



Estate Agents Act 1979

1979 CHAPTER 38

Clients' money and accounts

12 Meaning of " clients' money " etc.

- (1) In this Act " clients' money ", in relation to a person engaged in estate agency work, means any money received by him in the course of that work which is a contract or pre-contract deposit—
- (a) in respect of the acquisition of an interest in land in the United Kingdom, or
 - (b) in respect of a connected contract,
- whether that money is held or received by him as agent, bailee, stakeholder or in any other capacity.
- (2) In this Act " contract deposit" means any sum paid by a purchaser—
- (a) which in whole or in part is, or is intended to form part of, the consideration for acquiring such an interest as is referred to in subsection (1)(a) above or for a connected contract; and
 - (b) which is paid by him at or after the time at which he acquires the interest or enters into an enforceable contract to acquire it.
- (3) In this Act " pre-contract deposit" means any sum paid by any person—
- (a) in whole or in part as an earnest of his intention to acquire such an interest as is referred to in subsection (1)(a) above, or
 - (b) in whole or in part towards meeting any liability of his in respect of the consideration for the acquisition of such an interest which will arise if he acquires or enters into an enforceable contract to acquire the interest, or
 - (c) in respect of a connected contract,
- and which is paid by him at a time before he either acquires the interest or enters into an enforceable contract to acquire it.
- (4) In this Act " connected contract", in relation to the acquisition of an interest in land, means a contract which is conditional upon such an acquisition or upon entering into an enforceable contract for such an acquisition (whether or not it is also conditional on other matters).

13 Clients' money held on trust or as agent

- (1) It is hereby declared that clients' money received by any person in the course of estate agency work in England, Wales or Northern Ireland—
 - (a) is held by him on trust for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him, or
 - (b) if it is received by him as stakeholder, is held by him on trust for the person who may become so entitled on the occurrence of the event against which the money is held.
- (2) It is hereby declared that clients' money received by any person in the course of estate agency work in Scotland is held by him as agent for the person who is entitled to call for it to be paid over to him or to be paid on his direction or to have it otherwise credited to him.
- (3) The provisions of sections 14 and 15 below as to the investment of clients' money, the keeping of accounts and records and accounting for interest shall have effect in place of the corresponding duties which would be owed by a person holding clients' money as trustee, or in Scotland as agent, under the general law.
- (4) Where an order of the Director under section 3 above has the effect of prohibiting a person from holding clients' money the order may contain provision—
 - (a) appointing another person as trustee, or in Scotland as agent, in place of the person to whom the order relates to hold and deal with clients' money held by that person when the order comes into effect; and
 - (b) requiring the expenses and such reasonable remuneration of the new trustee or agent as may be specified in the order to be paid by the person to whom the order relates or, if the order so provides, out of the clients' money;but nothing in this subsection shall affect the power conferred by section 41 of the Trustee Act 1925 or section 40 of the Trustee Act (Northern Ireland) 1958 to appoint a new trustee to hold clients' money.
- (5) For the avoidance of doubt it is hereby declared that the fact that any person has or may have a lien on clients' money held by him does not affect the operation of this section and also that nothing in this section shall prevent such a lien from being given effect.

