



# Settlement Agents NEWS

SETTLEMENT AGENTS SUPERVISORY BOARD

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## Renewal applications to be lodged at Australia Post from September 2009

**From 1 September 2009, the Board will introduce important changes to the process for lodging triennial certificate renewal and licence on hold applications.**

These changes will mean that all renewal or licence on hold applications will be required to be lodged at Australia Post. There will be an initial three month transition period permitting applicants to either lodge the revised form at Australia Post, or lodge a paper form via post or in person to the Settlement Agents Supervisory Board. **However from 1 December 2009, renewal or licence on hold applications will only be accepted by lodgement at Australia Post.**

Australia Post will only accept lodgement of **complete** applications. Therefore, applicants must ensure that their application contains all the required attachments and information to enable their application to be assessed. An incomplete application will be rejected at the Australia Post counter.

Further details about the revised process will be uploaded to the Board's website at [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au). Agents will also be advised of the new process in their renewal reminder notice. If you have any questions about the process for lodgement at Australia Post, contact the Board's licensing staff on 9282 0844, or through the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide 8.30am – 5.00pm weekdays.

*“applicants must ensure that their application contains all the required attachments and information”*



## Late audit reports may incur fine

Agents and their auditors could face penalties of up to \$600 as part of the Board's 'no tolerance' policy over late submission of audit reports.

Reports received after 30 September 2009 for the audit period 1 July 2008 to 30 June 2009 may incur a fine.

The Settlement Agents Regulations 1982 states that an infringement notice of \$600 can be issued to agents failing to have trust accounts audited, and to auditors failing to deliver a report to the Board within three months after the end of each financial year.

The Board recommends agents arrange for an early audit and that auditors request records from settlement agents in good time to meet the deadline. During the auditing process, settlement agents are advised to maintain a record of any correspondence with their auditor.

Records should include correspondence from the agent advising the auditor that records are ready for auditing, together with the date the auditor is due to attend the agent's office. Records should also be kept of any files the agent delivers to the auditor, along with proof of correspondence.

Details of auditing requirements are highlighted in the *Settlement Agents Supervisory Board Trust account handbook*, available at [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au). Alternatively, copies of the handbook are available by contacting the Board on 9282 0844, or the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide, 8.30am – 5.00pm weekdays.

## Statutory trust accounts exempt from Guarantee Scheme Fee

**In November 2008, the Commonwealth Government commenced a scheme (the Guarantee Scheme) under which it guarantees large deposits and wholesale funding of eligible authorised deposit taking institutions (ADIs). An ADI is the financial institution in which settlement agents' statutory trust accounts may be held.**

The scheme guaranteed deposits of up to \$1,000,000 held with ADIs free of charge. Amounts over \$1,000,000 attracted a fee to participate in the scheme.

Many settlement agents regularly hold amounts in excess of \$1,000,000 in their statutory trust account and raised concerns about the cost of participating in the voluntary fee based scheme.

Since implementation the Commonwealth Government has been considering how the fee to access the Guarantee Scheme should apply to statutory trust accounts. The Settlement Agents Supervisory Board lodged a petition with the Minister for Commerce, the Hon Troy Buswell BEc MLA seeking an exemption from the fee to access the Guarantee Scheme for statutory accounts that regularly hold amounts in excess of \$1,000,000.

As a result of State Government and industry lobbying, the Federal Treasurer has now agreed that statutory trust accounts will be exempt from the fee to access the Guarantee Scheme. The arrangements came into effect 1 April 2009.

The fee exemption does not apply to interest bearing accounts where the beneficiary or account holder receives the interest directly.

The Board recommends that settlement agents check that their financial institution is an ADI for the purposes of the Guarantee Scheme and that their statutory trust account has been registered for the fee exemption.

ADIs need to submit details of the deposit products eligible for a fee exemption by email to [administrator@guaranteescheme.gov.au](mailto:administrator@guaranteescheme.gov.au).

The original can be sent by post to:

**The Scheme Administrator**  
**Australian Government Guarantee Scheme for Large Deposits and Wholesale Funding**  
**C/- The Secretary**  
**Reserve Bank of Australia**  
**GPO Box 5367**  
**SYDNEY NSW 2001**

For general enquiries, contact the Reserve Bank of Australia as administrator of the Guarantee Scheme on 1800 013 806. The fee exemption documentation is available at the Guarantee Scheme website, [www.guaranteescheme.gov.au](http://www.guaranteescheme.gov.au).

# Tenanted properties and the settlement agent's role

Agents are reminded of the requirements of the current Joint Form of General Conditions 2002 (JFGC) in regards to tenanted properties and the settlement agent's role.

