

WESTERN AUSTRALIA

SETTLEMENT AGENTS ACT 1981

**SETTLEMENT
AGENTS
REGULATIONS
1982**

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WESTERN AUSTRALIA

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REGULATIONS 1982**

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Citation

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

Interpretation

2. In these regulations, unless the contrary intention appears —

“**record**” means a record under section 50 (1) (b) of the Act;

“**register**” means the register referred to in regulation 7 (b);

“**working day**” means a day that is not a Saturday, Sunday,
public holiday or public service holiday.

[Regulation 2 inserted in Gazette 25 June 1996 pp.2925-6.]

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 Schedule 1 shall be payable in respect of the matters prescribed in that Schedule.

*[Regulation 4 amended in Gazette 29 October 1982
pp.4323-4; 23 May 1997 p.2420.]*

Holding fee

4A. (1) In this regulation —

"**holding fee**" means the fee set out in item 8 of Schedule 1 and referred to in section 30 (3a) (b) of the Act.

(2) The holding fee is payable —

(a) in the case of a licensee who, on the coming into operation of Part 9 of the *Business Licensing Amendment Act 1995*, holds a licence but does not hold a triennial certificate in respect of the licence, within 60 days after the coming into operation of that Part, and triennially after that payment; or

(b) in any other case, within 60 days after a licensee ceases to hold a current triennial certificate in respect of the licence held by the licensee, and triennially after that payment.

- (3) The Board may refund to a licensee —
- (a) two-thirds of the holding fee paid by the licensee if the licensee is granted a triennial certificate less than one year after paying the holding fee; or
 - (b) one-third of the holding fee paid by the licensee if the licensee is granted a triennial certificate one year or more, but less than 2 years, after paying the holding fee.

[Regulation 4A inserted in Gazette 2 August 1996 pp.3731-2;
amended in Gazette 23 May 1997 p.2420.]

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.

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r. 6A

(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.]*

Definition of “authorized financial institution” — prescribed classes

6A. For the purposes of the definition of “authorized financial institution” in section 48 of the Act, the following classes of bodies are prescribed —

- (a) the class that consists of all banks; and
- (b) the class that consists of all societies.

[Regulation 6A inserted in Gazette 25 June 1996 p.2926.]

Designation of trust accounts

6B. (1) For the purposes of section 49 (1) of the Act, a trust account is to be designated in the manner provided for in this regulation.

(2) The designation of a trust account, other than a separate account, is to include —

- (a) the description “SA Trust Account”;

- (b) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register; and
 - (c) the letters "TC" followed by the triennial certificate number recorded in the register.
- (3) The designation of a separate account is to include —
- (a) the description "SA Trust Account — IB";
 - (b) the name of the holder of the triennial certificate, and any business name of that holder, recorded in the register;
 - (c) the words "in trust for" followed by the name of the person who requested the separate account; and
 - (d) the letters "TC" followed by the triennial certificate number recorded in the register.

[Regulation 6B inserted in Gazette 25 June 1996 p.2926.]

Prescribed requirements for separate accounts

6C. For the purposes of section 49A (4) of the Act, a settlement agent shall only comply with a request for a separate account if the settlement agent is satisfied that —

- (a) the amount of moneys paid to the settlement agent exceeds \$20 000; or
- (b) the transaction in respect of which moneys are paid is not to be settled within 60 days.

[Regulation 6C inserted in Gazette 25 June 1996 pp.2926.]

Interest payable on trust accounts

6D. (1) For the purposes of section 49B (1) of the Act, interest on the balance of a trust account is to be paid —

- (a) at the rate that is 70% of the relevant bank accepted bills rate calculated on a daily basis; and
- (b) within 5 working days of the end of each month.

r. 6E

(2) In subregulation (1) (a) —

“relevant bank accepted bills rate” means the 30 day bank accepted bills rate as published in Table F.1 of the “Reserve Bank of Australia Bulletin” for the month that is 2 months before the month in respect of which the interest is to be paid.

(For example, the relevant bank accepted bills rate for May is the 30 day bank accepted bills rate for March.)

[Regulation 6D inserted in Gazette 25 June 1996 pp.2926-7.]

Content of receipts

6E. A receipt given under section 50 (1) (a) of the Act shall contain the following information —

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

[Regulation 6E inserted in Gazette 25 June 1996 p.2927.]