14 Keeping of client accounts

- (1) Subject to such provision as may be made by accounts regulations, every person who receives clients' money in the course of estate agency work shall, without delay, pay the money into a client account maintained by him or by a person in whose employment he is.
- (2) In this Act a " client account" means a current or deposit account which—
 - (a) is with an institution authorised for the purposes of this section, and
 - (b) is in the name of a person who is or has been engaged in estate agency work ;
and
 - (c) contains in its title the word " client".
- (3) The Secretary of State may make provision by regulations (in this section referred to as " accounts regulations ") as to the opening and keeping of client accounts, the keeping of accounts and records relating to clients' money and the auditing of those accounts; and such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (4) As to the opening and keeping of client accounts, accounts regulations may in particular specify—
- (a) the institutions which are authorised for the purposes of this section;
 - (b) any persons or classes of persons to whom, or any circumstances in which, the obligation imposed by subsection (1) above does not apply ;
 - (c) any circumstances in which money other than clients' money may be paid into a client account; and
 - (d) the occasions on which, and the persons to whom, money held in a client account may be paid out.
- (5) As to the auditing of accounts relating to clients' money, accounts regulations may in particular make provision—
- (a) requiring such accounts to be drawn up in respect of specified accounting periods and to be audited by a qualified auditor within a specified time after the end of each such period ;
 - (b) requiring the auditor to report whether in his opinion the requirements of this Act and of the accounts regulations have been complied with or have been substantially complied with;
 - (c) as to the matters to which such a report is to relate and the circumstances in which a report of substantial compliance may be given ; and
 - (d) requiring a person who maintains a client account to produce on demand to a duly authorised officer of an enforcement authority the latest auditor's report.
- (6) Subject to subsection (7) below, "qualified auditor" in subsection (5)(a) above means—
- (a) a person who is a member of one or more bodies of accountants established in the United Kingdom and for the time being recognised by the Secretary of State for the purposes of section 161(1)(a) of the Companies Act 1948 or, in Northern Ireland, recognised by the Department of Commerce for Northern Ireland for the purposes of section 155(1)(a) of the Companies Act (Northern Ireland) 1960 ; or
 - (b) a person who is for the time being authorised by the Secretary of State under section 161(1)(6) of the Companies Act 1948 or, in Northern Ireland, by the Department of Commerce for Northern Ireland under section 155(1)(b) of the Companies Act (Northern Ireland) 1960; or
 - (c) in the case of a client account maintained by a company, a person who is qualified to audit the accounts of the company by virtue of section 13(1) of the Companies Act 1967 (unqualified auditors of former exempt private companies); or
 - (d) a Scottish firm of which all the members are qualified auditors within paragraphs (a) to (c) above.
- (7) A person is not a qualified auditor for the purposes of subsection (5)(a) above if, in the case of a client account maintained by a company, he is disqualified from auditing the accounts of the company by subsection (2), subsection (3) or subsection (4) of either section 161 of the Companies Act 1948 or section 155 of the Companies Act (Northern Ireland) 1960.
- (8) A person who—

Status: This is the original version (as it was originally enacted).

- (a) contravenes any provision of this Act or of accounts regulations as to the manner in which clients' money is to be dealt with or accounts and records relating to such money are to be kept, or
 - (b) fails to produce an auditor's report when required to do so by accounts regulations,
- shall be liable on summary conviction to a fine not exceeding £500.

15 Interest on clients' money

- (1) Accounts regulations may make provision for requiring a person who has received any clients' money to account, in such cases as may be prescribed by the regulations, to the person who is or becomes entitled to the money for the interest which was, or could have been, earned by putting the money in a separate deposit account at an institution authorised for the purposes of section 14 above.
- (2) The cases in which a person may be required by accounts regulations to account for interest as mentioned in subsection (1) above may be defined, amongst other things, by reference to the amount of the sum held or received by him or the period for which it is likely to be retained, or both.
- (3) Except as provided by accounts regulations and subject to subsection (4) below, a person who maintains a client account in which he keeps clients' money generally shall not be liable to account to any person for interest received by him on money in that account.
- (4) Nothing in this section or in accounts regulations shall affect any arrangement in writing, whenever made, between a person engaged in estate agency work and any other person as to the application of, or of any interest on, money in which that other person has or may have an interest.
- (5) Failure of any person to comply with any provision of accounts regulations made by virtue of this section may be taken into account by the Director in accordance with section 3(1)(c) above and may form the basis of a civil claim for interest which was or should have been earned on clients' money but shall not render that person liable to any criminal penalty.
- (6) In this section "accounts regulations" has the same meaning as in section 14 above.

