

South Australia

Community Titles Variation Regulations 2003

under the *Community Titles Act 1996*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *Community Titles Regulations 1996* (Gazette 31.10.1996 p 1559) as varied

- 4 Insertion of regulation 29A
 - 29A General duty with respect to electronic records
 - 5 Substitution of regulations 30 and 31
 - 30 Cash books
 - 30A Separate trust ledger accounts
 - 30B Reconciliation statements
 - 31 Receipt of trust money
 - 6 Variation of regulation 32—Payment of trust money
 - 7 Variation of regulation 33—Audit of trust accounts
 - 8 Variation of Schedule 1—Forms
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Community Titles Variation Regulations 2003*.

2—Commencement

These regulations will come into operation on 7 April 2003.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in this regulation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Community Titles Regulations 1996* (Gazette 31.10.1996 p 1559) as varied

4—Insertion of regulation 29A

After regulation 29 insert:

29A—General duty with respect to electronic records

If an agent uses a computer program to keep records under this Division, the agent must ensure that—

- (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 week, 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.

5—Substitution of regulations 30 and 31

Regulations 30 and 31—delete the regulations and substitute:

30—Cash books

- (1) For the purposes of section 126(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 receipts book 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;
 - (ii) the name of the person from whom the money is received;
 - (iii) the name of the community corporation or reference to which the transaction relates;
 - (iv) brief particulars of the purpose of the receipt;
 - (v) the amount of the receipt;
 - (b) a cash payments book 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 or electronic transfer of funds by which the payment was made;
 - (ii) the name of the payee;
 - (iii) the community corporation's 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) However, 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.

30A—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 corporation 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 corporation 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;
 - (ii) the name of the person from whom the money is received or to whom the money is disbursed;
 - (iii) brief particulars of the purpose of the receipt or disbursement;
 - (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 agent must clearly record the transfer—
- (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 zero; and
 - (B) a hard copy of all of the information required under this Division 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; and
 - (d) hard copies of the trust ledger accounts and transfer journal are produced within 2 days of a request from the Minister or the agent's auditor.

30B—Reconciliation statements

At the end of each month, reconciliation statements must be prepared—

- (a) reconciling the balance of the agent's cash books, or equivalent computer records, kept under regulation 30 with the balance of the agent's trust account; and
- (b) reconciling the balances of the ledgers comprised in the agent's trust ledger accounts with the balance of the agent's trust account,

(but the agent is not required to set out in a statement a list of individual balances, or the names of the corporations on whose behalf money is held).

31—Receipt of trust money

- (1) For the purposes of section 126(2)(a) of the Act, the receipt that an agent must make available to a person making a payment of trust money must—
 - (a) 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) 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;
 - (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 corporation for whom the money is received;
 - (v) brief particulars of the purpose of the payment;
 - (vi) the amount of the payment.
- (2) An agent need not comply with subregulation (1)(a) 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).

- (3) An agent must make out a receipt in accordance with 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 a statement from a financial institution or some other way, whichever occurs sooner); or
 - (b) in any other case—immediately on receipt of payment.

6—Variation of regulation 32—Payment of trust money

- (1) Regulation 32—delete subregulation (2) and substitute:
 - (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.

Maximum penalty: \$500.

- (2a) 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.
- (2) Regulation 32—after subregulation (3) insert:
 - (4) 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 corporation 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.

7—Variation of regulation 33—Audit of trust accounts

- (1) Regulation 33(3)—after paragraph (f) insert:
 - (g) 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.
- (2) Regulation 33—after subregulation (6) insert:
 - (6a) However, the auditor is not required to give a report to the Minister in respect of the discovery of a loss, deficiency or failure if the auditor is satisfied that—
 - (a) bringing the discovery to the attention of the agent or community corporation will adequately deal with the matter; and
 - (b) the loss, deficiency or failure does not involve dishonesty or a breach of the law.

8—Variation of Schedule 1—Forms

Schedule 1—delete Form No. 1 and substitute:

Form No. 1—Sections 14(4)(h), 52(4)(f)(ii), 58(3)(e) and 60(3)(f)

CERTIFICATE OF LICENSED SURVEYOR

I,, a licensed surveyor under the Survey Act 1992, certify that—

- (a) *I am uncertain about the location of that part of the service infrastructure shown between the points marked > and < on the plan; and*
- (b) *this community plan has been correctly prepared in accordance with the Community Titles Act 1996 to a scale prescribed by regulation.*

Dated the day of 20

*.....
Licensed Surveyor*

Made by the Governor

with the advice and consent of the Executive Council
on 20 February 2003

No 14 of 2003

AGO 0007/03 CS