The seller has a number of obligations when selling a tenanted property and many will look to their settlement agent, property manager or real estate agent to ensure their obligations are met, therefore settlement agents should be familiar with the conditions, so that they can assist their seller clients in meeting these obligations.

Agents should note that pursuant to the JFGC 6.6(a), the seller is entitled to rent up to but not including settlement. The buyer is entitled to rent from and including settlement. In the past the seller was entitled to rent up to and including the settlement date. Settlement agents need to be aware of this when adjusting rent.

If settlement is delayed then rent needs to be readjusted.

## The seller's obligations under the JFGC include:

- **JFGC 6.7(a)** The seller must pay to the buyer any rent to which the buyer is entitled which has been paid to the seller before settlement. For example, if settlement occurs on 14 February, 2009 and the seller has collected rent up to the 28 February, then the seller must pay to the buyer rent from and including 14 February up to 28 February, 2009. In a situation where the property manager has released the rent to the seller, they should inform the seller's settlement agent so that the settlement agent can include this adjustment on the statements.

Where there is no property manager, or the property manager does not provide information, the seller's settlement agent must obtain this information from the seller and make the appropriate adjustments.

- **JFGC 6.7(b)** The seller is not obliged to pay to the buyer any rent which was payable by the tenant but is unpaid.
- **JFGC 6.9** The seller must deliver to the buyer on settlement:
  - where the lease is in writing, the original or true copy of the lease;
  - where the lease is verbal, a written memorandum setting out the relevant details of the lease;
  - a statement showing rent payable, for what period and date paid to;
  - a property condition report;
  - where a bond has been paid by the tenant, the seller must either provide this bond by bank cheque payable to the buyer on settlement OR provide documentation to transfer the seller's rights in respect of the bond to the buyer; and
  - a notice signed by the seller or their settlement agent addressed to each tenant including the following information:
    - that the property has been sold to the buyer; and
    - a direction to the tenant to pay rent as from settlement to the buyer or as otherwise directed in writing by the buyer.

## Other matters to note are:

- **JFGC 6.8** If rent is received after settlement by either the buyer or the seller, the party receiving the money must pay the money to the party entitled to receive it as soon as reasonably possible.
- **JFGC 6.9(b)** Where rent is due to the seller and has not been paid as at settlement:
  - the buyer assigns the unpaid rent to the seller;
  - the buyer will, if requested by the seller, sign a deed of assignment for the unpaid rent and a notice to the tenant of the assignment. Such assignment to be prepared by the seller at the seller's expense; and
  - the seller may institute proceedings against the tenant for unpaid rent.

Immediately, the contract becomes unconditional, and a prudent settlement agent regardless of who they are acting for will send a letter to the managing agents requesting the following information:

- a copy of the tenancy agreement or lease;
- the amount of rent and date paid to; and
- the amount of bond and where held.

The settlement agent should also point out to the managing agent that all outstanding rent should be collected prior to settlement and should the managing agent experience any difficulty in obtaining the arrears, the settlement agent should be notified immediately so

## Tenanted properties and the settlement agent's role (cont.)

that they can seek their client's instructions and advise the client to seek legal advice as to how best to recover the outstanding rent. It may be considered necessary to put an assignment in place in line with JFGC 6.9(b).

The settlement agent should also ask whether or not the managing agent will be adjusting the rent and whether management is remaining with the same agency.

When effecting settlements of commercial or retail properties additional questions need to be asked, including but not limited to:

- does the lease give the lessee first right of refusal to purchase the property and if so has the lessee been given this opportunity?;
- does the lease require the lessee to have a bank guarantee in place and if so where is the guarantee held? It will be a requirement of settlement that the bank guarantee be reissued, or if possible assigned, to the buyer;
- are there any areas of the property that are vacant? Whilst tenants in commercial properties are usually liable to pay all outgoings such as rates and taxes, if any areas are vacant then an adjustment of rates on the vacant area must occur at settlement;
- how are outgoings invoiced, monthly as a variable outgoing or upon assessment from the rating authority?;
- will a variable outgoing audit be conducted as at settlement date?; and
- does the lease have provision for any options to extend the lease period and if so have these options been exercised?

As the JFGC is clear in the seller's obligations there is a distinct onus on a settlement agent to obtain the information for their clients. Failure to do so may result in a breach of rule 16 of the Settlement Agents' Code of Conduct. If you do not have the experience or knowledge to deal with the additional complications of a settlement of a tenanted commercial, industrial or retail property, then do not accept instructions.

Also bear in mind when quoting on settlements of tenanted commercial and residential properties that they require more expertise and involve extra work and your quote should take this into consideration.

