

CR 93-211

CERTIFICATE

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

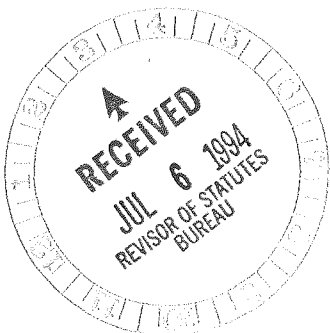
I, Patricia McCormack, Deputy Secretary in the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 5th day of July, 1994.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 5th day of July, 1994.

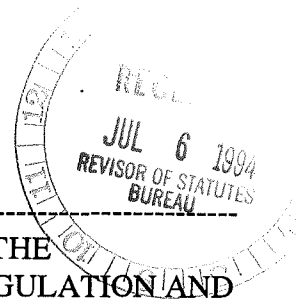
Patricia C. McCormack

**Patricia McCormack, Deputy Secretary
Department of Regulation and
Licensing**



9-1-94

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION : LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 93-211)

ORDER

An order of the Department of Regulation and Licensing to repeal RL 18.03, 18.04 (2), (3), (4) and (5), and chapter RL 21; to renumber RL 18.09 (3) and 18.13 (1) (c); to amend RL 18.04 (1), 18.05 (title) and 18.05, 18.06 (title) and 18.06, 18.07 (1) and (2), 18.10, 18.11 (title), (1) (title), (1) and (2), and 18.13 (1) (intro.), (a) and (b), (2), (4) (title) and (4); to repeal and recreate RL 18.02 and 18.08; and to create RL 16.06 (1) (f), 18.031, 18.032, 18.033, 18.034, 18.035, 18.036, 18.037, 18.09 (3) (b), 18.13 (1) (c) and (6) relating to forms, definitions, trust funds, earnest money and promissory notes.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2), 452.04, 452.05 (1) (b), 452.06 (1) and 452.07, Stats.

Statutes interpreted: ss. 452.05 (1) (b), 452.13, 452.14 (3) (m) and 452.11, Stats.

SECTION 1 adds a condition under which real estate agents may use department-approved contractual forms which they have printed or had printed for them. Since the department has approved a new residential listing contract and residential offer to purchase form which utilizes computer formatting to highlight the title of the forms, the section headings and the subsection headings, this rule would require the licensee to assure that the printed form contains formatting features substantially identical to those on the department's approved form.

SECTION 2 creates several new definitions, relating to 1993 Wisconsin Act 33, and amends several other definitions. Since 1993 Wisconsin Act 33 created a new definition of "client funds," this rule proposal distinguishes between trust accounts for client funds and trust accounts for non-client funds.

SECTIONS 3 and 4 retain many of the requirements which were in s. RL 18.03, amend some of them and convert the subsection numbers to section numbers. The primary policy changes in what was formerly s. RL 18.03 are: 1) requiring brokers to deposit real estate trust funds received by them within 48 hours, rather than 24 hours; 2) permitting a broker to deposit trust funds relating to the rental of property into an owner's account with the broker as a signatory on the account; 3) permitting a broker to maintain more than one interest-bearing common trust

account for client funds; 4) requiring brokers to provide the department with information about interest-bearing common trust accounts for client funds, just as brokers had been required to provide the department about real estate trust accounts in the past; and 5) requiring brokers to authorize both the department and the Department of Administration to examine and audit interest-bearing common trust accounts for client funds.

SECTIONS 5 and 6 reduce the minimum qualifications of persons whom the broker may authorize to sign trust account checks. This section now only requires that the person be 18 years of age.

SECTION 7 retains the requirement that a broker must indicate on the offer to purchase that the broker has received earnest money; however, it adds a time frame: "at the time the offer is drafted." If earnest money is received later, the broker should not receipt for it on the offer to purchase.

SECTION 8 amends a section relating to after-closing escrow agreements and creates a provision which would permit a broker to prepare an after-closing escrow agreement on a form approved by the department for this purpose, provided that the department decides to approve such a form. At the time of this rule-making the department has not approved a form for this purpose.

SECTION 9 retains requirements for cooperating brokers to transfer earnest money to the listing broker; however, a new provision is added which requires such transfer no later than 30 days after receipt of the earnest money, unless the cooperating broker has obtained definitive information from the depository institution that the personal check, share draft or draft has not cleared.

