



Trust Account Management

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Newsletter

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Trust Account Management

It's that time of year. The end of September has come and gone (not that it feels that way after the extended lockdown that most of us in NSW and VIC are still experiencing).

The end of September (the 30th to be exact) is usually the date that all property agents in NSW need to have submitted their Trust Account audit reports to NSW Fair Trading. Due to Covid-19, this submission date has been extended to 31 December 2021 (for this year only). Side note here – make sure you obtain a copy of your Trust Account report from your auditor and retain in your records for a period of three years.

If you are one of ACOP's Facebook followers then you may have heard this story a few months ago. If you are not a subscriber we should first ask, why not? Tune in at 4.30pm on Wednesday afternoons for our industry updates. But back to our story, a solicitor was astounded recently when an agent had made a pretty big mistake when disbursing funds from the trust account. The solicitor was acting for

the vendor in a sale and the agent was holding \$45,000 as deposit in their trust account. One week prior to settlement the solicitor, in accordance with the contract and permission from the purchaser's solicitor, had instructed the agent to release \$35,000 of the deposit as it was required towards the discharge of the mortgage, leaving \$10,000 in the agency trust account. The agent followed the instructions and as such the settlement proceeded without issue.

A week later, after settlement had been completed and after business hours, the vendor's solicitor received an email from the vendor advising that they had received a large deposit that they were not expecting, the agent had deposited \$35,000 directly into the bank account of the vendor. It appeared that the agent had in fact released the \$35,000 twice... from a \$45,000 deposit. The vendor's solicitor contacted the agent and the answer given, "oh the accounts team must have made a mistake". Subsequently, a request was sent to the vendor from the agency to return the additional \$35,000. Without considering the obvious

trust account breach issues in this scenario, as well as the benefits of conducting daily reconciliations and having the Licensee-In-Charge responsible for the disbursement of trust monies, one major question raised is, has this agency followed the correct procedure in reporting this breach to NSW Fair Trading? This is not just a breach that the Licensee-In-Charge should note in their diary for when their annual audit is conducted, they must report this breach within a very short time frame.

Section 89 of the Property and Stock Agents Act 2002 states the following:

89 Licensee to notify trust account becoming overdrawn

A licensee must, within 5 days after becoming aware that a trust account of the licensee has become overdrawn, notify the Secretary in writing of:

- a) the name and number of the account, and
- b) the amount by which the account is overdrawn, and
- c) the reason for the account becoming overdrawn.

Maximum penalty: 100 penalty units.

We do not know if the agent ever made that report to NSW Fair Trading, and we would hope that there are not many agents out there

making the mistake of accidentally releasing the same amount twice within a week to a vendor. We are pretty certain that not all agents realise that when a breach does occur, it **MUST** be noted with NSW Fair Trading even outside of your regular annual audit. Not doing so can attract a financial penalty to the Licensee-In-Charge.

Rosy Sullivan

Director | College Principal

From the office

All of us here at ACOP are starting to get excited about the return of some freedom here in Sydney and the ability for us all to be working together again at College head office. None of us will miss the daily “teams” meeting and the two dimensional squares on our computer – there’s nothing quite like that personal approach to doing business. Every business has been jumping hurdles and looking at alternatives for daily work – and we are looking forward to combining some of the new processes we have developed with some of the good-old fashioned ability to connect in person.

Even more exciting than the return to the office, is the thought that cakes will again be part of work-life. Fingers crossed that our welcome back cake will be amazing.

Bring on freedom day and an ability to connect with our friends and family.

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