



Real Estate

Continuing Professional Development



Trust accounts

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Real Estate CPD –Trust accounts, covers the following information:

Learning outcomes	4
Terms used in this guide.....	4
Introduction.....	5
Obligations regarding trust accounts	6
Trust accounts	6
Third-party trust account providers	7
Trust account records.....	7
Statement of account.....	10
Monitoring trust account money.....	11
Record keeping	12
Case study 1.....	12
Case study 2.....	13
Dispersing money/making payments	14
Paying out funds you receive.....	14
Authorising payments	15
Auditing your trust account.....	15
Appointment of auditor.....	16
Case study 3.....	17
Opening and closing trust accounts	18
Audit requirements	18
Case study 4.....	19
Case study 5.....	23
Summary	25
Appendix 1: Relevant sections from the Real Estate Agents Act 2008	27
Appendix 2: Relevant regulations from the Real Estate Agents (Audit) Regulations 2009....	29
Appendix 3: Relevant clauses from the ADLS/REINZ <i>Agreement for Sale and Purchase of Real Estate – Eleventh Edition 2022 (3)</i>	32

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Learning outcomes

At the end of this topic, you will be able to:

- understand and explain the obligations of licensees regarding trust accounts; and
- understand and explain the audit requirements for trust accounts.

Terms used in this guide

In this guide, we will use various terms related to real estate agency work and complaints processes. This table will explain key terms.

Term/abbreviation	Notes
CAC	A Complaints Assessment Committee.
Client	A person on whose behalf an agent carries out real estate agency work under a signed agency agreement. In this guide, we will consider that the agency has a client relationship with the seller and, therefore, that seller is their 'client,' and any buyer or potential buyers are 'customers'.
Code of Conduct	The Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012.
Consumer	In the context of this guide, the word 'consumer' refers to buyers, sellers, and potential buyers and sellers in the real estate sale and purchase process.
Customer	A customer is a person who is a party or a potential party to a transaction and excludes a client or potential client (as defined in rule 4.1 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012). The meaning of 'customer' depends on with whom the agency has a client relationship.
Disciplinary Tribunal	The Real Estate Agents Disciplinary Tribunal.
Purchaser/Buyer	The person buying the property
REA	The Real Estate Authority
Act/REAA	The Real Estate Agents Act 2008.
Audit Regulations	Real Estate Agents (Audit) Regulations 2009
Vendor/Seller	The person selling the property
Agency	When referring to the obligations of an agency under the Audit Regulations, agency means—

	<p>(a) in the case of an agent who is an individual who carries out real estate agency work on his or her own account, that individual; and</p> <p>(b) in the case of 2 or more individual agents who carry out real estate agency work in partnership with each other, that partnership; and</p> <p>(c) in the case of an agent that is a company, that company.</p> <p>(as defined in s 4 Audit Regulations).</p>
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Note:

The sale and purchase agreement most agencies use is the ADLS/REINZ *Agreement for Sale and Purchase of Real Estate*. However, some agencies use other agreement forms. Although we will reference the ADLS/REINZ form, the comments are relevant to those using other forms.

In this guide, we will reference the ADLS/REINZ *Agreement for Sale and Purchase of Real Estate - Eleventh Edition 2022* (3).

Introduction

This topic provides information relating to an agency's obligations and responsibilities to manage trust accounts, including their obligations under the Real Estate Agents Act 2008 and Audit Regulations.

It is important that all licensees including salespersons and branch managers, have sound knowledge of the rules relating to the use and oversight of trust accounts. Trust account obligations exist for the protection of consumers, and their funds, and it is important that all licensees understand the requirements.

In this topic, we examine the legal requirements, common issues and recent case law that has highlighted the importance of the Act and Audit Regulations in respect of trust accounts.

If trust accounts are not managed correctly, this could result in financial loss to consumers, professional misconduct findings and/or reputational damage to the licensee, agency, and loss of trust and confidence in the industry as a whole.

Obligations regarding trust accounts

Trust account obligations are an important part of the consumer protection focus of the REAA. All money received by an agent in respect of any transaction is required by law to be paid into a trust account. Trust account money is not available for payment of an agent's debt(s) and cannot be taken by an agent's creditors.

Agencies need to have good systems in place for dealing with consumer money. They also need to have sound procedures for oversight of the handling of money and the trust account(s).

Note: The text from some sections of the REAA and Audit Regulations are included in the Appendix 1 and Appendix 2.

This topic does not cover Anti-Money Laundering and Countering of the Financing of Terrorism (AML/CFT) requirements which all licensees must be familiar with. Licensees need to refer to the verifiable CPD topics AML: your compliance requirement and AML- due diligence. Department of Internal Affairs | Te Tari Taiwhenua - provides guidance on their website AML/CFT for [real estate agents](#).

Trust accounts

The 'Interpretation' section of the [Real Estate Agents \(Audit\) Regulations 2009](#) defines the terms 'trust account' and 'trust account money' as follows:

4 Interpretation

(1) In these regulations, unless the context otherwise requires, -

.....

trust account means a general or separate account kept by an agency at any bank carrying on business in New Zealand –

- (a) that is designated as a trust account; or
- (b) into which trust account money is deposited.

trust account money means all money that, when received by an agency, is subject to section 122 of the Act.

