

Release of Deposits

January 25, 2019

RTO 91513

What an interesting start to this year for 2019 with two agents sentenced with corrections orders for trust account frauds and thefts. In both of these cases, which have only just been heard in the Courts (even though they are offences dating back as far as 2013), the main offence was misusing sales deposits.

As we start the new year, it is a great opportunity for us to remind agents of the processes involved when dealing with sales deposits. Section 88 of the Property, Stock and Business Agents Act is pretty clear about the restriction on an agent using trust monies:

88 Trust money not available to pay licensee's debts

(1) Trust money is not available for the payment of the debts of the licensee to any other creditor of the licensee, or liable to be attached or taken in execution under the order or process of any court at the instance of any other creditor of the licensee.

(2) This section does not take away or affect any just claim or lien that any licensee may have against or upon trust money.

We do understand that an agent may get paid from the trust deposit. However, the agent cannot make that assumption at any time throughout the process, and decide to withdraw their commission prior to proper authorisation.

The deposit is not the money of the agent, the agent is not a stakeholder and as such the agent has no right to withdraw funds or use funds until the authorisation has come through for the agent to withdraw any fees owed to them from that money.

Remember that you as an agent get paid your commission and any other fees owing (such as advertising) by the vendor. The money that you are holding in trust, does not solely become the vendor's money until settlement. At that point, the vendor (or their legal representative) will give you the authority to pay yourself your commission and any fees.

One of the only times an agent should be involved in an early release of deposit monies is when the vendor requires the deposit to enable them to pay a deposit on a property purchase. In this case, there would be a number of steps required for an agent to follow prior to that release:

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1. Receive proper authorisation - in writing from the legal representative of both the purchaser and the vendor. This is important because while the money has been paid by the purchaser at the unconditional exchange of contracts, the money is technically due to the vendor at settlement or rescission by the purchaser. Until such settlement or a rescission of contracts occurs, the money is still the funds of the purchaser.
2. If the funds required include what should be paid to the agent in commission and fees, a letter from you as the agent advising the vendor's solicitor or conveyancer that the money is to be released, confirming where it is being paid to and that a tax invoice will be provided for payment of commission prior to settlement.
3. Provide the tax invoice to solicitor or conveyancer after confirmation of the date of settlement to ensure you get paid at settlement.

Our final tip in this matter is to those of you who are the Licensee-In-Charge of an agency. Should you find an issue with your trust accounts because of your own actions or the actions of one of the agents that work within your agency, you must advise NSW Fair Trading within 5 days of being aware of an issue. It is better for you to advise them than it is for them to find out should they pop into your office for a random audit.

'Til next time,

Wishing you every success in your business ventures,

Rosy

4 HOUR CPD Seminars

THUR 7 TH FEB	CASTLE HILL Sales & Prop Mgmt	MON 18 TH FEB	BATHURST Stock & Station
MON 11 TH FEB	GOULBURN Stock & Station	MON 18 TH FEB	BALLINA Sales & Prop Mgmt
TUE 12 TH FEB	SYDNEY CBD Business Broking	TUE 19 TH FEB	TWEED HEADS Sales & Prop Mgmt
THUR 14 TH FEB	GOSFORD Sales & Prop Mgmt	THUR 21 ST FEB	PORT MACQUARIE Sales & Prop Mgmt
MON 18 TH FEB	BATHURST Sales & Prop Mgmt	THUR 21 ST FEB	PORT MACQUARIE Comm & Retail Sales & Leasing

2 HOUR CPD Seminars (8am - 10am unless otherwise specified). Pre-reading required Full 12 points!!

FRI 1 ST FEB	NEWCASTLE Sales & Prop Mgmt	FRI 22 ND FEB	PARRAMATTA Sales & Prop Mgmt
WED 6 TH FEB	BANKSTOWN Sales & Prop Mgmt	FRI 1 ST MAR	SYDNEY CBD Sales & Prop Mgmt
THUR 14 TH FEB	SYDNEY CBD Strata Mgmt	FRI 8 TH MAR	CASTLE HILL Sales & Prop Mgmt
TUE 19 TH FEB	TWEED HEADS Strata Mgmt	WED 13 TH MAR	LIVERPOOL Sales & Prop Mgmt



There we have it, our first fortnight of the year has flown by us all here at ACOP. We have all returned back from an incredible holiday break just that little bit more tanned, relaxed and rejuvenated. It was a steady start to 2019 with fresh faces completing our first Certificate of Registration program here at ACOP Head Office in the CBD, and we couldn't be more pleased to see them want to start their career in the property industry and wish them well for their future plans.