Records under section 50 (1) (b)

6F. (1) A record shall be —

- (a) kept in written form;

- (b) kept for a period of not less than 6 years from the date on which the money was received; and
- (c) readily accessible.

(2) Where a receipt has been given for money received, a record shall contain the information contained in the receipt and may take the form of a duplicate copy of the receipt.

(3) Where money has been received by electronic transfer, a record shall contain the information specified in regulation 6E (b), (c), (d), (e) and (f) and, for that purpose, the reference in regulation 6E (b) to "receipt" is to be read as a reference to "record".

[Regulation 6F inserted in Gazette 25 June 1996 p.2927.]

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;
 - (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.

Application of Board Interest Account

9. For the purposes of section 105 of the Act —
- (a) moneys standing to the credit of the Account are to be applied monthly before the end of each month; and
 - (b) the following proportions are prescribed —
 - (i) 10% to the Fidelity Fund; and
 - (ii) 90% to the General Purpose Fund.

[Regulation 9 inserted as regulation 11 in Gazette 25 June 1996 pp.2927-8; renumbered as regulation 9 in Gazette 30 August 1996 p.4322.]

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.

Documents that a real estate settlement agent may draw etc.

11. (1) For the purposes of clause 1 (2) (a) of Schedule 2 to the Act the forms of offer and acceptance set out in Part A of Schedule 3 are prescribed and, if any of those forms is revised, the current revision of it is prescribed.

(2) For the purposes of clause 1 (2) (b) of Schedule 2 to the Act a licensee may draw or prepare a document containing any or all of the requisitions on title set out in Part B of Schedule 3 subject to the condition that the requisitions are only issued in respect of land that is registered under the *Transfer of Land Act 1893*.

(3) For the purposes of clause 1 (2) (c) of Schedule 2 to the Act the documents set out in Part C of Schedule 3 are prescribed subject to any conditions set out in that Part.

[Regulation 11 inserted in Gazette 23 May 1997 p.2420.]

Documents that a business settlement agent may draw etc.

12. For the purposes of clause 2 (fa) of Schedule 2 to the Act any document set out in Schedule 4 is prescribed.

[Regulation 12 inserted in Gazette 23 May 1997 p.2420.]

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 Schedule 2.

[Regulation 13 inserted in Gazette 29 October 1982 p.4323;
amended in Gazette 23 May 1997 p.2420.]

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 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.

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r. 14

(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.]*

SCHEDULE 1 — PRESCRIBED FEES

	[Regs. 4 and 4A]
	\$
1. Grant of licence to a natural person (including triennial certificate)	333
2. Grant of licence to a firm (including triennial certificate)	333
3. Grant of licence to a body corporate (including triennial certificate)	333
4. Renewal of triennial certificate	297
5. Inspection of register	10
6. Certificate as to an individual registration —	
first page	10
each subsequent page	2
7. Certificate as to all registrations in register	122
8. For the purposes of section 30 (3a)	150
(the holding fee)	

[Schedule 1 inserted in Gazette 30 November 1993 pp.6407-8; amended in Gazette 2 August 1996 p.3732; 23 May 1997 p.2421.]

**SCHEDULE 2 — NOTICE UNDER SECTION 26A OR 26B
OF THE ACT**

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.

*[Schedule 2 inserted in Gazette 29 October 1982 pp.4323-4;
amended in Gazette 23 May 1997 p.2421.]*

**SCHEDULE 3 — DOCUMENTS THAT A REAL ESTATE
SETTLEMENT AGENT MAY DRAW OR PREPARE**

[Reg. 11]

PART A — OFFER AND ACCEPTANCE

1. "Contract for Sale of Land by Offer and Acceptance" (1994 revision) incorporating the "1994 Joint Form of General Conditions for the Sale of Land", as adopted jointly by the Law Society of Western Australia (Inc) and the Real Estate Institute of Western Australia (Inc) and approved by the Settlement Agents Association (Inc) and the Associated Settlement Agents of Western Australia (Inc).
2. "Contract for Sale of Strata Title Property by Offer and Acceptance" incorporating the "1994 Joint Form of General Conditions for the Sale of Land", as adopted jointly by the Law Society of Western Australia (Inc) and the Real Estate Institute of Western Australia (Inc) and approved by the Settlement Agents Association (Inc) and the Associated Settlement Agents of Western Australia (Inc).