.....

All trust accounts, as defined above, must be audited, and auditors of trust accounts have specific duties.

[Under s 122 of the REAA](#), every agent must ensure that money received in respect of a real estate transaction is deposited into a trust account. The agency must ensure that the bank account into which trust account money is received is a "designated trust account" and ensure the bank receives written notice, and must request from the bank written confirmation that the bank accepts the terms of the notice.¹

¹ For the specific requirements of the notice to the bank refer to regulation 5(1) and 5(2) of the Audit Regulations.

The text of s 122 of the REAA is provided in Appendix 1.

Some common issues with trust accounts

Listed below are examples of common issues that arise with trust accounts:

- failure to appoint an auditor and/or a replacement auditor
- failure to receipt trust account money received in a timely manner
- failure to accurately receipt trust account money when received
- failure to provide monthly reconciliations on time
- failure and/or refusal to supply information that has been requested by REA
- audit reports being late or not provided at all
- statutory declarations not being provided
- false declarations being provided
- trust account money being released before 10 working days without agreement of all parties
- payment of trust account money to those not entitled to it
- late or no trust account receipts submitted to the auditor.
- a lack of understanding of trust account obligations

In this topic we will examine trust account obligations in relation to some of these issues.

Third-party trust account providers

Many real estate agencies now use independent third party trust account services as an alternative to operating an in-house trust account for money received in relation to a real estate transaction. If a third party provider is used the agency must ensure that the provider fully complies with all of the trust account requirements in the Act and regulations, and is responsible for any errors or omissions of that provider.

Trust account records

Every agency must keep accurate trust account records in a way that enables them to be properly audited. They must be up to date, clearly show the amount of trust money held for each client, and be secured as far as practicable against retrospective alteration or deletion (Regulation 6(1) of the Audit Regulations).

Trust account records must be kept for at least seven years from the date of the last transaction. After the first three years, records may be held through electronic storage, imaging, or similar technology.

The text of Regulation 6 of the Audit Regulations is provided in Appendix 2.

Receipt of funds

All trust money received must be receipted, banked, and recorded promptly and accurately in a trust account ledger. A separate ledger account must be kept for each client.

The trust account ledger must state the person making the payment, the amount, date, purpose, and source of the receipt, and the client for whom the money is being held.

Where trust account money is paid in cash, or if the payer of trust money requests, a receipt must be issued to the payer, and a copy of the receipt must be kept by the agency in either electronic or paper form.²

Receipt forms have to comply with Regulation 8 of the Audit Regulations. Trust receipts must be issued sequentially and include the following information:

- the name of the agency
- the person from whom the trust account money is received
- the person to be credited with the trust account money
- a brief description of the purpose for which the trust account money is received
- the amount, in words and figures, of trust account money received
- the date of issue of the trust receipt
- the signature of the agent, cashier, or other person authorised by the agency to sign trust receipts
- the words 'official receipt form for trust money'
- how the trust account money has been received by the agency, for example, by cash or by bank transfer.

The text of Regulation 8 of the Audit Regulations is provided in Appendix 2.

Holding trust money

Ten working day rule

When an agency receives trust money, such as the deposit on a property purchase, this money must be kept in the designated trust account **for ten working days after the date on which it was received** before making a payment of that money to any person (REAA, s 123). A court order or an authority signed by all the parties to a transaction may require the agent to pay the money before the expiry of the ten working day period.

Section 123 applies to any money received by an agent in respect of any transaction in their capacity as an agent.

The text of s 123 of the REAA is provided in Appendix 1.

² Refer to <https://www.dia.govt.nz/AML-CFT-Information-for-Real-Estate-Agents> for specific requirements on AML/CFT for real estate industry professionals.

Request for early release of a deposit

If written notice is received of any requisition or objection in respect to the title of the land affected during the ten working day period, the agent must continue to hold the money in the trust account until:

- written notice by court order; or
- an authority directing payment to be made and signed by all the parties to the transaction is received (REAA, s 123).

The delay before any money is paid out is designed to protect the parties involved in property transactions.

Contractual requirements relating to the deposit release

In addition to the requirements in s 123, licensees need to be aware of any contractual obligations which might apply in a particular situation relating to the release of deposit money.

For example, Clauses 2.4 and 2.5 of the *ADLS/REINZ Agreement for Sale and Purchase of Real Estate - Eleventh Edition 2022 (3)* relate to the release of deposit money.

The text of clauses 2.4 and 2.5 of the *ADLS/REINZ Agreement for Sale and Purchase of Real Estate - Eleventh Edition 2022 (3)* is provided in Appendix 3.

It is important that in every case, licensees:

- check what obligations might apply
- check that clients have an opportunity to seek legal advice; and
- seek their own advice if in any doubt.

The deposit can be released if the agreement is cancelled (in accordance with the terms and conditions of the agreement). (*ADLS/REINZ Agreement for Sale and Purchase of Real Estate - Eleventh Edition 2022 (3)*, clause 5.2)

The text of clause 6.2 is provided in Appendix 3.

When a request for early release of the deposit is made:

- the other party needs to have the opportunity to seek advice from their lawyer; and
- all parties need to authorise the early release; and
- the lawyers from both parties need to acknowledge acceptance of the early release of the deposit.

