



HOLMANS

STATUTORY TRUST ACCOUNT

HOLMANS GUIDEBOOK



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BANKING AND RECONCILIATION

BANK RECONCILIATION DATE

To strictly comply with the requirements of the Agents Financial Administration Regulation 2014, the monthly reconciliation must be performed to the **final closing balance on the final day of the month**. All the deposits and transactions that relate to the particular month which you are reconciling must be received in that month and any transactions dated the following month, should not be received.

TIP: To ensure all transactions are captured, perform the reconciliation on the **first day** of the following month to allow time for all transactions to process through to the account for the month. If you are worried about the timing, the legislation states that you have 5 business days to complete the reconciliation after month end.

TIP: We also recommend retaining a copy of the internet transaction listing used when undertaking your end of month to support balances in the instances where the bank has amended their dates of posting the transactions at a later time.

BANK DEBITS/CREDITS ADJUSTMENTS

The 'Bank Debits/Credits' and 'Balance B/Fwd Debits/Credits' should be equal at the end of each month, unless an adjustment has been made at the end of one month which clears in the following month.

IMPORTANT NOTE: Adjustments should not be used as a substitute for investigating and resolving issues that have caused a reconciliation to fail. You should use caution and seek appropriate advice before using an adjustment to balance the accounts.

TIP: We recommend you regularly review the adjustments in the period and if you are unable to identify the variance we suggest contacting your software provider to assist you.

DELAY IN BANKING CASH

To comply with the Agents Financial Administration Act 2014, you must deposit the cash into the trust bank account **before the end of the first business day** after receiving the amount.

TIP: We recommend your banking duties are performed daily.

BANK STATEMENTS

If you are receiving bank statements quarterly, we recommend contacting your bank to arrange the statements to be issued on a **monthly** basis. This ensures statements are received in a timely manner and also assists in the audit process.

BANKING AND RECONCILIATION

MONIES IN TRANSIT/UNPRESENTED DEPOSITS

Unpresented deposits should be clearly traced and identified after each month end. There should be no stale unpresented deposits/monies in transit in your reconciliation.

TIP: We recommend ensuring all unpresented deposits/monies in transit are cleared and identified after each month end and if you are unable to identify the deposit, we suggest contacting your software provider to assist.

STALE DEPOSITS HELD

You must not retain money in a trust account **for more than 42 days after** the transaction finalises. This ranges from booking deposits, owner monies, tenant monies, supplier monies, sales monies etc. It is a requirement for the licensee to take all the necessary steps to find the original owner of the funds and return the un-used deposit to the original owner.

What constitutes finalised transaction - a 'finalised transaction' is one where the entitlement to trust money shifts from the payer to the payee for example a deposit and rent paid for holiday letting accommodation that is non-refundable or that becomes non-refundable upon a certain time or event occurring ie guest arriving.

It is important to regularly review ledgers to ensure there are no stale monies being held and to take the necessary steps to clear the funds from the trust account.

If you are holding stale booking deposits, review the booking and allocate to relevant owner ledger if the guests arrived, amend the booking dates if the guest postponed the booking or refund in accordance with your cancellation policy.

If you are holding stale monies on behalf of the owner/tenant/suppliers, review the accounts and payout any remaining balance.

If, after all the steps have been taken to find the original owner have failed and you are unable to payout the funds, it is a requirement to forward all unclaimed money to the public trustee for outstanding amounts greater than 12 months.

You are required to provide the following details:

- the full name of the person who the money belongs to
- the last known address
- the amount owing to them
- what the money represents e.g. refund of deposit
- from what date you held the money

TIP: To forward unclaimed monies to the Public Trustee, you can lodge a "unclaimed money file" via the Public Trustee website.

Link to lodge unclaimed money online: (www.pt.qld.gov.au/other-services/unclaimed-money/lodge-unclaimed-money/).