SECTIONS 10 and 11 renumber a provision and create a requirement that a broker who provides property management services must disburse the fee earned for providing property management services on a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

SECTION 12 amends the current rule which permits a broker to deposit personal funds in the broker's trust account to cover service charges by additionally requiring that the broker must deposit additional personal funds within 10 business days after notice that there are insufficient funds in the account to cover such charges.

SECTION 13 clarifies the conditions under which a broker may receive and hold promissory notes. The earnest money provisions in the approved form must be modified to show receipt of a promissory note, to grant the broker authority to hold the note and to provide appropriate disbursement directions for the broker.

SECTIONS 14 through 17 amend provisions relating to a cash journal and ledger maintained by a broker. The journal need no longer be a book. The ledger must identify the name of the party giving earnest money if that party is different from the buyer.

SECTION 18 lists 6 conditions under which a broker may use a computerized system to maintain the broker's bookkeeping system.

SECTION 19 repeals Chapter RL 21 which is no longer necessary in light of changes to ss. 452.17 and 440.21, Stats., and the creation of Chapter RL 3, Wis. Admin. Code.

TEXT OF RULE

SECTION 1. RL 16.06 (1) (f) is created to read:

RL 16.06 (1) (f) Shall assure that the formatting of the form is substantially identical to that on the department's form.

SECTION 2. RL 18.02 is repealed and recreated to read:

RL 18.02 DEFINITIONS. In this chapter:

- (1) "Client funds" has that meaning given in s. 452.13 (1) (a), Stats.
- (2) "Cooperating broker" means a broker who is assisting a buyer or a tenant in negotiations with a seller or landlord who is represented by a listing broker. A "cooperating broker" may be the agent of the buyer, the tenant, the seller, or the landlord.
- (3) "Department" means the department of regulation and licensing.
- (4) "Depository institution" has that meaning given in s. 452.13 (1) (b), Stats.
- (5) "Real estate trust account" means an account for real estate trust funds maintained at a depository institution for which withdrawals or transfers can be made without delay, subject to any notice period that the depository institution is required to observe by law, and includes:
 - (a) Interest-bearing common trust accounts established for client funds;
 - (b) Non-interest bearing real estate trust accounts maintained for real estate trust funds other than client funds; and
 - (c) Interest-bearing real estate trust accounts maintained for real estate trust funds other than client funds.
- (6) "Real estate trust funds" means any cash, checks, share drafts, drafts or notes, other than promissory notes, received by a broker or a broker's salespersons or time-share salespersons on behalf of a principal or any other person including, but not limited to:

- (a) Payments on land contracts, mortgage payments and any other receipts pertaining to mortgages;
- (b) Tax and insurance payments held in escrow;
- (c) Advance fees and finder's fees, unless non-refundable;
- (d) Rental application deposits and rents, but only when received while acting as an agent for another;
- (e) Payments received for subsequent repayment to a third party;
- (f) Security deposits on rental property, except as provided in s. RL 18.031 (4); and
- (g) Initial and additional earnest money downpayments and other monies received in connection with offers to purchase, options and exchanges, even if the broker, salesperson or time-share salesperson receives the downpayments or monies when negotiating the sale of real estate or a business opportunity which the broker, salesperson or time-share salesperson owns in whole or in part, or when negotiating the purchase of real estate or a business opportunity for ownership in whole or in part by the broker, salesperson or time-share salesperson.

SECTION 3. RL 18.03 is repealed.

SECTION 4. RL 18.031, 18.032, 18.033, 18.034, 18.035, 18.036 and 18.037 are created to read:

RL 18.031 DEPOSITS AND TYPES OF ACCOUNTS. (1) **TIME OF DEPOSIT.** A broker shall deposit all real estate trust funds received by the broker or broker's salespersons or time-share salespersons in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds within the next 2 business days of the depository institution. If a broker receives funds which cannot be deposited by the broker, the broker shall, no later than one business day after receipt, either:

- (a) Forward the funds to the payee, if someone other than the broker; or
- (b) Return the funds to the payor.

(2) **DUTY OF SALESPERSON.** A salesperson or time-share salesperson who receives real estate trust funds shall promptly submit the funds to the employer-broker of the salesperson or time-share salesperson.

(3) **INTEREST-BEARING ACCOUNTS.** (a) Client funds shall be deposited in an interest-bearing common trust account and the department of administration shall be the beneficial owner of the interest accruing to the account, minus any service charges. At no time may the broker remove or use the interest earned on such accounts.