(Rule 9.7 and clauses 2.4 and 5.2 of the *ADLS/REINZ Agreement for Sale and Purchase of Real Estate - Eleventh Edition 2022 (3)*)

Licensees need to be aware that there are several situations in the sale and purchase agreement to cancel or avoid the agreement that may arise over an extended period of time (and potentially up to the date of settlement), well after the ten working day period provided for in s 123 of the REAA.

In the absence of proper authorisation by all parties (as specified in the sale and purchase agreement) and in accordance with a licensee's client and customer care obligations, a

licensee must hold the deposit as stakeholder for this extended period. As indicated above, licensees should ensure that parties have the opportunity to seek legal advice if they are unsure.

The deposit can be released if the agreement is cancelled (in accordance with the terms and conditions of the agreement).

Note that an early release of the deposit is for the benefit of the parties to the transaction, rather than the licensee and/or the agency. Due to the risks associated with early release REA strongly recommends that early release is authorised through a separate, clearly worded authority, signed by all parties (as opposed to being included in any sale and purchase agreement). Licensees must avoid undue pressure, maintain transparency and clearly document that the implications of early release have been explained to the parties.

Statement of account

The agency must provide a written summary of account to the person lawfully entitled to the money. This account must state:

- the particulars of the money received in the trust account on their behalf; and
- how the funds have been applied.

If requested, the account must be provided in writing as soon as the relevant client asks you and, in any case, no later than 28 days after the money was received in the agency trust account (REAA, s124)

The text of s 124 of the REAA is provided in Appendix 1.

It is an offence for an agent to render (submit) false accounts, and anyone found in breach under the Act may be liable to penalties (REAA, s152).

The text of s 152 of the REAA is provided in Appendix 1.

Payment and Refunding money

All money received by an agent in respect of a transaction **must** be paid to the person lawfully entitled to that money or in accordance with their instructions. (REAA, s122).

If money is received (for example, as a deposit on a property) and the transaction doesn't go through, the accounts **must** show the refund.

The obligation is on the agency to comply with AML/CFT requirements, even if they use a third-party provider. Licensees **must** be familiar with AML/CFT requirements and refer to the DIA's website for further information.

Refunds should only be sent back to the account from which the money came.

Monitoring trust account money

The agency **must** account for all transactions made in and out of the trust account, as required by the Audit Regulations.

A receipt **must** be issued as soon as possible after receiving the funds into the account.

Cleared funds

Cleared funds are defined in clause 1.1 (8) of the ADLS/REINZ *Agreement for Sale and Purchase of Real Estate – Eleventh Edition 2022* (3) as follows:

1.0 Definitions, time of performance, notices, and interpretation

1.1 Definitions

...

(9) "Cleared funds" means:

(a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines;

...

The current PLS guidelines are available on this webpage:

<https://www.lawsociety.org.nz/branches-sections-and-groups/property-law-section/guidelines/>

New Zealand banks send electronic credit payments as 'cleared' funds. Sending as 'cleared funds' means the bank that receives the payments can credit these payments as immediately available funds. Whether the funds can be accessed is subject to any restrictions that may be in place on the account.

An agency should not pay out non-cleared funds because until cleared, the funds have not actually been received.

If requested that funds be released quickly, and this request meets legal requirements and the requirements under the sale and purchase agreement, **ensure that the funds have cleared first**. This is particularly important because with electronic payments, transfers can be processed very quickly.

Record keeping

Every agency **must** keep trust account records in a way that enables them to be properly audited. Each receipt, payment, and transfer **must** be promptly and clearly recorded in the ledger for each client so the funds can easily be traced backwards and forwards (Regulation 6(2) of the Audit Regulations).

Your agency **must** be able to show how the balances of your accounting system ledger/journals reconcile with the bank statements.

The text of Regulation 6 of the Audit Regulations is provided in Appendix 2.

Monitoring reconciliation of accounts

At the end of each calendar month, every agency **must** reconcile the balance of the agency's trust account(s) to the balance of the agency's cash book and ledger. These reconciliations **must** be given to your auditor every month, even if there were no transactions during the month concerned. Reconciliations are due with the auditor on the 20th of the month, except for January, when the report is due by the 27th

Any variations between balances **must** be investigated. Variations may indicate:

- transactions entered into the ledger but not yet showing on the bank account; or
- transactions banked but not yet entered into the ledger; or
- data entry errors (such as '\$15,000' being entered instead of '\$18,000').

Miscellaneous fees and bank charges **should not** be paid from the trust account.

Case study 1

[2024] NZREADT 20

In this case the agency did not submit its list of balances and monthly reconciliations on time to its auditor in accordance with Regulation 15 of the Audit Regulations on 25 occasions over three financial years. On one occasion the list of balances/monthly reconciliation was provided 152 days late. Notably, the agency had been reminded of its obligations to comply with the Audit Regulations and REAA, by REA.

In explanations for its conduct the agency said it had staffing issues, had moved premises and had changed its licensed agent officer. The Tribunal considered that the agency should have put measures in place to ensure breaches did not occur.

The Tribunal found the agency guilty of misconduct under s 73(b) REAA. The Tribunal found that due to the length, extent and seriousness of the non-compliance that the agency's conduct was at the mid-level of misconduct under s 73(b) of the REAA.