RECEIPTING

COMPLETION OF RECEIPTS

It is a requirement of Regulation 9(1) of the Agents Financial Administration Regulation 2014 that a completed trust account receipt form must contain the following particulars:

- (a) The name of the principal licensee on whose behalf the receipt was completed
- (b) The agent's licence number
- (c) The date the trust money was received; and the receipt was completed
- (d) The name of the person completing the receipt form and if the receipt form is from a receipt book or is a hard copy of a computer entry, the person's signature
- (e) The name of the person for whom the receipt was completed
- (f) The name of, or other means of identifying, the person on whose behalf the trust money was received
- (g) A brief description of the matter for which the trust money was received
- (h) The amount of the trust money received, in figures
- (i) How the trust money was received (eg cash, cheque, direct deposit)
- (j) If the trust money received is rent, then the address of the rented premises and the day up to which the rent is paid

TIP: Review a random receipt and ensure all the above particulars are included.

SEQUENTIAL TRUST ACCOUNT RECEIPTS

It is a requirement that every receipt have a unique receipt number and be issued in numerical sequence. The sequencing falls out of order when receipts are being back dated or receipting is performed starting with the most recent transaction to the oldest, rather than oldest transaction to the newest.

The Agents Financial Administration Regulation 2014 (Regulation 8) states that a principal licensee must complete a trust account receipt form;

- a) if a principal licensee receives trust money by way of direct deposit or electronic funds transfer – on the day the principal licensee becomes aware of the receipt of the trust money; or
- b) otherwise – immediately on receiving the trust money.

Following the procedure above will ensure all receipts are in consecutive date order and there will be no back dated receipts.

TIP: Process receipting from the oldest transactions to the newest to avoid back dated receipts.

RECEIPTING

TRUST ACCOUNT RECEIPTS - ELECTRONIC STORAGE

There is no requirement to provide the tenants with a trust account receipt unless they have requested one pursuant to Regulation 10(c) of Agents Financial Administration Regulation 2014.

However, the licensee is required to ensure 'a completed and legible duplicate trust account receipt form is kept in the principal agent's records' pursuant to Regulation 10(d).

You are required to keep a duplicate copy of each receipt (marked 'duplicate copy' or 'office copy') for **at least five years**. If you are not printing the receipt, you are still required to keep a soft copy for at **least five years**. See Digital Storage Section for tips on storing soft copies.

RECEIPTING & DISBURSEMENT OF NON-TRUST MONIES

Non-trust money is money received by you that is unrelated to acting as an agent. I.e. you received income that purely belongs to you and not to an owner. Section 18(1) of the Agents Financial Administration Act 2014, specifies an agent must not pay to the trust account an amount that is considered to be non-trust monies.

However, Section 18(2) of the Agents Financial Administration Act 2014 stipulates that where non-trust monies are received as part of a total deposit which cannot be divided, the licensee must –

- (a) pay the whole amount to the licensee's general trust account; and
- (b) draw the non-trust money from the account within **14 days** after the money becomes available for drawing.

Examples of non-trust monies includes things like sale of keys and fobs to guests/tenants, late check out, hire charges etc. Where possible, it might be best to get the tenants to deposit non-trust monies straight into your general account, rather than your trust account

TIP: We recommend you regularly review your Managers Income Reports from your Trust Account Software throughout the month and remove any non-trust monies. Please ensure adequate records are retained of the transfers made out of the trust account. Please contact your software provider if you need assistance in relation to the generation of your Managers Income Reports and Mid-Month disbursement.

TIP: We further recommend any amounts of solely non-trust monies are not receipted into the trust account and are paid directly to your general account. If you wish to issue a receipt for the monies you can do so via your general account bookkeeping software. If issuing a receipt via your general account bookkeeping software, ensure the invoice issued meet the ATO requirements.

PAYMENTS

MID-MONTH MANAGEMENT DISBURSEMENTS

If you are going to undertake a mid-month disbursement, you must ensure you only disburse monies you are entitled to up until that particular date.

IMPORTANT NOTE: If you are making disbursements to yourselves for commissions you must also make a payment to the owner for the balance of their rental income.

