

WESTERN AUSTRALIA

**SETTLEMENT
AGENTS
REGULATIONS
1982**

REPRINTED AS AT 9 APRIL 1996

Reprinted under the
Reprints Act 1984 as
at 9 April 1996

WESTERN AUSTRALIA

SETTLEMENT AGENTS
REGULATIONS 1982

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WESTERN AUSTRALIA

SETTLEMENT AGENTS ACT 1981

SETTLEMENT AGENTS REGULATIONS 1982

Citation

1. These regulations may be cited as the *Settlement Agents Regulations 1982*¹.

Interpretation

2. In these regulations unless the context otherwise requires —

“**subregulation**” means a subregulation of the regulation in which the term is used;

“**the Act**” means the *Settlement Agents Act 1981*.

[*Regulation 2 amended in Gazette 30 March 1984 p.910.*]

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Common seal

3. (1) The common seal of the Board shall be circular in form inscribed with the words "Settlement Agents Supervisory Board" around its circumference and "Common Seal" in its centre.

(2) The common seal of the Board shall be kept in safe custody and shall not be applied to any document except pursuant to a resolution of the Board.

(3) The common seal is to be affixed by the Registrar or by such other officer approved by the Board.

Fees

4. The fees set out in the First Schedule to these regulations shall be payable in respect of the matters prescribed in that Schedule.

*[Regulation 4 amended in Gazette 29 October 1982
pp.4323-4.]*

Publication of notice of application

5. (1) Notice of an application for the grant of a licence to be advertised pursuant to subsection (2) of section 24 of the Act —

(a) shall be in a form approved by the Board; and

(b) shall be published by the applicant in an issue of a newspaper known as *The West Australian* not less than 14 days before the day fixed for the hearing of the application.

(2) An applicant for a licence shall prior to the hearing of his application lodge with the Registrar the whole page of the newspaper in which notice of his application was advertised in accordance with this regulation.

Examinations

6. (1) The examinations for the purpose of —

- (a) Clause 1 (1) (a) of Schedule 1 to the Act; and
- (b) subject to subregulation (2), Clause 2 (1) (a) of Schedule 1 to the Act,

are those examinations required to be passed for the conferring of a Certificate in Settlement Agency Procedures by the Technical Education Division of the Department of the Public Service principally assisting the Minister of the Crown to whom the administration of the *Education Act 1928* is for the time being committed.

(2) The examinations for the purposes of Clause 2 (1) (a) of Schedule 1 to the Act for —

- (a) a licensed real estate settlement agent under the Act; or
- (b) the holder of a current Public Practice Certificate issued by the Australian Society of Accountants or a current Certificate of Public Practice issued by the Institute of Chartered Accountants in Australia,

shall be examinations in the subjects “Business Agency A” and “Business Settlements” from the course for the certificate referred to in subregulation (1).

*[Regulation 6 inserted in Gazette 25 November 1988 p.4761;
Erratum in Gazette 2 December 1988 p.4799.]*

Particulars to be included in registers

7. The particulars to be recorded, pursuant to subsection (2) of section 110 of the Act, by the Registrar —

- (a) in the register of licensees are, in respect of each licensee —
 - (i) the name and address of the licensee;

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- (ii) where the licensee is a firm, the name and address of each partner constituting the firm and the licence number of each partner in the firm who is licensed;
 - (iii) where the licensee is a body corporate, the name and address of each director of the licensee and the licence number of each director who is licensed;
 - (iv) the licence number and the date on which the licence held by the licensee was granted;
 - (v) any special conditions to which the licence held by the licensee is subject;
 - (vi) where a claim has been made or sustained against the Fund in respect of the licensee, a reference to that claim;
- (b) in the register of holders of current triennial certificates are, in respect of each holder —
- (i) the name and address of the holder;
 - (ii) any business name under which the holder carries on business as a settlement agent;
 - (iii) the situation of the registered office of the holder;
 - (iv) the situation of every registered branch office of the holder and the name and licence numbers of each branch manager;
 - (v) where the holder is a firm, the name and address of each partner constituting the firm and the licence number of each partner in the firm who is licensed;
 - (vi) where the holder is a body corporate, the name and address of each director of the holder and the licence number of each director who is licensed;
 - (vii) where the holder is a firm or body corporate the name and address of the person in *bona fide* control of the business of the holder;

- (viii) the licence number and the date on which the licence held by the holder of the certificate was granted;
- (ix) whether the holder is licensed as a real estate settlement agent, business settlement agent or both;
- (x) the certificate number, and the date on which the certificate currently held by the holder was granted or renewed, as the case may be;
- (xi) the policy number of the current certificate of fidelity and professional indemnity insurance held by the holder of the triennial certificate;
- (xii) the name and address of the auditor appointed by the holder; and
- (xiii) the amount of any payment made under section 92 of the Act by the holder.

Recovery of fees, fines and costs

8. (1) The amount of —

- (a) any fees prescribed by these regulations;
- (b) any fine ordered by the Board to be paid pursuant to the Act;
- (c) any costs ordered by the Board to be paid to the Registrar upon the determination of any proceedings,

may be sued for and recovered by the Registrar on behalf of the Crown in any court of competent jurisdiction.

(2) Where, upon the determination of any proceedings, the Board makes an order for costs in favour of a person other than the Registrar, the amount of those costs may be sued for by that person and recovered from the person against whom the order is made, in any court of competent jurisdiction.

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Percentage for purposes of section 105 of the Act

9. For the purposes of section 105 of the Act the prescribed percentage is 65%.

Claims against the Fund

10. A claim against the Fidelity Guarantee Fund shall be made in writing and be verified by a statutory declaration made by a person who deposes to the facts therein set out of his own knowledge.