The agency was censured and ordered to pay a fine of \$7,000.

You can read about this complaint and decision in the REA decisions database at rea.govt.nz

Case study 2

[2024] NZREADT 12

In this case the agency breached the Act and Audit Regulations on numerous occasions over the course of three financial years.

In summary, the agency failed to hold money and only pay those persons entitled to it, failed to ensure that the deposit of trust monies were correctly recorded to or paid from the trust account, and overdraw its trust account. The agency failed to provide monthly reconciliations on time on 27 occasions over three financial years, with some reconciliations being provided over one year late.

We outline the key breaches below. In summary, the agency:

- failed to ensure that the deposits of trust monies were correctly recorded in or paid from the trust account. Specifically, errors occurred on eight separate occasions in one financial year and nine occasions in another financial year.
- allowed the trust account to be overdrawn by \$11,575 which was only repaid months later.
- allowed the trust account to be surplus, however, this was only due to a commission being held in the trust account in error, which was eventually transferred out of the trust account.
- failed to provide its monthly reconciliations on time on 27 occasions over three financial years. Some reconciliations were provided over a year late. One reconciliation was provided 449 days late.
- failed to provide its Auditor a list of the trust accounts operated in three financial years.

The Tribunal found the agency guilty of misconduct under s 73(b) of the Act for breaching s 122 of the Act and regulations 7, 14, 15, 16 and 17 of the Audit Regulations.

The Tribunal recorded "that due to the length, extent and seriousness of non-compliance, the conduct is at the higher end of misconduct under s 73(b) of the Act".

The Tribunal also had regard to the fact that the agency had admitted liability and cooperated with the Authority. The agency had no previous disciplinary history, and it was acknowledged that there have been no reports of any subsequent breaches of the Audit Regulations. The Tribunal considered that some acknowledgement of the difficulties arising from COVID-19 was appropriate.

Having taken all of the above matters into account, and the principles as to penalty, the Tribunal concluded that the fine ordered against the agency must be placed at the mid to upper level of the available penalty.

The agency was censured and ordered to pay a fine of \$15,000.

You can read about this complaint and decision in the REA decisions database at rea.govt.nz



Questions

1. In this case what do you think the agency should have done?

2. How can you ensure compliance with the regulations?

Dispersing money/making payments

Agents are required to make certain payments from their trust account. These payments need to be in accordance with s 122 of the REAA. Examples of types of payments made from trust accounts are:

- fees/commission deducted
- balances of deposits to clients or their lawyers
- deposit refunds due to a sale not becoming unconditional

Paying out funds you receive

All money you have received for a real estate transaction **must** be paid to the person who is lawfully entitled to that money or in accordance with their instructions. Some customers may decide to include a condition stating that the deposit funds be held in the client's lawyer's trust account until settlement.

Trust money **must** be held in the trust account until it is paid out. You are required to account for all trust money you have received.

It is essential that trust funds are only paid to those lawfully entitled to receive the funds or as directed by them.

Uncertainty regarding legal entitlement to money in the trust account

If you are in doubt regarding who is lawfully entitled to any money, you **must** take all reasonable steps to learn, as soon as practically possible, who is entitled to the money. The funds should be held in the trust account in the meantime (REAA, s122(2)).

The text of s122 of the REAA is provided in Appendix 1.

Creditors are not entitled to take trust money as payment

If the agency is in financial difficulty, any creditors affected are not entitled to take trust money to pay for outstanding accounts. This is outlined in s 122(4) of the REAA:

122(4) *No money to which this section applies is available for payment of the agent's debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent's creditors.*

Interest on trust funds

If any interest is earned on trust account funds, it **must** be paid to the person entitled to it.

Withdrawal of commission

Any payment/deduction from a trust account **must** have the authority of the person who is lawfully entitled to the trust money. The salesperson usually establishes entitlement to withdraw commission from trust funds during the listing process when the agency is entering into an agency agreement with the client.

Authorising payments

It is **best practice** to have more than one authorised person approve the payments before making them. A process can be built into the agency's systems for electronic transfers whereby a secondary authorisation process occurs.

Auditing your trust account

A qualified auditor **must** audit all trust accounts at the times and in the manner set out under the Audit Regulations. All real estate agency trust accounts **must** comply with the Audit Regulations.

You **must** notify REA of the name of the auditor responsible for auditing your trust account(s) when you:

- start a new real estate agency business; or
- make any significant change to an existing business (such as entering into a partnership or taking part in any type of merger with another business).

Notification **must** happen before any money is received in respect of a real estate transaction. (Audit Regulations, r 12).

The text of Regulation 12 is provided in Appendix 2.

Appointment of auditor

A person may be appointed as an auditor if that person:

- is qualified to be an auditor (refer to section 35 of the Financial Reporting Act 2013 (FRA)); and
- is not disqualified based on specified conflicts of interest (refer to Regulation 11(2) of the Audit Regulations or the provisions of s36(4) of the FRA).

The text of Regulation 11(2) is provided in Appendix 2.

Audit requirements for new agencies

Before a new agency receives any money in respect of their first transaction, they **must** inform REA of their nominated trust account auditor through a notification of auditor form. Correspondence **must** include confirmation from the auditor that they are eligible to be an auditor (Audit Regulations, r 12).

