



Unclaimed Monies held in Trust Accounts

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Unclaimed Monies held in Trust Accounts

Unclaimed money for real estate agencies refers to funds held in a trust account (sales or property management) that have not been returned to the rightful owner, such as landlords, tenants, vendors or purchasers, for a specific legal period.

The Unclaimed Money Act 1995 (NSW) applies to unclaimed money held in a trust account under the Property and Stock Agents Act 2002.

According to the Act, any trust money is deemed unclaimed if it has been maintained by a licensee in a trust account for over 2 years without any activity. This rule encompasses all monetary amounts, including those below \$100. The types of funds that fall under this category include tenant deposits, un-presented cheques, funds placed in a trust account without a specific reference or identified owner, expression of interest deposits, as well as proceeds from property sales, such as interest accrued from deposit funds held in a term deposit.

Additionally, small balances that remain in a vendor or purchaser ledger after the completion of a property sale are also included.

Licensees of agencies are legally obligated to exert reasonable efforts to locate the owner prior to declaring the funds as unclaimed, and failure to do so could attract a penalty of up to \$5,500. Reasonable efforts can be dictated by which account the money has been deposited into. For instance, in the case of a property management account, there are various steps you can take to ascertain the owner. Begin by determining which tenant has defaulted on payments, especially if this is an unusual occurrence, particularly when the deposited amount matches the unidentified amount. Additionally, consider any outstanding amounts related to water usage.

Key deadlines and requirements for agencies:

- Agencies must reconcile and finalise their trust accounts by 30th June each year.



- Agencies must have their trust accounts audited, by a qualified Auditor annually for the period ending 30 June, with reports submitted to NSW Fair Trading via the Auditor's Report Online portal by 30 September.
- Agencies must still submit an audit report if there were no transactions in the Trust account during the Audit period.
- Unclaimed money must be reported to Revenue NSW (NOT to NSW Fair Trading) by 31 October of the year following the 30 June date it became unclaimed.
- Payment of unclaimed monies must be made within 7 days of lodging the return.

In an ideal world, every person-purchaser, vendor, landlord and tenant alike would identify the money they have deposited. However, this is not always the case.

Regardless of which trust account money has been deposited in, if it is unclaimed and you have held

the funds for two years, you must be able to show what steps you have taken to identify the owner of the monies. If the rightful owner cannot be found, then the funds must be reported and transferred to Revenue NSW. As noted above, failure to do so may result in penalties of up to \$5,500 plus potential daily penalties of \$550 for ongoing non-compliance.

The Act also stipulates that money held in a trust account by a former Licensee-in-Charge, or the personal representative of a deceased Licensee, is unclaimed money and must be remitted to Revenue NSW within three months after the person ceased to be the Licensee or became a personal representative.

For further information regarding unclaimed Trust Account monies, please visit the Revenue NSW website: <https://www.revenue.nsw.gov.au/unclaimed-money>

Rosy Sullivan
Director | College Principal

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