

(Reprint No. 3)

SOUTH AUSTRALIA

LAND AGENTS REGULATIONS 1995

*These regulations are reprinted pursuant to the Subordinate Legislation Act 1978 and incorporate all amendments in force as at **1 July 1997**.*

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DIVISIONAL PENALTIES AND EXPIATION FEES

REGULATIONS UNDER THE LAND AGENTS ACT 1994

LAND AGENTS REGULATIONS 1995

being

No. 107 of 1995: *Gaz.* 25 May 1995, p. 2464¹

as varied by

No. 90 of 1996: *Gaz.* 30 May 1996, p. 2662²

No. 259 of 1996: *Gaz.* 23 December 1996, p. 2262³

No. 79 of 1997: *Gaz.* 13 May 1997, p. 1863⁴

¹ Came into operation 1 June 1995: reg. 2.

² Came into operation 1 July 1996: reg. 2.

³ Came into operation 3 February 1997: reg. 2.

⁴ **Came into operation 1 July 1997: reg. 2.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the regulations see Appendix 1.*

Citation

1. These regulations may be cited as the *Land Agents Regulations 1995*.

Commencement

2. These regulations will come into operation on the day on which the *Land Agents Act 1994* comes into operation.

Revocation

3. All regulations previously made under the *Land Agents, Brokers and Valuers Act 1973* are revoked.

Interpretation

4. (1) In these regulations—

"Act" means the *Land Agents Act 1994*.

(2) For the purposes of these regulations, a reference to a qualification, course or subject conferred or offered by a particular institution includes a reference to a qualification, course or subject of a different name conferred or offered by that institution and certified by that institution to be an equivalent qualification, course or subject.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Entitlement to be registered as agent—qualifications

5. For the purposes of section 8(1)(a) of the Act, to be entitled to be registered as an agent a natural person must hold at least one of the following qualifications:

- (a) Certificate in Real Estate Agency conferred by the Department for Employment, Training and Further Education;
- (b) degree of Bachelor of Business (Property) conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
 - (i) Commercial Property Management; and
 - (ii) Real Estate Business and Marketing Management;
- (c) Graduate Diploma in Property, or Master of Business in Property, conferred by the University of South Australia including satisfactory completion of (or status granted in) the following subjects:
 - (i) —
 - (A) Property Law 1G and 2G; or
 - (B) Property Law 2M; and
 - (ii) —
 - (A) Real Estate Valuation 1 and Property Case Studies; or
 - (B) Real Estate Valuation G; and

- (iii) —
 - (A) Real Estate Business Management and Real Estate Case Studies; or
 - (B) Real Estate Business and Marketing Management G;
- (d) degree of Bachelor of Business in Property conferred by the University of South Australia, including satisfactory completion of (or status granted in) the following subjects:
 - (i) Property Management; and
 - (ii) Real Estate Field Work 1 and 2; and
 - (iii) Property Marketing;
- (e) degree of Bachelor of Business in Property conferred by the University of South Australia, together with satisfactory completion of (or status granted in) the following subjects offered by the Department for Employment, Training and Further Education as part of the course for the Certificate in Real Estate Agency:
 - (i) Practice II; and
 - (ii) Practice III.

Annual fee and return

6. (1) For the purposes of section 9(2) of the Act, the date for payment of an annual fee and for lodging an annual return is—

- (a) in the case of a registered agent who held a licence as a land agent, or was registered as a manager, under the *Land Agents, Brokers and Valuers Act 1973* immediately before the commencement of these regulations—31 May in each year;
- (b) in the case of any other registered agent—the last day of the month in each year that is the same month as the month in which the registration was granted.

(2) For the purposes of section 9(3) of the Act, the penalty for default in paying the annual fee or lodging the annual return is \$95.

Notification of changes in circumstances

7. (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).

Penalty: Division 7 fine.

Expiation fee: \$160.

(2) 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.

Penalty: Division 7 fine.
Expiation fee: \$160.

(3) 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.

Penalty: Division 7 fine.
Expiation fee: \$160.

Return of certificate of registration

8. If registration of a person as an agent is suspended or cancelled, the person must, at the direction of the Court or the Commissioner, return the certificate of registration to the Commissioner.

Penalty: Division 7 fine.
Expiation fee: \$160.