PART B — REQUISITIONS ON TITLE

1. Is the certificate or certificates of title to the land the subject of any dealing or dealings at the Land Titles Office? If so, please provide true copies of all documents lodged at the Land Titles Office relating to such dealing or dealings.
2. Is the vendor aware of any circumstances which could give rise to a claim to an interest in the land, or any parts of it, by virtue of adverse possession? If so, please provide details.
3. Is the vendor, after due enquiry, aware of any pending or threatened suit relating to the title of the land or any claim to its use generally or for any particular purpose adverse to the title of the vendor? If so, please provide details.
4. Is the vendor aware of any circumstances, including enjoyment or use, which would give rise to claims to rights of way, liens, restrictive covenants, grants of licence or of other rights or easements, public or private, or trusts, affecting the land, not referred to in the certificate or certificates of title to the land? If so, please provide details.
5. Does the vendor have any knowledge of any circumstances which could give rise to a charge against or interest in the land pursuant to any statute including, but not limited to, any of the following Acts:
 - (a) *Lands Acquisition Act 1989* (Cwlth);

- (b) *Energy Corporations (Powers) Act 1979*;
 - (c) *Environmental Protection Act 1986*;
 - (d) *Heritage of Western Australia Act 1990*;
 - (e) *Land Acquisition and Public Works Act 1902*;
 - (f) *Local Government Act 1995*;
 - (g) *Metropolitan Water Supply, Sewerage and Drainage Act 1909*;
 - (h) *Retirement Villages Act 1992*;
 - (i) *Soil and Land Conservation Act 1945*;
 - (j) *Strata Titles Act 1985*?
6. Is anybody in occupation of the land under any or any alleged lease or licence? If so, please provide precise details of the terms of any such lease or licence or alleged lease or licence and provide copies of any agreements in respect thereof.
7. Are there any claims by any third parties to a mining lease or licence under the *Mining Act 1978*? If so, please provide precise details of the terms of any claim.
8. The vendor is to list all Land Titles Office applications, transfers, instruments, statutory declarations, discharges of mortgages, withdrawals of caveats or other documents to be tendered at settlement in order for the purchaser to become registered as the proprietor of the freehold of the land without any encumbrances on the title to it.

**PART C — DOCUMENTS FOR REGISTRATION
OR LODGEMENT**

1. Under or for the purposes of the *Strata Titles Act 1985* the following documents, subject to the condition that a licensee shall not draft a resolution of a strata company under or for the purposes of that Act:
- (a) these documents for the purposes of these provisions of that Act:

Provision	Description of document
ss. 4-5B	Application for registration of a strata plan or a survey-strata plan
s. 69C	Vendor's notice to purchaser of notifiable variation;

- (b) these forms in Schedule 3 to the *Strata Titles General Regulations 1996*:

Form	Description of form
10	Certificate of Strata Company Consenting to Conversion of Common Property
11	Certificate of Consent by Strata Company to Amended Schedule of Unit Entitlement
12	Certificate of Strata Company Authorizing Application to Land Valuation Tribunal
13	Certificate of Strata Company Authorizing Acceptance of Transfer or Lease
14	Certificate of Resolution and Consents to Transfer or Lease, Easement or Restrictive Covenant
15	Notification of Resolution of Termination of Scheme
16	Notice of Change of Address for Service of Notices
17	Notice of Change of Name of Scheme and Change of Address for Service of Notices
19	Notice of Resolution to Vary, Remove or Add a Restriction;
20	Application for Re-subdivision by Strata Company
21	Notice of Amendment, Repeal or Addition of By-law
22	Disposition on Subdivision
23	Disposition on Re-subdivision
24	Application to Western Australian Planning Commission for Approval to Strata Plan
28	Disclosure Statement
30	Notice of Resolution of Merger of Buildings
39	Disposition on Merger of Land or Conversion to a Survey-Strata Scheme
40	Notice of Objection to Change of Fencing Provisions
41	Notice of Termination of Insurance Order.