Alongside our Certificate of Registration courses, we have had an abundance of students attend our first CPD classes of 2019. We kicked off our first CPD here at ACOP running our 4 hour morning CPD Sales for Real Estate seminar followed by our 4 hour afternoon Property Management seminar which had the College buzzing. As many of you may know, our trainers love to travel to provide training, so they had made their first trip to the Central Coast at Gosford and back to Castle Hill to run our 2 hours CPD Sales and Property Management seminars. To finish off a great start to this fortnight, we welcomed our students who are attending our first licensing module of 2019 – the 5 day Strata Management Agency Practices course.

With our College closed over the Christmas and New Year break, it was a great to see everyone after we left 2018 with a bang. We spent the first week processing our roles (as you do) coming back from holiday mode, but it wasn't long before we got back into the swing of College life. We exchanged hugs, laughter, goals for 2019 and positive vibes that lead to our stories of our holidays. Some of us enjoyed long afternoons by the poolside, strolls along the beach soaking in the sun, venturing coast to coast discovering new and exciting fishing spots whilst others sailed the beautiful scenic seas of New Zealand and let me tell you we are as ready as ever to kick start this new year as a team with you all. Welcome back.

Certificate of Registration Courses

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

MON 4TH - WED 6TH FEB	PARRAMATTA
MON 18TH - WED 20TH FEB	PORT MACQUARIE
MON 18TH - WED 20TH FEB	SYDNEY CBD
MON 4TH - WED 6TH MAR	CASTLE HILL
SAT 23RD - SUN 24TH MAR	SYDNEY CBD ONLINE + WEEKEND WORKSHOP

Finance & Mortgage Broking Courses

Units taken from nationally accredited training qualifications from the FNS Financial Services Training Package.

MON 25TH - WED 27TH FEB	SYDNEY CBD Cert IV in Finance & Mortgage Broking
MON 25TH FEB - FRI 1ST MAR	SYDNEY CBD Dip of Finance & Mortgage Broking Management

Property Licence Courses

Units taken from nationally accredited training qualifications from the CPP07 Property Services Training Package.

25 TH - 26 TH MAR	Financial Management SYDNEY CBD
31 ST JAN - 1 ST FEB	Staff Management SYDNEY CBD
11 TH - 14 TH FEB	Sales for Real Estate SYDNEY CBD
1 ST - 5 TH APR	Stock & Station Agency Practices SYDNEY CBD
11 TH - 14 TH MAR	Strata management Agency Practices SYDNEY CBD
FRI 15 TH FEB	Real Estate Auctioneer Accreditation SYDNEY CBD

FRI 15 TH MAR	Trust Accounting + Insurance SYDNEY CBD
4 TH - 6 TH FEB 18 TH - 20 TH FEB	Trust Accounting SYDNEY CBD PORT MACQUARIE
7 TH - 8 TH FEB 25 TH , 26 TH , 27 TH FEB	Property Management SYDNEY CBD SYDNEY CBD EVENING (5.30PM - 8.30PM)
7 TH - 8 TH FEB	Business Broking Agency Practices SYDNEY CBD

View our course calendar for all course details.

Finish 2018 with Success

With proposed reforms coming for the real estate and property industry, make 2018 the year that you get the qualification and obtain a full property licence.

ACOP provides licensing training programs, and will recognise your prior learning and experience, for the following licence categories:

- **real estate agent's licence**
- **strata manager's licence**
- **business agent's licence**
- **stock and station agent's licence**
- **buyer's agent's licence**
- **on-site residential property manager's licence**

If you are seeking Recognition of Prior Learning (RPL) or Recognition of Current Competence (RCC), talk to us about the types of evidence that you will need to provide to seek these exemptions from training.



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