Entitlement to be sales representative—qualifications

9. (1) For the purposes of section 11(1)(a)(i) and (2)(d)(i) of the Act, the qualifications required to be held by a sales representative are—

- (a) satisfactory completion of the courses of instruction approved by the Industrial and Commercial Training Commission in relation to the declared vocation "Customer Servicing (Real Estate Operations—Sales)" under the *Industrial and Commercial Training Act 1981*; or
- (b) satisfactory completion of a course accredited under the *Tertiary Education Act 1986* in relation to the Certificate in Real Estate Operations (Sales Consulting) (or some other academic award certified by the Minister responsible for the administration of that Act to be an equivalent academic award); or
- (c) at least one of the following qualifications obtained after 31 May 1993:
 - (i) Certificate in Real Estate Sales conferred by the Department for Employment, Training and Further Education;
 - (ii) satisfactory completion of (or status granted in) the following subjects offered by the University of South Australia as part of the course for the degree of Bachelor of Business (Property):
 - (A) Introduction to Law; and
 - (B) Law of Property; and
 - (C) Real Estate Management and Agency Practice; and
 - (D) Physical Aspects of Real Estate;

- (iii) satisfactory completion of (or status granted in) the following subjects offered by the University of South Australia as part of the course for the degree of Bachelor of Business in Property:
 - (A) Property Law 1, 2, 3 and 4; and
 - (B) Property Studies 2 and 3; and
 - (C) Property Fieldwork 1 and 2;
- (iv) satisfactory completion of (or status granted in) the following subjects offered by the University of South Australia as part of the course for the Graduate Diploma in Property or the degree of Master of Business in Property:
 - (A) —
 - Property Law 1G and 2G; or
 - Property Law 2M; and
 - (B) —
 - Real Estate Marketing and Property Case Studies; or
 - Real Estate Marketing and Agency Practice G; or

(d) a qualification entitling the person to be registered as an agent.

(2) A person is exempt from the requirement to hold the qualifications required by section 11(1)(a)(i) and (2)(d)(i) of the Act if the person only acts as a sales representative while participating in the on-the-job training component of—

- (a) a course of instruction approved by the Industrial and Commercial Training Commission in relation to the declared vocation "Customer Servicing (Real Estate Operations—Sales)" under the *Industrial and Commercial Training Act 1981*; or
- (b) a course accredited under the *Tertiary Education Act 1986* in relation to the Certificate in Real Estate Operations (Sales Consulting) (or some other academic award certified by the Minister responsible for the administration of that Act to be an equivalent academic award).

Payment of interest on trust accounts to Commissioner

10. For the purposes of section 15 of the Act, the days on which a bank, building society or credit union must pay interest in respect of trust money held in a trust account to the Commissioner are 1 March, 1 June, 1 September and 1 December in each year.

Receipt of trust money

11. 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—
 - (i) 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"; or

- (ii) be in some other form approved in writing by the Commissioner on the application of the agent; and
- (b) must contain the following information:
 - (i) the date of payment; and
 - (ii) the name of the person making the payment; and
 - (iii) whether the payment is by cash, cheque or bank draft and, if the payment is by cheque, the name of the drawer of the cheque; and
 - (iv) the name of the person for whom the money is received; and
 - (v) brief particulars of the purpose of the payment; and
 - (vi) the amount of the payment.

Payment of trust money

12. (1) An agent must not make a payment of trust money in cash.

Penalty: Division 7 fine.

- (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 (3) and keep the receipt as part of the agent's records; and
 - (c) must prepare and keep as part of the agent's records a cheque stub or voucher containing the following information:
 - (i) the date and reference number of the cheque;
 - (ii) the name of the payee;
 - (iii) the client name or reference and brief particulars of the purpose of the payment;
 - (iv) the amount of the cheque.

Penalty: Division 7 fine.

- (3) The receipt must be legible and contain the following information:
 - (a) the date and reference number of the cheque; and
 - (b) particulars identifying the trust account against which the cheque is drawn; and
 - (c) the name of the payee; and

- (d) brief particulars of the purpose of the payment; and
- (e) the amount of the cheque.

Keeping of records

13. (1) Subject to subregulation (2), 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 the following requirements:

- (a) a cash receipt book (or some other form of record approved in writing by the Commissioner on the application of the agent) must be kept 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; and
 - (ii) the name of the person from whom the money is received; and
 - (iii) the client name or reference to which the transaction relates; and
 - (iv) brief particulars of the purpose of the receipt; and
 - (v) the amount of the receipt;
- (b) a cash payments book (or some other form of record approved in writing by the Commissioner on the application of the agent) must be kept 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 by which the payment was made; and
 - (ii) the name of the payee; and
 - (iii) the client name or reference to which the transaction relates; and
 - (iv) brief particulars of the purpose of the payment; and
 - (v) the amount of the cheque;
- (c) trust ledger accounts must be kept separately—
 - (i) in respect of each of the agent's clients; and
 - (ii) if the agent performs services for a client in respect of a number of transactions between different parties—in respect of each such transaction; and
- (d) each of the separate accounts must contain the following details:
 - (i) the name and address of the client to whom the accounts relate;
 - (ii) a brief description of the service provided and the transaction to which the accounts relate;
 - (iii) in respect of each receipt or payment of trust money—
 - (A) the date and reference number of the receipt or the cheque by which the payment is made;