2. Under or for the purposes of the *Transfer of Land Act 1893* —

- (a) these documents under these provisions of that Act for the purposes described:

Provision	Description of document and purpose
s. 48B	Request in relation to the issue of duplicate certificate of title
s. 59	Application to remove notation as to legal disability
s. 71	Application for a consolidated certificate of title

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- | Provision | Description of document and purpose |
|-----------|---|
| s. 71A | Application for a certificate of title for the balance of land in a certificate of title |
| s. 74B | Application for a new duplicate certificate of title |
| s. 75 | Application for a replacement duplicate certificate of title |
| s. 82 | Transfer |
| s. 84 | Transfer |
| s. 129BB | Application for discharge or modification of restrictive covenant |
| s. 136J | Application for discharge or modification of restrictive covenant |
| s. 137 | Caveat to protect the interest of a purchaser or mortgagee for whom the licensee is acting |
| s. 138B | Application to have notice sent to caveator |
| s. 146 | Application for search certificate |
| s. 148 | Application for stay of registration |
| s. 166 | Application for new certificates of title on a subdivision of land that is held in fee simple |
| s. 219 | Application on a transmission |
| s. 221 | Application by remainderman on a transmission |
| s. 227 | Application by the survivor of joint proprietors |
| s. 240A | Application to change an address; |
- (b) a withdrawal of a caveat lodged by a purchaser or mortgagee, or prepared by the licensee to protect the interest of a purchaser or mortgagee for whom the licensee is acting, if —
- (i) there is to be lodged with the withdrawal a transfer of the whole of the land the subject of the withdrawal to the caveator or to a person nominated in writing by the caveator, or if there is more than one caveator, by each of them;
 - (ii) no other person has acquired or claims any interest in the land that has priority over, or that is adverse to, the caveator's claim; and
 - (iii) no dealing that is adverse to, or that derogates from, the caveator's claim is lodged or is to be lodged after the withdrawal and before the transfer to the caveator or the caveator's nominee;
- (c) an application to amend the Register as to the name of a registered proprietor;
- (d) a notice under section 67B of the *Water Agencies (Powers) Act 1984*, to be provided by the Water Corporation, directing that section 67B of that Act cease to apply to specified land;

- (e) a notice under section 62D of the *Water Boards Act 1904*, to be provided by a Water Board, directing that section 62B of that Act cease to apply to specified land.

[*Schedule 3 inserted in Gazette 23 May 1997 pp.2421-4.*]

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Sch. 4

**SCHEDULE 4 — DOCUMENTS THAT A BUSINESS
SETTLEMENT AGENT MAY DRAW OR PREPARE**

[Reg. 12]

1. A memorandum of satisfaction of a bill of sale for the purposes of section 21 of the *Bills of Sale Act 1899*.

[*Schedule 4 inserted in Gazette 23 May 1997 p.2424.*]

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NOTES

¹ This reprint is a compilation as at 12 December 1997 of the *Settlement Agents Regulations 1982* and includes the amendments effected by the regulations referred to in the following Table.

[This compilation has been reprinted and amendments prior to the latest reprint are not referred to in this Table.]

Table of Regulations

Regulation	Gazettal	Commencement	Miscellaneous
<i>Settlement Agents Regulations 1982</i>	19 March 1982 pp.886-7	19 March 1982	
(Regulations effecting amendments in the previous reprint are not referred to in this Table)			Previous reprint as at 9 April 1996
<i>Settlement Agents Amendment Regulations (No. 2) 1996</i>	25 June 1996 pp.2925-8	1 July 1996 (see regulation 2 and <i>Gazette</i> 25 June 1996 p.2902)	
<i>Settlement Agents Amendment Regulations 1996</i>	2 August 1996 pp.3731-2	2 August 1996	These regulations are in place of the <i>Settlement Agents Amendment Regulations 1996</i> published in the <i>Gazette</i> on 5/7/96 pp.3224-5. Those regulations were published in the <i>Gazette</i> after the day on which they purported to commence (1/7/96 — see proclamation published in <i>Gazette</i> 1/7/96 p.3179 fixing 1/7/96 as the day on which Part 9 of the <i>Business Licensing Amendment Act 1995</i> came into operation).
<i>Settlement Agents Amendment Regulations (No. 3) 1996</i>	30 August 1996 p.4322	30 August 1996	

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Regulation	Gazetal	Commencement	Miscellaneous
<i>Settlement Agents Amendment Regulations 1997</i>	23 May 1997 pp.2419-24	24 May 1997 (see regulation 2 and <i>Gazette</i> 23 May 1997 p.2417)	