16 Insurance cover for clients' money

- (1) Subject to the provisions of this section, a person may not accept clients' money in the course of estate agency work unless there are in force authorised arrangements under which, in the event of his failing to account for such money to the person entitled to it, his liability will be made good by another.
- (2) The Secretary of State may by regulations made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.—
 - (a) specify any persons or classes of persons to whom subsection (1) above does not apply ;
 - (b) specify arrangements which are authorised for the purposes of this section including arrangements to which an enforcement authority nominated for the purpose by the Secretary of State or any other person so nominated is a party ;

- (c) specify the terms and conditions upon which any payment is to be made under such arrangements and any circumstances in which the right to any such payment may be excluded or modified ;
 - (d) provide that any limit on the amount of any such payment is to be not less than a specified amount;
 - (e) require a person providing authorised arrangements covering any person carrying on estate agency work to issue a certificate in a form specified in the regulations certifying that arrangements complying with the regulations have been made with respect to that person ; and
 - (f) prescribe any matter required to be prescribed for the purposes of subsection (4) below.
- (3) Every guarantee entered into by a person (in this subsection referred to as " the insurer") who provides authorised arrangements covering another person (in this subsection referred to as " the agent") carrying on estate agency work shall enure for the benefit of every person from whom the agent has received clients' money as if—
- (a) the guarantee were contained in a contract made by the insurer with every such person; and
 - (b) except in Scotland, that contract were under seal; and
 - (c) where the guarantee is given by two or more insurers, they had bound themselves jointly and severally.
- (4) No person who carries on estate agency work may describe himself as an " estate agent" or so use any name or in any way hold himself out as to indicate or reasonably be understood to indicate that he is carrying on a business in the course of which he is prepared to act as a broker in the acquisition or disposal of interests in land unless, in such manner as may be prescribed,—
- (a) there is displayed at his place of business, and
 - (b) there is included in any relevant document issued or displayed in connection with his business,
- any prescribed information relating to arrangements authorised for the purposes of this section.
- (5) For the purposes of subsection (4) above,—
- (a) any business premises at which a person carries on estate agency work and to which the public has access is a place of business of his ; and
 - (b) " relevant document" means any advertisement, notice or other written material which might reasonably induce any person to use the services of another in connection with the acquisition or disposal of an interest in land.
- (6) A person who fails to comply with any provision of subsection (1) or subsection (4) above or of regulations under subsection (2) above which is binding on him shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.

17 Exemptions from section 16

- (1) If, on an application made to him in that behalf, the Director considers that a person engaged in estate agency work may, without loss of adequate protection to consumers, be exempted from all or any of the provisions of subsection (1) of section 16 above or of regulations under subsection (2) of that section, he may issue to that person a certificate of exemption under this section.

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- (2) An application under subsection (1) above—
 - (a) shall state the reasons why the applicant considers that he should be granted a certificate of exemption; and
 - (b) shall be accompanied by the prescribed fee.
- (3) A certificate of exemption under this section—
 - (a) may impose conditions of exemption on the person to whom it is issued ;
 - (b) may be issued to have effect for a period specified in the certificate or without limit of time.
- (4) If and so long as—
 - (a) a certificate of exemption has effect, and
 - (b) the person to whom it is issued complies with any conditions of exemption specified in the certificate,that person shall be exempt, to the extent so specified, from the provisions of subsection (1) of section 16 above and of any regulations made under subsection (2) of that section.
- (5) If the Director decides to refuse an application under subsection (1) above he shall give the applicant notice of his decision and of the reasons for it, including any facts which in his opinion justify the decision.
- (6) If a person who made an application under subsection (1) above is aggrieved by a decision of the Director—
 - (a) to refuse his application, or
 - (b) to grant him a certificate of exemption subject to conditions,he may appeal against the decision to the Secretary of State; and subsections (2) to (6) of section 7 above shall apply to such an appeal as they apply to an appeal under that section.
- (7) A person who fails to comply with any condition of exemption specified in a current certificate of exemption issued to him shall be liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum.