



# REBA Trust Accounting: how to get it right

Alastair Abbott | 13 November 2019

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## REBA Trust Accounting: how to get it right

### Knowledge Check

- ▶ What are the bank reconciliation requirements for an interest bearing trust account?
- ▶ How often must your bond register be reconciled?
- ▶ If you identify a trust accounting error, what steps must you take?
- ▶ When receiving cash deposits, what are the mandatory requirements and time frames?



#### Who are Australian Audit?

- CA ANZ Firm
- Audit only firm
- 3 partners
- Office in Perth CBD

## Alastair Abbott

CA, B.Comm., GradDipCA, M. Forensic Accounting, MAICD, Registered Company Auditor, Registered Self-Managed Super Fund Auditor

- ▶ Joined Australian Audit in 2008, rising to position of Director in 2014
- ▶ Completed his undergraduate studies at the University of Western Australia followed by the Chartered Accounting program.
- ▶ Completed a Masters of Forensic Accounting through the University of Wollongong.
- ▶ Has broad experience across all types of audits, from the smaller trust accounts, variable outgoings and strata companies through to financial statement audits for large companies, charities and financial service licensees.

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## Disclaimer

- ▶ This presentation is for your general information only, and should not be taken as specific financial or business advice. You should not act, or refrain from acting, on the basis of this presentation alone, without seeking specific advice from your advisers.
- ▶ Nevertheless, this presentation has been carefully prepared based on the information available at the time of the presentation.

## Outline of this session

- ▶ Recent disciplinary actions
- ▶ Audit outputs
- ▶ Trust accounting requirements
- ▶ Common errors

## Legislation & References

- ▶ Real Estate and Business Agents **Act** 1978
- ▶ Real Estate and Business Agents (General) **Regulations** 1979
- ▶ **Code of Conduct** for Real Estate and Business Agents and Sales Representatives 2016
- ▶ DMIRS: **Trust account handbook** for real estate agents and real estate business agents (Sep 2018)
- ▶ DMIRS: A **guide to auditing** trust accounts (Dec 2017)
- ▶ DMIRS: **Compliance Self-Assessment** Checklist

Handbook – 24 pages  
Audit guide – 50 pages

## Recent Disciplinary Actions

- ▶ Fine for trust account breach (Port City Real Estate)
  - ▶ July 2017 withdrew \$4,735 from trust account as 'break contract fee'
  - ▶ Mistaken belief by agent that contract allowed for this charge
  - ▶ \$4,000 fine and costs
- ▶ Ten year ban for deceptive conduct (Matthew Liscia)
  - ▶ Sales agent charged \$1,000 'open day' fee, deposited to his personal account
  - ▶ \$20,000 deposit for signing lease, paid to his personal account
  - ▶ Funds repaid, \$3,000 fine and costs, and 10 year ban

Recent Disciplinary Actions – AKA 'why should I care' or 'why should I pay attention'



## Recent Disciplinary Actions

- ▶ Trust account mistakes (TM Residential and Executive Leasing)
  - ▶ May 2016 to Sep 2016 - \$17,882 (5 occasions) mistakenly withdrawn from trust account
  - ▶ July 2016 to Sep 2016 - \$16,840 (3 occasions) bonds received recorded as rent received
  - ▶ Jan 2016 - \$1,931 received but not entered by next business day
  - ▶ July 2016 to Oct 2016 - \$26,120 (6 bonds) not lodged with bond admin within 14 days
  - ▶ July 2016 to Oct 2016 – 2 owners charged 6.6% management fee instead of 6% fee
- ▶ Finding
  - ▶ Breaches due to error, no evidence of dishonesty, Agent voluntarily reported to consumer protection
  - ▶ No client suffered any loss – funds repaid as soon as identified
  - ▶ \$10,000 fine and costs on 13 June 2019