Please note that the JFGC is currently under review. Refer to the Board's website at [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au) for the latest updates regarding the impact of this review.



## ➔ Preparing tax invoices at time of settlement

The Board wishes to reiterate that the *Settlement Agents Act 1981* does not authorise settlement agents to prepare tax invoices on behalf of the seller.

If Goods and Services Tax (GST) is being paid at settlement, whether it is included or in addition to the purchase price, then the seller must provide a tax invoice to the buyer unless the GST is being calculated using the margin scheme.

Remember that in order to charge GST on the supply of a property the registered proprietor must have an ABN and must be registered for GST. It is necessary for settlement agents to check this as sellers who are not registered for GST cannot charge GST on the supply of the property.

Settlement agents acting for a seller must ensure the seller provides the tax invoice to them prior to settlement. A copy should be faxed to the buyer's settlement agent to ensure they can have it vetted by their client.

The original tax invoice should be provided to the buyer's settlement agent at settlement. If acting for a buyer, the settlement agent should request in writing, a copy of the tax invoice prior to settlement.

### The tax invoice should contain the following minimum information:

- It must be titled: "Tax Invoice"
- Name of the seller/entity selling the property
- The entity's ABN (the settlement agent should double check this against the searches undertaken and address any discrepancies)
- The address of the property being purchased (in other words, what is being supplied)
- The buyer's details (for example, if the buyer is a trustee, ensure the full details are shown on the tax invoice)
- The purchase price
- The GST payable
- The total amount payable.

It is important to note that if the GST has been calculated using the margin scheme, the seller may not be obliged to provide the buyer with a tax invoice. In most circumstances, the buyer is unable to claim an input tax credit for GST that has been calculated using the margin scheme.

For more information on GST and tax invoices, refer to Issue 37 of the *Settlement Agents News* (Summer 2006) available online at [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au), or visit the Australian Tax Office at [www.ato.gov.au](http://www.ato.gov.au).



# Compulsory Professional Development update

The requirements of the Board's Compulsory Professional Development (CPD) program are prescribed by legislation and form part of the licensing framework. The potential benefits of the program include renewed enthusiasm for your profession, consistency, best practice, refreshment of knowledge and updating of skills in the areas of industry developments, legislative change and work practices.

In each CPD cycle, individual licensees with a current triennial certificate are required to attain **six CPD points**. Of these six points, a minimum of **four** points are to be earned from core activities and **two** points from elective activities. A comprehensive list of the core and elective CPD activities is located at the CPD section of the Board's website at [www.sasb.wa.gov.au](http://www.sasb.wa.gov.au).

Please refer to the timetable below for the CPD sessions scheduled in the near future. The easiest way to arrange CPD bookings is to book online at [www.wcpt.com.au](http://www.wcpt.com.au). If you have any direct booking enquiries, please contact West Coast Property Training by email on [cpd@wcpt.com.au](mailto:cpd@wcpt.com.au) or phone 9300 0000.

## For further information

Everything you need to know about CPD can be found under the CPD link on the SASB website. If you wish to obtain a copy of the CPD Guide or have specific queries relating to your CPD obligations, please contact the Board on 9282 0584 or phone the Real Estate and Settlement Advice Line on 1300 30 40 64 for the cost of a local call statewide 8.30am – 5.00pm weekdays. Alternatively, email [cpd@sasb.wa.gov.au](mailto:cpd@sasb.wa.gov.au).

## Compulsory Professional Development dates for your diary

Date	Time	Session	Point Value and Type	Location
Thurs, 9 Jul	09.00–11.00	Office of State Revenue	2 Core points	Perth CBD
Thurs, 9 Jul	11.30–13.30	Commercial Property Settlements	2 Elective Points	Perth CBD
Thurs, 9 Jul	14.30–16.30	Strata Title Settlements	2 Core points	Perth CBD
Mon, 13 Jul	10.30–12.30	Reconciliation of Trust Accounts	2 Core or Elective points	Joondalup
Tue, 15 Sept	12.00–14.00	Strata Title Settlements	2 Core points	Perth CBD
Tue, 15 Sept	14.30–16.30	Reconciliation of Trust Accounts	2 Core or Elective points	Perth CBD

Please book online at [www.wcpt.com.au](http://www.wcpt.com.au)

This newsletter contains general information that was current at the time of publication. If you have specific enquiries arising from any material in this publication, you should write to the Registrar of the Settlement Agents Supervisory Board, or seek independent professional advice. The producers of this publication expressly disclaim any liability arising out of a reader's reliance on information in this publication.

THIS PUBLICATION WAS ISSUED BY THE SETTLEMENT AGENTS SUPERVISORY BOARD.

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