

Chapter DFI-Bkg 42

TRUST ACCOUNTS

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Note: Chapter RL 42 was renumbered chapter DFI-Bkg 42 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., *Register*, June 1999, No. 522. Corrections made under s. 13.93 (2m) (b) 7., Stats., *Register*, September, 1999, No. 525. Chapter DFI-Bkg 42 as it existed on December 31, 2009 was repealed and a new chapter DFI-Bkg 42 was created, effective January 1, 2010.

DFI-Bkg 42.01 General requirements for trust accounts. (1) **TYPE OF ACCOUNT.** A licensee shall deposit all trust funds received by the licensee or the licensee's employees in a trust account in a depository institution. The account shall be identified as a trust account. The division may prohibit a licensee from establishing or maintaining a trust account in a financial institution if the division believes that the financial institution is operating in an unsafe or unsound manner.

(2) **TIME OF DEPOSIT.** A licensee shall deposit all trust funds received by the licensee or the licensee's employees in a trust account within 48 hours of receipt of such trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the licensee shall deposit the funds on the next business day of the depository institution. A licensee may satisfy this requirement by mailing trust funds to the depository institution within 48 hours after receipt of the trust funds.

(3) **DEPOSIT OF LOAN APPLICATION FEE BY MORTGAGE BROKER.** A licensed mortgage broker who receives a loan application fee from an applicant for a residential mortgage loan shall make a good faith estimate of that portion of the loan application fee which will be needed to pay for services rendered by a third party incident to the processing of the residential mortgage loan application, such as a fee or a charge for a credit report or a real estate appraisal. The mortgage broker shall follow either one of the following 2 procedures relating to that portion of the loan application fee which is needed to pay for the services rendered by a third party or which is imposed on behalf of any other person:

(a) Deposit that portion of the loan application fee in a trust account and disburse it from the trust account to pay for the services rendered by a third party.

(b) Direct the applicant to make payment directly to the third party.

(4) **STATEMENT OF ACCOUNT.** Upon reasonable notice, a licensee shall promptly provide a statement of account to any party to a mortgage transaction.

(5) **COMMINGLING OF FUNDS.** A licensee shall deposit only trust funds in the licensee's trust account and shall not commingle personal funds in a trust account, except that a licensee may deposit and keep in an account an amount of personal funds which is necessary to cover customary advances or service charges relating to the account.

(6) **RESPONSIBILITY OF EMPLOYEES.** An employee of a licensee who receives trust funds shall promptly submit the funds to the licensee.

History: CR 09-060; cr. *Register* December 2009 No. 648, eff. 1-1-10.

DFI-Bkg 42.02 Duty to notify the division about trust accounts. Upon request by the division, the licensee shall provide the division with the name and number of every trust account maintained by the licensee in a depository institution and the name and address of the depository institution in which the licensee holds each account.

History: CR 09-060; cr. *Register* December 2009 No. 648, eff. 1-1-10.

DFI-Bkg 42.03 Authorization to examine trust accounts. Upon the division's request, a licensee shall obtain the certification of every depository institution in which a licensee maintains a trust account, attesting to the existence of the account and consenting to the examination and audit of the account by a duly authorized representative of the division. The licensee shall have sufficient documentation from the trust account available to make an adequate examination.

History: CR 09-060; cr. *Register* December 2009 No. 648, eff. 1-1-10.

DFI-Bkg 42.04 Disbursement of trust funds. (1) **WITHDRAWAL OF FEES AND COMMISSIONS.** A licensee shall withdraw fees or commissions from trust accounts maintained by the licensee within 24 hours after the fees or commissions are payable or in accordance with any written agreement or contract, except that fees relating to the servicing of monthly mortgage payments shall be withdrawn from trust accounts within 60 days after monthly payments are received.

(2) **RELEASE OF TRUST FUNDS.** A licensee shall release trust funds within 30 days after payment of a residential mortgage loan in full. If a residential mortgage loan is not consummated, a licensee shall release trust funds to the person who furnished the money to be held in trust within 30 days after it is determined that the loan will not be consummated.

History: CR 09-060; cr. *Register* December 2009 No. 648, eff. 1-1-10.

DFI-Bkg 42.05 After closing escrow agreements. If a licensee requires or permits funds to be placed in escrow until some future occurrence, such as repair or completion escrows, and the parties request that the licensee hold these funds, a written agreement to that effect shall be prepared by the parties or an attorney. If the licensee holds these funds, the licensee shall place the funds in the licensee's trust account.

History: CR 09-060; cr. *Register* December 2009 No. 648, eff. 1-1-10.

DFI-Bkg 42.06 Advance deposits in escrow accounts. In any transaction, in connection with a residential mortgage loan, in which a licensee requires a borrower or prospective borrower to deposit a sum of money in a tax or insurance escrow account for the purpose of assuring payment of taxes, insurance premiums or other charges with respect to the property, the licensee shall comply with 12 USC 2601 et seq., as amended, and all regulations related thereto if the transaction involves a "federally related mortgage loan," as the phrase is defined in 12 USC 2602, as amended.

History: CR 09-060; cr. *Register* December 2009 No. 648, eff. 1-1-10.