

Chapter REB 9

TRUST ACCOUNTS

REB 9.01 Trust accounts

History: Chapter REB 9 as it existed on April 30, 1972 was repealed and a new chapter REB 9 was created, Register, April, 1972, No. 196, effective May 1, 1972.

REB 9.01 Trust accounts. (1) REQUIREMENTS. Each broker shall maintain a demand deposit common trust account or accounts in a bank for the deposit of all down payments, earnest money deposit, or trust funds received by the broker or his salesman on behalf of his principal or any other person while acting and performing duties as a licensed real estate broker or salesman as set forth in section 452.01, Wis. Stats.

(2) AUTHORIZED SIGNATURE. In order to provide for emergencies and the necessities of modern real estate practice, the board in recognition of the need for brokers to have others authorized to sign trust account checks will not take action with respect to a broker's license as a violation of Wis. Adm. Code chapter REB 9 or section 452.09, Wis. Stats., where a person other than the licensed broker signs form 5 trust account checks provided:

(a) Said person has filed an application for said authority with the board on form 50 and said application has been approved in writing by the board.

(b) Said person is a regular employe of the broker licensee and working in the office of said licensee.

(c) Permission on form 50 shall only be given to 3 persons in any broker's office or 1 person in a branch office except that:

1. If there are more than 3 brokers in an office there shall be allowed one additional signator for each additional 3 brokers who are company officers or partners.

2. This permission on form 50 shall not be given to an inactive partner or to an unlicensed officer of a corporation unless said partner owns less than a controlling interest in said partnership or said officer is a minority stockholder.

3. Permission on form 50 may be given to a licensed Wisconsin attorney or a certified public accountant who is employed by said broker, provided said attorney or certified public accountant have their place of business no further than 100 miles from said broker's office.

(d) Failure of a broker to fully comply with this rule shall be a basis for disciplinary action pursuant to section 452.10, Wis. Stats.

(e) In no case shall any permission on form 50 be granted to any person who is not a resident of the state of Wisconsin and presently residing in the state of Wisconsin.

(f) No permission shall be given to an individual under 21 years of age.

(g) With the exception of item (e), the board may upon written request and evidence of extenuating circumstances waive portions of this rule.

(3) NOTIFICATION. Each broker shall notify the board of the name of the bank or banks in which said trust account or accounts are maintained and also the name of the accounts on forms provided therefore. Said form or forms shall be designated form number 5, consent to examine and audit trust account and shall be filed with the board by each new applicant for a real estate broker's license. A new form 5 shall be filed with the board each time a broker changes said real estate trust account in any manner whatsoever including but not limited to change of banks, change of account number, change of business address, change of name, change of method of doing business. Said new forms shall be filed with the board within 10 days after the aforementioned change takes place. Failure to file said form within said time limit shall be deemed to constitute a violation of the Wis. Stats., within the meaning of section 452.10 (2) (a) and also shall be deemed to constitute a violation of section 452.10 (2) (i) requiring safeguards of the interests of the public.

(4) AUTHORIZATION. Each broker shall authorize the board to examine said trust account and shall obtain the certification of the bank attesting to said trust account and consenting to the examination and audit of said account by a duly authorized representative of the board, and each broker shall starting with renewal application filed for the year 1973, authorize the board to examine said trust account and shall obtain the certification of the bank attesting to said trust account and consenting to the examination and audit of said account by duly authorized representative of the board. A new authorization shall be filed with the board every 2 years thereafter, unless required under subsection (2) of this rule. Said certification and consent shall be furnished on forms prescribed by the board.

(5) COMMINGLING PROHIBITED. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 452.01, Wis. Stats., in said common trust account and shall not commingle his personal funds or other funds in said trust account with the exception that a broker may deposit and keep a sum not to exceed \$100 in said account from his personal funds which sum shall be specifically identified and deposited to cover bank service charges relating to said trust account.

(6) NUMBER OF TRUST ACCOUNTS. A broker may maintain more than one trust account provided the board is advised of said account as specified in subsections (4) and (5) above.

(7) TIME OF DEPOSIT. Each broker shall deposit all real estate trust money received by him or his salesmen in the broker's trust account registered with the board within 24 hours of receipt of said money by said broker or said salesman. In the event said trust money is received on a day prior to a holiday or other day said bank is closed, said money shall then be deposited on the next business day of said bank.

(8) **BOOKKEEPING SYSTEM.** Each broker shall maintain a bookkeeping system in his office consisting of at least the following:

(a) A permanently bound record book called a journal which shows the chronological sequence in which funds are received and disbursed:

1. For funds received the journal must include the date, the name of the party who is giving the money, the name of the principal, and the amount.

2. For disbursements, the journal must include the date, the payee, the check number and the amount.

3. A running balance must be shown after each entry (receipt or disbursement).

(b) A ledger. A record book which shows the receipt and the disbursements as they affect a single, particular transaction—as between buyer and seller or landlord and tenant, etc. The ledger must include the names of both parties to a transaction, the dates and the amounts received. When disbursing funds the date, payee, check number and amount must be shown. The ledger must segregate one transaction from another transaction. There must be a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions (i.e. sales, or rental collections, or mortgage and land contract collections).

(c) The trust account must be reconciled monthly except in the case where there had been no activity during that month. The reconciliation must include a written work sheet comparing the bank statement with the journal and the ledger to insure agreement (chapter 16 of the Wisconsin real estate manual shows a typical reconciliation).

(d) Real estate trust funds received in his capacity as a broker would include but not be limited to monies received in connection with the following:

1. Offers to purchase.

2. Options.

3. Land contracts.

4. Rent contracts.

5. Mortgages.

6. Mortgage payments.

7. Real estate taxes and insurance payments.

8. Finders fees.

9. Advance fees.

10. Any other receipts pertaining to the sale, exchange, purchase, rental of real estate or business opportunities or mortgage financing.

(e) Said journal and ledgers shall include but not be limited to information on:

1. Finders fees, dates, names of parties and amount.

2. Advance fees, dates, names of parties and amount.

3. Earnest money receipts, dates, names of parties, amount of down payment.

4. Any other receipts pertaining to the sale, exchange, purchase, rental of real estate or business opportunities, dates, names of parties, amount of payment.

(9) **DEPOSITS IN LIEU OF CASH.** Any instrument or equity or thing of value taken in lieu of cash as down payment shall be held by an authorized escrow agent except as otherwise agreed.

(10) **BRANCH OFFICE TRUST ACCOUNT.** In the event a branch office maintains a separate trust account, a separate bookkeeping system shall be maintained in said branch office.

(11) **WITHDRAWAL OF DEPOSITS.** Commissions or fees earned by the broker out of monies deposited in said trust account shall be withdrawn from said trust account within 24 hours after the transaction is consummated, terminated or after the commission or fees are earned in accordance with the contract involved.

(12) **VIOLATION OF RULES.** Failure of the broker to follow the rules as set forth in this section shall constitute grounds for revocation or suspension of his license under section 452.10 (2), Wis. Stats.

History: Cr. Register, April, 1972, No. 196, eff. 5-1-72.