodge an annual return; or
    - (d) if the Commissioner fixes some other date at the request of the agent—the date next occurring fixed by the Commissioner.
- (2) In carrying out an audit, the auditor must—
  - (a) make checks that will enable the auditor to give an opinion as to whether the agent has, during the period covered by the audit, complied with the Act and these regulations relating to the agent's accounts and records; and

- (b) ascertain whether a trust account under Part 3 Division 2 of the Act was kept by the agent during that period; and
  - (c) make a general test examination of any trust account kept by the agent and of the pass books and statements relating to any such account during that period; and
  - (d) make a comparison as to no fewer than 2 dates (1 to be the last day of the period of the audit and 1 other to be a date within that period selected by the auditor) between—
    - (i) the liabilities of the agent to the agent's clients as shown by the agent's trust ledger accounts and the records kept under these regulations; and
    - (ii) the aggregate of the balances standing to the credit of the agent's trust account; and
  - (e) ask for such information and explanations as the auditor may require for the purposes of this regulation.
- (3) For the purposes of section 22(1)(b) of the Act, the statement relating to the audit must be prepared by the auditor and must include all matters relating to the agent's accounts and records that should, in the auditor's opinion, be communicated to the Commissioner and, in particular, deal with each of the following matters:
- (a) whether the accounts and records appear to have been kept regularly and properly written up at all times;
  - (b) whether the accounts and records have been ready for examination at the periods appointed by the auditor;
  - (c) whether the agent has complied with the auditor's requirements;
  - (d) whether, at any time during the period of the audit, the agent's trust account was overdrawn and, if so, the full explanation for that given by the agent;
  - (e) whether the agent has, or has had, any debit balances in his or her trust account and the explanation or reason for such a debit given by the agent;
  - (f) whether the auditor has received and examined the notice given to the auditor under regulation 23 and the result of that examination;
  - (g) whether the agent has complied with section 13 of the Act;
  - (h) if the agent uses a computer program to keep the agent's accounts and records—whether the program allows for the accounts and records to be conveniently and properly audited.
- (4) The statement prepared by the auditor for lodging with the Commissioner must include the name, number and relevant BSB number of each trust account included in the audit.
- (5) The auditor must give a signed copy of the statement to the agent.
- (6) If the auditor in the course of auditing the agent's accounts and records discovers—
- (a) that they are not kept in a manner that enables them to be properly audited; or
  - (b) a matter that appears to the auditor to involve dishonesty or a breach of the law by the agent; or

- (c) a loss or deficiency of trust money or a failure to pay or account for trust money; or
- (d) a failure to comply with the Act or these regulations,

the auditor must, as soon as possible, give a report in respect of the discovery to the Commissioner and the agent concerned.

Maximum penalty: \$2 500.

- (6a) Subregulations (3) and (6)(c) do not apply in relation to losses and deficiencies in a trust account that have been promptly rectified and were due to inadvertence (provided that the total of the losses and deficiencies have not exceeded \$100 in any 3 month period).
- (7) For the purposes of section 22(3)(b) of the Act, an agent must lodge an audit statement or declaration within 2 months after the end of each audit period.

### **23—Agent's statement**

- (1) An agent who is required to have accounts and records audited under Part 3 Division 2 of the Act must, before the completion of the audit, certify—
  - (a) under his or her hand; or
  - (b) in the case of a firm of agents—under the hands of not less than 2 partners of the firm; or
  - (c) in the case of a body corporate agent—under the hands of not less than 2 directors of the body or, if the body corporate has only 1 director, under the hand of that director,

and deliver to the auditor a notice setting out in detail, as of the last day of the period to which the audit relates, particulars of—

- (d) the names of all persons on whose behalf the agent is holding trust money and the amount of the credit of each such person; and
- (e) all negotiable or bearer securities or deposit receipts in the name of the agent which represent money drawn from the agent's trust account and which were held by the agent on that day; and
- (f) —
  - (i) the names of the trust accounts in which the balance of the agent's trust money is lodged and the balances on that date of those accounts; and
  - (ii) if the trust account balances are not in agreement with the balances of the agent's ledger accounts—a statement reconciling those balances.

Maximum penalty: \$2 500.

- (3) The agent must give the auditor making the next succeeding audit of the agent's accounts and records—
  - (a) at the request of the auditor, a copy of the notice, together with a signed copy of the auditor's statement of the last preceding audit of the agent's accounts and records; or

- (b) if the agent's accounts and records are being audited for the first time or, if for any other reason a copy of the notice cannot be produced for the purpose of the audit—before completion of the audit, a notice containing the same particulars as to money, negotiable or bearer securities and deposit receipts held on the first day of the period to which the audit relates.

Maximum penalty: \$2 500.