We suggest that you attach a copy of your Management Summary Report which corresponds to the amount disbursed and a copy of the associated owner ledgers. Please ensure that when a mid-month disbursement is made, that the payment is dated the day of payment and not the end of month date.

BOND PAYMENTS

All rental bonds needs to be paid to the Residential Tenancies Authority (RTA) within **10 days of receipt**.

TIP: We recommend reviewing the bonds held at regular intervals throughout the month to ensure bonds can be lodged within the required legislative time periods.

CHEQUES

Where possible, we recommend making payments electronically to minimise the possibility of stale cheques and ensure the recipient receives the funds in a timely manner.

PAYMENTS FROM GENERAL ACCOUNT TO TRUST ACCOUNT

To strictly comply with Section 18 of the Agents Financial Administration Act, you should ensure that you **do not** make any payments from your general business bank account/s to your trust account. The act advises that you must not pay to a trust account an amount other than an amount that must be paid to the account or is authorised to be paid into the trust account.

If an amount was incorrectly transferred into the trust account, we recommend transferring the deposit back into the general account without delay or as soon as you are aware of the the mistake. Ensure you have an audit trail and clear notes of what has happened.

Often these mistakes are unavoidable, however where possible, care should be taken when dealing with the trust account.

LETTING AUTHORITIES

PROPERTY OCCUPATION ACT(POA) FORM 6

The Property Agents and Motor Dealers Act (PAMDA) ceased on 1 December 2014 and was replaced with the Property Occupations Act (POA). **If you have any existing PAMDA 20A Agreements in place these are now outdated and we recommend considering updating the existing PAMDA 20A Agreements to the new POA Form 6.**

If you are not currently subscribing to any forms management software, the POA Form 6 can be downloaded from the Office of Fair Trading website (www.qld.gov.au/law/fair-trading) or via the direct link provided in the Useful Links & Resources section. The current version is Version 5 effective 1 August 2016. Before sending the Form 6 to the owner for signing, send us a copy for review to ensure everything is in order and all details are correct.

Updating to the Form 6 is a great opportunity to revisit the schedule charges to determine whether any fees could be increased, removed if outdated or even simplified. We recommend you consult with your industry accountant / business advisor prior to making any significant changes to your schedule of fees and charges to ensure the charges are in line with industry standards and to provide advice thereon.

PLEASE NOTE: PAMDA 20A Agreements in existence after December 2014 were able to remain in force indefinitely provided the terms of the agreement remained **unchanged**. A change to the Agreement includes any changes to the Addendum and schedule of charges. So any change to the PAMDA 20a Agreement requires it to be replaced with a Form 6.

If you have any agreements that are on the PAMDA 20A and have since updated your schedule of fees and charges, you can only charge the updated fees per those agreements up to 1st December 2014 and **any increase in charges thereon are unauthorised under the PAMDA agreements** i.e if you've updated your schedule of charges on the 2nd of December 2014, you are unauthorised to charge per the updated schedule and have to revert back to the updated schedule of charges prior to 1 December 2014.

Note if any fees or terms of your agreements are being updated (or have been) since December 2014, then you are required to put in place new agreements.

REVIEW OF SCHEDULE OF CHARGES

It is important to ensure there are no inconsistencies in the fees charged to the owners compared those authorised in the POA Form 6 or PAMDA 20A Letting Authorities.

We recommend periodically reviewing your software to ensure the commission and fees charged is in accordance with the PAMD 20A and POA Form 6 Agreements on file.

Owners should be refunded any amounts which have been charged in excess of the documented schedule of fees per your existing agreements.

LETTING AUTHORITIES

POA FORM 6 LICENSEE DETAILS

Minor errors on a Form 6 can have significant consequences for an agent. To ensure validity of the Form 6, it is important to ensure the Licensee details are correct.

Part 2 – Licensee Details should be as follows;

- Trading Name should reflect the registered trading name
- Licensee Name should reflect Corporate Licensee name as the licensed corporation; Where a sole trader is to be appointed, state the individual's name
- If a corporation, Licence Number should reflect the corporate licence number; Where a sole trader is to be appointed, state the individual's name and licence number

TIP: To check if your business name registration is current you can search the Australian Business Register by ABN, ACN or name via abr.business.gov.au.