The text of Regulation 12 is provided in Appendix 2.

Notification of Auditor Form available on the REA website.

Auditor ceases to be engaged by agency, does not commence role or is disqualified

If the appointed auditor either:

- ceases to be engaged by the agency; or
- does not commence their role as an auditor; or
- is disqualified under the Audit Regulations from auditing the agency's trust accounts.

then notice must be given to REA either:

- before such time as the auditor ceases to be engaged; or
- within 20 days of the agency becoming aware of the matter (Audit Regulations, r 13).

Any notice must be made in writing and signed by the authorised person, who is either:

- the individual agent licensee (if trading as an agent); or
- a partner of any partnership; or
- an officer of the real estate agency company.

The text of Regulation 13 is provided in Appendix 2.

Case study 3

[2024] NZREADT 41

In this case the agency failed to appoint a new auditor (which the agency said was due to a miscommunication in a transitional period) to audit its trust account over one financial year. Throughout that period the trust account was not audited, as required by the Act and the Audit Regulations, however, the agency completed a significant volume of transactions.

The Tribunal found that "Breaching the Audit Regulations must be regarded as serious. The amount of monies transferred in and out of the trust account were at times significant. However, we acknowledge that the breaches appear to have occurred inadvertently due to miscommunication and a change in auditors. The breach was for a one year period and fortunately there was no mishandling of customer monies."

The Tribunal concluded that the fine ordered against the agency must be placed at the lower to mid-level of the available penalty for unsatisfactory conduct. The Tribunal had regard to the facts that there was no mishandling of monies, the agency had admitted liability and cooperated with the Authority at an early stage. The agency had no previous disciplinary history and had put new systems in place to avoid any future breaches.

The Tribunal found unsatisfactory conduct under s 72 REAA for contravening s 125 of the Act and regulations 9, 15 and 16 of the Audit Regulations.

The Tribunal censured the agency, ordered a fine of \$5,000 and ordered the agent's company officer, under s 44(2) of the Act, undertake the Authority's verified CPD topic on trust accounts.

You can read about this complaint and decision in the REA decisions database at rea.govt.nz

Opening and closing trust accounts

Opening a new trust account

If an agency opens a new trust account, it **must** notify its auditor and REA of the new account details within ten working days (Regulation 14(2) of the Audit Regulations).

Closing trust accounts or making them inactive

The trust account you use may be deactivated for a number of reasons, such as changing jobs, starting a company of your own or entering into a partnership with another agent.

You **must** inform your auditor in writing that the account is inactive and that all money that was in it has been paid to the appropriate people. You **must** provide the auditor with all unaudited trust account records and receipts, which they should keep while the account remains inactive.

If you stop conducting business as an agent

If you stop conducting business as an agent, or your partnership is dissolved, or a company has been wound up, you **must** have a final audit carried out on the account within 20 working days. If you are suspending your licence, you should inform REA that your trust account will be inactive.

Audit requirements

The agency is required to permit the auditor access to the trust accounts, produce a signed copy of the most recent audit report, and produce all trust account records, bank statements, and any other relevant information (Regulation 14 of the Audit Regulations).

A trust account audit should be conducted to the standard required of a reasonable assurance engagement as specified by the Standard on Assurance Engagements 3100 (SAE 3100).

Schedule for auditors to examine the trust account

Auditors **must** examine the trust account at least three times each year as specified in the schedule outlined in Regulation 21.

The auditor **must** give REA a signed copy of the annual audit report within ten working days of completing the final audit for the year.

Failure to supply your auditor with the necessary documents to enable them to comply with the audit schedule may lead to disciplinary action.

Official statutory declaration

You need to provide an official statutory declaration with each statement you give to your auditor (Audit Regulations, r 16). This declaration **must** be taken by either a Justice of the Peace, barrister and solicitor, notary public or another official as listed in section 9 of the Oaths and Declarations Act 1957.

This statement and declaration **must** be provided to the auditor three times a year at their request before the start of the audit. REA does not provide a template for this declaration but recommends you use the wording in Audit Regulation 16(2).

Provision of monthly accounts and other documents to the auditor

You have to provide the auditor with monthly accounts and any other documents or information the auditor requires. The auditor can also require your bank to provide information about your bank accounts (Regulation 27 of the Audit Regulations).

You are required to provide the auditor with written confirmation from your bank that the account is a designated trust account.

Case study 4

[2024] NZREADT 25

In this case the agency failed to appoint an auditor to audit its trust account for almost four years. Throughout that period the trust account was not audited, as required by the Act and the Audit Regulations, however the agency completed 34 sale and lease transactions using the trust account.

Despite reminders from the authority, the agency failed to notify the authority of an auditor, failed to provide monthly reconciliations and failed to prepare the required statutory declarations.

The agency said it had not received the REAA's reminders, however, the Tribunal found that it was the agency's obligation to be aware of the requirements under the Audit Regulations, regardless of any reminders from REAA. The Tribunal confirmed that compliance with the Audit Regulations is not something that is "nice to have", that compliance is mandatory, and that breaches will be taken seriously.

The Tribunal found misconduct under s 73(b), censured the agency and ordered a fine of \$14,000.