#### **24—Audit when agent ceases to carry on business**

- (1) If an agent ceases to carry on business as an agent, the agent, or, if the agent has died, the agent's personal representative, must—
  - (a) cause the agent's accounts and records kept under Part 3 Division 2 of the Act to be audited and reported on by an auditor for the period from the previous audit up to the date on which the agent's affairs are wound up; and
  - (b) submit a copy of the auditor's statement to the Commissioner within 4 months of the winding up of the agent's affairs or within such further period as the Commissioner may allow.

Maximum penalty: \$2 500.

- (2) The relevant provisions of the Act and these regulations apply (subject to such modifications as may be necessary) to the audit and statement required by this regulation.
- (3) The agent, or his or her personal representative, must continue to comply with the Act and these regulations as if the agent had not ceased to carry on business until the agent's affairs (so far as they relate to trust money and other matters required to be recorded under these regulations) are properly and finally wound up.

Maximum penalty: \$2 500.

- (4) The preceding provisions of this regulation do not apply to an agent who, before ceasing to carry on business, was a member of a firm if all continuing members of the firm and (unless the agent is dead) the agent certify to the Commissioner that the trust money and other matters in respect of which records are required to be kept under these regulations are under the proper administration and control of the continuing partners or some of them.
- (5) In this regulation—

*agent* includes a former agent.

#### **25—Audit and report etc for firm operates for each partner**

An audit of accounts and records kept by a firm of agents and the auditor's statement and attached notice relating to the firm's accounts and records will be taken to operate as an audit, statement and notice in respect of each agent who is a member of the firm.

#### **26—Certain persons may not audit accounts and records of agent**

A person must not audit the accounts and records of an agent if the person—

- (a) is, or has been within 2 years, an employee or partner of the agent; or
- (b) is an employee of another agent actually carrying on business as an agent; or



(c) is, himself or herself, an agent carrying on business as an agent.

Maximum penalty: \$2 500.

## **Division 3—Indemnity fund**

### **27—Indemnity fund**

- (1) For the purposes of section 29(2) of the Act, money constituting, or forming part of, the indemnity fund may be invested as authorised by the Minister.
- (2) For the purposes of section 29(4) of the Act, money standing to the credit of the indemnity fund may be applied in payment of amounts approved by the Minister towards the cost of—
  - (a) the educational program known as the Professional Development Program conducted by the Real Estate Institute of South Australia Incorporated for the benefit of agents, sales representatives and property managers;
  - (b) the advisory service relating to the real estate industry conducted by the Real Estate Institute of South Australia Incorporated for the benefit of members of the public, including the preparation and publication of brochures and other materials as part of that service;
  - (c) the education program known as SA HomeBuyers Free Information Seminars conducted by SA HomeBuyers Incorporated for the benefit of members of the public;
  - (d) the educational program relating to the provisions contained in the *Statutes Amendment (Real Estate Industry Reform) Act 2007* conducted by or on behalf of the Commissioner for the benefit of agents, sales representatives and members of the public;
  - (e) the educational program relating to the provisions contained in the *Statutes Amendment (Real Estate Reform Review and Other Matters) Act 2013* conducted by or on behalf of the Commissioner for the benefit of agents, sales representatives and members of the public;
  - (f) the education program relating to the provisions contained in the *Land Agents (Registration of Property Managers and Other Matters) Amendment Act 2017* conducted by or on behalf of the Commissioner for the benefit of agents, sales representatives, property managers and members of the public.

### **28—Establishment and determination of claims**

- (1) For the purposes of section 32(2)(a) of the Act, written notice of the claim (citing a unique reference number by which the claim may be identified) must be given to the claimant and agent or former agent informing them of the Commissioner's receipt of the claim and including—
  - (a) in the case of a notice given to the agent or former agent—details of the claimant's name and any other contact details made available by the claimant for that purpose;
  - (b) in all cases, an explanation of—
    - (i) the parties' rights to make submissions as to the claim under section 32(2)(b) of the Act; and

- (ii) the parties' rights of review under section 35 of the Act against a determination of the claim by the Commissioner.
- (2) For the purposes of section 32(5) of the Act, the Commissioner must—
  - (a) within 6 months after a claim is made, provide the claimant with a report as to the progress of the claim; and
  - (b) provide the claimant with subsequent progress reports, each within 6 months after the previous such report, until such time as the claim is determined.

## **29—Claimant's entitlement to compensation and interest**

For the purposes of section 37(2) of the Act, the rate of interest by which a claimant's entitlement to compensation is to be increased is 5% per annum.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Land Agents Regulations 2010* revoked the following:

*Land Agents Regulations 1995*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2010	186	<i>Gazette 12.8.2010 p4055</i>	1.9.2010: r 2
2011	72	<i>Gazette 9.6.2011 p2093</i>	1.7.2011: r 2
2012	104	<i>Gazette 31.5.2012 p2419</i>	1.7.2012: r 2
2013	95	<i>Gazette 6.6.2013 p2213</i>	1.7.2013: r 2
2013	261	<i>Gazette 21.11.2013 p4300</i>	21.11.2013: r 2
2014	114	<i>Gazette 19.6.2014 p2599</i>	1.7.2014: r 2
2015	68	<i>Gazette 18.6.2015 p2570</i>	1.7.2015: r 2
2015	223	<i>Gazette 29.10.2015 p4755</i>	21.11.2015: r 2
2016	129	<i>Gazette 23.6.2016 p2341</i>	1.7.2016: r 2
2017	90	<i>Gazette 22.6.2017 p2233</i>	1.7.2017 immediately after 144/2017: r 2
2017	144	<i>Gazette 22.6.2017 p2383</i>	1.7.2017: r 2
2017	218	<i>Gazette 8.8.2017 p3156</i>	1.11.2017: r 2
2018	27	<i>Gazette 6.2.2018 p652</i>	30.4.2018 except rr 6 to 8 & 10—1.2.2019: r 2
2018	154	<i>Gazette 21.6.2018 p2421</i>	1.7.2018 except Pt 3—1.2.2019 immediately after 27/2018 r 10: r 2
2018	180	<i>Gazette 28.6.2018 p2650</i>	4.10.2018: r 2
2019	83	<i>Gazette 13.6.2019 p1890</i>	1.7.2019: r 2
<b>2020</b>	<b>110</b>	<b><i>Gazette 4.6.2020 p2927</i></b>	<b>1.7.2020: r 2</b>

## Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2011</i>
r 3		
BSB number	inserted by 223/2015 r 4	21.11.2015
<b>r 4</b>	<b>substituted by 110/2020 r 4</b>	<b>1.7.2020</b>
Pt 2		
r 4A	inserted by 27/2018 r 4	30.4.2018
r 5	substituted by 27/2018 r 5	30.4.2018
r 5A	inserted by 27/2018 r 6	1.2.2019
r 6		
<i>r 6(2)</i>	<i>deleted by 90/2017 r 4</i>	<i>1.7.2017</i>
r 7		
r 7(2)	varied by 27/2018 r 7(1), (2)	1.2.2019
<i>r 7(4)</i>	<i>deleted by 223/2015 r 5</i>	<i>21.11.2015</i>
r 8		
r 8(1)	varied by 180/2018 r 4	4.10.2018
Pt 3		
r 12		
r 12(3) and (4)	inserted by 218/2017 r 4	1.11.2017
r 12(5)—(7)	inserted by 27/2018 r 8	1.2.2019
r 13	varied by 223/2015 r 6	21.11.2015
r 22		
r 22(4)	substituted by 223/2015 r 7(1)	21.11.2015
r 22(5)	varied by 223/2015 r 7(2)	21.11.2015
r 22(6a)	inserted by 223/2015 r 7(3)	21.11.2015
<i>r 22(8)</i>	<i>deleted by 90/2017 r 5</i>	<i>1.7.2017</i>
r 23		
<i>r 23(2)</i>	<i>deleted by 223/2015 r 8</i>	<i>21.11.2015</i>
r 27		
r 27(2)	varied by 261/2013 r 4	21.11.2013
	varied by 27/2018 r 9(1), (2)	30.4.2018
r 28		
r 28(1)	varied by 180/2018 r 5	4.10.2018
<i>Sch 1 before substitution by 154/2018</i>	<i>substituted by 72/2011 r 4</i>	<i>1.7.2011</i>
	<i>substituted by 104/2012 r 4</i>	<i>1.7.2012</i>
	<i>substituted by 95/2013 r 4</i>	<i>1.7.2013</i>

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	<i>substituted by 114/2014 r 4</i>	1.7.2014
	<i>substituted by 68/2015 r 4</i>	1.7.2015
	<i>substituted by 129/2016 r 4</i>	1.7.2016
	<i>substituted by 144/2017 r 4</i>	1.7.2017
<i>cll 5 and 6</i>	<i>deleted by 90/2017 r 6</i>	1.7.2017
<i>Sch 1</i>	<i>substituted by 154/2018 r 4</i>	1.7.2018
	<i>varied by 27/2018 r 10(1)—(4)</i>	1.2.2019
	<i>varied by 154/2018 r 5(1)—(7)</i>	1.2.2019
	<i>substituted by 83/2019 r 4</i>	1.7.2019
	<b><i>deleted by 110/2020 r 5</i></b>	<b>1.7.2020</b>
<i>Sch 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.7.2011

## **Transitional etc provisions associated with regulations or variations**

### ***Land Agents (Registration of Property Managers) Variation Regulations 2018 (No 27 of 2018), Sch 1***

#### **1—Transitional provision**

Despite section 6AB of the Act, a person is not required to comply with the provisions of that section until 28 September 2019.

#### **Historical versions**

1.7.2011  
 1.7.2012  
 1.7.2013  
 21.11.2013  
 1.7.2014  
 1.7.2015  
 21.11.2015  
 1.7.2016  
 1.7.2017  
 1.11.2017  
 30.4.2018  
 1.7.2018  
 4.10.2018  
 1.2.2019  
 1.7.2019