(b) Real estate trust funds, other than client funds, may be deposited in an interest-bearing account if the broker obtains from the persons for whom the funds are being held written authorization to deposit the funds in an interest-bearing account and if the authorization specifies how and to whom the interest will be disbursed. None of the interest earned on the funds deposited into an interest-bearing account may inure to the benefit of the broker.

(4) **SECURITY DEPOSITS.** A licensee having an ownership interest in a rental property shall either place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

(5) **RENTAL OWNER'S ACCOUNT.** (a) In this subsection, "owner's account" means an account maintained by an owner of rental property for depositing and disbursing any funds payable to or by the owner.

(b) A broker may directly deposit into an owner's account rental application deposits, rents and security deposits which may have been made payable to one or more owners. The broker may be designated as a signatory on the owner's account and may make disbursements from that account to the extent authorized by the owner in writing.

RL 18.032 NUMBER OF REAL ESTATE TRUST ACCOUNTS. A broker may maintain more than one real estate trust account, including more than one interest-bearing common trust account for client funds, if the broker notifies the department of these accounts, as required in s. RL 18.035.

RL 18.033 TIME WHEN REAL ESTATE TRUST ACCOUNT SHALL BE OPENED OR MAY BE CLOSED. (1) **OPENING AN ACCOUNT.** A broker shall open a real estate trust account if the broker receives real estate trust funds.

(2) **CLOSING AN ACCOUNT.** A broker may close a real estate trust account if no real estate trust funds remain in the account.

RL 18.034 ACCOUNT DESIGNATION. (1) A broker shall name the broker's real estate trust account with the name appearing on the broker's license or with a trade name submitted to the department under s. RL 23.03 and shall include the words "trust account" in the name of the account.

(2) **NAME ON CHECKS.** A broker shall imprint the name of the real estate trust account on real estate trust account checks, share drafts or drafts.

RL 18.035 DUTY TO NOTIFY THE DEPARTMENT. (1) OPENING AN ACCOUNT.

No later than 10 days after opening any real estate trust account a broker shall provide the department with the name and number of the account, with the name of the depository institution in which the broker holds the account and with information concerning whether the account is for client funds or for real estate trust funds other than client funds. The information shall be provided on a form, as required in s. RL 18.037.

(2) CHANGING OR CLOSING AN ACCOUNT. A broker shall notify the department no later than 10 days after a broker changes a real estate trust account name or number, changes the real estate trust account from one depository institution to another, closes a real estate trust account or changes a real estate trust account to or from an interest-bearing common trust account established for client's funds. The notification shall be provided on a form, as required in s. RL 18.037.

RL 18.036 AUTHORIZATION TO EXAMINE REAL ESTATE TRUST ACCOUNTS AND RECORDS. (1) BROKER'S AUTHORIZATION. No later than 10 days after opening a real estate trust account a broker shall furnish the department authorization for the department to examine and audit all of the broker's real estate trust account records and authorization for the department of administration to examine all of the broker's interest-bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. RL 18.037.

(2) DEPOSITORY INSTITUTION'S CERTIFICATION. No later than 10 days after opening a real estate trust account a broker shall obtain the certification of every depository institution in which the broker maintains a real estate 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 department or, in the case of interest-bearing common trust accounts maintained for client funds, the department of administration. The certification shall be provided to the department on a form, as required in s. RL 18.037.

RL 18.037 FORM FOR NOTIFICATION AND AUTHORIZATION. A broker shall provide the information and authorization in ss. RL 18.035 and 18.036 on a form provided by the department. This form shall be designated "consent to examine and audit trust account." However, when closing a real estate trust account, a broker may inform the board by letter only.

Note: A copy of this form may be obtained from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

SECTION 5. RL 18.04 (1) is amended to read:

RL 18.04 AUTHORIZATION TO SIGN TRUST ACCOUNT CHECKS. ~~(1)~~ **AUTHORIZATION:** A broker may authorize other persons to sign real estate trust account checks, share drafts or drafts drawn on the broker's real estate trust account if the person is at least 18 years of age.

Note: ~~A free copy of this authorization form may be obtained from the Department of Regulation and Licensing, Real Estate Bureau, 1400 East Washington Avenue, Madison, Wisconsin 53702.~~

SECTION 6. RL 18.04 (2), (3), (4) and (5) are repealed.