Questions

3. What safeguards and systems do you need to have in place to comply with the legislation and audit regulations?

Auditor's annual audit report

Auditors **must** provide an annual audit report to REA within ten working days of completing the final audit for the year. This audit report **must** be signed and use the REA template or be in accordance with it. REA will acknowledge receipt of the audit report submitted within ten working days.

Auditors **must** also supply a signed copy of the audit report to the agent.

The auditor **must** be satisfied that all money you receive as a real estate agent has been 'duly and promptly' deposited in the trust account and that all money paid into the trust account is properly accounted for (Audit Regulations, r 20 (2)).

Duty to report defaults or irregularities

Auditors **must** promptly report specified matters to REA. The infographic on the next page outlines these specified matters.

Matters auditors must promptly report to REA

Balances of each client not clearly shown

Trust account records that do not show the trust account balances of each client



Records are not kept in a manner that enables them to be properly audited

Trust account records that are not kept in a manner that enables them to be properly audited

Any matter involving dishonesty, or a breach of law on the part of the agency



Loss, deficiency or failure to account for trust account money

A loss or deficiency of trust account money, or a failure of the agency to account for any trust account money

Failure to comply with the REAA or Audit Regulations

The auditor **must** promptly report any failure to comply with the provisions of the REAA or the Audit Regulations in relation to the agency's trust accounts.



This includes failure to supply the auditor with the documents the agency needs to provide to meet its responsibilities in a timely manner.



Other matters such as errors, irregularities, or misstatements

The auditor should report any other matter, such as errors, irregularities, or misstatements in a trust account that the auditor believes should be reported.

When an agent notifies the auditor that their trust account is inactive or reactivated



Auditors **must** advise REA whenever they receive any notification of an inactive or reactivated trust account from an agent (Audit Regulations, r 25 and r 26)

Disclosure of information by an auditor

Subsection 125(2) of the Real Estate Agents Act 2008 says, '*All information obtained by an auditor in the course of the audit of any trust account under this Act must be treated as confidential*'. However, Regulation 28 of the Audit Regulations says that an auditor may disclose information that was obtained in the course of an audit of an agency's trust account if:

- the disclosure is made in a report to REA; or
- the information is required for the purpose of proceedings that may arise out of any such report or otherwise in relation to the trust accounts of the agency concerned; or
- the information disclosed relates to money in which a person has a legal or beneficial interest, and the disclosure is made to that person; or
- the information is required for the purpose of any investigation conducted by a CAC; or
- the disclosure is made with the consent of the agency; or
- the disclosure is otherwise permitted or required by REA, the Audit Regulations or any other enactment.

Auditor's duty when agency business ceases

Where an individual agent ceases to carry on real estate business, or a partnership is dissolved, or a company has been wound up, within 20 working days, the agency's auditor **must** perform a final audit of the trust accounts as if the closing date was 31 March (Audit Regulations, r 18).

Inactive trust accounts

Regulation 24 applies where an agency (or individual agent licensee) has an inactive trust account because either:

- the agency is an individual who previously operated a trust account but who is now:
 - employed by another agency; or
 - an officer of a company that is an agent; or
 - a member of a partnership that operates a partnership trust account, or
- the agency is no longer actively engaged in carrying on the business of an agent.

Where the trust account is inactive, the agency **must** notify the appointed auditor in writing that the trust account is inactive. They **must** give the auditor all unaudited trust account records and ensure no further receipts are generated.

Under Regulation 25, if an auditor receives notice of an inactive trust account, the auditor **must**, if satisfied that all the trust account records for that inactive trust account are in their possession, advise REA in writing that:

- notice has been received under regulation 24 that the agency's trust account is inactive; and
- all relevant trust account records required to be audited under the Audit Regulations have been received, including all unused receipts and cheques, and the agency has provided an assurance that no further trust receipts are to be generated electronically; and

- except for the reports that are required to be given to the Authority up to the date of the notice, the audit reports required under regulation 22 will not be given to the Authority until further notice.

Case study 5

[2024] NZREADT 40

This case involved a prolonged period of wrongdoing by the licensee over a period of almost two years. There were 68 instances of client funds being improperly paid into a non-designated trust account, then unlawful use of those funds for personal/ business expenses. This resulted in numerous breaches of the REAA and Audit Regulations.

The licensee failed to designate the trust account and had not separated her personal or business funds from money held on trust. She also failed to hold trust monies, keep ledgers and records, issue receipts and produce monthly lists of balances and reconciliation statements in the manner required by the Audit Regulations. The trust account was not audited at the time and in the manner prescribed by the Audit Regulations.

The licensee was found guilty of disgraceful conduct for breaches to ss 122, 123 and 125 of REAA as well as regulations 5, 6, 7, 8, 9, 14 and 15 of the Audit Regulations.

The licensee was censured, ordered to pay half of the Committees costs (\$16,784.17) and subjected to an order that no agent employ or engage the licensee in connection to real estate agency work for a period of 5 years from the date of the decision.

The Tribunal noted the practice of treating funds as her own, albeit ultimately without loss, jeopardised the public confidence and therefore the reputation of the profession as a whole.

