

Western Australia

LEGISLATIVE ASSEMBLY

**Real Estate Legislation (Fidelity Guarantee  
Funds) Amendment Bill 1999**

**A Bill for**

**An Act to amend the —**

- *Real Estate and Business Agents Act 1978; and*
  - *Settlement Agents Act 1981,*
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Real Estate Legislation (Fidelity Guarantee Funds) Amendment Act 1999*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

## **Part 2 — *Real Estate and Business Agents Act 1978***

### **3. The Act amended**

The amendments in this Part are to the *Real Estate and Business Agents Act 1978*\*.

5 [\* Reprinted as at 6 September 1996.  
For subsequent amendments see 1998 Index to Legislation of  
Western Australia, Table 1, p. 211, and Act No. 26 of 1999.]

### **4. Section 116 amended and revival and transitional provisions**

10 (1) Section 116(2) is repealed and the following subsection is  
inserted instead —

“

(2) The Board is to disallow a claim against the Fidelity  
Fund unless —

15 (a) notice of the claim is given in writing to the  
Board within 3 years after the day on which the  
claimant became aware of the defalcation; or

(b) the Board —  
(i) has been given notice in writing of the  
claim within 6 years after the day on  
20 which the claimant became aware of the  
defalcation; and

(ii) considers that it is just and reasonable in  
the circumstances to deal with the claim  
even though notice was not given within  
25 the time referred to in paragraph (a).

”.

(2) A person may give notice of a claim under section 116(2) as  
amended by this section even if the time within which that  
notice was to be given under that section before that amendment  
30 had expired.

**s. 5**

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- 5 (3) Where a person may give notice of a claim under section 116(2) as amended by this section, notice of the claim given by the person previously in writing to the Board (whether or not dealt with by the Board) is to be taken to be notice of the claim for the purposes of that section.

**5. Section 117 amended**

Section 117(1) is amended by deleting “receive and settle” and inserting instead —

“ receive and, subject to section 116(2), settle ”.

## **Part 3 — Settlement Agents Act 1981**

### **6. The Act amended**

The amendments in this Part are to the *Settlement Agents Act 1981*\*.

5 [\* Reprinted as at 23 September 1996.  
For subsequent amendments see 1998 Index to Legislation of  
Western Australia, Table 1, p. 229, and Act No. 26 of 1999.]

### **7. Section 93 amended and revival and transitional provisions**

10 (1) Section 93(2) is repealed and the following subsection is  
inserted instead —

“

(2) The Board is to disallow a claim against the Fund  
unless —

15 (a) notice of the claim is given in writing to the  
Board within 3 years after the day on which the  
claimant became aware of the defalcation; or

(b) the Board —  
(i) has been given notice in writing of the  
claim within 6 years after the day on  
20 which the claimant became aware of the  
defalcation; and

(ii) considers that it is just and reasonable in  
the circumstances to deal with the claim  
even though notice was not given within  
25 the time referred to in paragraph (a).

”.

(2) A person may give notice of a claim under section 93(2) as  
amended by this section even if the time within which that  
notice was to be given under that section before that amendment  
30 had expired.

**s. 8**

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- 5 (3) Where a person may give notice of a claim under section 93(2) as amended by this section, notice of the claim given by the person previously in writing to the Board (whether or not dealt with by the Board) is to be taken to be notice of the claim for the purposes of that section.

**8. Section 95 amended**

Section 95(1) is amended by deleting “receive and settle” and inserting instead —

“ receive and, subject to section 93(2), settle ”.

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