

South Australia

# Trustee Regulations 2011

under the *Trustee Act 1936*

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### 1—Short title

These regulations may be cited as the *Trustee Regulations 2011*.

### 2—Commencement

These regulations will come into operation on 1 September 2011.

### 3—Interpretation

In these regulations—

*Act* means the *Trustee Act 1936*.

### 4—Prescribed insurers

For the purposes of section 13A(1)(b) of the Act, a body that is authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business in relation to lender's mortgage insurance is a prescribed body.

### 5—Records to be kept by trustee

- (1) For the purposes of section 84B of the Act, the records that a trustee must keep relating to administration of the trust property are as follows:
  - (a) each document authorising the trustee to act as trustee;
  - (b) each letter received by the trustee and a copy of each letter sent by the trustee;
  - (c) a copy of each statutory declaration and each affidavit made in the course of the administration of the trust;
  - (d) each deed, agreement or other instrument varying distribution of the trust property or a stamped duplicate of any such deed, agreement or instrument;

- (e) a copy of all returns made as to any form of duty, charge or tax imposed on the trust by the Commonwealth or any State or Territory of the Commonwealth (including trust income tax returns and personal tax returns for beneficiaries where applicable);
- (f) all written instructions for the sale or transfer of any trust property or any asset which forms or formed part of the trust property and any independent valuations obtained in relation to those assets;
- (g) minutes of the proceedings of all meetings relating to administration of the trust at which the trustee was or was entitled to be present;
- (h) a record of any insurance cover in respect of the assets which form or formed part of the trust property;
- (i) any report received from an investment adviser and a record of all decisions made in relation to such report;
- (j) a record of all reviews of investments;
- (k) other records that would enable the receipt and disposition of trust property to be conveniently and properly audited, including the following:
  - (i) a register of securities recording the following information in respect of all securities received and disposed of:
    - (A) the date of receipt or disposition;
    - (B) a description of the securities;
    - (C) the consideration passing for receipt or disposition;
    - (D) brief particulars of the purpose of the transaction;
  - (ii) a property register recording the following information in respect of all other property received and disposed of:
    - (A) the date of receipt or disposition;
    - (B) a description of the property;
    - (C) the consideration passing for receipt or disposition;
    - (D) brief particulars of the purpose of the transaction;
  - (iii) a register of all investments of income and capital funds (including redemptions and income accretions) recording the following information in respect of each investment:
    - (A) the date of investment;
    - (B) the amount of the funds invested;
    - (C) brief particulars of the investment;
  - (iv) a cash receipt book recording the following information in respect of each receipt of trust money:
    - (A) the date and reference number of each receipt;
    - (B) the name of the person from whom the money is received;
    - (C) the trust name or reference to which the transaction relates;

- (D) brief particulars of the purpose of the receipt;
  - (E) the amount of the receipt;
  - (F) the date the cash received is deposited in an ADI account (where applicable);
  - (v) a cash payments book recording the following information in respect of each payment of trust money:
    - (A) the date of the payment;
    - (B) if the payment was made by cheque—the cheque number;
    - (C) the name of the payee;
    - (D) the trust name or reference to which the transaction relates;
    - (E) brief particulars of the purpose of the payment;
    - (F) the amount of the payment;
  - (vi) each ADI statement and passbook issued in relation to trust ADI accounts;
  - (vii) trust statements, prepared not less than annually, showing the following for the period from the end of the last period for which a statement was prepared:
    - (A) cash receipts and payments;
    - (B) other property received or transferred;
    - (C) assets and liabilities as at the last day of the statement period.
- (2) Where the trustee administers more than 1 trust, separate records must be kept, in accordance with this regulation, in relation to each trust administered by the trustee.
- (3) All records referred to in this regulation must be retained by the trustee, in a legible written form or so as to be readily convertible into such a form, for at least 5 years after the termination of the trust.

## **6—Prescribed qualifications for inspectors**

For the purposes of section 84C of the Act, the prescribed qualifications for an inspector under that section are that he or she be—

- (a) an auditor registered under Division 2 of Part 9.2 of the *Corporations Act 2001* of the Commonwealth; or
- (b) a legal practitioner within the meaning of the *Legal Practitioners Act 1981*.

## **Schedule 1—Revocation of *Trustee Regulations 1996***

The *Trustee Regulations 1996* are revoked.

## Legislative history

### Notes

- 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).

### Principal regulations

Year	No	Reference	Commencement
2011	207	<i>Gazette 25.8.2011 p3716</i>	1.9.2011: r 2