Application of accrued moneys

11. For the purposes of section 108 of the Act the days upon which moneys accruing to the credit of the Trust Interest Account may be applied are 30 June and 31 December in each year.

Documents

12. The documents prescribed for the purposes of paragraph (2) (b) of Clause 1 of Schedule 2 of the Act are —

- (a) CONTRACT FOR SALE OF LAND BY OFFER AND ACCEPTANCE approved by THE REAL ESTATE INSTITUTE OF WESTERN AUSTRALIA (INC.) AND THE SETTLEMENT AGENTS ASSOCIATION (INC.) — 1982 REVISION, subject to THE REAL ESTATE INSTITUTE OF WESTERN AUSTRALIA (INC.) GENERAL CONDITIONS FOR THE SALE OF LAND (1982 REVISION);
- (b) AGREEMENT FOR SALE OF FREEHOLD LAND, RESIDENTIAL — TORRENS OR STRATA TITLE — WHERE PURCHASE PRICE (EXCLUDING DEPOSIT) PAYABLE BY NOT MORE THAN TWO INSTALMENTS approved by The Law Society of Western Australia (Inc.) 1980 EDITION.

Power of attorney

12A. The power of attorney prescribed for the purposes of paragraph (1) (h) of clause 1 of Schedule 2 of the Act is a power of attorney in the form set forth in the Nineteenth Schedule of the *Transfer of Land Act 1893*.

[*Regulation 12A inserted in Gazette 30 March 1984 p.910.*]

Warning notice by certain exempted persons

13. The form of the notice to be given by a person exempted under section 26A or 26B of the Act before arranging or effecting a settlement to which the exemption conferred by that section applies is as set out in the Second Schedule to these regulations.

[*Regulation 13 inserted in Gazette 29 October 1982 p.4323.*]

Absence of licensee

14. (1) A person who is in *bona fide* control of a business operated under a licence shall not, without the prior approval in writing of the Board, absent himself from that business for more than 4 continuous weeks in any one calendar year.

Penalty: \$100.

(2) An application for approval under subregulation (1) shall state whether, in the absence of the person in *bona fide* control of the business, that business is to be —

- (a) closed; or
- (b) conducted by another person.

(3) The Board may refuse to grant approval under subregulation (1) —

- (a) where the business is to be closed, unless and until the person in *bona fide* control of that business has satisfied the Board that at the date of closure he will have carried

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out all his obligations under the Act or the code of conduct;
or

- (b) where the business is to be conducted by another person, if the Board does not consider that person is suitable to conduct that business.

(4) A person who, pursuant to an approval granted by the Board under this regulation, conducts a business operated under a licence during the absence of the person in *bona fide* control of that business does not commit an offence under section 26 of the Act.

*[Regulation 14 inserted in Gazette 30 March 1984 p.910;
Erratum in Gazette 6 April 1984 p.998.]*

FIRST SCHEDULE

	[reg. 4]
	\$
1. Grant of licence to a natural person (including triennial certificate)	333
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[First Schedule inserted in Gazette 30 November 1993 pp.6407-8.]

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Second Schedule

WESTERN AUSTRALIA

SETTLEMENT AGENTS ACT 1981

Take notice that I/We
of

being a licensed Real Estate and/or Business Agent exempted under section(s) 26A and/or 26B of the above Act may not arrange or effect settlements for reward.

This means that I/We can arrange or effect your settlement free of charge but you will not be entitled to make any claim against the "Settlement Agents Fidelity Guarantee Fund" or to the protection of the *Settlement Agents Act* generally in respect of the settlement.

[*Second Schedule added in Gazette 29 October 1982*
pp.4323-4.]

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NOTES

^{1.} This reprint is a compilation as at 9 April 1996 of the *Settlement Agents Regulations 1982* and includes the amendments effected by the regulations referred to in the following Table.

Table of Regulations

Regulation	Gazettal	Commencement	Miscellaneous
<i>Settlement Agents Regulations 1982</i>	19 March 1982 pp.886-7	19 March 1982	
<i>Settlement Agents Amendment Regulations 1982</i>	29 October 1982 pp.4323-4	29 October 1982	
<i>Settlement Agents Amendment Regulations 1984</i> Erratum 6 April 1984 p.998	30 March 1984 p.910	30 March 1984	
<i>Settlement Agents Amendment Regulations 1985</i>	21 June 1985 p.2263	21 June 1985	
<i>Settlement Agents Amendment Regulations 1986</i>	13 June 1986 p.1997	1 July 1986 (see regulation 2)	
<i>Settlement Agents Amendment Regulations 1987</i>	4 September 1987 p.3519	4 September 1987	
<i>Settlement Agents Amendment Regulations 1988</i>	2 September 1988 p.3466	2 September 1988	
<i>Settlement Agents Amendment Regulations (No. 2) 1988</i> Erratum 2 December 1988 p.4799	25 November 1988 p.4761	25 November 1988	
<i>Settlement Agents Amendment Regulations 1989</i>	30 June 1989 pp.1970-1	30 June 1989	
<i>Settlement Agents Amendment Regulations 1990</i>	1 August 1990 p.3653	1 August 1990	

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Regulation	Gazettal	Commencement	Miscellaneous
<i>Settlement Agents Amendment Regulations 1991</i>	13 December 1991 p.6161	13 December 1991	
<i>Settlement Agents Amendment Regulations 1992</i>	14 August 1992 p.4009	14 August 1992	
<i>Settlement Agents Amendment Regulations 1993</i>	30 November 1993 pp.6407-8	30 November 1993	