SECTION 7. RL 18.05 (title), 18.05, 18.06 (title) and 18.06 are amended to read:

RL 18.05 (title) RECEIPT FOR EARNEST MONEY RECEIVED BY THE BROKER. A broker ~~and a broker's licensed salespersons~~ shall indicate on the offer to purchase the receipt of ~~initial~~ earnest money received ~~by them~~ from a buyer at the time the offer is drafted.

RL 18.06 (title) ESCROW AGREEMENT FOR EARNEST MONEY NOT HELD BY THE BROKER. If the parties to a transaction do not desire that the broker hold the earnest money in the broker's real estate trust account, and wish to ~~agree so some type of escrow arrangement other than that provided for in the offer to purchase with respect to earnest money deposits, the escrow agreement shall not be drafted by the broker~~ designate an escrow agent other than the broker, the broker may not draft the escrow agreement. The escrow agreement shall be drafted by the parties or an attorney. The broker ~~shall~~ may not hold the funds in the broker's real estate trust account, nor ~~shall~~ may the broker act in any way as custodian of the funds for the parties. The funds, pursuant to the escrow agreement, shall be held by some other party, such as a bank, a savings and loan association, a credit union or an attorney.

SECTION 8. RL 18.07 (1) and (2) are amended to read:

RL 18.07 AFTER CLOSING ESCROW AGREEMENTS. (1) (title) BY SEPARATE AGREEMENT. If the parties to a contract wish, or are required, to place funds in escrow which are to be held after closing by the broker in the broker's trust account or by another person until some future occurrence, and they request that the broker hold these funds, an agreement to that effect shall be prepared by the parties or an attorney. If the broker holds these funds, the broker shall place them in the broker's real estate trust account. The broker may draft the escrow agreement if a form for this purpose has been approved by the department for use by licensees pursuant to s. RL 16.03.

(2) (title) ON CLOSING STATEMENT. A broker may hold in a the broker's trust account without a separate escrow agreement occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed, provided that the closing statement shows that the broker is holding the funds.

SECTION 9. RL 18.08 is repealed and recreated to read:

RL 18.08 REAL ESTATE TRUST FUNDS AND COOPERATING BROKERS. If a transaction involves a cooperating broker and the parties have not agreed otherwise, the cooperating broker shall transfer any trust funds received to the listing broker or other person

designated by the parties to hold the trust funds within 24 hours of the deadline stated in the offer, option, exchange agreement or lease for transfer of the funds. If the trust funds are received in the form of a personal check, share draft or draft, the cooperating broker may withhold transfer of the payment pending evidence of clearance from the payor's depository institution. In any case, the cooperating broker shall transfer the trust funds to the listing broker within 30 days after receipt, unless the cooperating broker has obtained definitive information from the depository institution that the personal check, share draft or draft has not cleared.

SECTION 10. RL 18.09 (3) is renumbered 18.09 (3) (a).

SECTION 11. RL 18.09 (3) (b) is created to read:

RL 18.09 (3) (b) A broker providing property management services shall disburse the fee earned for providing property management services as a regular monthly basis unless otherwise agreed in a written property management agreement signed by the parties to that agreement.

SECTION 12. RL 18.10 is amended to read:

RL 18.10 COMMINGLING PROHIBITED. A broker shall deposit only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account except that a broker may deposit and keep a sum not to exceed \$300.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover service charges relating to the trust account. A broker shall deposit additional personal funds in the broker's real estate trust account within 10 business days following receipt of a statement or other notification from a depository institution that a service charge has been made against the account for which insufficient personal funds are available in the account.

SECTION 13. RL 18.11 (title), (1) (title), (1) and (2) are amended to read:

RL 18.11 (title) NON-DEPOSITABLE ITEMS. (1) (title) OTHER THAN PROMISSORY NOTES. With the exception of promissory notes, a broker shall not hold ~~as down payment from a buyer~~ any instrument, equity or thing of value which is not depositable in a real estate trust account. Non-depositable items other than promissory notes shall be held by one of the parties to the transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

(2) PROMISSORY NOTES. A broker may accept and hold earnest money downpayments in the form of promissory notes ~~from buyers as downpayments and hold these for received from the parties to the~~ a transaction, if the broker, ~~inserts language in the offer to purchase which expressly gives the broker authority to hold the note and if the broker modifies the earnest money clause and the earnest money receipt in the offer to purchase to show receipt of a promissory note.~~ the parties or the parties' attorney or attorneys:

(a) Delete or modify the earnest money provisions in a form approved pursuant to s. RL 16.03 to show receipt of a promissory note;

(b) Grant the broker the authority to hold the note; and

(c) Provide appropriate disbursement directions for the broker.