## Recent Disciplinary Actions

- ▶ Property management and trust account breaches (Real Estate Property Shop Network Pty Ltd / James Samuel Henneberry)
  - ▶ \$664.70 withdrawals from trust in error, and other property management matters
  - ▶ \$4,000 fine
- ▶ Late bond lodgements (LJ Hooker Geographe Bay)
  - ▶ 2 bonds lodged late (6 and 9 days) in May 2017
  - ▶ Feb 2019 \$3,500 fine
- ▶ Permanent ban for stealing trust funds (Kylie Chiplin)
  - ▶ Feb 2016 to May 2018 stole \$34,803.99 from a Scarborough Real Estate trust account
  - ▶ 8 May 2018 fined \$3,000 plus 18 months imprisonment, suspended for 24 months
  - ▶ Permanent disqualification

## Recent Disciplinary Actions

- ▶ Late bonds and wrong dates (Caputo & Clay Pty Ltd / Michael Clay)
  - ▶ Caputo & Clay Pty Ltd, formerly trading as Harcourts Integrity
  - ▶ Dec 2017 – May 2018 – 9 bonds lodged late, 8 bonds lodged with incorrect receipt dates
  - ▶ \$15,000 fine
- ▶ Failing to cooperate with auditor (Greg O'Farrell)
  - ▶ \$1,053.90 fine and costs for failing to cooperate with auditor during termination audit

# Audit outputs

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## Audit Outputs

### *By Auditor*

- ▶ Declaration by auditor
- ▶ Statutory declaration by auditor
- ▶ Management letter

### *By bona fide control (BFC)*

- ▶ Statutory declaration by person in bona fide control
- ▶ Statement of trust account money held (Annexure A)

## Declaration by auditor

1. That I am a registered company auditor
2. That I have audited the trust account
3. That I am not a real estate and/or business agent, nor a partner, clerk or servant of any agent
4. That I am not related to the agent, nor have I had any business dealings with that agent.

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DECLARATION BY AUDITOR REAL ESTATE AND BUSINESS AGENTS ACT 1978, SECTION 72(3)	
Name of auditor:	
Registered number of auditor:	
Address of auditor:	
Email address of auditor:	
I, the above named, do solemnly and sincerely declare:	
1. That I am a registered company auditor within the meaning of Part 9.2 of the Corporations Act 2001 (Cwth).	
2. That in accordance with the Real Estate and Business Agents Act 1978, I have, with the assistance of my staff audited the trust account(s) of:	
Name of agent*:	
Business name of agent	
Registered address of agent:	
Email address of agent:	
For the year ended:	
3. That I am not a real estate and/or business agent carrying on business as such, nor a partner, clerk or servant of the above named real estate and/or business agent or any other real estate and/or business agency actually in practice.	
4. That I am not related by blood or marriage or in a de facto relationship with the above named real estate and/or business agent nor have I had any business dealings with that real estate and/or business agent during my appointment as the agent's auditor.	
Declared at	(place) this ____ day of ____ 20__
	(signature)

Some examples of **conflicts of interest** include:

- acting as the **general accountant** for the agent;
- performing any type of taxation or other **financial services for the agent**;
- preparing any form of financial documentation (e.g. Business Activity Statements) for the agent;
- supplying any form of general financial advisory service to the agent;
- having a **financial interest in the agent's business**, including the agent's properties in which the agent also has financial interests;
- being a business partner of the agent, regardless of whether the business interest is related to real estate or settlement;
- being an employee of the agent, whether employed as a licensed person, clerk or servant of the agent;
- being a **tenant of a property owned or managed by the agent**;
- being a partner, clerk or servant of a company in which the agent has a financial interest;

## Statutory declaration by auditor

1. That I have audited the Trust Account
2. Report on the audit, that in my opinion:
  1. the **trust accounts have been regularly kept** and properly written up;
  2. the trust accounts **were ready for examination** at the periods appointed by me;
  3. the agent has **complied with all my requirements** as auditor;
  4. the trust **accounts are and have been in order** during the year of the audit; and
  5. there is **no matter** in relation to the trust accounts that should, in my opinion, be **communicated to Consumer Protection**, other than those matters included in my management letter.