TIP: To check if your license number and whether your license is current you can search by Name, Company Name or Licence Number via the OFT website <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/check-a-licence-association-charity-or-register/check-a-licence>

We recommend you keep your business name registration up to date and set a reminder ahead of the renewal date.

ENSURING LETTING AUTHORITY IS SIGNED

It is important to ensure your Letting Authority is signed by all parties, otherwise you are not authorised to act on behalf of the owner and collect fees and commission. If the Letting Authority has not been signed, you have to revert back to the most recent Form signed or wait to charge commission and fees until you have a signed Letting Authority on file.

We recommend you review all PAMD 20A and POA Form 6 Agreements on file and ensure all are signed by relevant parties.

PART 4 - TYPE AND TERM OF APPOINTMENT

Failure to clearly provide evidence of the type of listing and term the owner has agreed to may result in the Letting Appointment being invalid. When drafting a Form, ensure you have ticked "Letting/Collecting of Rent/Management".

We recommend you review all PAMD 20A and POA Form 6 Agreements on file and ensure all are correct boxes are ticked and the term is still current. If the term is no longer current, ensure the agreements are updated accordingly.

RECORD KEEPING

RETENTION OF RECORDS

You are required to keep all trust account records in a secure, orderly and accessible way for **five years**.

DIGITAL STORAGE OF AUDIT RECORDS

Within **five business days after the end of month**, you are required to keep records of the following information:

- The balance of the trust ledger accounts
- The reconciliation as performed in accordance with Regulation 17

Agents Financial Administration Regulation 17 prescribes the trust account cash book balance is reconciled with the trust account ledger balances, displaying each trust account creditors name and the amount held on behalf of the creditor as at the end of the month. Furthermore, the financial institution's statement balance for the principal agent's trust account as at the end of the month must be reconciled to the trust account cash book.

We highly recommend you move towards digital storage of your audit records and take the below into consideration;

- Discussing the storage of the monthly audit reports electronically as PDF files with your software provider
- Ensuring all records are stored in a manner which are easily accessible, available for investigation or auditing at any given point in time.
- Ensuring adequate backups of both the software and digital records are maintained offsite i.e. cloud storage (DropBox, GoogleDrive, OneDrive etc)
- Ensuring the minimum copies of audit records are maintained as detailed above
- Familiarise yourself with Agents Financial Administration Regulation 3 and 4 to ensure you are comfortable with your software's capacity maintain the audit records in the required format

TIP: We recommend using a cloud based storage system to store **all** End of Month records provided by your software provider, including the monthly bank statements, issued receipts and any invoices paid via your trust account in separate monthly folders.

TIP: Ensure you have consistent naming conventions for your files to ensure all records are stored in a manner which are easily accessible, available for investigation or auditing at any given point in time.

USEFUL LINKS & RESOURCES

OFT TRUST ACCOUNT GUIDE

A comprehensive guide to trust accounts for property agents, motor dealers, debt collectors and their auditors. This guide provides a summary of agents' trust account obligations and important information for auditors. It does not cover all the trust account provisions of the Act and Regulations or all exceptions or qualifications that may apply. Any agents who are unsure how the law applies to their particular circumstances should obtain independent legal advice.

Link to the Guide - <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/db91826c-0078-486b-a920-dd7220cd64f4/trust-accounts-guide.pdf?ETag=130b2303e7aec46b804fd162ac08e4bb>

AGENTS FINANCIAL ADMINISTRATION REGULATION 2014

The Regulation regulates the administration of a trust account ie. how you keep the trust account records, how to deal with trust account receipts or payments, trust account cashbooks, trust account ledgers and transfer of trust accounts.

Link to the Regulation - <https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2014-0246>

AGENTS FINANCIAL ADMINISTRATION REGULATION 2014

The main object of this Act is to protect consumers from financial loss in dealings with agents regulated under an Agents Act. The act regulates how you establish, maintain and audit a trust account.

