



Check Your Bank Account



Edition: 17th February 2012

Leverage was approached about three weeks ago by a client who has had difficulties with their trust account. No, they have not dipped their fingers into their trust account, but some administrative problems have emerged.

In 1999, the agent opened the trust account in accordance with the Property, Stock & Business Agent's Act 1941. They went to the bank with their blue form, provided a copy to the Office of Fair Trading and kept a copy for themselves. This form advised the bank that:

- All fees should be taken from the agent's general account; and
- All interest should be paid to the Property Services Compensation Fund.

Over that period of time, the bank debited all fees from the agencies general account. Unfortunately, they paid all interest payable under the account to the agent's trust account and not to the Office of Fair Trading Property Services Compensation Fund. This bank has now served a notice on the agency seeking a refund of \$132,000.

Yes it was the bank's fault. Regrettably, the law of banking is absolutely clear. You are not entitled to keep what is not yours. The agent was given \$132,000, which is the property of the Property Services Compensation Fund. Yes, they are responsible for paying the money back.

It is also our opinion that the bank has acted unlawfully. The bank has a statutory obligation to pay interest to the Property Services Compensation Fund. It is not the obligation of the agent. Hence, the bank has acted negligently and needs to compensate the agent.

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Leverage has written a letter to the bank requesting that they develop a proposal that fits our client's needs. Presently, they are suggesting that they will loan the money to the agent and charge them interest. How understanding is that???

It is Leverage's suggestion that the bank needs to at least compensate for two things:

- The tax paid on the amount they paid to the agent; and
- The high amount of fees which were paid for an interest bearing account.

You might ask why the bank made this mistake? We don't know! Basically they were not aware that it was a real estate trust account! All the cheque books, the receipt books, the account statements state "..... Real Estate Agent's Trust Account".

What has been identified from our investigations is that this has happened to a number of agents in a number of areas of Sydney. It isn't a oneoff. It's an event which has happened right across Sydney. For obvious reasons, Leverage will not identify the bank or the agent. We do however suggest that, as soon as possible, you check your bank accounts to ensure that the banks have applied interest correctly.

***Cheers,
Bailey Compton
and The team at ACP/Leverage!***



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