



WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Veterans, Homeland Security,
Military Affairs, Small Business and Government
Reform (SC-VHSMASBGR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

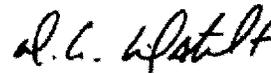
**Committee on Veterans, Homeland Security, Military Affairs,
Small Business and Government Reform**

Clearinghouse Rule 05-110

Relating to interest on real estate trust accounts and affecting small business.
Submitted by Department of Commerce.

February 20, 2006 Referred to Committee on Veterans, Homeland Security, Military
Affairs, Small Business and Government Reform.

March 20, 2006 No action taken.



Daniel Lindstedt
Committee Clerk





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **05-110**

AN ORDER to repeal and recreate Comm 155.06, relating to interest on real estate trust accounts and affecting small business.

Submitted by **DEPARTMENT OF COMMERCE**

12-01-2005 RECEIVED BY LEGISLATIVE COUNCIL.

12-19-2005 REPORT SENT TO AGENCY.

RNS:MM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 05-110

RULE NO.: Chapter Comm 155

RELATING TO: Interest on Real Estate Trust Accounts

Agency contact person for substantive questions.

Name: Patti Glassburn

Title: Housing Financial Specialist

Telephone No. 608/266-8273

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

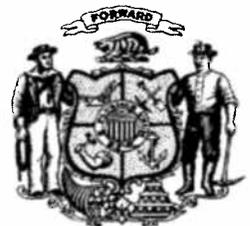
d. Comments attached

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3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached



WISCONSIN STATE LEGISLATURE



RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 05-110

Rule No.: Chapter Comm 155

Relating to: Interest on Real Estate Trust Accounts

Contact person for substantive questions:

Contact person for internal processing:

Name Patti Glassburn Name Sam Rockweiler

Title Housing Financial Specialist Title Code Development Consultant

Telephone Number 608/266-8273 Telephone Number 608/266-0797

1. Basis and purpose of the proposed rule.

The basis of the proposed rule is s. 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25. The purpose of the proposed rule is to revise the requirements for the submittal of the IBRETA information.

2. How the proposed rule advances relevant statutory goals or purposes.

The proposed rule reflects the statutory requirement for submittal of the IBRETA information annually by February 1.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No changes were made to the fiscal estimate that was prepared for public hearing. The rule analysis was changed to indicate that an equivalent form may be submitted instead of the department form.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Chapter Comm 155
Amendment No. if Applicable

Subject
Interest on Real Estate Trust Accounts

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be Possible to Absorb
Within Agency's Budget Yes No
- Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
None

Assumptions Used in Arriving at Fiscal Estimate

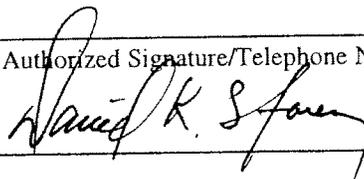
The proposed rules have no effect on revenues or costs for state or local government in the administration and enforcement of chapter Comm 155.

The proposed rules have no fiscal effect on the private sector.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.)
Commerce/Ronald Acker 267-7907

Authorized Signature/Telephone No.



Date

6/1/05

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R02/97)

ORIGINAL
 CORRECTED
 UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Chapter Comm 155

Amendment No.

Subject
 Interest on Real Estate Trust Accounts

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$ 0	\$ -0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs By Category	\$ 0	\$ -0
B. State Costs By Source of Funds		
GPR	\$ 0	\$ -0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$ 0	\$ -0
GPR Earned	0	-0
FED	0	-0
PRO/PRS	0	-0
SEG/SEG-S	0	-0
TOTAL State Revenues	\$ 0	\$ -0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)
 Commerce/Ronald Acker 267-7907

Authorized Signature/Telephone No.

David K. Sfray

Date

12/1/05



WISCONSIN STATE LEGISLATURE



FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 05-110

RULE NO.: Chapter Comm 155

RELATING TO: Interest on Real Estate Trust Accounts

Final regulatory flexibility analysis not required. (Statement of determination required.)

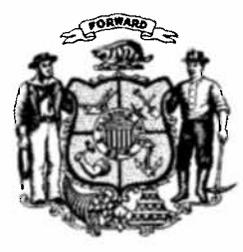
Section 452.13 (2) (e) 1., Stats., requires financial institutions to submit the IBRETA information to the department annually by February 1. The proposed rules of Clearinghouse Rule No. 05-110 are minimum requirements to meet the directives of statutes, and any exceptions from compliance for small businesses would be contrary to the Statutory objectives which are the basis for the rules. Financial institutions may use their own form to report the IBRETA information provided their form contains the same information as the department form.

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.
2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

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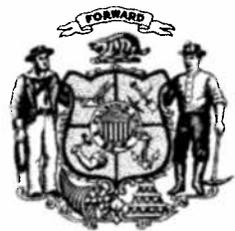


WISCONSIN STATE LEGISLATURE





WISCONSIN STATE LEGISLATURE



**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 05-110		Hearing Location: Madison	
Rule Number: Chapter Comm 155		Hearing Date: January 10, 2006	
Relating to: Interest on Real Estate Trust Accounts			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
1	Daryl Lund Community Bankers of Wisconsin Madison, WI	<p>1. Extend the timeframe for annual submission to March 1. For many banks, the month of January is very busy with closing out year-end financial information. Allowing an extra month to submit this information to the department would alleviate the reporting burden during a busy period for banks.</p> <p>2. Allow as an option the submission of information on forms developed by the bank rather than mandating the proposed department form. Most banks have computerized software that produces bank statements. These statements already include the required information of the name of the broker, the rate of interest applied, the amount of service charges for fees deducted, if any, and the account balance for the period that the statement covers. Also, the word "Account" should be eliminated in the first column on the proposed form. The bank should not be required to provide account numbers due to privacy concerns.</p> <p>3. The department should publish the annual interest rate on the department Web site. Currently this information is published on the Department of Financial Institutions Web site. As administrators for these accounts, the department should also include this information so that banks and others do not have to visit multiple Web sites to obtain this information.</p> <p>4. The department should publish an annual summary of the IBRETA program. Publishing an annual summary of the revenues raised and how those revenues were utilized would be of interest to banks and others participating in the program.</p>	<p>1. Disagree. The February 1 submission date is established by section 452.13 (2)(e)1., Wis. Stats., and cannot be changed by administrative rule. IBRETA funds supplement other state and federal funds for the homeless grant program that needs to be awarded in May before the end of the state fiscal year. Extending the submission date to March would hamper that grant process.</p> <p>2. Agree. The rule has been changed to allow an equivalent form. The first column on the proposed form has been renamed "Broker Account Name."</p> <p>3. Agree. The department will add a link from its Web site to the Department of Financial Institutions Web site.</p> <p>4. Agree. The department will publish an annual summary and post it on its Web site.</p>

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 05-110		Hearing Location: Madison	
Rule Number: Chapter Comm 155		Hearing Date: January 10, 2006	
Relating to: Interest on Real Estate Trust Accounts			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
2	Jeremy J. Shepherd Wisconsin Bankers Association Madison, WI	<p>1. Section 452.13 (2) (e) 2., Stats., provides financial institutions with flexibility in the form of statement used so long as certain specified pieces of information are contained in the document. The purpose of Comm 155.06 was not to overly burden financial institutions with more regulatory burdens. Financial institutions should continue to be given flexibility to determine the form that is used to remit monies to the state. WBA recommends that the current rule in Comm 155.06 be retained so that financial institutions continue to have the ability to choose from 3 options for providing information to the department when remitting monies.</p> <p>2. WBA is aware that some financial institutions remit money more frequently than annually. It is an operational issue to require financial institutions to hold monies until a specified period and then forward it to the state at one specified time. These issues become further complicated if an IBRETA account is closed during the year. It becomes unduly burdensome for a financial institution to maintain the needed information on these accounts that are closed, hold them until a specified date and then remit monies. The flexibility currently afforded in the law should be retained such that a financial institution may, if it chooses, remit monies more frequently than annually.</p>	<p>1. Agree in part. The rule has been changed to allow an equivalent form. The 3 options result in inefficiencies and added workload in department processing of the reports.</p> <p>2. Disagree. Numerous submittals throughout the year from a given financial institution result in extra workloads for the department. Section 452.13 (2) (e) 1., Wis. Stats., requires the submittal annually. When an account is closed, the needed information can be submitted at that time, meeting the once a year requirement.</p>





commerce.wi.gov

P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD#: (608) 264-8777

Jim Doyle, Governor
Mary P. Burke, Secretary

February 16, 2006

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 208
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

**TRANSMITTAL IN FINAL DRAFT FORM OF ADMINISTRATIVE
RULES AND REPORT**

CLEARINGHOUSE RULE NO.: 05-110

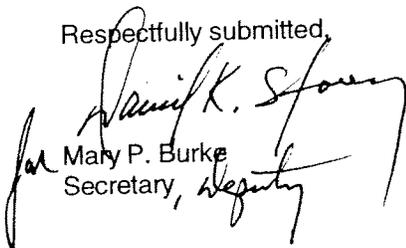
RULE NO.: Chapter Comm 155

RELATING TO: Interest on Real Estate Trust Accounts

Pursuant to section 227.19, Stats., agencies are required to submit, in triplicate, copies of the proposed administrative rules in final draft form together with a rule report and an analysis. The recommendations received from the Legislative Council are also to be submitted.

At this time, this material, together with cover letters to the President of the Senate and the Speaker of the Assembly, is being transmitted for referral to the standing committees for legislative review.

Respectfully submitted,


for Mary P. Burke
Secretary, *deputy*



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD#: (608) 264-8777

Jim Doyle, Governor
Mary P. Burke, Secretary

February 16, 2006

Senator Alan Lasee
President of the Senate
Room 219 South, State Capitol
Madison, Wisconsin 53702

Representative John Gard
Speaker of the Assembly
Room 215 West, State Capitol
Madison, Wisconsin 53702

Dear Senator Lasee and Representative Gard:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 05-110

RULE NO.: Chapter Comm 155

RELATING TO: Interest on Real Estate Trust Accounts

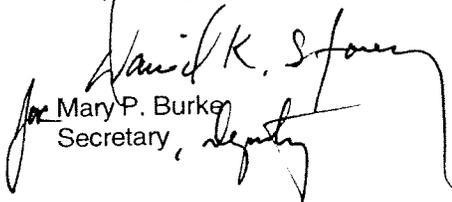
Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the presiding officer of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


for Mary P. Burke
Secretary, Deputy



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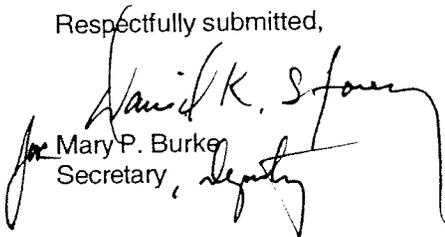
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Respectfully submitted,


Mary P. Burke
Secretary



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February 16, 2006

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CLEARINGHOUSE RULE NO.: 05-110

RULE NO.: Chapter Comm 155

RELATING TO: Interest on Real Estate Trust Accounts

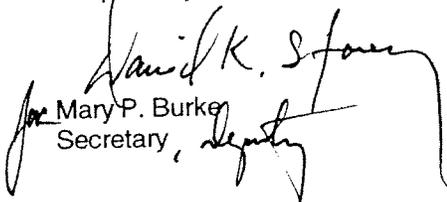
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If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,


for Mary P. Burke
Secretary, Deputy





State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 155

Relating to: Interest on Real Estate Trust Accounts

Clearinghouse Rule No.: 05-110

The Department of Commerce proposes an order to repeal and recreate s. Comm 155.06, relating to interest on real estate trust accounts and affecting small business.

Analysis of Proposed Rules

1. Statutes Interpreted.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25

2. Statutory Authority.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25

3. Related Statute or Rule.

None.

4. Explanation of Agency Authority.

Section 452.13 (5), Stats., as amended by 2005 Wisconsin Act 25, requires the department to promulgate rules necessary to administer section 452.13, Stats.

5. Summary of Rule.

Currently, banks and lending institutions submit a statement and remit the interest from an interest bearing real estate trust account (IBRETA) to the department in any format and at any time of the year. The proposed rules require the submittal of the IBRETA information on a standardized form, or an equivalent form, and by a specific date each year.

6. Summary of, and Comparison with, Existing or Proposed Federal Regulations.

There is no existing or proposed federal regulation that addresses the submittal of the IBRETA information to the department.

7. Comparison with Rules in Adjacent States.

Minnesota

The Wisconsin IBRETA statute was modeled after the Minnesota statute, and as a result the two statutes are quite alike. In Minnesota, each real estate broker is required to deposit all client funds, inferred to include at least earnest money and other down payments, into an

interest-bearing trust account. As in Wisconsin, it is the responsibility of the financial institution, not the broker, to pay the interest, less transaction costs, to the state. The financial institution must also submit a statement including the name of the broker, the rate of interest, the amount of service charges deducted, and the account balance for the period.

The method of collection and disbursement of these funds differs slightly. In Minnesota, the interest accruing to these accounts is paid to the Commissioner of Finance and deposited in the Housing Trust Fund account. The Housing Trust Fund is managed by the Minnesota Housing Finance Agency (the equivalent of WHEDA) and consists of funds from these interest-bearing accounts along with other state funds, gifts, grants, donations, and other agency monies. The funds in the Housing Trust Fund account are used to support low-income housing in the state by providing loans or grants for the development, construction, acquisition, preservation, and rehabilitation of low-income rental housing, for the operating costs of low-income or supportive housing, and for rental assistance. Funds from the housing trust fund account may only be used to benefit persons and families with income less than 60 percent of the median income, and 75 percent of these funds must be used for the benefit of persons and families with income less than 30 percent of the median income for a defined seven county area. These funds may also be used to benefit households receiving section 8 vouchers.

Receipts from the real estate brokerage accounts have varied greatly since the program's inception in 1989. Below is a table of receipts by year for the past ten years. The figure for 2005 has been estimated based on receipts through March, 2005. In general, these receipts are comparable to those of the Wisconsin IBRETA program.

1996	1997	1998	1999	2000
\$386,677	\$399,527	\$419,028	\$412,398	\$376,645

2001	2002	2003	2004	2005
\$421,598	\$370,564	\$274,928	\$221,305	\$300,503

Iowa

The state of Iowa also requires that brokers deposit all money belonging to others, including receipts from property management, rental or lease, advanced fee, or earnest money contracts, into a trust account. Interest accruing to these accounts, less services charges, is to be remitted to the Iowa Department of Economic Development. It is the responsibility of the broker, as opposed to the financial institution as in Wisconsin and Minnesota, to see that the interest is remitted. Interest is remitted quarterly along with a Real Estate Interest Remittance Form and a copy of the bank statement.

Funds received by the Department of Economic Development are deposited in the Local Housing Assistance Fund. These funds are used for housing programs but are not limited to projects that benefit low-income households. The Iowa Department of Economic Development reports that in recent years these funds have amounted to roughly \$200,000. There has been a decline in the amount of funds received in recent years as a result of both low interest rates and a provision in Iowa law that permits brokers or clients to keep the interest on such accounts if specified in the contract.

Michigan

Michigan does not require brokers to deposit client funds into interest-bearing trust accounts. The Michigan statutes say that a broker may deposit such funds into an interest-bearing account and that the interest accrued by this account should be handled according to the contract between the broker and the client.

Illinois

Illinois similarly does not require brokers to deposit client funds into interest-bearing trust accounts. On the contrary, Illinois requires that brokers deposit escrow funds, meaning earnest money and security deposits, in non-interest-bearing accounts except in cases where the principals specifically require otherwise. In the case of an interest-bearing account, the recipient of the interest must be specified in the contract between the principals.

8. Summary of Factual Data and Analytical Methodologies.

There were no factual data or analytical methodologies used to develop the proposed rules.

9. Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of Economic Impact Report.

The proposed rules should have a minimal effect on small business. There were no supporting documents used to determine the effect on small business, and an economic impact report was not prepared.

SECTION 1. Comm 155.06 is repealed and recreated to read:

Comm 155.06 Statement. The information required under s. 452.13. (2) (e) 2., Stats., shall be submitted annually by February 1, for the previous calendar year, to the department on form CDH-10829 or on an equivalent form. One report covering the aggregate accounts at a depository institution shall be submitted.

Note: Copies of form CDH-10829 are available at no charge from the Department of Commerce, P.O. Box 7970, Madison, WI 53707-7970, or by telephone at 608/266-8273, or on the Internet at www.commerce.wi.gov/CD.

Note: The address for submitting the annual report and payment to the department is the Wisconsin Department of Commerce – Administrative, P.O. Box 78257, Milwaukee, WI 53293-0257.

END

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