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STATUTORY DECLARATION BY AUDITOR REAL ESTATE AND BUSINESS AGENTS ACT 1978, SECTION 79(3)(h)	
Name of auditor:	
Registered number of auditor:	
Registered address of auditor:	
Email address of auditor:	
I, the above named auditor, sincerely declare as follows:	
1. That in accordance with the <i>Real Estate and Business Agents Act 1978</i> , I have with the assistance of my staff audited the trust account of:	
Name of trust account:	
Business name of agent:	
Registered address of agent:	
Email address of agent:	
<b>For the year ended:</b>	
2. That the audit of the above mentioned agent's trust account(s) has been completed for the above year ended ..... (insert date) in accordance with sections 79(2) and 79 of the <i>Real Estate and Business Agents Act 1978</i> and that in my opinion:	
(a) the trust account(s) have been kept regularly and properly written up;	
(b) the trust account(s) were ready for examination at the periods appointed by me;	
(c) the agent has complied with all my requirements as auditor;	
(d) the trust account(s) are and have been in order during the audit period; and	
(e) there is no other matter in relation to the trust account(s) that should, in my opinion, be communicated to the Commissioner for Consumer Protection.	
This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.	
This declaration is made under the <i>Oaths, Affidavits and Statutory Declarations Act 2005</i> at .....	
..... (signed) by .....	
..... (signature of person making the declaration)	
in the presence of .....	
..... (signature of authorised witness)	
..... (name and qualification of authorised witness)	

## Management letter

*Further to our carrying out an audit of the XYZ Real Estate Trust Account for the year ended 31 December 2019, **there were no matters to be reported to management.** The books of account, files and general record keeping were of a high standard.*

**OR**

*Further to our carrying out an audit of the XYZ Real Estate Trust Account for the year ended 31 December 2019, **there were the following matters to be reported** to management. The books of account, files and general record keeping were of a high standard, other than the matters noted below.*

*[items listed]*



## Statutory declaration by BFC

1. I am the person in bona fide control of the business
2. Annexure A is attached, listing;
  1. money held on 31 December by the agent for or on behalf of any other persons; and
  2. negotiable or bearer securities or deposit receipts in the name of the agent which were held by the agent on that day.
3. That the particulars shown in Annexure A are true and correct in every detail therein.
4. Must be witnessed by an authorised witness
  1. <https://www.commerce.wa.gov.au/consumer-protection/authorised-witnesses>

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VERIFYING STATEMENT OF BALANCES HELD REAL ESTATE AND BUSINESS AGENTS ACT 1978, SECTION 80	
Person in bona fide control	
Home address:	
Email address:	
I, the above named do solemnly and sincerely declare:	
1. I am the person in bona fide control of the business carried on by:	
Name of licensed agent:	
Business address of agent:	
2. That annexed hereto and marked as Annexure 'A' is a statement of:	
(i) money held on ..... (insert date) by the above agent for or on behalf of any other persons, and	
(ii) negotiable or bearer securities or deposit receipts in the name of the above agent which represent money drawn from the trust account and which were held by the above agent on that day.	
3. That the particulars shown in the annexed statement marked Annexure 'A' are true and correct in every detail therein.	
This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.	
This declaration is made under the Oaths, Affidavits and Statutory Declarations Act 2005 at	
..... (place) on ..... (date) by	
..... (signature of person making the declaration)	
in the presence of ..... (signature of authorised witness)	
..... (name and qualification of authorised witness)	

## Statement of trust account money held (Annexure A)

Name of Licensed Agent:	
Business Address of Agent:	
Person in Bona Fide Control:	
For the Year Ended:	
Declaration Date:	

This is the statement marked 'A' referred to in the declaration of the above person in bona fide control of the business, being the person in bona fide control of the business carried on by the above licensed agent declared on the above declaration date.

### Cash at Bank

*(Insert details of all trust accounts held)*

Account name	Bank and Branch	BSB	Account No.	Reconciled Balance AU\$
General trust accounts				
Separate Interest bearing trust accounts				

But ... it was only a minor error!