SECTION 14. RL 18.13 (1) (intro.), (a) and (b) are amended to read:

RL 18.13 (1) CASH JOURNAL. A broker shall maintain a ~~permanent record book~~, called a journal, which shall show the chronological sequence in which real estate trust funds are received and disbursed as follows:

(a) For funds received, the journal shall include the date, the name of the party who is giving the money, ~~the name of the principal~~, and the amount.

(b) For disbursements, the journal shall include the date, the payee, the number of the check, share draft or draft and the amount. ~~The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification.~~

SECTION 15. RL 18.13 (1) (c) is renumbered 18.13 (1) (d).

SECTION 16. RL 18.13 (1) (c) is created to read:

RL 18.13 (1) (c) The journal shall identify each transaction by including the name of the principal, an identification number or other means of identification which will link the journal to the transactions and the ledger described in sub. (2).

SECTION 17. RL 18.13 (2), (4) (title) and (4) are amended to read:

RL 18.13 (2) LEDGER. A broker shall maintain a record ~~book~~ which shows the receipts and the disbursements as they affect each particular transaction e.g., transactions between buyer and seller, landlord and tenant, etc. The ledger entry shall include the names of both parties to a transaction, the dates and the amounts received and the name of the party giving the money if different from the buyer. The ledger entry shall include the date, payee, number of the check, share draft or draft and amount when funds are disbursed. The ledger shall show a running balance and segregate each transaction. The broker shall maintain a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions, e.g., sales, rental collections or mortgage and land contract collections.

(4) (title) TRIAL BALANCE. The broker shall prepare or have prepared, in conjunction with sub. (3), a written listing, "trial balance", of all open items in the real estate trust account. The list must show the names of the parties to the transaction and the amount held in trust for the parties at the time corresponding to the account reconciliation. The broker may in

lieu of the names of the parties to the transaction substitute the ledger page number ~~on which the funds appear~~ or other means of identification from the ledger to label the funds in the trial balance.

SECTION 18. RL 18.13 (6) is created to read:

RL 18.13 (6) USE OF COMPUTERS. A computerized system may be used to maintain the broker's bookkeeping system if:

- (a) The system complies fully with subs. (1) to (5).
- (b) All bookkeeping entries required by this chapter are made in the computerized system, even if other records are being simultaneously maintained.
- (c) A backup copy of the bookkeeping records required under subs. (1) to (2) is made on any day on which entries are made in the computerized bookkeeping system. The backup copy shall be made on a disk or other medium which is separate and distinct from that on which the source documents resides.
- (d) After complying with subs. (3) to (5), the document which records the account reconciliation, trial balance and validation is immediately copied to a backup medium and maintained by the broker.
- (e) All records which are not maintained as written paper records are capable of being immediately converted to written paper records and immediately made available without charge to the department for the purposes of department audit or investigation.
- (f) All computerized trust account records are retained pursuant to s. RL 15.04.

SECTION 19. Chapter RL 21 is repealed.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

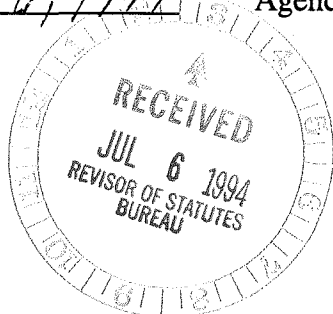
Dated

July 6, 1994

Agency

Patricia C. McCormack

Patricia McCormack, Deputy Secretary
Department of Regulation and Licensing



CORRESPONDENCE/MEMORANDUM

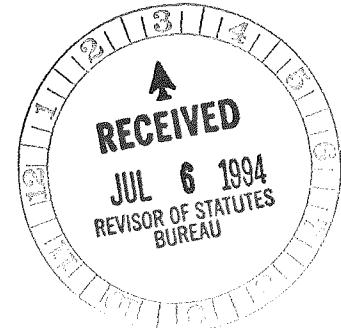
STATE OF WISCONSIN

DATE: July 6, 1994

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Administrative Assistant
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Rule-Making Order



Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 93-211

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the code.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.