Link to the Act - <https://www.legislation.qld.gov.au/view/pdf/inforce/2014-05-21/act-2014-018>

APPOINTMENT AND REAPPOINTMENT OF A PROPERTY AGENT FORM 6

A property agent and their client must fill out this form in order to have a valid appointment. Agents cannot represent a client unless they are properly appointed.

Link to download the Form 6 - <https://www.publications.qld.gov.au/dataset/oft-property-transaction-forms/resource/06a46202-16c8-4b72-8cc4-3eff95e33403>

TRUST ACCOUNT NOTIFICATION - OPENING/CLOSING/CHANGING OR APPOINTMENT OF AUDITOR

Property agents, motor dealers, auctioneers and debt collectors must use a Form 5 to notify the Office of Fair Trading about changes to their trust accounts;

- Opening a Trust Account - **within two months of opening a trust account**
- Closing a Trust Account - **within two months after you have closed the account**
- Changing the trust account name - **within two months of the change**
- Appointment of Auditor - **within one month of opening a trust account**
- Change of Auditor - **immediately notify the OFT**

Link to download the Form 5 - <https://www.publications.qld.gov.au/dataset/oft-industry-trust-account-forms-and-guides/resource/6c9d02e4-e39a-447f-8388-6aa179f1778f>

USEFUL LINKS & RESOURCES

RTA GENERAL TENANCY AGREEMENT (FORM 18A)

The General tenancy agreement (Form 18a) is used when renting a house, unit, apartment, townhouse or houseboat in Queensland.

A written agreement must always be used when renting, even if the person renting is family or a friend. It is a legally binding written contract that outlines the legal rights and responsibilities of a tenant and property manager/owner. It applies to everyone renting the property (e.g. those in share homes or co-tenancies).

Link to download the Form 18A - <https://www.rta.qld.gov.au/forms-resources/forms/forms-for-general-tenancies/general-tenancy-agreement-form-18a>

Australian Resident Accommodation Manager's Association (ARAMA)

ARAMA is the peak body for the Management Rights Industry. ARAMA is a membership based, not-for-profit organisation representing the interests of those involved in the Management Rights industry.

ARAMA is an organisation established to support operators, protect business interests, and promote a strong accommodation sector. The Association has a voice in Local, State and Federal Government on issues relating to the operational needs of the industry and offers a range of benefits and services to assist members.

Many management rights operators elect to become a member of ARAMA for the benefits it may offer. The aims and objectives of ARAMA are to:

- Promote the concept of owner operated Management Rights as the most effective method of serving the interests of Unit Owners, Bodies Corporate, Tourists and Tenants.
- Provide the necessary lobbying, submissions and representation required for all legislations covering multi-unit living, particular the protection of Management Rights.
- Promote the tourism industry generally, and specifically the letting of units within buildings on behalf of owners.
- Keep members informed of industry developments and activities.
- Represent members on relevant tourism and other professional bodies.
- Maintain a code of ethics for members to enhance standards of operation and behaviour within the industry.
- Provide a source of regular bulletins, publications and media releases concerning industry issues.
- Improve the professional and educational standards within the industry through effective training and licensing requirements.

ARAMA membership will provide you with an opportunity to attend industry networking events, participate in industry training programs, access current industry information, receive industry newsletters, access the member's library, and participate in industry discussion forums.

Link to ARAMA Website - <https://www.arama.com.au/>

USEFUL LINKS & RESOURCES

RTA eServices

eServices is an RTA facility for property managers and owners who manage multiple tenancies. eServices is a different facility to RTA Web Services.

eServices account holders can:

- request a full tenant refund
- search for a bond, and
- display and print their full list of bonds

If you want to register for an eServices account, complete an eServices account registration form: <https://www.rta.qld.gov.au/forms-resources/forms/forms-for-rooming-accommodation/eservices-account-registration-form> and Email it to e-services@rta.qld.gov.au

Log in to eServices: <https://eservices.rta.qld.gov.au/Account/Login>



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