You can read about this complaint and decision in the REA decisions database at
rea.govt.nz



Questions

4. How should the licensee have operated the Trust account?

5. What were the risks in this case?

6. Why did the Tribunal not suppress the name of the licensee?

You can read about this complaint and decision in the REA decisions database at rea.govt.nz

Summary

This topic highlights the key duties of real estate professionals for the safe handling of money on behalf of their clients and customers.

The cases outlined in this topic highlight the consequences of:

- not recording transactions correctly in trust accounts
- using trust accounts for personal expenses
- not providing the required monthly reconciliations and statutory declarations
- not advising auditors of trust accounts held
- overdrawing trust accounts
- having surplus funds in trust accounts

Managing trust accounts correctly is a requirement under REAA, the Audit Regulations and Code of Conduct. Failing to correctly manage trust accounts could result in financial loss to consumers as well as reputational damage to the licensee, agency, and/or the industry as a whole. Licensees are reminded of the duty to protect the public and the profession.



Putting my learning into practice

How has this topic improved your knowledge and understanding of 'Trust Accounts'?

Describe at least one change you will make to the way you work as a result of this topic.

Appendix 1: Relevant sections from the Real Estate Agents Act 2008

The following are extracts from the Real Estate Agents Act 2008:

122 Duty of agent with respect to money received in course of business

- (1) All money received by an agent in respect of any transaction in his or her capacity as an agent must be paid to the person lawfully entitled to that money or in accordance with that person's directions.
- (2) Despite subsection (1), if an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to the money, he or she must take all reasonable steps to ascertain as soon as practicable the person who is entitled and may retain the money in his or her trust account until that person has been ascertained.
- (3) Pending the payment of any such money, the money must be paid by the agent into a general or separate trust account at any bank carrying on business in New Zealand under the authority of any Act and may not be drawn upon except for the purpose of paying it to the person entitled or as that person may in writing direct.
- (4) No money to which this section applies is available for payment of the agent's debts, nor may it be attached or taken in execution under the order or process of any court at the instance of any of the agent's creditors.
- (5) Nothing in this section takes away or affects any just lien or claim that an agent who holds money to which this section applies has against the money.

123 Money to be held by agent for 10 working days

- (1) When an agent receives any money in respect of any transaction in his or her capacity as an agent, he or she must not pay that money to any person for a period of 10 working days after the date on which he or she received it.
- (2) Despite subsection (1), a court order or an authority signed by all the parties to the transaction may require the agent to pay the money before the expiry of the period specified in that subsection.
- (3) If at any time while holding any money on behalf of any party to the transaction, the agent receives written notice of any requisitions or objections in respect of the title to any land affected by the transaction, the agent must not at any time pay that money to any person except in accordance with a court order or an authority signed by all the parties to the transaction.

124 Agent to furnish account to client

- (1) As soon as an agent is asked by his or her client to do so, and in any case not later than 28 days after the agent receives any money in respect of the transaction in his or her capacity as an agent, the agent must render to the person lawfully entitled to the money an account in writing, setting out particulars of all such money, and its application.
- (2) If an agent is in doubt on reasonable grounds as to the person who is lawfully entitled to any money, the agent must take all reasonable steps to ascertain as soon as practicable the person who is entitled and is not required to render an account under this section until the person lawfully entitled has been ascertained

125 Agents' trust accounts to be audited

- (1) Every general or separate trust account of an agent must be audited at the times and in the manner prescribed by regulations made under this Act.
- (2) All information obtained by an auditor in the course of the audit of any trust account under this Act must be treated as confidential.
- (3) Subsection (2) is subject to any rights of disclosure that may be prescribed for the purposes of the audit.

149 Offence to fail to pay person lawfully entitled to money received

An agent commits an offence if that agent fails to pay a person lawfully entitled to money received in respect of any transaction in accordance with Section 122 or otherwise contravenes that section.

152 Offence to render false accounts

- (1) A person commits an offence who renders an account purporting to be an account for any money received by him or her in his or her capacity as a licensee, knowing the account to be false in a material particular.
- (2) Every person who commits an offence against this section is liable on conviction, -
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$40,000, or both; or
 - (b) in the case of a company, to a fine not exceeding \$100,000.

Appendix 2: Relevant regulations from the Real Estate Agents (Audit) Regulations 2009

Regulation 6 outlines the requirements for recording into and maintaining trust account records.

6 Trust account records

- (1) Every agency must-
 - (a) keep trust account records in a manner that enables those records to be conveniently and properly audited; and
 - (b) ensure that those trust account records-
 - (i) are up to date; and
 - (ii) clearly show the amount of trust account money held for each client; and
 - (iii) are, as far as practicable, secure against retrospective alteration or deletion.
- (2) All entries in the client ledger accounts, and in other records that are the source of those entries, must-
 - (a) be dated; and
 - (b) include references that identify their source or destination and enable them to be traced backward and forward.
- (3) All entries in the journal must include sufficient detail to make their purpose evident.
- (4) Trust account records relating to a client must be retained for a period of at least 7 years from the date of the last transaction recorded in them, but-
 - (a) May be retained after the first 3 years, in the form of imaging, or other similar technology; or
 - (b) In the case of computer-generated trust account records originated by the agency, may be retained in the form of electronic storage, imaging, or similar technology.

Regulation 7 outlines the requirements for receipt and payment of trust account money.