- (B) the name of the person from whom the money is received or to whom the money is paid;
 - (C) brief particulars of the purpose of the receipt or payment;
 - (D) the amount received or paid;
- (e) if the agent transfers money between any of the separate accounts, the transfer must be clearly recorded—
- (i) in both accounts; and
 - (ii) in a transfer journal,
- in sufficient detail that the transfer may be clearly understood;
- (f) at the end of each month, reconciliation statements must be prepared—
- (i) reconciling the balance of the agent's cash books (or other records approved under paragraph (a) or (b)) with the balance of the agent's trust account; and
 - (ii) reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account,
- (however, the agent is not required to set out in the statement a list of individual balances, or the names of the clients on whose behalf money is held).

(2) A registered agent who held a licence as a land agent, or was registered as a manager, under the *Land Agents, Brokers and Valuers Act 1973* immediately before the commencement of these regulations is not required to compile detailed accounts of receipts and disbursements of trust money that take place in the first audit period ending after commencement of these regulations in accordance with subregulation (1) if they are compiled in accordance with regulation 20 of the *Land Agents, Brokers and Valuers Regulations 1986* as in force immediately before the commencement of these regulations (but subregulation (1) must be complied with in respect of trust money subsequently received or disbursed).

Transfer of money from trust account to office account

14. 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 three months, transfer the money to an account maintained by the agent for receipts other than trust money.

Penalty: Division 7 fine.

Audit of trust accounts

15. (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

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- (b) in the case of an agent being granted registration—the date of registration,
until—
- (c) two 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 Division 2 of Part 3 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 two dates (one to be the last day of the period of the audit and one 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 16 and the result of that examination;

(g) whether the agent has complied with section 13 of the Act.

(4) The auditor must attach to the auditor's statement a copy of the agent's notice delivered to the auditor under regulation 16(1).

(5) The auditor must verify the statement by statutory declaration and 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.

Penalty: Division 7 fine.

(7) For the purposes of section 22(3)(b) of the Act, an agent must lodge an audit statement or declaration within two months after the end of each audit period.

(8) For the purposes of section 22(4) of the Act, the civil penalty for default in lodging the audit statement or declaration within the time allowed is \$300.

Agent's statement

16. (1) An agent who is required to have accounts and records audited under Division 2 of Part 3 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 two partners of the firm; or
- (c) in the case of a body corporate agent—under the hands of not less than two directors of the body,

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.

Penalty: Division 7 fine.

(2) The notice must be verified by statutory declaration—

- (a) of the agent; or
- (b) in the case of a firm of agents—of not less than two of the partners of the firm; or
- (c) in the case of a body corporate agent—of not less than two directors of the body.

(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.

Penalty: Division 7 fine.

Audit when agent ceases to carry on business

17. (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 Division 2 of Part 3 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 four months of the winding up of the agent's affairs or within such further period as the Commissioner may allow.

Penalty: Division 7 fine.

(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.

Penalty: Division 7 fine.

(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.

Audit and report, etc., for firm operates for each partner

18. 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.

Certain persons may not audit accounts and records of agent

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

- (a) is, or has been within two 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.

Penalty: Division 7 fine.

Indemnity fund

20. (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)(d) 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 and sales representatives;
- (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.

Claimant's entitlement to compensation and interest

21. 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.

Land Agents Regulations 1995

SCHEDULE

Fees

1. Section 7(b) of the Act: Application for registration \$181
2. Section 9(2)(a) of the Act: Annual fee \$181

APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Regulation No. 259 of 1996, reg. 4)

4. A regulation varied or revoked by these regulations will continue to apply (as in force immediately prior to the variation or revocation coming into operation) to an expiation notice issued under the varied or revoked regulations.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Regulation 6(2):	varied by 90, 1996, reg. 3; 79, 1997, reg. 3
Regulation 7(1) - (3):	varied by 259, 1996, reg. 3 (Sched. cl. 13)
Regulation 8:	varied by 259, 1996, reg. 3 (Sched. cl. 13)
Schedule	
Clause 1:	varied by 90, 1996, reg. 4(a); 79, 1997, reg. 4(a)
Clause 2:	varied by 90, 1996, reg. 4(b); 79, 1997, reg. 4(b)

Land Agents Regulations 1995**APPENDIX 2****DIVISIONAL PENALTIES AND EXPIATION FEES**

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.