- ▶ Unfortunately, materiality doesn't apply
- ▶ Regardless of the quantum of any error identified, it is reportable to DMIRS



# Trust accounting requirements

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## Account Naming (Regulation 6D)

### **Sole trader**

REBA Trust Account – Mary Smith T/A ABC Real Estate – TC12345

### **Partnership**

REBA Trust Account – Mary Smith and Bill Jones T/A ABC Real Estate – TC12345

### **Body corporate**

REBA Trust Account – ABC Pty Ltd T/A ABC Real Estate – TC12345

### **Interest Bearing Trust Accounts**

REBA Trust Account – IB – ABC Pty Ltd T/A ABC Real Estate in trust for  
Joe Smith – TC12345

- ▶ Opening and closing accounts – must advise DMIRS (standard form)

The title of a trust account needs to contain:

- the description 'REBA Trust Account', and
- the name of the holder of the triennial certificate, and any business name of that holder as recorded by the Commissioner; and
- the letters 'TC' followed by the agent's triennial certificate number.

The title of an interest bearing trust account (IBTA) needs to contain:

- the description 'REBA Trust Account – IB', and
- the name of the holder of the triennial certificate, and any business name of that holder as recorded by the Commissioner; and
- the words 'in trust for' followed by the name of the person who requested the separate account; and
- the letters 'TC' followed by the agent's triennial certificate number.

## Bank Reconciliations – General Trust (68(6)(d))

- ▶ The monthly trust account reconciliation should be:
  - ▶ **as at the close** of business of the last day of the month;
  - ▶ completed **within 10 working days** after the end of each month;
  - ▶ verified, **signed and dated by the agent**, or the person in bona fide control, even if there are no funds in the account; and
  - ▶ retained for auditing purposes
- ▶ Unpresented cheques to be followed up
- ▶ Adjustments not to be carried forward continuously

## Bank Reconciliations – Interest Bearing Trust

- ▶ IBTA for >\$20,000 or >60 days
- ▶ Reconcile within trust accounting software is best practice
  - ▶ May use portfolio approach, e.g. off the plan developments
- ▶ 10 days, signed by BFC, close of each month still applies

Lot #	BSB	Acct #	Account Name	Opening Balance	Deposits	Withdrawals	Interest	Fees	Closing Balance
1	123-123	45678912	XXX	\$\$\$	\$		\$	-\$	\$\$\$
2	123-123	45678913	XXX	\$\$\$		-\$	\$	-\$	\$\$\$
3	123-123	45678914	XXX	\$\$\$			\$	-\$	\$\$\$

*Reference: Section 68A of the Act and regulation 6D and 6E of the Regulations*

## Depositing trust money

- ▶ Record to accounts by close of next business day (68(6b))
- ▶ Receipt issued and all details included (Regulation 6G)
  - ▶ Not required for electronic receipts
- ▶ All trust money must be deposited in the trust account with an authorised financial institution **as soon as practicable** after it is received. (68(1))
  - ▶ It is the view of the Department that, 'as soon as practicable' means **by close of business the next working day.**

### ***Contents of trust receipts***

It is a requirement that all trust receipts show the following information:

- the name of the holder of the triennial certificate, and the business name of the holder, that is recorded in the register;
- a number or letter, or a combination of both, in consecutive order that allows the receipt to be uniquely identified;
- the date on which the money was received;
- the name of the person paying the money;
- the amount of money received;
- a brief description of the purpose of the payment; and
- if the receipt is hand-written, the name of the person receiving the money evidenced by the signature of that person.

*Reference: Regulation 6G of the Regulations*

When money has been received by electronic transfer, an agent must ensure a record is kept to allow the receipt of the money to be uniquely identified, by including:



- a number or letter, or combination of both, in consecutive order that allows the record to be uniquely identified;
- the date the money was received;
- the name of the person paying the money;
- the amount of the money received; and
- a description of the purpose of the payment.

## Withdrawing trust money

- ▶ Record by next business day to accounts (68(6b))
- ▶ Cheques (if used)
  - ▶ Never pre-signed, Insert “not negotiable – account payee only”, cross out “or bearer”
- ▶ Ensure funds cleared before disbursing
- ▶ Overdrawn account / trust ledger (68C(3))
  - ▶ Advise DMIRS & Auditor immediately
  - ▶ Replace funds from Agent’s general account
- ▶ Commissioner: agents ought not pay their clients’ creditors by credit card and then reimburse themselves from the trust account, unless they have consent from their client to do so.

## Withdrawing Fees payable to agent

- ▶ Must have a valid authority to act
- ▶ Fees charged not more than agreed
- ▶ Funds to agent should be paid to trading account, not paying bills directly
- ▶ Service has been performed
  - ▶ i.e. quarterly inspection must occur before fee is charged
  - ▶ Disbursements are for actual costs only
- ▶ Every 7 days recommended by DMIRS
  - ▶ Not every software can do this yet

## Bonds

- ▶ How to lodge on time and correctly
  - ▶ Required to lodge a security bond as an eTransaction via the BondsOnline system
  - ▶ All lodgements must be filed **within 14 days of receipt of the bond.**
  - ▶ If the tenant is paying the **bond by instalments**, do not wait until you receive the full amount. Each instalment must be lodged within 14 days of receiving it.
- ▶ Failing to lodge can be costly!
  - ▶ Each instance of failing to lodge a bond within 14 days of receipt can result in an infringement notice of \$2,000 or, if prosecuted in Magistrates Court, a fine for up to \$20,000.

## Bonds

- ▶ Monthly Bonds Report

- ▶ From November 2019 bonds report won't be emailed – have to download from BondsOnline

- ▶ DMIRS policy to reconcile regularly – on same basis as trust accounts (monthly, within 10 days)

- ▶ Old guidance was quarterly
  - ▶ No current published guidance

## Other Requirements

- ▶ No buffer funds
  - ▶ Including fees payable to the agent
- ▶ Record & narration for journals
  - ▶ Sufficient details
- ▶ Termination audit
  - ▶ Due 5 months after closing

## Proactive Compliance

- ▶ Checklist used is available
  - ▶ <https://www.commerce.wa.gov.au/publications/proactive-compliance-visits-real-estate-agents>
- ▶ Ensure you are complying with all items
- ▶ Breach in proactive visit may also have to be reported in audit visit

## Unclaimed Monies

- ▶ Account needs manual reconciliation and summary of outstanding items
- ▶ Lodgement process is long, involves lots of waiting
- ▶ All unclaimed monies should be in one ledger
  - ▶ Should not be adjustments on bank reconciliation
- ▶ Report to Treasury January each year
  - ▶ Have been holding money >2 years
  - ▶ 18 months later Treasury will request payment
- ▶ <http://www.treasury.wa.gov.au/Unclaimed-money/Lodging-Monies-with-Treasury/>



## Client Files

- ▶ Records are properly maintained and can be conveniently and properly audited (68(6))
  - ▶ List of clients / files
- ▶ Full and accurate records of receipts and payments are maintained (68(6))
  - ▶ Added to each file, or in software
- ▶ Entitlement to commissions (60 & 61)
  - ▶ Validly appointed & service has occurred
  - ▶ Charges agreed & support for expenses

## Client Files

- ▶ Valid authority to act (60)
  - ▶ Signed by client (60(2))
  - ▶ Identifies property (60(2)(a))
  - ▶ Copy given to client (60(2)(c))
  - ▶ Statement on commissions; dollar value (not only %) and maximum cap
- ▶ Verification of ID (Article 25 of Code of Conduct)
- ▶ Security of documents (Privacy Act)
  - ▶ IT Security / physical security / back-ups
  - ▶ Mandatory data breach reporting

## Data Security

- ▶ 2 Factor Authentication
  - ▶ Especially for email system
- ▶ Password managers & strong password generators
- ▶ <https://haveibeenpwned.com/>

As a very quick aside, with the prevalence of scams and other electronic theft. Have you got strong security in place?

## When something goes wrong

- ▶ Purchasing rent roll / business
  - ▶ brought forward errors
- ▶ What to do when trust account is overdrawn or ledger is overdrawn
  - ▶ Notify DMIRS and auditor
  - ▶ Replace funds until problem is fixed

## When fraud or theft occurs

If you realise money has been stolen from a trust account, you must:

- ▶ Notify DMIRS
- ▶ Contact the auditor to conduct a special trust audit to attempt to quantify the amount of the misappropriation and possibly identify the culprit;
- ▶ Notify the police
- ▶ Replace the misappropriated amount immediately; and
- ▶ Alert your professional indemnity insurer.

Ransomware?

## Electronic Record Keeping

So you want to have a paperless office?

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- Need ability to print to paper on request
- Consider backups and data security
- Some documents still need to be signed as evidence, e.g. bank reconciliations
- May consider docusign or similar if not wanting to print at all

# Common errors

## Bank Reconciliations – common errors

- ▶ Not signed
- ▶ Not dated
- ▶ Dated more than 10 business days after month end
- ▶ Not to last business day of month
- ▶ IBTA not reconciled
- ▶ IBTA interest not recorded



## Common Trust Accounting Errors

### ▶ Incorrect entries

- ▶ A trust account must be used exclusively for funds received or held on behalf of clients in relation to a real estate transaction. (Not for P&C or sports club funds)
- ▶ All funds paid to you in trust, must be deposited into and held in your trust account.

### ▶ Unidentified funds held in suspense accounts and unrepresented cheques for significant periods of time

- ▶ Regular review of trial balance is very important
- ▶ Funds due to agent should be regularly disbursed

## Common Trust Accounting Errors

- ▶ **Delays in entering deposits into trust account ledger**
  - ▶ For cash received, requirement is to be entered by end of next working day
- ▶ **Incorrect trust account titling**
  - ▶ General trust accounts and interest bearing trust accounts
- ▶ **Deficient, expired or missing property management and sales authorities**
  - ▶ If an agent does not have a valid appointment to act from their principal to perform a service, then the agent is not entitled to receive any remuneration for the service performed.
- ▶ **Over-charging owners property management fees**
  - ▶ Beware GST inclusive and exclusive fields

## Common Trust Accounting Errors

- ▶ Failing to place rental application deposits into the agency trust account
  - ▶ Cash envelopes in receptionist's desk is not acceptable
- ▶ Delays in banking, poor security of cash on premises and identifying theft and fraud
- ▶ Verification of Identity checks not performed or evidence of check not recorded and kept on file
  - ▶ 100 point Client Identity Verification suggested; other evidence may be acceptable
  - ▶ Agents should retain copies of all documents obtained in the process of verifying identities

## Common Trust Accounting Errors

### ▶ Overdrawn accounts

- ▶ A trust account or ledger should never be overdrawn.
  - ▶ To avoid a shortfall, ensure deposited funds have cleared before drawing against them.
- ▶ Whenever a trust account is overdrawn you must notify the Commissioner in writing immediately, regardless of the amount or whether it's the result of a bank error.

### ▶ Incorrect payments out of the trust account by error causing the account to be overdrawn or deficient

- ▶ Overdrawn ledger more common than overdrawn bank

## Common Trust Accounting Errors

### ▶ Buffer accounts

- ▶ Under no circumstances should agents maintain a surplus amount within the trust account to absorb any inadvertent deficiencies that may arise from dishonoured bank cheques or bank charges.
- ▶ A buffer fund cannot be used to offset bank fees or for any other reason.
- ▶ Agents should regularly clear their commission or account fees to their general account.
- ▶ The Commissioner strongly recommends against the practice of retaining commissions and management fees in the trust account for an extended period of time.

### ▶ Suspense accounts not being cleared

- ▶ Regular review of trial balance can avoid this

## Other Common Errors

- ▶ Certificates not on display
- ▶ Expired certificate on display
- ▶ Errors in statutory declarations
- ▶ Failure to report overdrawn accounts

## Take away messages

- ▶ Read “Trust account handbook for real estate agents” by DMIRS
- ▶ Use a checklist to ensure all requirements are complied with
- ▶ Complete a ‘pro-active compliance audit’ on yourself

Questions?



## Australian Audit

- ▶ Australian Audit is a specialist audit firm of Chartered Accountants. With offices in the Perth CBD, we look forward to hearing how we can assist with your audit requirements.
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