7 Receipt and payment of trust account money

- (1) Every receipt, payment, transfer, and balance of trust account money must be recorded in a trust account ledger with a separate ledger account for each client and no ledger account may contain money of more than 1 client, but a client's account may be subdivided into various matters.
- (2) For the purposes of subclause (1), a joint client must be treated as a single client.

Regulation 11 subclause (2) describes where a conflict of interest lies for an auditor:

11 Disqualification from auditing trust accounts of an agency

...

- (2) A conflict of interest exists if –
 - (a) the auditor is in business as an agent;
 - (b) the auditor is, or at any time within the immediately preceding 12 months has been, employed or engaged by the agency (other than as the agency's auditor);
 - (c) the auditor is, or at any time within the immediately preceding 12 months has been, a partner of the agency or in business with the agency;
 - (d) the auditor is, or at any time within the immediately preceding 12 months has been, an officer of the company that is the agency;
 - (e) the auditor, or any employee of the auditor is, or at any time within the immediately preceding 12 months has been, engaged in processing or recording transactions relating to the agency;
 - (f) the relationship between the auditor and the agency is of a kind described in section 137 of the Act.

...

Regulation 12 outlines requirements of new agencies in regard to appointing an auditor.

12 New agency must notify appointment of auditor before receiving money

- (1) Every agency that is an individual who, or a company that, is granted a new licence under section 43 of the Act must notify the Authority of the auditor who is appointed to audit the agency's trust accounts, before that agency receives any money in respect of their first transaction pursuant to that licence.
- (2) Every agency that is a partnership formed on or after 17 November 2009, must notify the Authority of the auditor who is appointed to audit that agency's trust accounts, before any agent who is a member of that partnership receives any money in respect of a transaction undertaken as a member of that partnership.
- (3) Every notice given under this regulation must –
 - (a) specify the name and address of the auditor; and
 - (b) specify the name and identifying bank account number of each trust account that the auditor will audit; and be accompanied by written confirmation from the auditor that he or she
 - (i) is a qualified auditor;
 - (ii) [Revoked]
 - (iii) agrees to audit the trust account mentioned in paragraph (b);
 - (iv) is not disqualified under these regulations from acting as an auditor.
- (4) Every notice given under this regulation must be in writing and signed, -

- (a) if the agency is an individual, by that individual; or
- (b) if the agency is a partnership, by a member of that partnership; or
- (c) if the agency is a company, by an officer of the company.

Regulation 13 outlines requirements for notifying REA if the auditor is disqualified or no longer engaged.

13 Agency must notify Authority of replacement if auditor disqualified or no longer engaged

- (1) Every agency must give notice to the Authority, within the time set out in subclause (2), if the auditor appointed to audit the agency's trust accounts –
 - i. ceases to be engaged by the agency; or
 - ii. does not, for any reason, commence his or her role as auditor; or
 - iii. is disqualified under these regulations from auditing the agency's trust accounts.
- (2) The notice must be given to the Authority at any time before the auditor ceases to be engaged, or within 20 working days of the agency becoming aware of the matter specified in subclause (1)(a), (b) or (c), whichever is the later.
- (3) Every notice given under this regulation must-
 - (a) Specify the name and address of the auditor who is to be replaced; and
 - (b) Specify the name and address of a replacement auditor who is appointed to audit the agency's trust accounts; and
 - (c) Specify the name and identifying bank account number of each trust account that the replacement auditor will audit; and
 - (d) Be accompanied by written confirmation from the replacement auditor that he or she -
 - (i) is a qualified auditor
 - (ii) *[Revoked]*
 - (iii) agrees to audit the trust accounts mentioned in paragraph ©:
 - (iv) is not disqualified under these regulations from acting as an auditor.
- (4) Every notice given under this regulation must be in writing and signed, -
 - (d) If the agency is an individual, by that individual; or
 - (e) If the agency is a partnership, by a member of that partnership; or
 - (f) If the agency is a company, by an officer of the company.

Appendix 3: Relevant clauses from the ADLS/REINZ Agreement for Sale and Purchase of Real Estate – Eleventh Edition 2022 (3)

2.4 The person to whom the deposit is paid shall hold it as a stakeholder until the latest of those of the following matters which are applicable to this agreement:

- (1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and/or
- (2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and/or
- (3) where the property is a unit title:
 - (a) a pre-contract disclosure statement that complies with section 146 of the Unit Titles Act, and a pre-settlement disclosure statement that complies with section 147 of the Unit Titles Act, have been provided to the purchaser by the vendor within the times prescribed in those sections; and/or
 - (b) all rights of delay or cancellation under sections 149, 149A, 151, or 151A of the Unit Titles Act that have arisen have been waived or have expired without being exercised; and/or
 - (c) this agreement is cancelled pursuant to sections 149A or 151A of the Unit Titles Act; and/or
- (4) this agreement is:
 - (a) cancelled pursuant to clause 6.2(3)(c); and/or
 - (b) avoided pursuant to clause 9.10(5).

2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to subclause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008, but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing.

6.2

- (1) The purchaser is deemed to have accepted the vendor's title except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:
 - (a) the tenth working day after the date of this agreement; or
 - (b) the settlement date.
- (2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.
- (3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply:

- (a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice;
- (b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement;
- (c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.

6.3 In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.